

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

FILED

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BOARD OF PROFESSIONAL
RESPONSIBILITY

Reed

EXEC. SEC.

IN RE: WILLIAM CALDWELL HANCOCK, DOCKET NO. 2010-1959-5-SG
 BPR #005312, Respondent
 An Attorney Licensed and
 Admitted to the Practice of
 Law in Tennessee
 (Davidson County)

MEMORANDUM OPINION

This matter is before the Disciplinary Panel on the Board of Professional Responsibility's Petition for Discipline against the Respondent William Caldwell Hancock. Following a two-day trial, and consideration of all proof, the Panel finds as follows:

STATEMENT OF THE CASE

On August 20, 2010, the Board filed a Petition for Discipline against Respondent. On approximately September 8, 2010, Respondent filed a Motion to Dismiss or For More Definite Statement and Pre-Trial Conference. On September 13, 2010, the Board filed a Response to Respondent's Motion to Dismiss or For More Definite Statement and Pre-Trial Conference and Motion to Amend Petition for Discipline. By Order filed November 16, 2010, the Hearing Panel denied Respondent's Motion to Dismiss, granted Respondent's Motion for Definite Statement, and granted the Board's Motion to Amend the Petition for Discipline.

The Board filed an Amended Petition for Discipline on February 1, 2011. On March 1, 2011, Respondent filed a Motion to Dismiss and Answer to Amended Petition. On March 9,

2011, the Board filed a Response to Motion to Dismiss. By Order filed July 21, 2011, the Hearing Panel denied Respondent's Motion to Dismiss.

On July 29, 2011, Respondent filed a Motion to Dismiss Petition and Sanction Board and Counsel followed by a Supplement to Motion and Reply to the Board's Response. On August 1, 2011, the Board filed a Response to Respondent's Motion to Dismiss Petition and Sanction Board and Counsel and subsequently filed a Response to Respondent's Supplement to Motion. On August 29, 2011, the Hearing Panel entered an Order denying Respondent's Motion to Dismiss and Sanction Board and Counsel.

On September 8, 2011, Respondent filed a Motion for Partial Summary Judgment No. 1 with accompanying Declaration of Respondent and Statement of Material Facts. On September 9, 2011, Respondent filed a Motion for Partial Summary Judgment No. 2 with accompanying Declaration and Statement of Material Facts. On September 12, 2011, the Board filed a Response to Motion for Partial Summary Judgment No. 1 and No. 2. On September 22, 2011, the Hearing Panel entered an Order denying Respondent's Motions for Partial Summary Judgment No. 1 and No. 2.

The trial in this matter took place on October 11 and 12, 2011.

STATEMENT OF THE FACTS

File No. 32689-5-NJ – Innovative Concepts, Inc.

Mr. Hancock represented Innovative Entertainment Concepts, Inc. (IEC) in filing a Chapter 11 bankruptcy proceeding. (Exhibit 2).

As attorney for IEC, Mr. Hancock filed a disclosure of compensation which reflected that he had received Ten Thousand Dollars (\$10,000.00) and that the source of those funds was "the debtor." (Exhibit 3). According to Respondent, the only source of information as to the source

of the retainer was IEC President Mark Seifert. Respondent testified that the deposit was made directly into his IOLTA account so that he did not physically see the deposit.¹

On April 27, 2004, Mr. Hancock filed an application for debtor for approval of employment of debtor's counsel. (Exhibit 4). Mr. Hancock's Application for debtor for approval of employment of debtor's counsel states "Debtor has paid to Hancock a \$10,000.00 retainer for services to be performed for the debtor." (Exhibit 4). Mr. Hancock's Application was made to the best of Respondent's "knowledge, information and belief" and was verified under penalty of perjury. (Exhibit 4).

In August 2004, IEC's bankruptcy case converted from a Chapter 11 to a Chapter 7 proceeding. A trustee was appointed and Respondent ceased to represent the estate of IEC at that point by operation of law.

On November 11, 2005, the Trustee filed a Complaint against Mr. Hancock for turnover of Mr. Hancock's IEC retainer. (Exhibit 5).

Respondent testified that in 2006, he received an unsolicited call from former IEC representative Mark Seifert concerning new information about the source of the retainer. After confirming with former Chief Bankruptcy Judge Paul E. Jennings his duty to disclose this "new" information to the Court and trustee, Respondent did so. Mr. Jennings testified at trial and confirmed this exchange with Respondent.

On March 10, 2006, Mr. Hancock filed an Answer and Pre-trial statement stating that the retainer was borrowed by the debtor. (Exhibits 5 and 6). On approximately May 20, 2006, Mr. Hancock filed a Notice of Application of William Caldwell Hancock for Allowance of Compensation stating:

¹ Mark Seifert did not testify at trial. Respondent stated to the Panel that he had subpoenaed Mr. Seifert and that Mr. Seifert had failed to appear.

Debtor neither had nor expected to have sufficient funds to provide the retainer from cash resources normally available in the ordinary course of business, so debtor's President made arrangements with his mother and the application under which she would place \$10,000 in trust with applicant for the benefit of the debtor, to be held in trust pending a decision to file a petition under Chapter 11. In the event a filing took place as anticipated, the entrusted funds would be a retainer to be held by applicant to the credit of the debtor for the payment of legal fees to be incurred and awarded to applicant for work done for the debtor in the case. In the event of a sale, which was being pursued in lieu of a Chapter 11 filing, the funds would be returned to the provider. In the event the awarded fees should be less than the retainer, any balance would be returned to the provider. (Exhibit 7).

The Trustee filed an Objection to Mr. Hancock's Application of Compensation. (Exhibit 8). In the Objection, the Trustee noted that while Mr. Hancock's Application indicated the source of the retainer was the debtor, Mr. Hancock now was asserting the source was Debtor's President's mother, a Creditor of the Debtor. (Exhibit 8).

An Order denying Mr. Hancock's Application for compensation and sustaining the Trustee's objection to his application in IEC was entered June 22, 2006. (Exhibit 9).

On May 26, 2006, the Trustee filed a Motion for Summary Judgment regarding turnover of the \$10,000 retainer. (Exhibit 12). Mr. Hancock did not file a response to the Motion for Summary Judgment. (Exhibit 5). Mr. Hancock did not appear at the June 20, 2006 hearing on the Motion for Summary Judgment. (Exhibit 13).

