

FILED
Sept. 3, 2009
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE
Keta Wehler
Executive Secretary

IN DISCIPLINARY DISTRICT V
OF THE BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF THE STATE OF TENNESSEE

In re:

RICHARD AUSTIN DEMONBREUN,
BPR No. 104565, an attorney licensed to
practice law in the State of Tennessee
(Davidson County).

Docket No. 2008-1735-5-RS
File No. 29575-5-JV

FINDINGS AND JUDGMENT OF THE PANEL

Pursuant to Rule 9, Section 8.3 of the Rules of the Supreme Court for the State of Tennessee, the Disciplinary Panel of the Board of Responsibility issues its Findings and Judgment in the matter captioned above. For the reasons set forth below, the Panel finds that the Board of Professional Responsibility, as Petitioner (“**Board**”), has established that the Respondent, Richard Austin Demonbreun (“**Respondent**”), has engaged in professional misconduct in violation of Rules 3.3, 3.4 and 8.4 of the Rules of Professional Conduct (RPC), Tenn. R. Sup. Ct. 8,. The Board’s Petition and Supplemental Petition are therefore **GRANTED** in accordance with the terms outlined in this Memorandum and the Order.

I. STATEMENT OF THE CASE

On March 7, 2008, the Board filed a Petition for Discipline against the Respondent, alleging ethical misconduct in violation of RPC 8.4(a),(b) and (g). (Petition at ¶ 9.) The Respondent timely filed an Answer on March 31, 2008, and this Panel issued a Scheduling Order on May 30, 2008.

On December 31, 2008, the Board filed a Supplemental Petition for Discipline, alleging that subsequent to the filing of the initial Petition, the Respondent engaged in ethical misconduct in violation of RPC 3.3, 3.4, and 8.4. (Supp. Petition at ¶ 16.) The Respondent timely filed an Answer to the Supplemental Petition for Discipline on January 13, 2009. Thereafter, the Panel issued a second scheduling order on January 20, 2009.¹

On April 28, 2009, the Respondent filed a motion to exclude the testimony of Stacey A. Tompson (“**Tompson**”) and to dismiss the Supplemental Petition, and the Board filed a timely response on May 4, 2009. On May 6, 2009, the Respondent filed a motion to compel the Board to produce Tompson for a discovery deposition, and for sanctions against the Board. The Board filed a timely response to the Respondent’s second discovery motion on May 12, 2009. The Panel granted the Respondent’s motion to exclude Tompson’s testimony, but denied the Respondent’s motion to dismiss and also denied his motion for sanctions.

On June 19, 2009, the Respondent filed a Motion in Limine to exclude evidence related to Rutherford County criminal matters naming him as a defendant (discussed in further detail below), on the grounds that those criminal matters had been expunged. The Board timely filed a response to the Motion in Limine on June 24, 2009, to which the Respondent filed a Reply on June 26, 2009.

Prior to the trial of this cause on June 30, 2009, a hearing was held on the Motion in Limine. At that hearing, the Panel held that it would not consider as evidence the plea

¹ The January 20, 2009 scheduling order also states that the Respondent informally requested that one of the undersigned Panel members, Clifford Wilson, consider recusal in light of his appearances as co-counsel and adverse counsel to Respondent in prior matters several years prior to these Petitions. Mr. Wilson represented to the parties and the Panel that he held no “preconceived biases” of any kind as to the Respondent, and the Respondent withdrew his request.

agreement or other official records within the definition of Tenn. Code Ann. § 40-35-313 as they relate to the Respondent's prior plea of guilty. The Panel ruled, however, that it could consider other evidence in the record, including the Respondent's own admissions through correspondence and his Answer to the Petition acknowledging that he previously pled guilty to violating an Order of Protection and to the charge of misdemeanor stalking. . Subsequent to the hearing, the Panel granted a Motion to Seal the Respondent's medical records. Pursuant to the Panel's instruction, parties each filed findings of fact and conclusions of law on or before July 15, 2009.

II. FINDINGS OF FACT

1. The Respondent was duly licensed to practice in the State of Tennessee in 1990. The Respondent has been actively and continuously engaged in the practice of law since his licensure.

