

IN THE CHANCERY COURT FOR DAVIDSON, TENNESSEE,
AT NASHVILLE

FILED

2012 OCT 25 AM 10:21
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

WILLIAM CALDWELL HANCOCK,

Petitioner,

vs.

BOARD OF PROFESSIONAL
RESPONSIBILITY OF THE
TENNESSEE SUPREME COURT,

Respondent.

and

BOARD OF PROFESSIONAL
RESPONSIBILITY OF THE
TENNESSEE SUPREME COURT,

Petitioner,

vs.

WILLIAM CALDWELL HANCOCK,

Respondent.

FOR IT

No. 11-1816-IV

COPY

Nos. 11-1797-IV

JUDGMENT

This case is before the court on consolidated Petitions for Certiorari filed by the petitioners, William Caldwell Hancock and the Board of Professional Responsibility of the Tennessee Supreme Court. The petitions seek a review of the Judgment of the Hearing Panel filed November 2, 2011, in a lawyer disciplinary proceeding against Mr. Hancock. Based upon the findings in the Memorandum filed simultaneously with this judgment and incorporated herein by reference, the court is of the opinion the judgment of the hearing panel should be modified, in part.

It is, therefore ORDERED and ADJUDGED that the judgment of the hearing panel filed November 2, 2011, be modified to include a finding that with regard to the appeal in *Hancock v. Clippard*, Mr. Hancock failed to take reasonable efforts to expedite litigation in violation of Rule 3.2; knowingly disregarded the rules and orders of the court in violation of Rule 3.4(c); violated

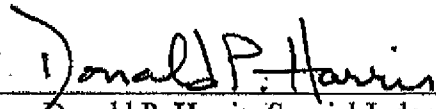
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OCT 29 2012

BOARD OF PROFESSIONAL RESPONSIBILITY
SUPREME COURT OF TENNESSEE

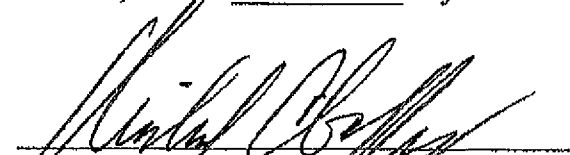
Rule 8.4(a) by violating the Rules of Professional Conduct and Rule 8.4(d) by engaging in conduct that is prejudicial to the administration of justice. It is further ORDERED that the sanction imposed by the hearing panel, a thirty day suspension of Mr. Hancock's license to practice law, be affirmed.

The costs of this consolidated cause shall be taxed to William Caldwell Hancock, for which execution may issue, if necessary.


Donald P. Harris, Special Judge
Sitting by Designation of the
Tennessee Supreme Court

CERTIFICATE

The undersigned hereby certifies that a true copy of the foregoing Order has been forwarded to Sandy Garrett, Senior Litigation Counsel, Board of Professional Responsibility, 10 Cadillac Drive, Suite 220, Brentwood, TN 37027; and William Caldwell Hancock, 102 Woodmont Boulevard, Suite 200, Nashville, TN 37205-2216, this the 25th day of October, 2012.


Clerk and Master

IN THE CHANCERY COURT FOR DAVIDSON, TENNESSEE,
AT NASHVILLE

FILED

2012 OCT 25 AM 9:32

CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

D.C. & M.

WILLIAM CALDWELL HANCOCK,

Petitioner,

vs.

No. 11-1816-IV

BOARD OF PROFESSIONAL
RESPONSIBILITY OF THE
TENNESSEE SUPREME COURT,

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and

COPY

BOARD OF PROFESSIONAL
RESPONSIBILITY OF THE
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vs.

No. 11-1797-IV

WILLIAM CALDWELL HANCOCK,

Respondent.

MEMORANDUM

This case is before the court on consolidated Petitions for Certiorari filed by the petitioners, William Caldwell Hancock and the Board of Professional Responsibility of the Tennessee Supreme Court.¹ The petitions seek a review of the Judgment of the Hearing Panel filed November 2, 2011, in a lawyer disciplinary proceeding against Mr. Hancock.

¹Since both parties are petitioners in the consolidated cases, Mr. Hancock will be referred to in this memorandum as "Mr. Hancock." The Board of Professional Responsibility will be referred to as the "Board."

