

**IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE**

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<b>IN RE:</b>	)	
<b>WILLIAM CALDWELL HANCOCK,</b>	)	
	)	
<b>PETITIONER</b>	)	
<b>v.</b>	)	<b>CHANCERY Docket No.: 14-1074-II</b>
	)	<b>BPR DOCKET # 2013-2216-5-KH</b>
<b>BOARD OF PROFESSIONAL</b>	)	
<b>RESPONSIBILITY OF THE SUPREME</b>	)	
<b>COURT OF TENNESSEE,</b>	)	<b>Summers, Sr. J</b>
	)	<b>by designation</b>
	)	
<b>RESPONDENT</b>	)	
	)	

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**ORDER**

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A hearing was held April 28, 2015. Attendees included William Caldwell Hancock (Petitioner) and The Tennessee Board of Professional Responsibility (Respondent), represented by Deputy Chief Disciplinary Counsel, Krisann Hodges, Esquire. The Court has received briefs from appellant (“Mr. Hancock”) and the appellee Tennessee Board of Professional Responsibility (“Board”), as well as a copy of the Hearing Panel (“Panel”) transcript; and the official record with exhibits.

**TRUNCATED FACTS OF THE UNDERLYING CASE**

Beginning in November 2010, Mr. Hancock represented Ms. Rose in contentious post-divorce proceedings involving, in part, visitation issues for the minor children. (*Baker v. Baker*, Sumner County Chancery Court, No. 2008D-412) Jeffrey Baker is Ms. Rose's ex-husband and father of the children. Mitzi Blair was Mr. Baker's neighbor and girlfriend.

Mr. Hancock's conduct leading to the Panel's findings of misconduct arose from Mr. Hancock's filing of a lawsuit against Ms. Blair. The Petitioner later amended the Complaint for Injunctive Relief and Damages. The Complaint filed sought \$10 million in damages for intentional infliction of emotional distress. (*Rose v. Blair*, Sumner County Circuit Court, No. 2010-CV-1544)

In the Complaint, Mr. Hancock prayed for "actual, consequential, and special damages, including attorney fees, trebled as and if allowed by law, or punitive damages in an amount of not [sic] less than 50% of the net worth of Ms. Blair but not less than TEN MILLION DOLLARS, or such other sum as the jury may determine to be appropriate to punish Ms. Blair's false imprisonment of nine year old E. T.<sup>1</sup> (daughter of Ms. Rose), her abuse of E. T., her outrageous and intentional infliction of emotional distress upon the plaintiffs and to deter her from engaging in abusive conduct toward Mother and E. T. in the future."

The Chancery Court entered an Order of Voluntary Dismissal Without Prejudice on October 24, 2011. In January 2012, the Chancery Court heard argument for sanctions under Rule 11 and for discretionary costs. The Court awarded Rule 11 sanctions in the amount of \$1,642.50 and discretionary costs of \$484.00. The Court found that:

There were several aspects of Plaintiff's pursuit of claims against Defendant that were completely groundless, including the claim that the child was falsely imprisoned when it was obvious to everyone involved that Defendant had father's permission to babysit her ....

On March 19, 2012, Mr. Hancock filed a Motion to Alter or Amend Findings and Judgment Under Tenn. R. Civ. P. 52.02, 59.01, 59.04, and 11.03 and For Relief From Judgment Pursuant to Tenn. R. Civ. P. 60.02(1)(2) and (5). Mr. Hancock did not set his motion for hearing nor make any attempt to set the motion for a hearing prior to the Hearing Panel's decision to discipline him for

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<sup>1</sup> In keeping with the practice of this Court, a minor will be referred to by his or her initials only.

ethical misconduct. Mr. Hancock testified that the Rule 11 order is not a final order, and he has not yet paid the sanctions.

The Panel heard testimony of seven (7) witnesses and considered 34 exhibits. The Panel ultimately determined Mr. Hancock filed the lawsuit against Ms. Blair for an improper purpose, and failed to withdraw the complaint when it was confirmed that the allegations were spurious. The lawsuit contained allegations the Panel determined were known to be false by Mr. Hancock at the time the suit was filed.