2. Prior to the filing of these Petitions, the Respondent has been disciplined on several occasions by the Board. On August 10, 1992, the Board issued a Private Reprimand to the Respondent for violations of Disciplinary Rule (**DR**) 7-104(A)(2) and DR 1-102(A)(1), (5) and (6). On July 31, 1996, the Board issued a second Private Reprimand to the Respondent for violations of DR 7-101(A)(3) and DR 7-102(A)(1). On October 17, 1997, the Board issued a third Private Reprimand to the Respondent for violations of Formal Ethics Opinion 87-F-109. On November 21, 2000, the Board filed a Public Censure against the Respondent for failure to comply with DR 1-102(A)(1), (4), (5) and 6; DR 2-101(A)(1) and DR2-104(C)(1)(a) and (2)(a), (e), (g) of the Code of Professional Responsibility.

3. On or about June 17, 2006, the Respondent married Tompson. The Respondent took Tompson and her family on a expensive honeymoon trip to Europe. The Respondent also became a caring stepfather to Tompson's daughter, paying for her tuition to a private school, Franklin Road Academy. (See Respondent's Exhibit (**Resp. Ex.**) 1 at p. 56.) The Respondent and Tompson also consulted a fertility expert in anticipation of having children of their own. The Respondent was intently focused on building a happy life and family with Tompson.

4. The Respondent's plans soon fell apart. A few months after their return from their honeymoon, Tompson told Respondent that she no longer wanted to be married to him. She then moved out of the Respondent's home in Davidson County, Tennessee and relocated to Rutherford County, Tennessee.

5. The Respondent was extremely distraught and shocked by Tompson's decision. On several occasions, he attempted to contact her in person and via telephone. Thereafter, on September 18, 2006, the Respondent initiated divorce proceedings against Tompson in the Circuit Court for Davidson County, Tennessee ("**DCCC**"), Richard Demonbreun v. Stacey A. Tompson, Docket No. 06D2658 ("**Divorce Proceedings**"). (See Id.) The Respondent decided to serve Tompson with process in the Divorce Proceedings personally by leaving copies of the Divorce Proceedings and summons inside the screen door of her residence (Id. at p. 17.). The record indicates that Tompson alleged that the Respondent was "stalking" her, and Respondent was arrested by the Murfreesboro Police Department.

6. On the same day the Respondent filed and served the Divorce Proceedings, Tompson filed a Petition for an Order of Protection in the Circuit Court for

Rutherford County, Tennessee (“RCCC”), styled Stacey Amber Tompson v. Richard Austin Demonbreun, Docket No. 54269 (“**Protection Proceedings**”). On September 20, 2006, the Respondent was arrested by the Murfreesboro Police Department for “stalking.”

7. On September 26, 2006, the RCCC entered an Order of Protection in the Protection Proceedings (“**Order of Protection**”) which provided as follows:

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED:

* * *

That [Respondent] shall not telephone, contact, or otherwise communicate with the petitioner, directly or indirectly

(See Board Exhibit (**Bd. Ex.**) 5 at Ex. A.)

8. The Respondent testified that, after the Order of Protection was entered, he and Tompson had several communications which led him to believe that a reconciliation was possible. On October 6, 2006, the Respondent voluntarily dismissed the Divorce Proceedings. (Id. at p. 17.) On October 16, 2006, Respondent filed an “Agreed Petition to Modify Ex Parte Protective Order” in the Protection Proceedings, which sought to amend the Order of Protection so as to allow the Respondent and Tompson to “meet to discuss their marriage and attend scheduled counseling sessions.” (Bd. Ex. 15.) That Agreed Petition purported to bear the signatures of the Respondent and Tompson, and was set for hearing on November 9, 2006.

9. On October 26, 2008, Tompson filed her own Divorce Complaint in the DCCC styled Stacey A. Tompson v. Richard Austin Demonbreun, Docket No. 06D3011. (“**Tompson Divorce Proceedings**”).

10. After the entry of the Order of Protection and the filing of the Tompson Divorce Proceedings, the Respondent maintained contact with Tompson. The record indicates that between September of 2006 and November of 2006, the Respondent communicated with Tompson via cellular phone text messages on several occasions. The text messages were introduced into evidence via the testimony of Detective Jennifer West, an officer with the Rutherford County Police Department. Several of the messages are quoted below.