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BOARD OF PROFESSIONAL RESPONSIBILITY
SUPREME COURT OF TENNESSEE

The hearing panel found the Board failed to prove violations of certain Rules of Professional Conduct. The panel also found that Mr. Hancock violated certain Rules of Professional Conduct by sending an ex parte e-mail to Judge George C. Paine, II, on September 28, 2009. As a result, the hearing panel entered its judgment recommending Mr. Hancock be suspended from the practice of law for a period of 30 days.

Standard of Review

In reviewing the findings and conclusions of the hearing panel in a disciplinary proceeding, the court must be guided by Rule 9, section 1.3, of the Rules of the Supreme Court which provides in pertinent part as follows:

The Respondent-attorney (hereinafter "Respondent") or the Board may have a review of the judgment of a hearing panel in the manner provided by [Tennessee Code Annotated section] 27-9-101 et seq., except as otherwise provided herein. The review shall be on the transcript of the evidence before the hearing panel and its findings and judgment. If allegations of irregularities in the procedure before the panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The court may affirm the decision of the panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record.

In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

Tenn. Sup. Ct. R. 9, §1.3 (2007).

With that standard in mind, the court has carefully reviewed the entire record. The court's findings with regard to the allegations made by the Board and Mr. Hancock in the consolidated Petitions for Certiorari are set forth below.

Findings

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

The disciplinary complaint filed against Mr. Hancock relates to his representation of Barnhill's Buffet, Inc., in a bankruptcy proceeding. With regard to this case, the hearing panel found the following facts:

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

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. 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." Barnhill's and Dynamic Management Company were co-d *Barnhill's and Dynamic Management* filed in the Circuit Court for Escambia County, Florida.

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. 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."

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."

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 [Mr. Hancock] 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. 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." 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. In Mr. Hancock's December 9, 2009 e-mail to the Board, Mr. Hancock stated "I have never represented Dynamic Hospitality." Stacey Glexiner, Controller for Dynamic Hospitality, testified that from January 27, 2004 through February 27, 2006, Dynamic Hospitality made four payments to Mr. Hancock. On September 30, 2004, Dynamic Hospitality wire transferred \$2,500 to Mr. Hancock. On November 2, 2004, by check #4953, Dynamic Hospitality paid Mr. Hancock \$5,015. 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. 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 45800 Dynamic Hospitality paid Mr. Hancock \$160. 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. 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.

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.

On June 24 and June 25, 2008, the U. S. Trustee filed an Objection and Amended Objection to Mr. Hancock's fee application. 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. On July 3, 2008, the Court entered an Order requiring Mr. Hancock's final fee application to be filed by July 7, 2008.

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.

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. 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. 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.

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.

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 11 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.

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.

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

Mr. Hancock prepared and sent a Rule 11 Motion for Sanctions to counsel for the US to Trustee, Lloyd Mueller. 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." 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." 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."

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."

Mr. Hancock testified as counsel for Barnhill's, he agreed to a global settlement. 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. 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.

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

Mr. Hancock appealed the Bankruptcy Court's December 9, 2008 Memorandum denying his fees to the District Court. 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.

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

On May 1, 2009, Mr. Hancock filed a second Motion for Extension of Time to File Brief. 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. 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. Mr. Hancock did not file a Response to the District Court's Show Cause Order. Mr. Hancock did not file a 3rd Motion for Extension of Time to file Brief. Mr. Hancock filed a 128 page brief on August 17, 2009.

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. 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.

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. 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. (parentheticals omitted)

α. Unreasonable Fees

The amended petition for discipline filed in this case alleges that Mr. Hancock in his representation of Barnhill's in the bankruptcy proceeding violated Rule 1.5(a), Rules of Professional Conduct, by charging unreasonable fees in his interim and final applications for fees in the Barnhill bankruptcy proceeding. Rule 1.5(a) provides:

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent;

(9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and

(10) whether the fee agreement is in writing.

Based upon the evidence presented at the disciplinary hearing, the hearing panel found that the Board did not prove by a preponderance of the evidence that Mr. Hancock's fee applications were unreasonable. The Board alleges this finding is arbitrary, capricious, and characterized by an abuse of discretion and is unsupported by the evidence which is both substantial and material. The Board contends that since Mr. Hancock, in the June 3, 2008 interim fee application in the Barnhill's proceeding, sought fees for seventeen (17) days in which Mr. Hancock billed 20-27.5 hours each day, the Panel erred by determining Mr. Hancock did not violate Rule 1.5(a) by filing a fee application charging an unreasonable fee.

