

**IN DISCIPLINARY DISTRICT II
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

FILED

2016 NOV 18 PM 1:29

BOARD OF PROFESSIONAL
RESPONSIBILITY

DeW
EXEC. SEC'Y

**IN RE: IN RE: CHARLES DAVID DEAS,
BPR No. 2049, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Blount County)**

DOCKET NO. 2016-2578-2-AW

JUDGMENT OF THE HEARING PANEL

A Petition for Discipline (the "Petition"), Docket No. 2016-2578-2-AW, was filed May 9, 2016, and served upon the Respondent, Charles David Deas ("Mr. Deas" or "Respondent"). On June 14, 2016, Mr. Deas filed his Answer admitting the allegations set forth in paragraphs 1 through 14 of the Petition for Discipline.

The Petition for Discipline consists of a self-report of Mr. Deas regarding his arrest on June 10, 2014, for driving under the influence and possession of a handgun while under the influence and his subsequent conviction on January 8, 2016, for obstructing a roadway and possession of a handgun while under the influence. Mr. Deas admitted his conduct and that such conduct is in violation of the Rules of Professional Conduct 8.4. Accordingly, the only issue before the Hearing Panel is the appropriate disciplinary sanction to be imposed upon Mr. Deas for his admitted misconduct.

The Final Hearing was held on October 21, 2016, before a duly constituted Hearing Panel consisting of Sara E. Compher-Rice, Hugh B. Ward and chaired by G. Keith Alley. Mr. Deas appeared *pro se*, and the Board was represented by A. Russell Willis.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence submitted to the Hearing Panel, the Hearing Panel finds as follows:

1. The Respondent is an attorney licensed to practice law in Tennessee since 1972. Respondent's most recent office address as registered with the Board of Professional Responsibility is 384 High Street, Maryville, Tennessee, 37804-5846, being in Disciplinary District II. Respondent's Board of Professional Responsibility number is 2049.

2. On August 28, 2014, the Board received a faxed letter from Respondent self-reporting his arrest in Knoxville, Tennessee, on June 10, 2014, for driving under the influence of an intoxicant and possession of a handgun while under the influence.

3. On January 16, 2016, Respondent notified Disciplinary Counsel by letter that Mr. Deas had entered a plea of *nolo contendere* on January 8, 2016, to the offenses of obstructing a roadway, in violation of Tenn. Code Ann. § 39-17-307, a Class C Misdemeanor, and possession of a handgun while under the influence of alcohol, in violation of Tenn. Code Ann. § 39-17-1321, a Class A Misdemeanor.

4. Thereafter, on January 21, 2016, Respondent furnished Disciplinary Counsel with copies of both General Sessions Judgments reflecting the criminal convictions for these offenses.

5. Pursuant to Tenn. Sup. Ct. R. 9, § 22, the Board filed a Notice of Submission with the Supreme Court on February 8, 2016, reporting Mr. Deas' criminal misdemeanor convictions.

6. On February 10, 2016, the Supreme Court entered an Order referring Mr. Deas' criminal conduct to the Board for further action.

7. On March 11, 2016, the Board authorized the filing of a formal Petition for Discipline against Mr. Deas based upon his conviction of two (2) misdemeanors in violation of RPC 8.4(b).

8. On March 17, Eileen Burkhalter Smith ("Ms. Smith") of the Tennessee Board of Professional Responsibility erroneously mailed Respondent a proposed imposition of discipline of a Public Censure. The proposed censure was revoked by letter from Ms. Smith dated March 18, 2016, indicating a petition for discipline would be filed in the matter.