### **DISCIPLINARY PROCEDURAL HISTORY**

Mr. Hancock was licensed to practice law in 1977. Mr. Hancock has received a public censure, dated January 6, 2011, for failure to communicate with a client about the dismissal of the client's case and for failing to provide an accounting and refund of fees upon termination of the representation. Mr. Hancock received another public sanction - a suspension for thirty (30) days - for engaging in ex parte communication. This matter was on appeal at the time of the disciplinary hearing, but is now final.

In May 2013, the Board filed a Petition for Discipline against Mr. Hancock based upon two (2) complaints of misconduct received by the Board. These will be referred to as the "Blair" complaint and the "Soloman" complaint.<sup>2</sup> In the Blair complaint, the Board alleged that Mr. Hancock violated Rules of Professional Conduct ("RPC") 3.1, Meritorious Claims and Contentions; 4.4(a), Respect for the Rights of Third Persons; and 8.4(a) and (d), Misconduct.

Mr. Hancock answered the Petition on June 21, 2013. A final hearing was held on February 25 and 26, 2014. At the close of the Board's proof, Mr. Hancock moved for dismissal

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<sup>2</sup> The "Soloman" complaint of misconduct was filed with the Board by Scott Parsley, Esq. The BPR dismissed the Soloman complaint during the February 26, 2014 hearing.

and was denied as to the Blair complaint. At the close of the hearing, the Hearing Panel ordered the parties to file post-trial briefs regarding restitution.

In April 2014, the Hearing Panel entered a Memorandum Opinion and Order. The Hearing Panel determined that Mr. Hancock violated RPC 3.1, Meritorious Claims and Contentions; 4.4(a), Respect for the Rights of Third Persons; and 8.4(a) and (d), Misconduct. The Hearing Panel ultimately found that, due to his inappropriate behavior, Mr. Hancock should be suspended from the practice of law for one (1) year. He was required to pay restitution to Jeffrey Baker in the amount of \$20,000.00, and to Mitzi Blair in the amount of \$2,126.00. Payment of restitution is a condition precedent to reinstatement.

On May 16, 2014, Mr. Hancock filed a "Motion for (1) Partial New Trial and Other Relief Available Under Tenn. R. Civ. P. 52.02, 59.01, 59.07 and 59.04 From the "Amended Judgment" of April 15, 2014 and the "Memorandum and Order" [SIC] of April 14, 2014, (2) For Recusal and Replacement of All Three Members of the Hearing Panel For Cause, and (3) For Extension of Time Within Which to File Supporting Affidavits." The Board filed its Response on May 20, 2014.

The Hearing Panel entered an order denying the motion on May 21, 2014. The Board also filed a Supplemental Response on May 21, 2014. The Hearing Panel entered an Order again denying Mr. Hancock's Motion on May 22, 2014. The Panel cited specific legal and procedural grounds for denial of Mr. Hancock's motion.

Mr. Hancock filed a Petition for Writ of Certiorari on July 21, 2014, pursuant to Tenn. Sup. Ct. R. 9, § 33.1 (Formerly cited as Tenn. Sup. Ct. R. 9, § 1.3). The Board filed an Answer on August 11, 2014. The administrative record was filed by the Board on August 21, 2014. The Tennessee Supreme Court appointed Senior Judge Paul G. Summers on August 25, 2014 to hear this matter to conclusion. On October 22, 2014, the Board filed a Motion to Dismiss the appeal due to Petitioner's failure to file the required trial transcripts.

This Court granted multiple continuances to file briefs and responses. Petitioner repeatedly requested extensions after the time to respond had passed. The Court was very lenient with the Petitioner and extended the time to file numerous times. The Court granted Petitioner additional time; and the Petitioner filed the hearing transcripts on December 29, 2014. On January 9, 2015, the Board filed a Motion for Status Conference raising the issue of whether or not Judge Summers, or Petitioner, believed there was any basis for recusal. Following a hearing held on January 15, 2015, this Court entered an Order finding that recusal was not required. Both sides concurred in the order. A final hearing was scheduled for April 16, 2015. However, due to illness of parties, and by agreement of the parties, the hearing was continued until April 28, 2015.