During the disciplinary hearing, Mr. Hancock appears to have acknowledged there were errors in the June 3, 2008 interim application for compensation. He described those errors as duplications, errors in transposition and dictation errors. After filing the Barnhill's bankruptcy petition, Mr. Hancock testified that he was authorized by the bankruptcy court to use the services of a paralegal at the rate of \$125 per hour. He hired Natalie Horell for that purpose. Shortly thereafter, Ms. Horell got married and stopped working for Mr. Hancock. During this period of time, Mr. Hancock kept his work records on hand written time slips. When it became necessary to file a fee application, Mr. Hancock contacted Ms. Horell and asked if she could type these records for him. She could not read his handwriting, so Mr. Hancock dictated the contents of the time slips and forwarded the dictation to Ms. Horell by e-mail. She then entered the dictated time onto spread sheets. Mr. Hancock indicated there were duplication errors where, after an interruption, he dictated the same time slip twice, or Ms. Horell typed the dictation twice. He testified there were transposition errors where a .4 hours was entered as 4 hours. There may have been dictation errors where he dictated something as occurring on the "same day" when it should have been the next day.

After the June 3, 2008, interim application was filed, there were objections filed based, in part, on too many hours billed for some days. There was also an objection to the interim application on the basis that, since Mr. Hancock had withdrawn, it would be more practical to file a single final fee application. The final fee application was ordered by the court. Mr. Hancock, with the assistance of Ms. Horell, set about to correct the errors in the interim application, and filed a final fee application on July 7, 2008. There is no evidence the final fee application contained the same errors or over-billing that appeared in the June 3, 2008, application. Moreover, Mr. Hancock testified that his review of the June 3, 2008, filing failed to demonstrate that he had over-billed as claimed by the counsel for the bankruptcy trustee.

Apparently, the hearing panel viewed the alleged over-billing contained in the June 3, 2008, interim fee application to be either unfounded or unintentional errors that were corrected in the final fee application submitted to the bankruptcy court on July 7, 2008. Since there is evidence in the record that would support either position, the hearing panel's view of the evidence, in the opinion of the court, is not arbitrary, capricious or characterized by an abuse of discretion, nor is it unsupported by evidence that is both substantial and material. Consequently, the finding of the hearing panel with regard to the alleged violation of Rule 1.5(a) must be affirmed.

b. False Disclosure

The Board alleged, in its Amended Petition for Discipline, that Mr. Hancock violated Rules 1.7(a), 3.3(a)(1), 3.4(c), and 8.4(a), (c) and (d) of the Rules of Professional Conduct by failing to disclose in his application for employment as counsel for Barnhill's a prior representation or relationship with Dynamic Management Group, LLC; Dynamic Acquisition Group, LLC; and Dynamic Hospitality, LLC. Rule 1.7(a) provides, in part:

[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) 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.

Rule 3.3(a)(1) provides a lawyer shall not knowingly make a false statement of fact or law to a tribunal. Rule 3.4(c) prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal. Rule 8.4 provides that it is professional misconduct to violate or attempt to violate the Rules of Professional Conduct in subsection (a); to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation in subsection (c); and to engage in conduct that is prejudicial to the administration of justice in subsection (d).

The hearing panel in its Memorandum Opinion did not find that Mr. Hancock, in his application for employment or in representing Barnhill's in the bankruptcy proceeding, violated the prohibition of a concurrent conflict of interest; had knowingly made a false statement of fact to the bankruptcy court; had knowingly disobeyed an obligation of the rules of the bankruptcy court; or had violated or attempted to violate the Rules of Professional Conduct. The hearing panel further found that the Board failed to prove by a preponderance of the evidence that Mr. Hancock had engaged in conduct involving dishonesty, fraud, deceit or misrepresentation or that was prejudicial to the administration of justice.

In his application for employment filed in the Barnhill's bankruptcy proceeding, Mr. Hancock stated that he had "no connection with any creditor or any other party in interest" and "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." The hearing panel's findings related to this issue is as follows:

The proof in this trial was that [Mr. Hancock] 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. [Mr. Hancock] 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. [Mr. Hancock] 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.