On June 22, 2006, the Court entered an Order granting Trustee's Motion for Summary Judgment. (Exhibit 13).

On July 3, 2006 in IEC, Mr. Hancock filed a Motion to Alter or Amend or Set Aside Order Denying his Application for Compensation stating:

the retainer is a fund which came into the hands of the applicant from the debtor. The mother of the president of the debtor provided the retainer on the condition that it would be used solely

to retain the undersigned to provide the services that the debtor and the debtor-in-possession would require if and when the chapter 11 filing should come to pass. By agreement, in the event this money is not used as agreed, it must be returned to Ms. Seifert. It is, therefore, not property of the estate, although the estate does have an interest in seeing to its use to pay debtor's counsel's fees, the mother of the corporate president. It is held in trust by counsel earmarked for payment of legal fees of the undersigned or return to the provider. The estate has no possessory rights or interest therein and no right to dominion and control over it. If not used to pay fees, it must be returned to Ms. Seifert. (Exhibit 10).

On July 11, 2006, Mr. Hancock filed a Motion to Set Aside Order Granting Summary Judgment. (Exhibit 5). On September 8, 2006, the Court entered an Order granting Mr. Hancock's Motion to Alter or Amend or Set Aside Order Granting Motion for Summary Judgment. (Exhibit 5).

On November 14, 2006, Mr. Hancock filed an Amended Disclosure to Fee Application in which he states "This amendment sets the record straight." (Exhibit 14). In Mr. Hancock's Amended Fee Disclosure, he states:

At the time of disclosure of receipt of the retainer, it was the understanding of the undersigned, based on Mr. Seifert's statements at the time he signed the petition, that the retainer had been loaned to the corporation by his mother, or to Mr. Seifert and thence by him to the corporation. Mr. Seifert was so nervous and understandably dysfunctional at that time because under so much pressure to save the business that he could not remember exactly the documentation by which the retainer came to be deposited in the account of the undersigned (corporate check, corporate cash, mother's check, cashier's check, etc.) or the actual arrangement that he and his mother had made. He was, frantically scrambling to try to save the business and his attention to the subject was anything but focused. Given this uncertainty, and the absence of any definitive information to indicate that the retainer was not debtor sourced, that the undersigned reasonably believed that it was most proper and most conservative to disclose that the source of the funds was the debtor. Accordingly, at that time, the undersigned disclosed the source of the retainer as the debtor, believing it to be true. (Exhibit 14).

Mr. Hancock further states in his Amended Disclosure to Application:

It is now the joint view of the Chapter 7 Trustee and [the undersigned] that this retainer is most likely property of the estate. The undersigned has resigned all efforts to make legal sense out of the partial recollections of Mr. Seifert. Mrs. Seifert has chosen to remain silent although aware of the controversy. Given the foregoing, the undersigned now concludes that his original disclosure of the source of the retainer was correct. (Exhibit 14).

On March 7, 2007, the Bankruptcy Court issued a Memorandum Opinion finding:

In successive motions, statements and disclosures – many under penalty of perjury – in this case and adversary proceeding, Hancock has stated that the retainer came from the Debtor, was borrowed by the Debtor, was loaned to the Debtor's President, was paid to Hancock in trust by the mother of the Debtor's President and, coming full circle, was provided by the Debtor. After more than a year of litigation, perhaps the truth is less important than that this case is a poster child for why completing careful disclosure of the source of attorney's fees and retainer is the only possible rule in bankruptcy practice. (Exhibit 15).

The Bankruptcy Court further stated in its Memorandum Opinion that “The Trustee and U. S. Trustee have had to claw the facts out of Hancock. . . . The result is long and expensive litigation to get what Hancock was obligated to give in the first instance without compulsion: complete and accurate disclosure of the nature and source of the retainer.” (Exhibit 15).

The Bankruptcy Court found in its Memorandum Opinion that “Hancock did not respect the duties imposed on attorneys by the Bankruptcy Code and Rules.” (Exhibit 15).

In its Memorandum Opinion, the Bankruptcy Court found “because Hancock's shifting disclosures regarding the retainer failed to meet the standards set forth by the Sixth Circuit, disallowance of attorney's fees is required and the Trustee is entitled to turnover of the retainer.” (Exhibit 15).

On August 23, 2007, the Bankruptcy Court entered an Amended Order denying fees and granting Summary Judgment. (Exhibit 16). Mr. Hancock appealed the Bankruptcy Court's

Order to the District Court. The District Court in Hancock v. Limor found no error and affirmed the Bankruptcy Court finding:

He [the Respondent] further argues that his subsequent presentation to the Bankruptcy Court was comprised of information that came to his attention subsequent to his initial disclosures, so that none of his conduct could be viewed as in willful disregard of his obligation to the court. *Id.* This argument does not square with paragraph 8 of the Amended Disclosure, which clearly states that Hancock exercised his own judgment in not disclosing to the Bankruptcy Court all of the facts and circumstances regarding his retention by the debtor, facts of which he was aware at the time of his initial § 329 and rule 2016(b) statement. Consequently, in view of Hancock's own statements, his conduct cannot be considered as anything but willful.

Hancock's conduct cannot be viewed as candid in the circumstances, where Hancock is aware that the debtor's principal had considered arrangements for the retainer fund to be provided by a family member, arrangements where those funds were to be available to the debtor by loan, either directly or channeled through the debtor's principal, and where Hancock could not definitively state that such arrangements had been rejected by the debtor's principal at the time that he filed his initial disclosure. (Exhibit 17).

The District Court in Hancock v. Limor found:

Further, Hancock's initial conduct spawned a series of proceedings before the Bankruptcy Court that required the considerable expenditure of that court's resources without providing yet a clear picture of the fee arrangement. *Kisseberth*, 273 F.3d at 722 (candid and faithful compliance with § 329 and Rule 2016(b) required to avoid "fragmented proceedings"). (Exhibit 17).¹

The question presented to this Panel then is whether the Board was able to prove by a preponderance of the evidence that Respondent knew that his reports about the source of the retainer were false. The Board asserts that during Respondent's representation In re Innovative

¹ The Panel is not bound by the findings of either the Bankruptcy Court or the District Court in *Hancock v. Limor*. The facts presented, legal arguments made, and applicable law all differ to some extent from the facts, arguments, and legal standards in this disciplinary hearing.

