

IN THE CIRCUIT COURT OF DAVIDSON COUNTY TENNESSEE
AT NASHVILLE

JASON DANIEL HOLLEMAN,

Petitioner,

v.

No. 19C1832

BOARD OF PROFESSIONAL RESPONSIBILITY
FOR THE SUPREME COURT OF TENNESSEE,

Respondent.

JUDGMENT

Pursuant to Tenn. Sup. Ct. R. 9, § 33 and Davidson County Local Rule 25, Petitioner, Jason Daniel Holleman (“Mr. Holleman”), appeals the decision of the Hearing Panel of the Board of Professional Responsibility (“Hearing Panel”) ordering a public censure of Mr. Holleman. Mr. Holleman contends that the Hearing Panel lacked the requisite material evidence to support a decision for a public censure, and requests that this Court reverse the Hearing Panel’s judgment.

Mr. Holleman timely filed a Petition for Review, and this Court heard oral arguments on January 21, 2020, by Mr. Holleman and the Board of Professional Responsibility of the Supreme Court of Tennessee (“Board”), who acted on behalf of the Hearing Panel. Honorable William B. Acree, Jr., Senior Judge, sitting by designation over the Chancery Court of Davidson County, heard oral arguments, reviewed the Hearing Panel transcript, the official record with exhibits, and appellate briefs, and considered applicable authorities.

For the following reasons, the Hearing Panel’s findings of fact and conclusions of law are affirmed, and the sanction of the Hearing Panel is affirmed.

PROCEDURAL BACKGROUND

This matter is based on the Board's Petition for Discipline, filed on February 28, 2018, and Mr. Holleman's Answer to the Petition for Discipline, filed on January 29, 2019. On May 3, 2019, the Hearing Panel entered its Findings of Fact and Conclusions of Law, finding that (1) the Board met its burden by proving by the preponderance of the evidence that Mr. Holleman violated five provisions of the Tennessee Rules of Professional Conduct ("RPC"); and that (2) Mr. Holleman should be subject to reprimand in the form of Public Censure pursuant to Section 12.4 of Rule 9 of the Tennessee Supreme Court Rules.

On June 3, 2019, the Hearing Panel entered its Findings and Judgment for Assessment of Costs. Mr. Holleman timely filed a Petition for Review on August 2, 2019, alleging that the Board acted illegally, arbitrarily, and capriciously in the issuance of its final judgments, and that the Board's decision was unsupported by substantial and material evidence.

On September 3, 2019, the Supreme Court of Tennessee designated this Court to hear this lawyer-disciplinary appeal.

FINDINGS OF FACT

The facts in this case are undisputed. As such, the Findings of Fact by the Hearing Panel, as modified by this Court, are as follows.

The reason a complaint was filed against Mr. Holleman is that he was the attorney ultimately responsible for an adverse possession action against a historical Nashville cemetery. Through his actions as an attorney, human remains were removed from a number of graves at this historical cemetery and moved to another location without compliance with applicable statutes. Other graves in the cemetery were undisturbed; however, these remaining graves are now covered by an asphalt parking lot. Furthermore, the descendants of this historical cemetery

were not properly notified of the court proceedings seeking removal and relocation. Mr. Holleman was the attorney in charge throughout these proceedings.

The Supreme Court of Tennessee admitted Mr. Holleman to practice law in Tennessee in 1999. His most recent office address as registered with the Board of Professional Responsibility is 4800 Charlotte Avenue, Nashville, TN 37209, Disciplinary District V.

On or about late March or early April 2015, Davette Blalock (“Ms. Blalock”), a Metro Nashville Councilwoman, asked Mr. Holleman to represent the owners of a used car dealership in taking adverse possession of a historical cemetery adjacent to their car lot. The address of the cemetery is 5510 Nolensville Pike, Nashville, TN 37211. The owners of the car dealership, David Ashkarari (“Dave”) and Akbari Bariborz (“Fred”), hired Mr. Holleman to terminate the cemetery and relocate it for a *de minimis* flat fee on April 29, 2015. Mr. Holleman agreed to take the case for a nominal fee on the basis that the matter was not contested, and that Ms. Blalock would seek and contact descendants while Mr. Holleman would prepare the pleadings.

An action to terminate a cemetery is governed by Tenn. Code Ann. § 46-4-101, et. seq. Termination of Use of Land as Cemetery. Tenn. Code Ann. § 46-4-103(b) requires that “all interested persons who are not complainants shall be made defendants.”