Obviously, the hearing panel based its decision on the fact that at the time Mr. Hancock filed his employment application and Rule 2014 declaration on December 19, 2008, he did not represent Dynamic Acquisition Group, LLC, Dynamic Management Group, LLC, or Dynamic Hospitality LLC. The evidence clearly supports that fact. Moreover, it is not at all clear from this record that any of these entities had an interest in the bankruptcy proceedings which would be adverse to Barnhill's. The Dynamic Acquisition Group, LLC, owned 100% of the stock in Barnhill's Buffet, Inc. Robert M. Langford and Craig Barber each owned a 5% interest in that entity. Dynamic Hospitality, LLC, provided employees to Barnhill's on a lease basis and, presumably, may have been a creditor of Barnhill's. It seems to the court that the interests of Barnhill's, Dynamic Acquisition Group, LLC, and Dynamic Hospitality, LLC, were the same - to maintain the estate of Barnhill's to the extent possible. The only evidence in the record regarding Dynamic Management Group, LLC, is that it had no connection with Barnhill's. Mr. Langford and Mr. Barber each owned a 50% interest in Dynamic Hospitality, LLC, and Dynamic Management Group, LLC. Thus, there is no evidence that Mr. Hancock represented any of the three entities named during the time he represented Barnhill's in the bankruptcy proceeding and there is no evidence that even had he represented one or more of them that his representation of Barnhill's would have been adverse to any one of them. In the opinion of the court, the hearing panel's determination that there was no concurrent conflict of interest as defined by Rule 1.7, Rules of Professional Conduct, was correct, based upon the evidence presented.

It follows that since, at the time the Rule 2014 declaration was filed, the statements made in that declaration were factually correct, there was no violation of Rule 3.3(a)(1) which prohibits a lawyer from knowingly making a false statement of fact or law to a tribunal. A somewhat closer question, is whether there was a violation of Rule 3.4(c) that states a lawyer shall not knowingly disobey an obligation of the rules of a tribunal. Federal Rule of Bankruptcy Procedure 2014(a) states, in pertinent part:

Rule 2012. Employment of Professional Persons.

(a) Application of Employment.

An order approving the employment of attorneys . . . shall be made only on application of the trustee or committee. The application shall be filed and, . . . a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections to the debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective

attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Clearly, in the opinion of the court, the evidence established that Dynamic Acquisitions Group, LLC, and Dynamic Hospitality, LLC, were parties in interest. In his December 9, 2008, Memorandum, Judge George C. Paine, II, Dynamic Acquisition Group, LLC, Dynamic Management Group, LLC, and Dynamic Hospitality LLC were listed as co-debtors on Barnhill's bankruptcy filings and Dynamic Hospitality was listed as an insider receiving payments from the debtor within one year of the filing. Other than Judge Paine's memorandum, that evidence was not presented to the hearing panel. There was evidence, set out in the hearing panel's findings as quoted above, from which the hearing panel could have found that Mr. Hancock never represented Dynamic Acquisition Group, LLC, or Dynamic Hospitality LLC. The only representation of Dynamic Management Group, LLC, by Mr. Hancock was for a brief period of time when he provided assistance in obtaining a Florida lawyer to represent them in the lawsuit brought by W. D. Sales in the spring of 2007. That representation had ended several months prior to the filing of the Rule 2014 declaration.

Leaving aside the issue of whether Dynamic Management Group, LLC, was proven before the hearing panel to have an interest in Barnhill's bankruptcy proceeding, the primary issue is whether Federal Rule of Bankruptcy 2014 requires disclosure of the applicant's previous relationships with the debtor, creditors or other parties in interest. On its face, it does not specifically require disclosure of prior relationships. Mr. Hancock testified that he believed he was only required to disclose currently existing relationships. Paul Jennings who had been a bankruptcy judge for ten years and who had taught bankruptcy and commercial law at the Nashville School of Law and Vanderbilt University, testified that in his experience the Rule 2014 disclosure had been treated as seeking the current situation regarding connections with interested parties rather than the prior history of such connections. The court cannot say that the hearing panel abused its discretion by interpreting Rule 2014 to only require disclosure of currently existing connections. It follows that the hearing panel's determination that the Board failed to prove Mr. Hancock knowingly disobeyed an obligation of the bankruptcy rules was not arbitrary or capricious.

Based upon the foregoing analysis, the court must also approve the hearing panel's findings that Mr. Hancock's Rule 2014 disclosure did not violate the Rules of Professional Conduct (Rule 8.4(a)); did not involve dishonesty, fraud, deceit, or misrepresentation (Rule 8.4(c)); and was not proven to be conduct that is prejudicial to the administration of justice (Rule 8.4(d)).

c. Mr. Hancock's Conduct Toward Opposing Counsel.