9. The Petition against Respondent was filed on May 9, 2016.

10. Respondent filed an Answer to the Petition on June 14, 2016, admitting paragraphs 1 through 14 of the Petition.

11. At the October 21, 2016 Hearing on this matter, Attorney Andy Long testified on behalf of the Respondent and offered the following:

a. Attorney Long represented Respondent in the Knox County General Sessions Court for the offenses of driving under the influence and possession of a handgun while under the influence;

b. The underlying facts of the criminal cases included the following:

i. Respondent was stopped by the Knoxville Police Department after being found to be passed out or asleep at a traffic light on Kingston Pike at Scenic Drive;

ii. Respondent submitted to field sobriety tests, but such tests were administered out of the view of the officer's dash camera;

iii. Respondent agreed to submit to a blood alcohol test and registered a .13%;
and,

iv. After the arrest, a handgun was found behind the seat of Respondent's pickup truck during a search of the vehicle.

c. While Respondent was on bond, he was required to install and use an Ignition Interlock Device on his vehicle and he had no violations.

d. Respondent entered an agreement to plead nolo contendere to the offenses of possession of a handgun while under the influence and obstructing a roadway. The conditions of the plea agreement included placing Respondent on unsupervised probation for 11 months, 29 days, during which time Respondent was required to wear a SCRAM (Secure Continuous Remote Alcohol Monitoring) device for 6 months, forfeit his weapon, and pay the court costs.

12. Respondent also offered testimony. He explained that he fell asleep at a traffic light after attending a birthday dinner with his staff, where he had consumed wine.

13. On cross-examination, Respondent agreed that based upon his blood alcohol level, he could have consumed 5 to 6 glasses of wine prior to driving.

14. Respondent also indicated that after self-reporting to the Board after his arrest, he contacted the Tennessee Lawyers Assistance Program ("TLAP"). However, he chose to not follow up and enter any TLAP program. According to Respondent, his participation in the TLAP program was not needed because he began experiencing acid reflux, which made it painful to consume alcohol, so he would not be drinking. According to Respondent, he is currently addressing his drinking problem, which he admits he has, by "not drinking."

15. Respondent also admitted to consuming alcohol (wine) within one month prior to the October 21, 2016 hearing.

16. The Board introduced Exhibits 3 through 10, detailing Respondent's prior

discipline as follows:

- a. Informal Admonition for violation of DR 5-101(A), dated April 5, 1995;
- b. Informal Admonition for violation of DR 1-102(A)(1)(4)(5)(6), DR 6 101(A)(1)(2)(3), and DR 7-101(A)(1)(2)(3)(4), dated October 21, 1996;
- c. Public Censure for violation of RPC 8.1 and 8.4, dated September 26, 2005;
- d. Public Censure for violation of RPC 1.1, 1.2, 1.3, 1.4, 1.16, and 8.4, dated April 21, 2006;
- e. Order of Temporary Suspension pursuant to Section 4.3 of Supreme Court Rule 9, dated June 9, 2006;
- f. Order reinstating Mr. Deas to the practice of law, dated August 9, 2006;
- g. Order of Enforcement of Public Censure, dated May 9, 2008; and,
- h. Public Censure for violation of RPC 1.3, dated November 2, 2009.

JUDGMENT

The professional misconduct alleged consists of one (1) complaint governed by Tenn. Sup. Ct. R. 9 (2014). Pursuant to Tenn. Sup. Ct. R. 9, § 8 (2014), attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts. Pursuant to Tenn. Sup. Ct. R. 9, § 1 (2014), the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to act at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Pursuant to Tenn. Sup. Ct. R. 9, § 11 (2014), acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct (RPC) of the State of Tennessee constitute misconduct and grounds

for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. Mr. Deas failed to conduct himself in conformity with said standards and is guilty of acts and omissions in violation of RPC 8.4(b), as admitted by Respondent.

Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions (the "ABA Standards"). The relevant ABA Standards that apply to Respondent's matter include 5.12 and 8.2.

ABA Standard 5.12 provides:

5.12 Suspension is generally 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.

ABA Standard 8.2 provides:

8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause potential injury to a client, the public, the legal system, or the profession.