Entertainment Concepts, Inc., the Respondent violated Rule 3.3(a)(Candor Toward the Tribunal, Rule 3.4(c)(Fairness To Opposing Party and Counsel) and 8.4(a), (c) and (d)(Misconduct) of the Rules of Professional Conduct by failing to completely and accurately disclose the nature and source of the Respondent's retainer.

Rule 3.3(a) states that, "A lawyer shall not knowingly . . . (1) make a false statement of fact or law to a tribunal." Based upon the facts presented at trial, this Panel finds that the Board did not prove by a preponderance of the evidence that Respondent knowingly made a false statement of fact or law to a tribunal when disclosing the nature and source of Respondent's retainer.

Rule 3.4(c) states that, "A lawyer shall not knowingly . . . (1) disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists." Again, the Panel finds that the Board did not prove by a preponderance of the evidence that Respondent knowingly disobeyed an obligation under the rules of a tribunal.

Rule 8.4(a), (c) and (d) states that it is professional misconduct for a lawyer to (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist another to do so, or do so through the acts of another; (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice. Again, based upon the facts presented during the trial, the Panel does not find that the Board has proven by a preponderance of the evidence that Respondent violated Rule 8.4.

File No. 32690-5-NJ – Barnhill's Buffet

On December 3, 2007, Mr. Hancock filed a Chapter 11 Voluntary Bankruptcy Petition for Barnhill's Buffet (Barnhill's). (Exhibit 19). On approximately December 19, 2007, Mr. Hancock filed a Notice of Application of Debtor for Approval of Employment of Attorneys for

Barnhill's. (Exhibit 20). In Mr. Hancock's Application of the Debtor for Approval of Employment of Attorneys, he stated:

To the best of Debtor's knowledge, and as evidenced by the attached Declaration of Wm. Caldwell Hancock (the "Declaration"), submitted pursuant to Fed.R.Bankr.P. 2014(a), neither Mr. Hancock nor any affiliate of the Hancock law firm holds or represents an interest adverse to this estate and all such persons are "disinterested" persons as defined in the Code. To the best of the Debtor's knowledge, proposed counsel has no present connection with the Debtor (other than pre-petition representation of the Debtor in both bankruptcy and non-bankruptcy matters, which is not *per se* a disqualifying relationship) and no connection with any creditor or any other party in interest, their respective attorneys or accountants, the United States Trustee or any person employed in the Office of the United States Trustee. Mr. Hancock discloses that in 2002 through 2005, he represented Robert M. Langford, currently an officer, director, and member of the Debtor's management, in certain personal matters including litigated disputes. Those representations ended at that time. There was then, and there is now, no relationship whatsoever between any matter involved in the formal representation of the Debtor or any entity relative to any matter involved in this case." (Exhibit 20).

Mr. Hancock never filed an amendment to this employment application for Barnhill's. (Exhibit 19).

In his Barnhill's Application for Employment, Mr. Hancock did not disclose any connection to Dynamic Management Group, LLC; Dynamic Acquisition Group and/or Dynamic Hospitality. (Exhibit 20). In Mr. Hancock's e-mail dated August 7, 2008, to Lloyd Mueller, Mr. Hancock states, ". . . Bottom line: My disclosure is dead accurate and comprehensive and complete." (Exhibit 23).

Barnhill's and Dynamic Management Company were co-defendants in *WD Sales and Brokerage v. Barnhill's and Dynamic Management* filed in the Circuit Court for Escambia County, Florida. (Exhibit 21).

In defense of Motion to Vacate or Set Aside Default against Barnhill and Dynamic Management, Mr. Hancock signed and provided an affidavit for the *W.D. Sales* case. (Exhibit 22). In Mr. Hancock's affidavit, Mr. Hancock stated, "I represent Barnhill's Buffet, Inc., a Tennessee Corporation (hereinafter "Barnhill's). I also represent Dynamic Management Group, LLC, a Tennessee limited liability company (hereinafter "Dynamic"), which has no business relationship whatsoever with Barnhill's." (Exhibit 22).

In Mr. Hancock's August 7, 2008 e-mail to Lloyd Mueller, Mr. Hancock stated, "I do not represent and have not represented Dynamic Management in any matter having anything to do with BBI, or in any other matter." (Exhibit 23).

In Mr. Hancock's December 9, 2008 e-mail to Nancy Jones at the Board of Professional Responsibility, Mr. Hancock stated:

In terms of Rule 2014 disclosure, the facts are that the only client I ever represented that had any relationship whatsoever to Barnhill's was Dynamic Management, a company in a different line of business that was never a creditor or party interested in the BH case.

Respondent testified at trial that he represented Dynamic Management in assisting it in locating Florida counsel to represent it in litigation filed in Pensacola by W.D. Sales during the Spring of 2007, months before Barnhill's filed its Chapter 11 Petition. Respondent further testified that Dynamic Management had no business dealings with or interest in the Barnhill's proceedings and that he did not represent Dynamic Management at the date of his Bankruptcy 2014(a) disclosure or at any time during the *Barnhill's* proceedings. At trial, Mr. Langford and Mr. Hancock testified that Respondent did not represent Dynamic Management in any matter once the Florida proceedings were assigned to Florida counsel in August 2007.

In his Application to represent Barnhill's, Mr. Hancock did not disclose any connection with Dynamic Acquisition Group, LLC. (Exhibit 20). Lloyd Mueller testified Barnhill's common stock was owned by a holding company which was Dynamic Acquisition Group.

On April 25, 2007, Mr. Hancock sent a letter to Martin Moore on Mr. Hancock's letterhead stating "I have been retained by Dynamic Acquisition Group, LLC and Barnhill's Buffet, Inc. in connection with the disposition of the Indemnification Fund and remaining payments from the Merger Fund established under the Merger Agreement." (Exhibit 24).

Craig Barber testified he wrote the April 25, 2007 letter for Mr. Hancock and Mr. Hancock signed the letter. Mr. Barber testified that he mistakenly thought Mr. Hancock had been hired to represent Dynamic Acquisition Group, LLC in an escrow matter.