The Board next challenges the hearing panel's findings with regard to Mr. Hancock's conduct toward opposing counsel. In the amended petition for discipline, the Board alleged that Mr. Hancock, by his conduct toward opposing counsel, violated Rules 3.5(e), 4.4(a), 8.4(a) and

8.4(d), Rule 3.5(e), Rules of Professional Conduct prohibits a lawyer from engaging in conduct intended to disrupt a tribunal. Rule 4.4(a) prohibits a lawyer from using means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person; or from threatening to present a criminal or lawyer disciplinary charge for the purpose of obtaining an advantage in a civil matter.

The first incident of such alleged conduct was that Mr. Hancock threatened the creditor committee's counsel with criminal sanctions. The creditor committee's counsel, Bob Mendes, did not testify. The evidence with regard to this issue was presented in the form of an e-mail dated August 7, 2008, to Larry Mueller, attorney for the United States trustee, and the explanation from Mr. Hancock. The e-mail from Mr. Hancock stated as follows:

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 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.

Mr. Hancock testified that Mr. Mendes threatened to "kill" a one million dollar sale of assets of the debtor's estate unless he was paid an additional \$45,000.00 in attorney's fees. In Mr. Hancock's opinion, Mr. Mendes conduct was criminal.

The question is whether this evidence is sufficient to prove any of the disciplinary violations alleged. Clearly it was not intended disrupt a tribunal. It does not appear to have the purpose embarrassing, delaying, or burdening a third person. It was not intended to obtain evidence in violation of some person's legal rights. The issue then is whether the evidence is sufficient to prove Mr. Hancock was threatening to present a criminal or lawyer disciplinary charge for the purpose of obtaining an advantage in a civil matter. The hearing panel apparently felt it could not make such a finding on the basis of the evidence before it and without the testimony of Mr. Mendes concerning the content of Mr. Hancock's communications to him. While a rational trier of fact could have reached a different conclusion, the court does not find the hearing panel's determination to be arbitrary or capricious, and, as stated at the outset "the court [should] not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact."

The next instance of conduct the Board alleges violated these rules was an allegation that Mr. Hancock had accused Wells Fargo Bank's counsel, James Kelly, of fraud. Mr. Hancock

explained that Wells Fargo Bank was the senior secured creditor. In order to get more money for his client, Mr. Kelly told about 50 claimants under the Perishable Agricultural Commodities Act (PACA) that their claims were no good. Under PACA, according to Mr. Hancock, if one sells PACA-type goods to a restaurant and put the proper notice on the invoice, the seller has a superior claim to other creditors. Mr. Hancock believed that Mr. Kelly misrepresented the validity of the PACA claims.

The Board asserts that the evidence revealed Mr. Hancock sent to the attorney for the United States trustee a Rule 11 Motion for Sanctions but did not file the motion. The evidence revealed Mr. Hancock filed an expedited motion of the debtor for 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. . . 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. . . 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.

The U.S. Bankruptcy Court in its December 9, 2008 Memorandum noted that "Mr. Hancock filed a Motion seeking to appoint an examiner against Wells, even though the Code has no provision for such."

The evidence revealed that Mr. Hancock agreed to a global settlement, then filed a Motion for Relief from Provisions of Settlement Approval Order and for Limited Stay Pending Expedited Hearing in which he stated:

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.

Mr. Hancock later filing a Notice of Withdrawal of Objection to Proposed Settlement.

Mr. Hancock and Mr. Langford testified filings were necessary because of the conduct of the other parties and their attorneys in the bankruptcy proceeding. The hearing panel found no

violation of the Rules of Professional Conduct with regard to Mr. Hancock's actions outlined above. The court does not believe the findings of the hearing panel are arbitrary, capricious or amount to an abuse of discretion. The Board is not entitled to any relief with regard to these issues.

d. Failure to Comply with Bankruptcy Rules and Orders.

The Board next alleges the hearing panel's finding that Mr. Hancock did not violate the Rules of Professional Conduct 3.2; 3.4(c); 3.5(e) and 8.4(a)(d) by failing to comply with Bankruptcy rules and orders is arbitrary, capricious and characterized by an abuse of discretion and unsupported by evidence which is both substantial and material in light of the entire record. Rule 3.2 provides that a lawyer shall make reasonable efforts to expedite litigation. Rule 3.4(c) provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal. Rule 3.5(e) prohibits a lawyer from engaging in conduct intended to disrupt a tribunal.

