

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

20TH JUDICIAL DISTRICT AT NASHVILLE

ROBERT ALLEN DOLL, III
BPR #022764, an Attorney
Licensed to Practice Law in
Tennessee (Davidson County)

Petitioner,

vs.

BOARD OF PROFESSIONAL
RESPONSIBILITY OF THE
SUPREME COURT OF TENNESSEE

Respondent.

Case No. 22-0363-II

(Judge R.E. Lee Davies
Sitting by Interchange)

BPR Docket No. 2017-2721-5-WM-22.3

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DAVIDSON COUNTY, TENNESSEE
D.C.A.M.

MEMORANDUM AND ORDER

This cause came on to be heard on the 31st day of October, 2022, before Robert E. Lee Davies, Senior Judge, upon the petition for review filed by Attorney Robert Allen Doll, III. The Court has received a copy of the transcript from the trial before the Hearing Panel, the official record with exhibits, and the briefs filed by each party. After argument of counsel, the Court makes the following findings of fact and conclusions of law:

Procedural History

On May 17, 2017, Mr. Doll was convicted by a jury in the Circuit Court for Williamson County of two counts of subordination of aggravated perjury and one count of criminal simulation. As all three convictions were Class E Felonies, the Supreme Court entered an order suspending Mr. Doll from the practice of law on May 31, 2017 pending the outcome of the disciplinary proceeding against him. On June 1, 2017, a petition for discipline was filed by the Board of

Professional Responsibility, which Mr. Doll answered on October 9, 2017. On December 8, 2020, the Court of Criminal Appeals entered an order affirming the convictions of Mr. Doll, and on May 13, 2021, the Supreme Court denied Mr. Doll's application for appeal in the underlying criminal case.

Proof Before the Panel

The only person to testify before the Hearing Panel was Mr. Doll. Other than his testimony, the Panel was presented with three prior disciplinary actions taken against Mr. Doll consisting of: 1) a private reprimand in 2011; 2) a public censure in 2014; and 3) a ninety-day suspension in 2018. The final exhibit was a certified copy of Mr. Doll's criminal convictions in Williamson County, Tennessee and the order of enforcement entered by the Supreme Court on May 31, 2017.

The Hearing Panel

This matter was tried before the Hearing Panel of the Board of Professional Responsibility on November 23, 2021. On December 1, 2021, the Hearing Panel issued a detailed order and recommendation, including findings of fact and conclusions of law. The Panel found:

- That Mr. Doll was convicted of two counts of subordination of aggravated perjury and one count of criminal stimulation by the Criminal Circuit Court for Williamson County, Tennessee on May 17, 2017; that the conviction was upheld by the Tennessee Court of Criminal Appeals by order issued December 8, 2020; and that the Tennessee Supreme Court denied the Rule 11 Application on May 13, 2021.
- That Mr. Doll has been a licensed attorney in this state since 2003.
- That Mr. Doll received three previous disciplines consisting of a private reprimand, public censure, and a ninety-day suspension.
- That since the suspension, Mr. Doll has been working in the field of public accounting.

The Panel concluded that the criminal offenses were serious crimes as defined under Tenn. Sup. Ct. Rule 9 § 22. The Panel then turned to the ABA Standards for imposing lawyer sanctions and applied section 5.11.

5.11 Disbarment is generally appropriate when: (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses.

In addition, the Panel found that sections 7.0 and 7.1 applied.

7.0 Violations of Duties Owed as a Professional.

Absent aggravating or mitigating circumstances, upon application of the factors set out in standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or the failure to report professional conduct.

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.

Finally, the Panel addressed aggravating and mitigating factors. The Panel found the following aggravating factors:

- Prior disciplinary offenses;
- Dishonest and selfish motives;
- The refusal to acknowledge the wrongful nature of misconduct;
- Substantial experience in the practice of law;
- Illegal conduct.

The only mitigating factor which the Panel found applied was Mr. Doll's full and free disclosure to the Disciplinary Board and cooperative attitude in the proceedings.

Issues

Mr. Doll argued the same substantive issue before this Court that he argued before the Panel, which was the comparative punishment meted out by the Supreme Court to a Knox County lawyer in 2021. In Re: Grace Ingrid Gardiner, the Supreme Court entered an order suspending Ms. Gardiner for three years with four months of active suspension for the following conduct:

1. Obtaining original "wet" signatures of clients on petitions and schedules;
2. Permitting her name to be signed to a retainer agreement before she met the client;
3. Presenting an agreed order continuing a hearing baring the signature of the Chapter 13 Trustee who had not agreed to the continuance;
4. Failing to take reasonable measures to ensure that her assistant complied with the rules of the bankruptcy court; and
5. Presenting to the court a document baring the forged signature of her client.