Okay, I [expletive deleted] up. If you call your attorney tomorrow and nonsuit your complaint we have sued each other [sic] we [are] even. Can we put this . . . on hold and try to open some communication and see what WE can do? . . . You tell me how much your fees were and I will deposit that. And then you tell me what [you] want? Is that something we can agree on tonight? Is that fair? Can we agree to try just one more time? A simple YES is all I ask please . . . (from Respondent to Tompson, Nov. 1, 2006 6:17 p.m.)

Hey [are you] . . . okay? I am here being still [and] listening. (From Respondent to Tompson, Nov. 22, 2006 4:36 p.m.)

Could we talk about your financial needs? [Please]? (from Respondent to Tompson 12:41 a.m.)

Hey. Made deposit . . . Are you . . . okay? Shopping? I am here. And I will be still. I love you, Babe. (from Respondent to Tompson, Nov. 24, 2006 10:24 a.m.)

Contract to lease new home on Fall [Parkway] signed . . . I love you, Babe. I am sorry for everything and am going to try. (from Respondent to Tompson, Nov. 26, 2006 at 6:23 a.m.)

Stace: Last investor coming [Wednesday] to see house for deal to be approved. . . . Are [you] . . . okay? Can you help me with the legal things there. It can all be over in 2 weeks. I will get moved and we can hang out if/when you want. . . . Could [you] call me? Do [you] want to check out the house? I hate the mess I made but it will be over soon!!!! Life is going to be simple from now on! I love [you]. (from Respondent to Tompson, Nov. 27, 2006 7:36 a.m.)

(See Bd. Ex. 18). In addition to these text messages, on several occasions between October 30, 2006 and December 15, 2006, the Respondent unilaterally deposited funds into Tompson's bank account. (Resp. Ex. 1 at pp. 15-16.) The Respondent testified that on more than one occasion he had telephone conversations with friends and/or family of Tompson.

11. On or about November 9, 2006, the Respondent appeared before the judge presiding over the Protection Proceedings, the Hon. J. Mark Rogers, and presented to Judge Rogers what purported to be an Agreed Order modifying the Order of Protection ("Agreed Order"), which read, in pertinent part, as follows:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the [Order of Protection] which has been filed in this cause shall be and is modified to allow [the Respondent and Tompson] to have such contact and communication . . . which the court finds is in the best interest of their marriage.

The Respondent represented to Judge Rogers, and testified before this Panel, that he obtained Tompson's signature to the Agreed Order after meeting Tompson in a parking lot. Specifically, he testified to this Panel that Tompson affixed her signature to the Agreed Order, using the top of her steering wheel to do so. The Respondent further testified that, consistent with the terms of the proposed Agreed Order, he and Tompson attended a counseling session to discuss reconciliation. Judge Rogers, however, appeared before this Panel and testified that, in such matters, he requires that both parties attend hearings to set aside or modify protective orders, so that both petitioner and respondent clearly understand the consequences. Accordingly, using the Agreed Order document, the Judge entered an order denying the Agreed Petition, and noted that Tompson failed to

appear. (See Bd. Ex. 16.) Tompson eventually presented the Respondent's text messages and other information to Detective West.

12. On March 8, 2007, while the Respondent and Tompson were both on RCCC premises, the Respondent said to Tompson, "I am sorry," or words to that effect. He was swiftly arrested by the Murfreesboro Police Department. For violations of the Order of Protection, the RCCC held the Respondent in contempt of court. The Rutherford County General Sessions Court issued a five (5) day jail sentence to the Respondent. The Respondent served four (4) days of that sentence and was allowed an early release on March 12, 2007. The Respondent notified the Board of his arrest and jail term by letter dated March 14, 2007.

13. The Respondent acknowledges that, on or about August 13, 2007, he entered a guilty plea in Rutherford County Circuit Court to charges of misdemeanor stalking and violation of an Order of Protection and was placed on diversion and probation for eleven (11) months and twenty-nine (29) days. The RCCC also entered an "Order of Retirement" which states, in pertinent part, as follows:

The conditions of retirement include good and lawful conduct for the period of retirement and that the [Respondent] will have no contact whatsoever with the victim or victim's family, their property, their residence, or their place of business.