The Board insists that Mr. Hancock violated these rules in *Hancock v. Clippard*, No. 3:09-CV-00094 (D. Tenn.) by failing to follow the District Court's March 26, 2007 order giving him until April 27, 2009, to file his brief. The Board further asserts that when Mr. Hancock was given a second extension of time to file a brief and limiting that brief to 50 pages by order dated May 11, 2009, he again failed to timely file a brief. When 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, Mr. Hancock did not file a response but filed a 128-page brief on August 17, 2009. Thereafter, on August 27, 2009, the U.S. Trustee filed a motion to dismiss Mr. Hancock's appeal, or in the alternative to require him to comply with briefing page limits set in the court's prior order. On August 31, 2009, the District Court entered an order granting the motion to dismiss in part and ordering Mr. Hancock to file a revised brief that did not exceed 50 pages by September 21, 2009, and a motion for extension of time explaining why he had not timely filed his brief in May 2009. On September 21, 2009, Mr. Hancock filed a second brief of 50 pages containing font size and spacing that did not comply with local filing requirements.

While the hearing panel found all the above facts to be true, as set forth in their findings, quoted above, it failed to find Mr. Hancock's conduct violated any of the referenced Rules of Professional Conduct. This failure appears to have been an oversight and, in the opinion of the court, renders the decision of the hearing panel arbitrary with regard to these alleged violations in view of the factual determinations reached by the panel. The court finds the decision arbitrary simply because the hearing panel failed to address the alleged violations.² The court has chosen to modify the decision of the hearing panel rather than remand the case to the hearing panel because, in the opinion of the court, the violations alleged would not justify the imposition of additional sanctions and this matter needs to be concluded. Specifically, the court would find that Mr.

²While the Order filed by the hearing panel on November 2, 2011, recites that "Mr. Hancock did not violate Rules 3.2 (expediting litigation); . . .," the Memorandum Opinion filed contemporaneously with the Order fails to address the issue.

Hancock's failure to file a brief for almost five months after it was originally due amounts to a failure to take reasonable efforts to expedite litigation in violation of Rule 3.2. The court further finds the filing of a 128-page brief when he had been limited by the May 11, 2009, order of the District Court was a knowing disregard by Mr. Hancock, for the rules and orders of the court in violation of Rule 3.4(c). It follows that Mr. Hancock violated Rule 8.4(a) by violating the Rules of Professional Conduct and Rule 8.4(d) by engaging in conduct that is prejudicial to the administration of justice.

Mr. Hancock explained, however, that during this period of time, he was suffering from a chemical imbalance that made him extremely lethargic. While he obtained the assistance of other attorneys to assist him in representing other clients, in this case he was representing himself in an attempt to recover an attorney's fee. No one other than Mr. Hancock was injured by his conduct. No one, other than the Board, filed a complaint against him. It is the opinion of the court that these violations would not mandate an additional period of suspension.

File No. 33113-5-NJ - E-mail to Judge Paine

It is not disputed that on September 28, 2009, Mr. Hancock e-mailed Judge George C. Paine II, 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 chose 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 . . .

After the September 28, 2009, e-mail to Judge Paine, Mr. Hancock, on September 30, 2009, appealed the decision that he was criticizing in the e-mail to the Sixth Circuit Court of Appeals. The hearing panel found the sending of this e-mail violated Rules 3.5(b), 3.5(e), 8.2(a)(1), 8.4(a) and 8.4(d). As a consequence, the hearing panel recommended Mr. Hancock's license to practice law be suspended for a period of thirty days.

Rule 3.5(b) prohibits a lawyer from communicating ex parte with a judge, juror or prospective juror during a court proceeding unless authorized to do so by law or court order. Rule 3.5(e) prohibits a lawyer from engaging in conduct intended to disrupt a tribunal. Rule 8.2(a)(1) provides that a lawyer shall not make a statement that the lawyer knows to be false or that is made with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. Rule 8.4(a) prohibits violating or attempting to violate the Rules of Professional Conduct. Rule 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

In his petition, Mr. Hancock challenges the decision of the hearing panel on several grounds. The first ground is that the Board failed to prove the e-mail reached the Judge Paine. While the court is satisfied there is sufficient evidence from which the panel could infer receipt, Mr. Hancock's assertion that receipt must have been proven is without merit. In the opinion of the court, once Mr. Hancock composed the e-mail, addressed it to Judge Paine's judicial e-mail account, and sent it electronically, the communication was complete whether or not it was read by Judge Paine.