Respondent testified that he did not concurrently represent Dynamic Acquisition Group during his tenure as attorney for Barnhill's debtor-in-possession. Messrs. Barber and Langford also testified that no such relationship existed.

In Mr. Hancock's Application for Employment in Barnhill's, Mr. Hancock did not disclose any connection with Dynamic Hospitality, LLC. (Exhibit 20).

In Mr. Hancock's December 9, 2009 e-mail to the Board, Mr. Hancock stated "I have never represented Dynamic Hospitality." (Exhibit 18). Stacey Glexiner, Controller for Dynamic Hospitality, testified that from January 27, 2004 through February 27, 2006, Dynamic Hospitality made four payments to Mr. Hancock. (Exhibit 48).

On September 30, 2004, Dynamic Hospitality wire transferred \$2,500 to Mr. Hancock. (Exhibit 48). On November 2, 2004, by check #4953, Dynamic Hospitality paid Mr. Hancock \$5,015. (Exhibit 48). Mr. Hancock and Mr. Langford testified that Mr. Hancock made a

personal loan in the amount of \$7,500 to Mr. Langford that was used for settlement of a Langford matter in which Mr. Hancock was not counsel to anyone

Stacey Glexiner, Controller for Dynamic Hospitality, testified the \$5,015 and \$160 payments to Mr. Hancock were paid to Mr. Hancock for deposit into his trust account and payment to third party for Dynamic Hospitality. On January 27, 2004, Dynamic Hospitality wire transferred \$10,000 to Mr. Hancock's account. (Exhibit 48).

Stacey Glexiner and Robert Langford testified the \$10,000 was a retainer for Mr. Hancock's representation of Dynamic Hospitality employees who were former Phoenix Restaurant Group employees.

On February 27, 2006, by check #5800 Dynamic Hospitality paid Mr. Hancock \$160. (Exhibit 48). Respondent testified that this check was to reimburse him for a court reporter advance made on behalf of Mr. Langford in 2004. Mr. Langford corroborated this testimony.

Mr. Hancock and Mr. Langford testified that this loan was reimbursed to Mr. Hancock by Mr. Langford via funds drawn on an account of Dynamic Hospitality, paid in increments of \$2,500 and \$5,015, and that Mr. Hancock did not provide any legal services in this matter and was paid no legal fees.

On approximately April 18, 2008, Mr. Hancock filed a Motion to Withdraw as Counsel for Barnhill's. (Exhibit 25). In Mr. Hancock's Motion to Withdraw, he stated:

Debtor's counsel has been subjected to what are considered to be criminal threats of adverse action to be taken unless the debtor or other parties could not or would not affirmatively meet the demand of other counsel for a set aside of estate or creditor assets to secure said counsel's legal fees, which threats turned into reality when those demands were not met. The United States Trustee seems unwilling to remedy that misconduct. That same counsel has knowingly made (and refused to withdraw) wholly false allegations regarding counsel and debtor management in order to

leverage a fees carve out of \$45,000 from a creditor who opposed conversion. (Exhibit 25).

On June 3, 2008, Mr. Hancock filed an Application for Compensation and Amended Application for Compensation Seeking Compensation in the amount of \$355,975.00; \$351,050.00 in attorney fees; \$4,925.00 for paralegal hours; and \$1,071.55 in expenses. (Exhibit 26).

On June 24 and June 25, 2008, the U. S. Trustee filed an Objection and Amended Objection to Mr. Hancock's fee application. (Exhibit 27). The U. S. Trustee's Objection stated in part that Mr. Hancock's fee application sought fees for 17 days in which Mr. Hancock's billing was 20 – 27.25 hours each day. (Exhibit 27). On July 3, 2008, the Court entered an Order requiring Mr. Hancock's final fee application to be filed by July 7, 2008. (Exhibit 28). On July 7, 2008, Mr. Hancock filed a First and Final Application for Compensation for the period of December 3, 2007 through April 30, 2008 seeking a fee of \$356,554.50 and expenses totaling \$1,071.55. (Exhibit 29).

Lloyd Mueller testified that a trial lasting parts of five days was held on Mr. Hancock's fee application. Mr. Hancock testified that he and Natalie Horel messed up Mr. Hancock's interim fee application. Mr. Hancock billed \$125.00 per hour for a paralegal in his fee application. (Exhibit 29). Natalie Horel testified Mr. Hancock paid her \$25.00 per hour with no benefits. Mr. Hancock testified he dictated his time entries on Barnhill "long after" his representation of Barnhill's concluded. Mr. Hancock testified that Natalie Horel, his paralegal, threw away his original papers reflecting his time entries. Natalie Horel testified that she did not recall throwing away Mr. Hancock's original time entries.

By Memorandum dated December 9, 2008, the Bankruptcy Court denied all fees sought by Mr. Hancock. (Exhibit 30). In the December 9, 2008 Memorandum, the Bankruptcy Court stated:

Even though the Court finds that the disclosure violations alone are enough to deny Mr. Hancock's fees in full, the Court nonetheless must address the other issues which likewise warrant a full denial or at the very least, a substantial reduction of Mr. Hancock's fees. (Exhibit 30).

In the December 9, 2008 Memorandum, the Bankruptcy Court found "based on the extensive proof of Mr. Hancock's unprofessional, dilatory and fractious behavior" the Court could not find that Mr. Hancock's services were reasonable and necessary. (Exhibit 30).

In the December 9, 2008 Memorandum, the Bankruptcy Court gave the following six examples of what the Court termed Mr. Hancock's "abusive and disruptive behavior":

- (1) Mr. Hancock, without basis, threatened Creditors Committee counsel with criminal sanctions;
- (2) Mr. Hancock accused Wells Fargo counsel of fraud;
- (3) When the US Trustee and trustee objected to his fee application, Mr. Hancock prepared and sent a Rule 9011 Motion charging them with misconduct (never filed);
- (4) When he grew angry at Wells Fargo's control over the bank's control of their cash collateral, Mr. Hancock filed a motion seeking to appoint an examiner against Wells, even though the code has no provision for such;
- (5) When he wanted to disrupt the "global settlement" order that he signed off on agreeing to case conversion, Mr. Hancock filed but did not prosecute a Rule 60 Motion to set aside the settlement.
- (6) Mr. Hancock's attempted manipulation of opposing counsel by threatening professional responsibility violations concerning direct communication with Mr. Barber when Mr. Barber was routinely included on all e-mail traffic, and Mr. Hancock at times requested counsel to communicate with Mr. Barber while he was out of town. (Exhibit 30).