Thereafter, on November 26, 2007, Tompson filed a Motion to Extend the Order of Protection for five (5) years. (Resp. Ex. 1 at p. 49.)

14. On or about January 18, 2008, Tompson obtained a warrant in Davidson County alleging that the Respondent contacted her in violation of the Order of Protection while she was working in Davidson County. (Resp. Ex. 1 at p. 42.) As a result, the Davidson County Grand Jury indicted the Respondent on two (2) counts of violations of

the Order of Protection, State of Tennessee v. Richard Austin Demonbreun, Docket No. 2008-B-1597 (“**Davidson Criminal Proceedings**”). (Id. at pp. 44-45.) The Davidson Criminal Proceedings were retired for one (1) year, on the condition that the Respondent “stay away” from Tompson. (Id. at p. 46.) The Respondent testified that the Davidson Criminal Proceedings were retired due to Tompson’s refusal to cooperate or participate in the Davidson Criminal Proceedings.

15. The dissolution of his brief marriage, and the legal fallout, caused severe physical, mental and emotional distress to the Respondent. He was admitted by his father to Vanderbilt University Medical Center on September 11, 2006, where he was initially diagnosed as suffering from “[s]uicidal ideation and depression.” (Resp. Ex. 2.) He was later admitted to the Psychiatric Hospital at Vanderbilt (PHV) and was placed under the care of Dr. Roy O. Asta. During his stay, the Respondent occasionally exhibited “slightly bizarre” behavior. Dr. Asta diagnosed the Respondent with depression and prescribed antidepressants. The Respondent testified that, among other medications, he was taking Ativan, Lumesta, Ambien CR, Lexapro, Cymbalta and Remeron. On September 12, 2006, the Respondent checked himself out of PHV against Dr. Asta’s medical advice. The records introduced into the record by the Respondent show that Dr. Asta recommended that the Respondent continue psychiatric and/or psychological treatment after his discharge.

16. The Respondent testified he consulted Dr. Asta for approximately six (6) months after his discharge from PHV. Dr. Asta, however, testified that the Respondent unilaterally ended his treatment, against Dr. Asta’s advice. Dr. Asta testified that he usually prepares a letter certifying a patient’s fitness to resume work, and he had not done

so for Respondent at the time the Respondent stopped treatment. Dr. Asta's testimony indicated to the Panel that the Respondent remains in need of psychiatric and/or psychological treatment and evaluation.

17. The Respondent testified that his mental and emotional distress was a central factor in the conduct and decisions leading to the Protection Proceedings and Criminal Proceedings. The Respondent has claimed that his depression, and the effects of prescription medication he was taking for his condition (most notably, Ativan) diminished his capacity to discern the propriety of his conduct, or the consequences thereof. His testimony and demeanor made it apparent to this Panel that he still suffers from mental and emotional distress.² The Respondent has resumed his practice, and has acknowledged his mistakes, but is still in the process of putting his personal life back together.

18. Finally, the Respondent testified that his conduct was to a great degree triggered by the mixed messages Tompson sent him in the weeks and months after their separation. The Respondent presented evidence that Tompson initiated many of the contacts with him, at a time when he held out hope of reconciliation. He also claims that many of the criminal complaints Tompson initiated against him were designed to advance her interests in the Tompson Divorce Proceedings, which became final on February 28, 2008, by Final Decree wherein the court (Kurtz, J.) directed Respondent to remit \$20,000.00 to Tompson, and to assume sole responsibility for a debt owing to Franklin Road Academy for the school tuition for Tompson's daughter (Resp. Ex. 1 at pp. 80-81).

² At various times throughout the proceedings, the Respondent appeared visibly troubled and shaken. While the Panel understands the stress caused to the Respondent as a result of these proceedings, and specifically, in representing himself, these observations, coupled with the testimony of Dr. Asta -- the Respondent's own witness -- cannot be ignored by the Panel.

That Final Decree also extended the Order of Protection for two and a half years from the hearing date, February 20, 2008. (Id.)