### **Standard of Review**

The standard of review<sup>3</sup> for this matter is found at Tennessee Supreme Court Rule 9, § 1.3 (2006), which states in pertinent part:

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 Chancery 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

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<sup>3</sup> A new version of Tenn. Sup. Ct. R. 9 became effective January 1, 2014; however, this case is governed by the prior 2006 version because it was initiated before the Board prior to January 1, 2014.

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 (2006). Under this standard, this Court may reverse or modify the Hearing Panel's judgment only upon a finding that:

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,

*Board of Professional Responsibility v. Love*, 256 S.W.3d 644,653 (Tenn. 2008)

When reviewing a hearing panel's judgment, a trial court must consider the transcript of the evidence before the hearing panel and its findings and judgment pursuant to Tenn. Sup. Ct. R. 9, § 1.3. *Long v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 435 S.W.3d 174,178 (Tenn. 2014). On questions of fact, the trial court does not substitute its judgment for that of the hearing panel as to the weight of the evidence. *Bd. of Prof'l Responsibility v. Allison*, 284 S.W.3d 316, 323 (Tenn. 2009) (citing *Bd. of Prof'l Responsibility v. Love*, 256 S.W.3d 644, 653 (Tenn. 2008)).

The trial court may affirm the decision of the panel, remand the case for further proceedings, or reverse or modify the decision. A reversal or modification of the panel's decision may be made only if the trial court finds that the rights of the petitioner have been prejudiced. Prejudice occurs when 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 light of the entire record. Although the trial court may affirm, remand, reverse, or modify a hearing panel decision, the trial court may 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; *Bd. of Prof'l Responsibility v. Allison*, 284 S.W.3d 316, 323 (Tenn. 2009)

The Court, after careful review of the record, briefs, and final hearing arguments, considers each potentially prejudicial circumstance in turn.

(1) *Decisions are in violation of constitutional or statutory provisions.*

- a. The Court finds no violation of constitutional or statutory provisions.

(2) *Decisions are in excess of the hearing panel's jurisdiction.*

- a. The Court finds the Panel acted within its jurisdiction. The source of authority of the Board of Professional Responsibility and its functions lies in the Supreme Court. *Nevin v. Bd. of Prof'l Responsibility*, 271 S.W.3d 648, 655 (Tenn.2008).

(3) *Decisions are made upon unlawful procedure.*

- a. Procedures used by the Board and the resulting decisions were not based on unlawful procedure. Rules of evidence were followed, and the decision to admit or reject a piece of evidence will not be rejected absent a finding of abuse of discretion. The Court finds no abuse of discretion.

(4) *Decisions are arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.*

- a. The Hearing Panel's conclusions were quite specific with respect to how Mr. Hancock violated RPC 3.1: (a) he did not make sufficient inquiry of the facts prior to filing the lawsuit; (b) he utilized conclusory statements without sufficient basis as to their veracity; (c) Ms. Blair was babysitting the child with Mr. Baker's permission and Mr. Hancock was aware of that fact at the

time he accused her of false imprisonment; (d) Ms. Blair was never a party to the Baker divorce litigation; and (e) neither Mr. Hancock nor Ms. Rose sought a mental health assessment of the child prior to asserting that she would need costly therapy as a result of Ms. Blair's actions. The Hearing Panel opinion cited specific examples of each violation. It is the conclusion of this Court that the Hearing Panel exercised careful and judicious consideration of the facts and accorded Mr. Hancock a just and fair hearing.

- b. Comment 2 of RPC 3.1 describes a lawyer's obligation to refrain from proceeding with action when he has not made reasonable inquiry:
  - i. [T]he filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. **What is required of lawyers, however, is that they act reasonably to inform themselves about the facts of their client's case and the law applicable to the case and then act reasonably in determining that they can make good faith arguments in support of their client's position.** Such an action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law. (emphasis added)
- c. The Hearing Panel concluded that Mr. Hancock did not adequately research the facts before turning his speculation and conclusions into factual allegations. The Hearing Panel also relied upon evidence of Mr. Hancock's intent to support a violation of RPC 4.4(a). The evidence of Mr. Hancock's intent were his own words wherein he wanted to "bust girlfriend's chops" and that the "global settlement" email clearly demonstrated that he intended to



use the Blair suit to cause a preferential result for Ms. Rose in the post-divorce matter.