In Mr. Hancock's August 7, 2008 e-mail to Lloyd Mueller, Mr. Hancock states:

I have said before and will say again that it is my considered opinion that Bob Mendes also committed multiple criminal offenses by threatening adverse action to obtain money to pay his fees. The first time he did so I told him he was treading on thin ice and should read the criminal statute. The second and third and subsequent times I guess I should have just ignored him, lest your office challenge my fees for not playing nice with a person I believe to have repeatedly engaged in criminal conduct. Until now I did not know that your office is in the business of chilling the exercise of First Amendment rights by censoring speech under the guise of fee punishment. Or in the business of punishing whistleblowers. . . .

This is not a fee matter. It is a criminal matter for proper law enforcement authorities to deal with. (Exhibit 23).

Mr. Hancock and James Kelly testified Mr. Hancock accused James Kelly, Wells Fargo's counsel, of fraud. (Exhibit 49). James Kelly testified that he didn't think he did anything untoward and was personally and professionally offended to be accused of fraudulent behavior. (Exhibit 49).

Mr. Hancock prepared and sent a Rule 11 Motion for Sanctions to counsel for the US Trustee, Lloyd Mueller. (Exhibit 31). In Mr. Hancock's proposed Motion for Sanctions, he states, "Mr. Mueller has persuaded the Chapter 7 Trustee to join with him in what can only be described as a witch hunt, designed to publish to the world via internet, patent falsehoods and half-truths about Mr. Hancock." (Exhibit 31). Mr. Hancock and Lloyd Mueller testified Mr. Hancock did not file this proposed Motion for Rule 11 Sanctions.

Mr. Hancock filed an Expedited Motion of the Debtor for an Appointment of an Examiner in which Mr. Hancock stated, "Even though the Debtor, its governing body and its officers have faithfully and honestly conducted the business of the Debtor both pre and post petition, the conduct of Creditor Wells Fargo Bank, N.A. has been overreaching, and dishonest

and fraudulent both pre and post petition.” (Exhibit 32). In Mr. Hancock’s Expedited Motion he stated, “Wells has added charges to its pre and post petition loans that appear to be illegal and to have been added to justify a money grab.” (Exhibit 32).

Mr. Hancock further stated in his Expedited Motion, “Wells has committed promissory fraud by promising and agreeing and repeatedly assuring debtor management that it would agree to surcharge sale proceeds to timely pay those persons who extended unsecured post petition credit to the estate, when it had no intention of honoring that promise and agreement as is demonstrated by its delaying tactics when asked to approve orders to accomplish same.” (Exhibit 32).

Mr. Hancock testified as counsel for Barnhill’s, he agreed to a global settlement. (Exhibit 19). After agreeing to the settlement, on April 23, 2008 Mr. Hancock filed a Motion for Relief from Provisions of Settlement Approval Order and for Limited Stay Pending Expedited Hearing. (Exhibit 33).

Mr. Hancock stated in the Motion for Relief from Provisions of Settlement:

As grounds under Fed. R. Civ. P. 60(b) (3)(4) and (6), the Debtor will show as a matter of fact that the mandatory conversion provision of the Settlement Order is the product of misconduct of an adverse party – indeed misconduct by more than one adverse party – in that this provision of the order is designed not to enhance the estate but to enable the Committee to disband and its counsel to exit the case while the persons most knowledgeable regarding the misconduct are sent away. (Exhibit 33).

On September 18, 2008, Mr. Hancock filed a Notice of Withdrawal of Objection to Proposed Settlement. (Exhibit 19).

Mr. Hancock appealed the Bankruptcy Court’s December 9, 2008 Memorandum denying his fees to the District Court. (Exhibit 34). In Mr. Hancock’s appeal to the District Court styled Hancock v. Clippard, his brief was originally due to be filed on March 27, 2009. (Exhibit 34).

On March 26, 2009, Mr. Hancock filed an Emergency Motion for Extension of Time to file Brief. (Exhibit 35). On March 26, 2007, the Court entered an Order giving Mr. Hancock until April 27, 2009 to file his brief. (Exhibit 34). Mr. Hancock did not file his brief by April 27, 2009. (Exhibit 34).

On May 1, 2009, Mr. Hancock filed a second Motion for Extension of Time to File Brief. (Exhibit 36). On May 11, 2009, the Court entered an order granting Mr. Hancock's second Motion for Extension of Time to File Brief, and limiting the Brief to no more than 50 pages. (Exhibit 37). On August 5, 2009, the District Court entered a Show Cause Order ordering Mr. Hancock to show cause why his appeal should not be dismissed for failure to prosecute. (Exhibit 38). Mr. Hancock did not file a Response to the District Court's Show Cause Order. (Exhibit 34). Mr. Hancock did not file a 3rd Motion for Extension of Time to file Brief. (Exhibit 34). Mr. Hancock filed a 128 page brief on August 17, 2009. (Exhibit 39).

On August 27, 2009, the United States Trustee filed a Motion to Dismiss Appeal, or in the Alternative to Require Appellant to Comply with Briefing Page Limits Set in the Court's Prior Order. (Exhibit 34). On August 31, 2009, the District Court entered an Order granting Appellee's Motion to Dismiss in part and ordering Mr. Hancock to file by September 21, 2009 a revised brief that does not exceed 50 pages accompanied by a third Motion for Extension of Time explaining why Mr. Hancock did not timely file his brief in early May, 2009. (Exhibit 40).

On September 21, 2009, Mr. Hancock filed a second brief of 50 pages reflecting font size and spacing that did not comply with local filing requirements. (Exhibit 41). On September 23, 2009, the District Court entered an Order finding that the course of events fully justifies dismissal of the appeal with prejudice, however the Court instead affirmed the December 8, 2008 Memorandum and Order of the Bankruptcy Court. (Exhibit 42).