III. CONCLUSIONS OF LAW

1. The Respondent violated RPC 3.3 and RPC 3.4.

RPC 3.3 prohibits a lawyer from knowingly making “a false statement of fact or law to a tribunal,” or failing to inform a tribunal during the course of an *ex parte* proceeding “of all material facts known to the lawyer that will enable the tribunal to make an informed decision. . .” Said RPC also bars a lawyer from introducing evidence or affirming the validity of evidence that the lawyer knows to be false. Similarly, RPC 3.4 prohibits a lawyer from falsifying evidence,

The Panel finds that the Respondent violated RPC 3.3 by filing a Petition introducing a proposed Agreed Order to the Court which did not in fact contain Tompson’s signature. Neither party introduced expert testimony regarding the authenticity of the disputed signatures. As a result, the Panel is left to discern the issue based solely on the testimony and evidence in the record.

After considering the testimony and evidence in the record, and applying a “preponderance of the evidence” standard, the Panel concludes that Tompson’s “signatures” on the Petition and Agreed Order more closely resembles the Respondent’s handwriting than Tompson’s. In the Panel’s opinion, the purported signatures of Tompson on the Petition and Agreed Order do not resemble her signatures on other documents in the record, including, but not limited to, i) the Enrollment Contract with Franklin Road Academy (Resp. Ex. 1 at p. 56); ii) her verified signature on the Complaint

in the Tompson Divorce Proceedings (Id. at p. 25); or iii) her signature on the Motion to Extend the Order of Protection. (Id. at p. 49).

The Panel finds that the Respondent offered credible (and undisputed) testimony that some of Tompson's conduct was consistent with the *terms* of the Petition and proposed Agreed Order³, but not that she actually signed her name to that order. Regardless of Tompson's conduct, the Panel concludes that the Respondent filed a Petition and Agreed Order with the RCCC with signatures the Respondent knew were inauthentic, and that the Respondent failed to inform Judge Rogers of that fact. As such, the Respondent violated RPC 3.3. Moreover, filing "joint" pleadings and proposed "agreed" orders with inauthentic signatures is tantamount to falsifying evidence, in violation of RPC 3.4

The Respondent violated RPC 8.4(b).

RPC 8.4(b) prohibits a lawyer from "knowingly" failing

to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order, or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

The Board has established, and the Respondent does not dispute, that the Respondent violated the Order of Protection. The evidence in the record, and the Respondent's own admissions via correspondence, pleadings and testimony establish that he had extensive contact with Tompson after he had been ordered not to do so, including, but not limited to, sending text messages which led in part to his first jail stint, depositing funds in Tompson's bank accounts, and several other contacts with Tompson and/or her

³ It appears from the record that Tompson's conduct was at times inconsistent. For example, she filed the Tompson Divorce Proceedings on October 26, 2006, but according to the Respondent, attended a counseling session with Tompson several days later.

relatives and friends. This conduct placed him in criminal jeopardy, which was ultimately resolved...

The Respondent makes a colorable argument that Tompson initiated at least some of the contact between them. It is also apparent that the Respondent used most if not all of those communications to plead with Tompson to spend time with him and ultimately reconcile. The Panel is not unsympathetic to the Respondent's personal desire to reconcile with his (then) estranged wife, but as a lawyer licensed to practice in this State, he is duty bound to avoid any situation which could reasonably lead to the violation of a standing order that applied directly to him. The Respondent knew, or should have known, after his initial arrest that violations of the Order of Protection would have serious consequences.

Again, in this instance, alternative means were available to the Respondent. As indicated in RPC 8.4, the Respondent could have sought to have the Order of Protection lifted so as to allow for him to resume contact with Tompson and seek reconciliation. Instead, the Respondent chose to do so by submitting "agreed" filings which themselves violated RPC 3.3 and RPC 3.4. And, apparently, he violated the Order of Protection by meeting with Tompson to obtain her "consent" (if not her actual signatures) to the Petition and Agreed Order. Thus, the Respondent failed to seek relief from the RCCC in good faith.

The Respondent filed a pretrial motion to exclude evidence of the Respondent's guilty plea on the grounds that the Board cannot consider the expunged criminal charges against him, as he completed a judicial diversion program which is not tantamount to a "conviction" of a crime, pursuant to Tenn. Code Ann. § 40-35-313. (Motion In Limine

#1.) In support of this argument, he cites Canipe v. Memphis City Schools Bd. of Educ., 27 S.W.3d 919 (Tenn. 2000), and Wright v. Tenn. Peace Officer Standards, 277 S.W.3d 1, 8 (Tenn. App. 2008) in support of his contention. The Panel agreed that evidence of convictions via the plea agreement or other official record within the definition of 40-35-313 would not be admissible.