In order to satisfy this statutory requirement, Mr. Holleman directed Ms. Blalock to search for interested persons. Specifically, he recommended that Ms. Blalock contact all property owners in Davidson County with the last name “Rains,” and provided Ms. Blalock with letters to individuals with the last name Rains. These letters informed them that Mr. Holleman’s clients had an interest in terminating the cemetery.

After sending letters to individuals in Nashville with the last name Rains, the first person that Mr. Holleman heard from was James Larry Rains. Ms. Blalock then went to see Mr. Rains to

tell him about the lawsuit and the clients' desire to relocate the cemetery and the impending legal action. Ms. Blalock told Mr. Rains that she had spoken with a judge and that her constituents – the clients – were going to win their lawsuit to relocate the cemetery; Mr. Rains could oppose it if he wanted to.

In response, Mr. Rains told Ms. Blalock and Mr. Holleman that one of his brothers and his mother were in an assisted living facility and could not take care of themselves. Mr. Rains told her that he did not want the cemetery moved but that he would speak to his family.

Ms. Blalock then learned that Captain James Rains, a descendant, had donated property on which the fairgrounds is now located. Upon learning this, Ms. Blalock approached Mr. Rains and asked if he would agree to not oppose the lawsuit if the bodies could be moved to the fairgrounds. After speaking with his immediate family, Mr. Rains agreed to the relocation of the cemetery provided certain conditions were met including, that the cemetery would be relocated to the fairgrounds.

On a letter dated March 16, 2016, Mr. Rains sent Mr. Holleman a letter expressing the terms that he would agree to, which included the promises made by Ms. Blalock, and stating that he was “speaking for [his] immediate family and there may be others that may see this differently.” Tr. P. 11; Exhibit 1. Mr. Rains then called Mr. Holleman after he sent the letter and asked him if the cemetery was going to be moved to the fairgrounds; Mr. Rains testified that Mr. Holleman told him that it would be.

However, Mr. Holleman testified that he does not “actually have a specific recollection of discussing these provisions [in the March 16, 2016 letter] with Mr. Rains.” Tr. p. 135. Furthermore, based on his experience with the Metro Council, Mr. Holleman stated that he “would never have warranted to [Mr. Rains] that the fairgrounds relocation would occur.” *Id.*

Petition to Quiet Title and Termination of Cemetery

On March 4, 2016, Mr. Holleman filed a Petition to Quiet Title and Termination of Cemetery. Ex. 10. The Petition was then served upon Mr. Rains by personal service and mail. Tr. p. 15-16. On March 31, 2016, Mr. Holleman filed a motion and memorandum to allow further service by publication. Ex. 10. In that motion, Mr. Holleman wrote:

Petitioner's counsel was contacted by Mr. James L. (Larry) Rains who stated that he was, in fact, a descendant of the persons buried in the cemetery in question and that, under identified circumstances, he did not oppose the termination of the cemetery... Upon further conversation with Mr. Rains, he has provided the phone number of the only other known potential descendant, Mr. Ricky Rains in Murfreesboro, Tennessee. To date, Petitioners have not been successful in contacting Mr. Ricky Rains. Petitioners have no knowledge of other potential interested parties or how to ascertain such person(s) identity.

Id.

Mr. Holleman testified that he called Rick Rains several times and left voicemail messages for him. Tr. p. 133. However, Rick Rains testified at the hearing that he had never received a phone call from Mr. Holleman or a voicemail message on his phone. Tr. p. 30.

The Hearing Panel found that Mr. Holleman was aware of other descendants and misrepresented to the court that there was no knowledge of other potential interested parties.

On April 27, 2016, the court entered an order allowing Mr. Holleman to serve notice by publication. Ex. 10. Mr. Holleman then gave Ms. Blalock the Notice to be published and directed her to have it published in the *Nashville Ledger*. Ms. Blalock sent the Notice to the *Nashville Ledger* by email and provided her credit card number for payment. Tr. p. 87. However, Ms. Blalock did not confirm that the Notice was published in the four weeks she requested that it be published or confirm that her credit card had been charged for the publication. Tr. p. 88. The Notice was not published in the *Nashville Ledger*.

Mr. Holleman instructed Ms. Blalock to provide him with copies of the *Nashville Ledger* in which the Notice was allegedly published to support the motion for default judgement that he subsequently filed. Tr. p. 88. Ms. Blalock then gave Mr. Holleman the four issues of the *Nashville Ledger* in which the Notice was supposed to have been published. Tr. p. 88. Prior to filing the motion for default judgment, Mr. Holleman did not look at the issues of the *Nashville Ledger* to verify that they contained the Notice or that the language to be published was correct. Tr. p. 159. Instead, Mr. Holleman relied on Ms. Blalock's representation that the Notice was published. Tr. p. 159.