Mr. Hancock next challenges the finding that the e-mail was sent "during a court proceeding." Two days after he sent the e-mail, Mr. Hancock appealed the ruling of Judge Paine that was criticized in the communication. Since at the time Mr. Hancock sent the e-mail, his time for filing an appeal had not expired and he did, in fact, file an appeal, the hearing panel's finding that the communication occurred "during a court proceeding" was not in excess of the hearing panel's jurisdiction and was supported by evidence which was both substantial and material.

In his brief, but not in his petition, Mr. Hancock alleges Rule 3.5(b) has been preempted by Rule 9003 of the Federal Rules of Bankruptcy.³ The Advisory Committee Notes to that rule state: "This rule is not a substitute for or limitation of any applicable canon of professional responsibility or judicial conduct." Rule 8.5(b) of the Tennessee Supreme Courts Rules of

³ That rule provides:

Rule 9003. Prohibition of Ex Parte Contacts

(a) General prohibition

Except as otherwise permitted by applicable law, any examiner, any party in interest, and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding.

(b) United States trustee

Except as otherwise permitted by applicable law, the United States trustee and assistants to and employees or agents of the United States trustee shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding. This rule does not preclude communications with the court to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States trustee system.

Professional Conduct provides in any exercise of the disciplinary authority of this jurisdiction, "for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise" shall apply. Since Mr. Hancock's conduct occurred in the Bankruptcy Court for the Middle District of Tennessee, Tennessee's Code of Professional Conduct applies and the Federal Rules of Bankruptcy do not provide otherwise.

Mr. Hancock next asserts his communication to Judge Paine is protected by the free speech guarantees of the First Amendment of the Constitution of the United States. In *Ramsey v. Board of Professional Responsibility*, 771 S.W.2d 116 (Tenn. 1989), Justice Drowota summarized the relationship of the First Amendment with lawyer discipline as follows:

In dealing with First Amendment questions, we must balance the right of the speaker to communicate and the right of the listener to receive his expressions with the need of the courts to enforce attorney discipline to the end that a lawyer will not engage in conduct that is prejudicial to the administration of justice, DR 1-102(A)(5), or degrading to a tribunal, DR 7-106(C)(6), and thereby diminishes the confidence of the public in our courts. There is thus a delicate balance between a lawyer's right to speak, the right of the public and the press to have access to information, and the need of the bench and bar to insure that the administration of justice is not prejudiced by a lawyer's remarks. In balancing these rights, we must ensure that lawyer discipline, as found in Rule 8 of the Rules of this Court, does not create a chilling effect on First Amendment rights.

The right of free speech and free discussion as it relates to the institution of the law, the judicial system and its operations, is of prime importance under our system and ideals of government. A lawyer has every right to criticize court proceedings and the judges and courts of this State 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. As stated by this Court in *In re Hickey*, 149 Tenn. 344, 386, 258 S.W. 417, 429 (1923), "the members of the bar have the best opportunity to become conversant with the character and efficiency of our judges. No class is less likely to abuse the privilege, as no other class has as great an interest in the preservation of an able and upright bench. The rule contended for by the prosecution, if adopted in its entirety, would close the mouths of all those best able to give advice, who might deem it their duty to speak disparagingly."

Ramsey, 771 S.W.2d at 121.

The e-mail sent by Mr. Ramsey is not a statement made to any member of the public, the press or for informational purposes. It is a demeaning statement made to a trial judge during the

pendency of the case. Clearly, in this situation, in accordance with *Ramsey*, the interests of the courts to enforce attorney discipline outweigh free speech considerations.

Mr. Hancock next alleges the hearing panel's finding that the e-mail was intended to disrupt a proceeding in violation of Rule 3.5(d). At the time the e-mail was transmitted, the Barnhill's bankruptcy proceeding was still pending. The time for filing an appeal in Mr. Hancock's fee dispute, *Hancock v. Clippard*, had not yet expired. A judge who receives an ex parte communication is, generally speaking, required to disclose that communication to the parties in the case to which it pertains and, moreover, to file a copy of the communication of record. See, e.g. *State v. Birge*, 792 S.W.2d 723, 725(Tenn. Crim. App. 1990). Such disclosure certainly may have a disruptive effect on the Barnhill's bankruptcy proceeding. It also may have had an effect on the *Hancock v. Clippard* appeal. If that case was remanded on appeal, Judge Paine may have felt compelled to recuse himself thereby nullifying the five days spent hearing the matter. At the very least it would have caused the parties involved to question whether he could continue to be impartial. The hearing panel's finding that Mr. Hancock intended the possible consequences of his conduct is not arbitrary or capricious. While a rational trier of fact could have reached a different result, under the standard of review set out above, the hearing panel's finding that Mr. Hancock's violated Rule 3.5(d) must be affirmed.