The Board asserts that in the *Barnhill's Buffet* case, Respondent violated Rule 1.5(a)(Fees) by charging unreasonable fees in his interim application and final application for fees. Based upon the evidence presented at trial, the Panel finds that the Board did not prove by a preponderance of the evidence that Respondent's fee applications were unreasonable. Judge Paine denied that application for several reasons. However, the Board did not present sufficient evidence that the fee itself was unreasonable and, therefore, the Panel does not find that there was a violation of Rule 1.5(a).

The Board also asserts that the Respondent violated Rule 1.7(a)(Conflicts, 3.3(a)(1)(Candor Toward the Tribunal, 3.4(c), (Fairness to Opposing Party and Counsel); and 8.4(a), (c) and (d)(Misconduct) by failing to disclose in his application to employ as counsel for Barnhill's Respondent's prior representation and/or relationship with Dynamic Management Group, LLC, Dynamic Acquisition Group, LLC, and Dynamic Hospitality, LLC.

Rule 1.7 states that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client or if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. The proof in this trial was that Respondent did not represent Dynamic Management Group, LLC, Dynamic Acquisition Group, LLC or Dynamic Hospitality, LLC during his representation of Barnhill's in the bankruptcy case. Respondent did admit that he helped Dynamic Management Group, LLC find a lawyer to represent it in a lawsuit filed in Florida. He adamantly denied that he ever represented Dynamic Acquisition Group, LLC. Respondent did admit receiving payments from Dynamic Hospitality, LLC, but explained that those payments were payments for his

representation of employees of that LLC who had been sued in another matter. The testimony of Mark Langford and Craig Barber corroborated Mr. Hancock's testimony that he did not represent these entities during the *Barnhill's* bankruptcy. Therefore, the Panel finds that there is no conflict of interest violation under Rule 1.7.

Rule 3.3 states that a lawyer shall not knowingly make a false statement of fact or law to a tribunal. Arguably, Respondent could have been more forthcoming and explained in more detail on his disclosures the relationships among these entities and his dealings with them. However, as previously found, there is no conflict of interest and the Board did not prove by a preponderance of the evidence that Respondent's failure to go into more detail constituted a knowingly false statement of fact. Therefore, the Panel does not find a violation of Rule 3.3(a)(1).

Rule 3.4(c) states that a lawyer shall not knowingly disobey an obligation of the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists. As stated already, the Panel does not find that Respondent knowingly disobeyed an obligation in his disclosures. Therefore, the Panel finds that the Board did not meet its burden in proving a violation of Rule 3.4(c).

Rule 8.4(a) states that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another. The Panel does not find that Respondent's disclosure constitutes a violation of any other ethical rule and therefore declines to find a violation under this provision.

Rule 8.4(c) states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. This Rule also includes an intent

element which the Panel finds the Board did not prove by a preponderance of the evidence. Therefore, the Panel finds no violation of Rule 8.4(c) as it relates to the *Barnhill's* case.

Rule 8.4(d) states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. The Panel finds that the Board did not by a preponderance of the evidence prove that this disclosure in the *Barnhill's* case prejudiced the administration of justice.

The Board also contends that Respondent violated Rules of Professional Conduct 3.5(e)(Impartiality and Decorum of the Tribunal), 4.4(a)(Respect for the Rights of Third Persons) and 8.4(a) and (d)(Misconduct) by his embarrassing and threatening conduct directed at opposing counsel and third parties. The proof at the trial on this matter included Judge Paine's Memorandum setting out this alleged misconduct. At the trial itself, there was no specific testimony on how any of Respondent's actions in that bankruptcy case amounted to abusive or disruptive behavior. Judge Paine sets forth in his memorandum that Mr. Hancock, without basis, threatened creditors' committee counsel with criminal sanctions. There is no testimony from creditors' committee counsel concerning these criminal sanctions at the hearing. To the contrary, Respondent testified that he felt that creditors' committee counsel was committing a crime. In addition, Judge Paine sets out that Mr. Hancock accused Wells Fargo counsel of fraud. At the hearing, Respondent as well as Mr. Barber and Mr. Langford testified about the contentious nature of the relationship between Barnhill's and Wells Fargo. Clearly this was a very contentious bankruptcy. The Panel did not hear testimony which rose to the level of abusive conduct. It did not hear directly from anyone involved in that bankruptcy case other than Trustee Mueller who essentially only testified that certain motions were filed by Respondent.

Based upon the foregoing, the Panel finds that there are no violations of the Professional Rules of Conduct based upon Respondent's actions in the Barnhill bankruptcy case. Specifically, Rule 3.5(e) states that a lawyer shall not engage in conduct intended to disrupt a tribunal. The Panel finds that the Board did not prove by a preponderance of the evidence that any of Respondent's actions in the Barnhill bankruptcy case were intended to disrupt a tribunal.

Rule 4.4(a) states that in representing a client a lawyer shall not "(1) use means that have no substantial purpose other than to embarrass, delay, or burden another person or knowingly use methods of obtaining evidence that violates the legal rights of such person or (2) threaten to present a criminal or a lawyer disciplinary charge for the purpose of obtaining an advantage in a civil matter." Although the Panel certainly respects Judge Paine's opinion and sees from that memorandum that Judge Paine felt that Respondent did not act appropriately in the *Barnhill's* bankruptcy case, this Panel was simply not provided with the same information that Judge Paine had available. This Panel cannot take as a matter of law the facts that are set forth in Judge Paine's memorandum. The Board did not prove by a preponderance of the evidence that Respondent violated Rule 4.4(a).

Rule 8.4(a) states that it is professional misconduct for a lawyer to (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another. As stated earlier, since the Panel did not find that the Board has presented sufficient evidence of a violation of any other Rule, the Panel declines to find a violation under this catchall provision.

Rule 8.4(d) states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. The Panel was not presented evidence in the

disciplinary hearing to prove by a preponderance of the evidence that Respondent engaged in conduct that was prejudicial to the administration of justice.