- d. The Court finds the decision of the Panel was neither arbitrary nor capricious and not characterized by abuse or unwarranted exercise of discretion. The Court finds the decisions of the Panel are supported by substantial and material evidence which shows that Mr. Hancock violated RPC 3.1 Meritorious Claims and Contentions.

(5) *Decisions are 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.

- a. The record is replete with examples of conduct by Mr. Hancock wherein he abused his position as an officer of the court in an attempt to intimidate Ms. Blair. As a direct result of such conduct, Rule 11 sanctions were awarded by the Court against Mr. Hancock and his client. It appears to this Court that the Panel had adequate evidence, including both current and prior misconduct on the part of Mr. Hancock, upon which to base its decision.
- b. A careful and methodical review of the record and transcript of the hearing and a careful weighing of the evidence before the Panel shows that the decision of the Board is supported by evidence which is both substantial and material. This Court finds that the Petitioner has failed to meet his burden by a preponderance of the evidence.
- c. Finding no substantial or material evidence to the contrary, it is beyond the purview of this Court to reevaluate the decision of the Hearing Panel in

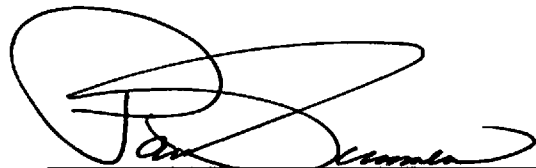
weighing the evidence, or to substitute the judgment of this Court for that of the Hearing Panel.

Mr. Hancock was given ample opportunity to take depositions, present evidence, call witnesses and to tell his side of the story to the Panel. The Panel evaluated Mr. Hancock's evidence and found that, by a preponderance of the evidence, he had committed the violations found against him. Mr. Hancock's protestations to this Court regarding evidence to the contrary are unpersuasive. The Hearing Panel found that "Mr. Hancock was evasive, argumentative, and deceptive in equal measures throughout the hearing." The Court defers to the Panel's determination that Mr. Hancock lacked credibility. A hearing panel is uniquely suited to make credibility determinations of witnesses. *Culp v. Bd. of Prof'l Responsibility*, 407 S.W.3d 201, 208 (Tenn. 2013)

After a careful and thorough review of the record, transcript, consideration of briefs and April 28, 2015 hearing arguments, this Court finds no circumstances or evidence giving this Court cause or authority to alter the judgment of the Board of Professional Responsibility.

The Court affirms the decision of the Hearing Panel in all respects. Costs of this appeal are taxed to William Caldwell Hancock and his surety, for which execution may issue, if necessary.

It is so **ORDERED**, this the 15<sup>th</sup> day of July, 2015.



PAUL G. SUMMERS, Senior Judge

**CERTIFICATE OF SERVICE**


I hereby certify that a true and accurate copy of the foregoing has been forwarded, via email or U.S. Mail, postage pre-paid, to the following:

Krisann Hodges, Esq.  
Deputy Chief Disciplinary Counsel - Litigation  
TN Board of Professional Responsibility  
10 Cadillac Drive, Suite 220  
Brentwood, TN 37027  
[KHodges@tbpr.org](mailto:KHodges@tbpr.org)  
(615) 361-7502 (direct dial)  
(800) 486-5714 x214 (toll free)  
(615) 367-2480 (fax)

Pro Se Petitioner

William Caldwell Hancock, Esq.  
144 Second Avenue South Suite 150  
Nashville, Tennessee 37201  
[hancocklaw@comcast.net](mailto:hancocklaw@comcast.net)  
(615) 620-5858

on this the 1<sup>st</sup> day of July, 2015.

  
Wayne A. Sutter