The use of a guilty plea under the diversion statute as a “legally operative fact” is not allowed, but such a plea can be used as “evidence of underlying conduct.” Williams, 277 S.W.3d at 14. Moreover, as the Supreme Court reiterated in Canipe, “testimony and evidence of the criminal acts preceding the arrest are admissible as evidence . . . of social history even if expungement is later obtained,” as “[e]xpungement does not return a person to the position occupied prior to committing the offense.” Canipe, 27 S.W.3d at 922 (quoting State v. Schindler, 986 S.W.2d 209, 211-12 (Tenn. 1999)) (inner quotation omitted). Moreover, evidence of guilt obtained by other lawful means, such as admissions via testimony or pleading, is admissible as to “underlying facts” of criminal conduct. Id.

The Respondent admitted in his correspondence, Answer to the Petition and at the hearing that he entered into guilty pleas in relation to violations of the Order of Protection. (See Answer to Petition at ¶¶ 6-8.) The parties each introduced proof of the Respondent’s violations of the Protective Order that did not originate from the guilty pleas, *i.e.*, the text messages, deposit slips, and Respondent’s own testimony. In fact, the Respondent states in his own Proposed Findings of Fact and Conclusions of Law that he violated the Order of Protection. (Respondent’s Proposed Findings of Fact and

Conclusions of Law at p. 2.) This evidence and these admissions were properly considered by the Panel.

The Respondent sought to impeach Ms. Tompson's credibility at the hearing, and in his Proposed Findings of Fact and Conclusions of Law, again emphasizes that her failure to appear for deposition testimony, or otherwise at the hearing, means that her allegations regarding "stalking" or fear of physical harm are not credible, and that "her failure to be a witness at trial to testify about this matter cannot be ignored by the panel." (Respondent's Proposed Findings of Fact and Conclusions of Law at p. 6.)

The Respondent, however, misses the point. The Panel's primary concern is not Tompson's credibility or conduct; rather, the Panel's primary concern surrounds the Respondent's violations of a court order. Even if the Respondent's contacts with Tompson and her friends and family were "non-threatening," and the Respondent's visits to her home were "independent," "benign," or even consensual, they still violated the clear "no contact" injunction of Order of Protection. (*Id.*) The Respondent's focus on the conduct of Tompson is therefore misplaced, and the Panel concludes that the Respondent violated RPC 8.4.

The Respondent violated RPC 8.4(a).

RPC 8.4(a) states that a lawyer commits professional misconduct where he "violates[s] or attempt[s] to violate the Rules of Professional Conduct[.]" The Panel has found that the Respondent violated RPC 3.3, 3.4 and 8.4(b). Therefore, the Panel concludes the Respondent violated RPC 8.4(a).

The Respondent's Sanction.

Having concluded that the Respondent engaged in professional misconduct, the Panel must now determine the sanction for that misconduct. The Board seeks a “lengthy suspension” for the Respondent. Citing “similar” Board cases, and the American Bar Association Center for Professional Responsibility Standards for Imposing Lawyer Sanctions (“**ABA Standard(s)**”), the Board apparently seeks a suspension of not less than six (6) months. (Board Proposed Findings of Fact and Conclusions of Law at ¶¶ 17-18.)

Generally, suspension or disbarment are appropriate where:

- the lawyer submits a false document, makes a false statement, or withholds material information causing serious or potentially serious injury to a party, or otherwise causes a significant or potentially significant adverse effect on the legal proceeding.
- the lawyer knows that false documents or information are being submitted to a court or material information is improperly being withheld from a court, and takes no action, causing injury or potential injury to a party in a legal proceeding, or an adverse or potentially adverse effect on that proceeding.
- the lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another party, and in the process causes serious or potentially serious injury to (or serious or potentially serious interference with) a legal proceeding.
- the lawyer knows he is violating a court order or rule, and in the process causes serious or potentially serious injury to (or serious or potentially serious interference with) a legal proceeding.
- the lawyer negligently fails to comply with a court order or rule, and in the process causes serious or potentially serious injury to (or serious or potentially serious interference with) a legal proceeding.
- the lawyer knowingly engages in conduct that is a violation of the duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system.