Mr. Hancock next challenges the hearing panel's finding that he violated Rule 8.2(a)(1) in that he made a statement that he knew to be false or that was made with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. The e-mail sent to Judge Paine includes the following phrase: "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 . . ." This phrase impugns Judge Paine's integrity by asserting he made a bad decision and implies it was made in order to cover for some wrongdoing. While Mr. Hancock states he has "a pretty good idea what it is," an obvious inference from the use of that phrase is that he was speculating. The hearing panel's finding that the statement was made with reckless disregard as to its truth or falsity is neither arbitrary or capricious and is supported by evidence which is both substantial and material in the light of the entire record.

It follows from the foregoing discussion that the hearing panel's finding that Mr. Hancock violated Rule 8.4(a) by violating the Rules of Professional Conduct and 8.4(d) by engaging in conduct that is prejudicial to the administration of justice is, likewise, not arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or unsupported by evidence which is both substantial and material in the light of the entire record. Mr. Hancock is not entitled to relief from these findings.

Mr. Hancock next challenges the sanction imposed by the hearing panel. He alleges there was no showing he knowingly violated a Rule of Professional Conduct. Section 8.4 of Rule 9, Rules of the Supreme Court, provides that "[i]n determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer

Sanctions.” In the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standard), “knowledge” is defined as the “conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” In the case before the court, the evidence supports a finding that Mr. Hancock was aware that he was sending an ex parte communication to the trial judge and he also aware the case was still pending as evidenced by the fact he appealed from the ruling two days later. The court is satisfied the requirement of knowledge has been satisfied. ABA Standard 6.32 provides that “[s]uspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of a legal proceeding.” The potential for injury and interference with the outcome of the legal proceeding has been discussed above.

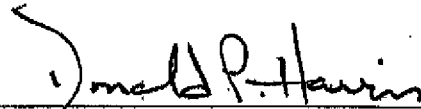
Mr. Hancock next alleges the finding of multiple violations by the hearing panel as an aggravating factor is erroneous. On January 6, 2011, Mr. Hancock was publicly censured by the Board of Professional Responsibility for violations of Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5 (fees), and 1.16 (terminating representation). In that case, a lawsuit that Mr. Hancock was handling was dismissed for failure to prosecute. Rule 1.3 provides that a “lawyer shall act with reasonable diligence and promptness in representing a client.” In this proceeding, the decision of the hearing panel has been modified by the court to find Mr. Hancock failed to take reasonable efforts to expedite litigation in violation of Rule 3.2. Those violations are substantially similar and justify the application of ABA Standard 8.2 which provides that suspension is appropriate where a lawyer has been reprimanded for similar misconduct and engages in further acts of similar misconduct. In the opinion of the court, suspension is an appropriate sanction under either ABA Standard 6.32 or 8.2.

ABA Standard 2.3 provides that suspension should ordinarily be for a minimum period of six months. The hearing panel found as a mitigating factor that Mr. Hancock was experiencing personal or emotional problems. The court finds a thirty day suspension to be within the appropriate range of sanctions.

The judgment of the hearing panel will be modified to include a finding that with regard to the appeal in *Hancock v. Clippard*, Mr. Hancock failed to take reasonable efforts to expedite litigation in violation of Rule 3.2; knowingly disregarded the rules and orders of the court in violation of Rule 3.4(c); violated Rule 8.4(a) by violating the Rules of Professional Conduct and Rule 8.4(d) by engaging in conduct that is prejudicial to the administration of justice. The court finds the sanction imposed by the hearing panel, a thirty day suspension of Mr. Hancock’s license to practice law, to be within the appropriate range for the violations of the Rules of Professional Conduct pursuant to the ABA Standards.

This Memorandum will be filed of record but shall not be spread onto the minutes of the court. An Order will be filed contemporaneously with this Memorandum incorporating it by reference and assessing the costs of these consolidated causes to Mr. Hancock.

This 23rd day of October 2012.



Donald P. Harris, Special Judge
Sitting by Designation of the
Tennessee Supreme Court

cc: Sandy Garrett
William Caldwell Hancock

COPIES TO ATTORNEYS AND PRO SE LITIGANTS
AT THE ABOVE ADDRESSES

DATE 10/25/12 CLERK 