File No. 33113-5-NJ – Hancock E-Mail to Judge Paine

On September 28, 2009, Mr. Hancock e-mailed Judge Paine stating in part:

I have been thinking about what you did to me and my family every hour of every day since last December. . . . My family and I are still waiting for your written apology. I also invite you to meet with me face to face – if you have the courage – and explain to me man to man and eye to eye WHY you denied my fees – I say “why” because you should know and I do know that the garbage you published is not law and is not fact and is just cover – there is an unspoken “why” and I have a pretty good idea what it is but really would like to hear it from your lips if you have the courage to be truthful – and I want you to tell me why you choose to trash me and my working skills in words that no decent human being would dare manufacture and publish about another unless his intention was to destroy another’s livelihood. I am available just about every day at lunch time at any place suitable to you. You have single handedly destroyed my ability to make a living – if you have a decent bone in your body you will get down off your high horse and act like a man instead of a bully and clown, show some courage and integrity now that you have proved your point, and repair the damage you have done . . . (Exhibit 45).

After Mr. Hancock’s September 28, 2009, e-mail to Judge Paine, on September 30, 2009,

Mr. Hancock appealed the Barnhill case to the Sixth Circuit Court of Appeals. (Exhibit 46).

In Mr. Hancock’s May 12, 2010 e-mail to the Board, Mr. Hancock stated:

Specifically, in late 2009 Judge Paine sent two armed U.S. Marshals, wearing jack boots and all black SWAT team type uniforms to my office, to insist on talking to me about my email to him, and while insisting that they were not there to frighten or intimidate me, proceeded to do just that – and the subject was the very email that you are now referencing and the one that immediately followed that you have not referenced.

Then, on February 25 this year, I received another call from the same US Marshal insisting that I give him an audience immediately. I declined his demand by email copied to Judge Paine. I assume you have been provided a copy of that email by

Judge Paine. If not, then you have been given only part of the truth by Judge Paine.

On approximately May 18, 2011, the United States Court of Appeals for the Sixth Circuit entered their Judgment and Opinion affirming the District Court's affirmance of the Bankruptcy Court. (Exhibit 43).

In their May 18, 2011 Judgment and Opinion, the Sixth Circuit Court of Appeals found:

Hancock did not file any brief in the district court until nearly seven months after he filed his notice of appeal, and that brief completely disregarded the district court's filing requirements and the bankruptcy rules. Hancock also ignored the district court's first order to show cause, and then responded to its second order with a series of disrespectful remarks and other entirely unacceptable explanations for his delay. Further, the district court demonstrated considerable leniency throughout the proceedings, giving Hancock the opportunity to make a proper filing and show cause as late as September of 2009. *See id.* (affirming a dismissal with prejudice where petitioner had received "more than ample leeway in which to conform its actions to the Board's requirements"). The district court's summary affirmance was therefore not motivated by a failure of technical compliance, but rather by a pattern of flagrant noncompliance. Summary affirmance without consideration of the merits was fully warranted under such circumstances. *See Thomas v. Corr. Med. Ctr.*, No. 98-3492, 1999 WL 283894, at *1 (6th Cir. Apr. 27, 1999). (Exhibit 43).

On January 6, 2011, Mr. Hancock was publicly censured by the Board of Professional Responsibility for violations of Rules of Professional Conduct 1.3 (diligence); 1.4 (communication); 1.5 (fees); and 1.16 (terminating representation). (Exhibit 47).

The Panel finds that the Respondent's ex parte September 28, 2009 e-mail to Judge Paine while the *Barnhill's* litigation was pending does violate Rules 3.5(b) and (c)(Impartiality and Decorum of the Tribunal), 8.2(a)(1)(Judicial Officials), and 8.4(a) and (d)(Misconduct) of the Rules of Professional Conduct. The Panel does not find that Rule 4.1(a) is applicable to that e-mail and therefore does not find a violation of that Rule.

The Panel finds that the *Barnhill's* bankruptcy case was still pending at the time that this e-mail was sent. Contrary to Respondent's assertions that it was sent privately to a friend, it was sent to Judge Paine's judicial e-mail and was specifically about Respondent's fee application. The tone is threatening to Judge Paine and also calls into question Judge Paine's integrity. The e-mail is extremely disrespectful. At the hearing, Respondent did not retract his statements in that e-mail, but rather endorsed them. He showed virtually no remorse for having sent the e-mail. He did acknowledge, however, that sending it was not smart and that he should not have sent it.

Rule 3.5(b) states that a lawyer shall not communicate ex parte with a person during a proceeding unless authorized to do so by court order. The Panel finds that this e-mail was an ex parte communication and therefore violative of Rule 3.5(b). Rule 3.5(e) states that a lawyer shall not engage in conduct intended to disrupt a tribunal. Respondent's statements in this e-mail constitute abusive and obstreperous conduct which the Panel finds is violative of Rule 3.5(e).

Rule 8.2(a) states that a lawyer shall not make a statement that the lawyer knows to be false or that is made with reckless disregard as to the truth or falsity concerning the qualifications or integrity of the following persons: (1) a judge. The Panel finds that Respondent made statements in this e-mail to Judge Paine which he either knew to be false or were stated with reckless disregard. Therefore, the Panel finds that the Respondent violated Rule 8.2(a)(1).

Rule 8.4(a) and (d) states that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct to knowingly assist or induce another to do so, or do so through the acts of another or to engage in conduct that is prejudicial to the administration of justice. The Panel finds that this e-mail to Judge Paine is violative of those Rules.

Respondent argues that the statements that he makes in this e-mail to Judge Paine are protected free speech under the State and Federal Constitutions. In *Ramsey v. Board of Professional Responsibility*, 771 S.W.2d 116 (Tenn. 1989), the Tennessee Supreme Court stated that, "A lawyer has every right to criticize court proceedings and judges and courts of Tennessee after a case is concluded, so long as the criticisms are made in good faith with no intent or design to willfully or maliciously misrepresent those persons and institutions or to bring them into disrepute." *Id.* at 121 citing *In re Hickey*, 256 S.W. 417-419 (Tenn. 1923). As stated earlier, the Panel finds that this case had not been "concluded." Moreover, the statements made by Respondent cannot be deemed to be "criticisms" made in "good faith." To the contrary, this Panel finds that statements in that e-mail to Judge Paine were made by Respondent "to willfully or maliciously misrepresent" Judge Paine and also to bring "disrepute" to him. Thus, the Panel finds that the statements made by Respondent in this e-mail are not protected speech.