See ABA Standards 5.12, 6.11, 6.12, 6.21, 6.22, 7.3. ABA Standard 2.3 states that lawyer suspensions generally should be “equal to or greater than six months.” In imposing a sanction, the Panel should evaluate the following factors:

- a. the duty violated;
- b. the lawyer’s mental state;
- c. the potential or actual injury caused by the lawyer’s misconduct;
- d. the existence of aggravating or mitigating factors.

ABA Standard 3.0.

In this case, the Panel concludes that a suspension is appropriate. The Respondent violated the Order of Protection on multiple occasions. The Respondent filed a motion and proposed order with the RCCC which misled that court, and the Respondent failed to provide material information to the RCCC about those documents.

The Panel finds that, for the purposes of sanctions, there are a myriad of aggravating and mitigating factors, many of which seem to intersect. The aggravating factors include the following:

- At the time of his misconduct, the Respondent had been licensed to practice law for nearly twenty (20) years. The Respondent therefore was able to comprehend the legal and ethical consequences of his conduct.
- The Respondent committed these violations to pursue his self-interest in reconciliation with Tompson.
- The Respondent has had multiple prior infractions in his Board record.

The mitigating factors include the following:

- The Respondent's professional misconduct was triggered by a sudden and shocking personal crisis, which negatively affected his mental state.
- At the time of his professional misconduct, the Respondent was suffering from depression, and was taking prescription medication, which negatively affected his mental state.
- The Respondent's mental state was negatively impacted by the "mixed messages" sent by Tompson during the time period relevant to this Petition.
- The Respondent failed to complete his treatment regimen for his depression, which negatively affected his mental state.

In light of the factors mentioned hereinabove, the Panel concludes that a suspension of four (4) months is appropriate. It is therefore **ORDERED** that the Respondent, Richard Austin Demonbreun, shall be suspended for a period of four (4) months, and said suspension shall commence on September 15, 2009.


It is further **ORDERED** that, in light of the evidence presented regarding the Respondent's mental condition, most notably, the testimony of Dr. Asta, the Respondent's reinstatement following suspension is subject to the following conditions:

1. The Respondent must comply fully and completely with the Order of Protection and/or the Orders of Retirement, specifically the provisions enjoining the Respondent from direct or indirect contact with Tomson.
2. The Respondent must resume psychiatric and/or psychological therapy with a Tennessee-licensed physician, psychiatrist, and/or psychologist during his period of suspension.
3. As a condition of reinstatement, the Respondent must submit a letter from his treating physician, psychiatrist and/or psychologist describing the Respondent's treatment, and certifying that the Respondent is mentally fit to resume the practice of law. The Respondent shall not be reinstated to practice law until the Board receives such a letter certifying the Respondent's fitness.

4. Pursuant to Rules 33.03(C)(5) and 33.07 of the Rules of the Tennessee Supreme Court, the Respondent is hereby referred to the Tennessee Lawyer Assistance Program (TLAP), for oversight and monitoring for a period of not less than three (3) years. TLAP shall, *inter alia*, monitor the Respondent's treatment during said 3 year period.
- i. Prior to the expiration of the Respondent's four-month suspension, TLAP shall prepare a progress report, or report of non-compliance, pursuant to Tenn. Sup. Ct. R. 33.07(B),
- ii. During the term of its oversight of Respondent, TLAP shall also file additional reports with the Board as necessary or appropriate.
- iii. At the end of the third year of its oversight of the Respondent, TLAP shall issue a report to the Board recommending the Respondent's release from oversight, or otherwise recommending that the oversight period be extended.
- iv. In the event that TLAP issues a report of non-compliance during the period of the Respondent's suspension, or at any other time during the oversight period, the Respondent shall be subject to disciplinary action, including, but not limited to, suspension.

It is so **ORDERED**.

Dated this the 30th day of August, 2009.


CLIFF WILSON, Panel Chair


MARK S. BEVERIDGE


WILLIAM J. HAYNES, III