The Supreme Court found Ms. Gardiner violated Rules of Professional Conduct 1.1 (Confidence), 1.3 (Diligence), 3.3 (Candor toward the Tribunal), 5.3 (Responsibilities regarding non-lawyer assistance); 8.4 (Misconduct). The Panel noted that there was no proof that Attorney Gardiner was charged or convicted of any criminal act. The Panel also noted that the Board argued a Hearing Panel was not to compare the proportionality of the punishment in other proceedings to the one in question.

The Panel concluded that disbarment was the presumptive punishment for Mr. Doll's criminal convictions and that the aggravating circumstances in his case outweighed any mitigating circumstances offered by Mr. Doll. The Panel then concluded with a recommendation of disbarment. After a motion to alter or amend, the Panel entered a final order affirming its previous recommendation of disbarment.

Standard of Review

When reviewing a Hearing Panel's judgment, a trial court must consider the transcript of the evidence before the Hearing Panel and its findings and judgment. Tenn. Sup. Ct. R. 9 § 1.3. On questions of fact, the trial court may not substitute its judgment for that of the Hearing Panel. The same is true for weighing the evidence. Board of Professional Responsibility v. Allison, 284 S.W. 3d 316, 323 (Tenn. 2009). However, the trial court reviews questions of law *de novo* with no presumption of correctness. Board of Professional Responsibility v. Cowan, 388 S.W. 3d 264, 267 (Tenn. 2012). The trial court will only reverse or modify the decision of a Hearing Panel if the rights of the petitioner had been prejudiced because of 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; 5) unsupported by evidence which is both substantial and material. Board of Professional Responsibility v. Reguli, 489 S.W. 3d 408, 417 (Tenn. 2015).

Analysis

On appeal, Mr. Doll argues that he should be entitled to argue the comparative fault of other attorneys in similar cases which resulted in a lessor discipline by the Supreme Court. As was discussed during oral argument, that is an issue which is in the exclusive jurisdiction of our Supreme Court. In Meehan v. Board of Professional Responsibility, 584 S.W. 3d 403 (Tenn. 2019), the Supreme Court specifically addressed whether a trial court or a hearing panel could consider sanctions in similar cases. "Under Rule 9, a hearing panel is directed to consider the applicable provisions of the ABA Standards to determine the appropriate sanction in a particular

case. Tenn. Sup. Ct. R. 9, §15.4 (a). There is no authority under Rule 9 for a hearing panel to base its recommended sanction on a review of sanctions imposed in similar cases. In addition, a trial court's authority to reverse or modify a hearing panel's decision is limited to the five grounds listed in Section 33.1(b). Inconsistency with sanctions in similar cases is not a listed ground. Thus, it was improper for the trial court to modify the hearing panel's decision based on grounds not authorized by Rule 9." Id. *416.

In Beier v. Board of Professional Responsibility, 610 S.W. 3d 423 (Tenn. 2020), the Supreme Court again reiterated that neither the hearing panel nor the trial court has the authority to conduct a comparative analysis.

The Chancery Court based its conclusion on the appropriate sanction in part on a comparative analysis, that is, a review of similar cases to determine the appropriate sanction. As noted above, this court recently held that, while hearing panels and the trial courts must consider the applicable provisions of the ABA Standards to determine the appropriate sanction in a particular case, "[t]here is no authority under Rule 9 for a hearing panel to base its recommended sanction on a review of sanctions imposed in similar cases." (Citing Meehan). Moreover, "a trial court's authority to reverse or modify a hearing panel's decision is limited to the five grounds listed in Section 33.1(b). Inconsistency with sanctions in similar cases is not a listed ground." Id. Thus, reviewing trial courts are not authorized to base a recommended sanction on a review of sanctions imposed in comparative cases.

Beier v. Board of Professional Responsibility, FN. 23.

Turning to the presumptive sanction, the Court agrees with the Hearing Panel that 5.11(a) is the appropriate starting point in that Mr. Doll was convicted of subordination of aggravated perjury and criminal simulation, all Class E felonies. All three offenses amount to an intentional interference with the administration of justice. These offenses also are explicit violations of duty owed by every attorney. Turning to the aggravating and mitigating factors in this case, there can be no serious challenge to the Panel's conclusion that the aggravating factors far outweigh the single mitigating factor.

Conclusion

This Court has reviewed the findings of fact and conclusions of law issued by the Hearing Panel and discerning no error, affirms them in all respects and agrees that the sanction of disbarment is appropriate. If Mr. Doll chooses to appeal this matter to the Supreme Court, then that is the proper court for him to make an argument on a comparative analysis with regard to the appropriate sanction. Therefore, the decision of the Hearing Panel is affirmed in all respects.

It is SO ORDERED.

ENTERED this 3 day of November 2022.


ROBERT E. LEE DAVIES, SENIOR JUDGE

CLERK'S CERTIFICATE OF SERVICE

A copy of this Order has been served by U.S. Mail upon all parties or their counsel named above.

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Vicki Bailey
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November 8, 2022
Date