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanctions to impose. Pursuant to ABA Standard 9.22, the Hearing Panel finds the following aggravating circumstances applicable in this matter:

- (a) Respondent's extensive prior disciplinary offenses;
- (b) The pattern of Respondent's misconduct to the extent that multiple offenses have involved the abuse of alcohol and the offenses appear to be occurring more frequently the longer the Respondent practices law;
- (c) Respondent has substantial experience in the practice of law;
- (d) The current matter is a result of illegal conduct on the part of the Respondent. Not

only was he convicted of a Class A Misdemeanor (Possession of a Handgun While Under the Influence) and a Class C Misdemeanor (Obstruction a Roadway), but Respondent's own testimony also supported a conclusion by a preponderance of the evidence that he also committed the offense of Driving Under the Influence.

Pursuant to ABA Standard 9.32, the Hearing Panel finds the following mitigating circumstances applicable in this matter:

(a) Respondent's full and free disclosure to the disciplinary and cooperative attitude toward the proceedings.

(b) Respondent was imposed other penalties of probation, the use of the SCRAM device, forfeiture of the handgun and payment of court costs. However, this is a minor mitigating circumstance considering the fact that such penalties relate only to the criminal offenses to which Respondent entered a plea of nolo contendere.

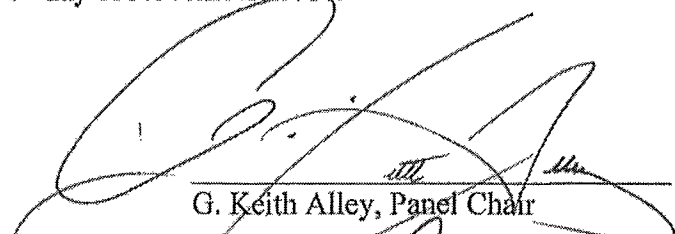
(c) Respondent's expression of remorse for his actions related to his arrest and criminal convictions.

CONCLUSION

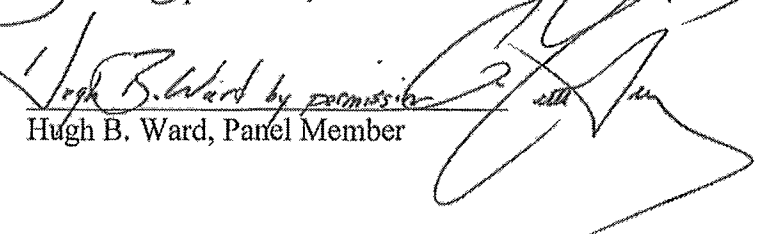
Based upon the facts in this case; the application of the Rules of Professional Conduct and considering the ABA Standards, the Hearing Panel concludes that a preponderance of the evidence demonstrates that Mr. Deas committed disciplinary misconduct that reflects upon his fitness to practice law. Considering the facts and circumstances of this matter, the previous convictions for alcohol related offenses and the disciplinary history, the fact that Respondent has been previously reprimanded for similar conduct, and the aggravating and mitigating circumstances, the Hearing Panel finds the appropriate disciplinary sanction to impose upon Mr. Deas is suspension from the practice of law for a period of six (6) months, all but sixty (60) days to be served on probation

pursuant to Tenn. Sup. Ct. R. 9, § 12.2. Respondent is also ordered to enter the TLAP and comply with any and all recommendations of TLAP. Costs associated with this action are hereby assessed to the Respondent.

SO ORDERED, this the 18th day of November, 2016.


G. Keith Alley, Panel Chair


Sara E. Compher-Rice, Panel Member


Hugh B. Ward, Panel Member

NOTICE TO RESPONDENT

THIS JUDGMENT MAY BE APPEALED PURSUANT TO TENN. SUP. CT. R. 9, § 33 (2014) BY FILING A PETITION FOR REVIEW IN THE CIRCUIT OR CHANCERY COURT WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF THE HEARING PANEL'S JUDGMENT.