For the foregoing reasons, this Panel finds that Respondent violated Rules 3.5(b) and (e), 8.2(a)(1), and 8.4(a) and (d) by sending this e-mail to Judge Paine.

SANCTION

Section 8.4 of Rule 9, Rules of the Supreme Court, states "In determining the appropriate type of discipline, the Hearing Panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions.

The ABA Standards for Imposing Lawyer Sanctions defines "injury" as "harm to a client, the public, the legal system or the profession which results from a lawyer's misconduct."

Section 1.1 of the ABA Standards for Imposing Lawyer Sanctions states:

- 1.1 Purpose of Lawyer Discipline Proceedings. The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their

professional duties to clients, the public, the legal system, and the legal profession.

Section 2.3 of the ABA Standards for Imposing Lawyer Sanctions states, “Generally, suspensions should be for a period of time equal to or greater than six months. . . .”

Section 8.2 of the ABA Standards for Imposing Lawyer Sanctions states:

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

Section 9.2 of the ABA Standards for Imposing Lawyer Sanctions states:

9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

The following aggravating factors exist in this case and justify an increase in the degree of discipline to be imposed against Mr. Hancock:

- (d) multiple offenses;
- (g) refusal to acknowledge wrongful nature of conduct;
- (i) substantial experience in the practice of law.

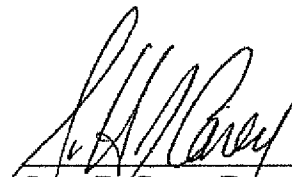
Section 9.3 of the ABA Standards for Imposing Lawyers Sanctions states:

9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

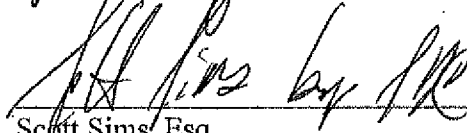
The following mitigating factors exist in this case and justify a decrease in the degree of discipline to be imposed against Mr. Hancock:

- (c) personal or emotional problems

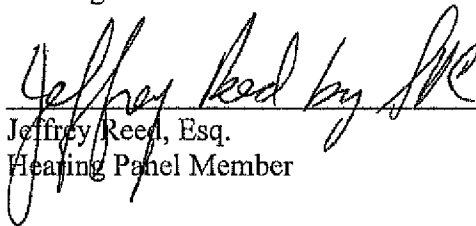
Based upon the foregoing, this Panel orders that Respondent shall have his license to practice law suspended for a period of thirty (30) days.



Scott D. Carey, Esq.
Chairman



Scott Sims, Esq.
Hearing Panel Member



Jeffrey Reed, Esq.
Hearing Panel Member

FILED

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

BOARD OF PROFESSIONAL
RESPONSIBILITY

Rev EXEC. SEC.

IN RE: WILLIAM CALDWELL HANCOCK, DOCKET NO. 2010-1959-5-SG
BPR #005312, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Davidson County)

ORDER

This matter is before the Disciplinary Panel on the Board of Professional Responsibility's Petition for Discipline against the Respondent William Caldwell Hancock. Following a two-day trial, and consideration of all proof, the Panel finds as follows:

1. Mr. Hancock's statements regarding the source of his retainer in *Innovative Entertainment Concepts* do not violate Rules 3.3(a) (candor to the tribunal); 3.4(c) (fairness to opposing counsel; and 8.4(a)(c) (misconduct) of the Rules of Professional Conduct.

2. In *Barnhill's*, Mr. Hancock did not violate Rule 1.5(a) (fees) by filing an interim fee application June 3, 2008 charging an unreasonable fee.

3. Mr. Hancock did not violate Rule 1.7(a) (conflicts); 3.3(a)(1) (candor toward the tribunal); 3.4(c) (fairness to opposing counsel); and 8.4(a)(c) and (d) (misconduct) by not disclosing in his Application to Employ as Counsel for Barnhill's any connections to Dynamic Management Group, LLC; Dynamic Acquisition Group, LLC; and Dynamic Hospitality, LLC.

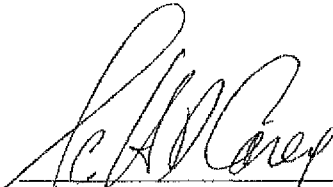
4. Mr. Hancock did not violate Rules 3.5(e) (impartiality and decorum of the tribunal); 4.4(a) (respect for the rights of third persons); and 8.4(a) and (d) (misconduct) by

engaging in conduct for the substantial purpose of embarrassing or burdening opposing counsel and intended to disrupt the proceeding.

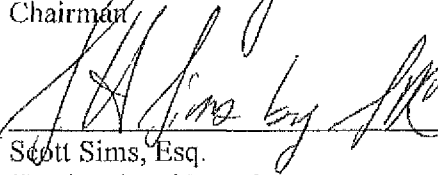
5. Mr. Hancock did not violate Rules 3.2 (expediting litigation); 3.4(c) (fairness to opposing counsel); 3.5(e) (impartiality and decorum of the tribunal); and 8.4(a) and (d) (misconduct) by failing to comply with Bankruptcy rules and Orders.

6. Mr. Hancock's ex parte September 28, 2009 email to Judge Paine while the *Barnhill's* litigation was pending was intended to be disruptive to the proceeding and was made with reckless disregard as to its truth or falsity concerning Judge Paine's integrity in violation of Rules 3.5(b) and (e) (impartiality and decorum of the tribunal); 8.2(a)(1) (judicial officials); and 8.4(a) and (d) (misconduct). The Panel does not find that Rule 4.1(a) is applicable to that e-mail and therefore does not find a violation of that Rule.

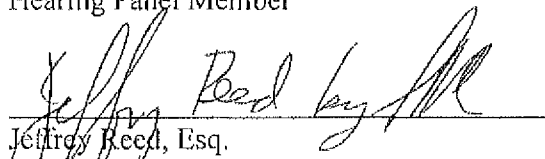
WHEREFORE, upon a finding that Mr. Hancock violated Ethical Rules 3.5(b) and (e), 8.2(a)(1), and 8.4(a) and (d), it is ORDERED that Mr. Hancock shall have his license to practice law suspended for thirty (30) days.



Scott D. Carey, Esq.
Chairman



Scott Sims, Esq.
Hearing Panel Member



Jeffrey Reed, Esq.
Hearing Panel Member