Relocation of the Cemetery

By August 2016, it became clear to Ms. Blalock that the cemetery could not be moved to the fairgrounds. Tr. pp. 104-105. Ms. Blalock testified that she went to tell Mr. Rains that the fairgrounds relocation was not going to work; however, he was not home. She then testified that Mr. Holleman told her to send Mr. Rains a letter. Tr. p. 107. Ms. Blalock further testified that she hand-delivered the undated letter to Mr. Rains' house advising him of this fact. Tr. p. 108. Mr. Rains acknowledged that the letter was given to his wife. Tr. p. 22. The evidence establishes that the letter was delivered in December 2016, approximately three months after Mr. Holleman and Ms. Blalock learned that the cemetery would not be moved to the fairgrounds. Tr. p. 125.

Motion for Default Judgment

On January 6, 2017, Mr. Holleman filed a Motion for Default Judgment against Mr. Rains and the unknown descendants. In the Memorandum in Support of Motion for Default Judgment, Mr. Holleman wrote:

“Prior to initiating such action, Petitioners diligently investigated the potential identities of all interested persons. Such investigation only yielded one person, Mr. James Rains, who expressed his support for the relocation

of the interred bodies to a perpetual care cemetery and has not entered an appearance or otherwise defended this action.”

Ex. 10.

Based on the record, the Hearing Panel found that Mr. Holleman was aware of Mr. Rains’ infirm brother who should have been noticed and represented in the proceedings. The Hearing Panel further found that Mr. Rains did not express support for relocating the cemetery to a perpetual care cemetery and that Mr. Holleman did not verify that fact appropriately prior to making the assertion in the motion for default.

Despite information that the cemetery was being restored, Mr. Holleman did not revisit the cemetery before he filed the Motion for Default Judgment. The certificate of service on the Motion for Default Judgment shows that it was mailed to Larry Rains.

Furthermore, Mr. Holleman affirmatively stated in the Memorandum and Motion in Support of Further Service by Publication that notice of the lawsuit was published in the *Nashville Ledger* on four consecutive weeks in August 2016, and that no person came forward or entered an appearance in the matter. Mr. Holleman certified the same representation of service publication in the Default Judgment Certificate. A hearing on the Motion for Default Judgment took place on January 20, 2017. The Order granting the Motion for Default Judgment was entered on January 25, 2017.

After the expiration of the time to appeal, Mr. Holleman’s clients had some of the Rains family graves moved to Mt. Olivet Cemetery. Others were not moved out and now are under an asphalt parking lot.

Some of the Rains family descendants learned that the bodies were re-interred at Mt. Olivet Cemetery without their knowledge and filed a Motion to Set Aside the Default Judgment.

On July 11, 2017, the Default Judgment was set aside in part because there was no service by publication.

Restoration of the Cemetery

The historic cemetery at issue was known as the Rains Cemetery. John Rains is a historical Nashville figure whose father helped defend Nashville from a Cherokee attack at the Battle of Buchanan Station in 1792. Mr. Rains and other family members were buried in the cemetery at what is now 5510 Nolensville Pike, near the intersection with Old Hickory Boulevard in Davidson County, Tennessee.

By 2016, the condition of the cemetery had deteriorated, and some of the cemetery headstones were broken and laid over the cemetery plots. Before the Petition to Quiet Title was filed, Ms. Blalock met with Tim Walker (“Mr. Walker”), Executive Director of the Metro Historical Commission, who had sent newly elected Councilwoman Blalock a letter welcoming her to the Council and offering to meet with her to tell her about the Historical Commission.

The Metro Historical Commission (“Historical Commission”) is Nashville’s historical preservation agency that, among other responsibilities, is involved in maintaining the county’s rural cemeteries. The Historical Commission also works with the Davidson County Cemetery Survey project that, over the past 25 years, has surveyed rural cemeteries in Davidson County and determined the identities of the individual buried in them. It also works with the Nashville City Cemetery Association that raises funds and promotes the city cemetery. Mr. Holleman served on the Board of the Nashville City Cemetery Association in the past, and at one point, served as its president.

Mr. Walker testified that if someone wanted to locate descendants of individuals buried in a historical cemetery, he would recommend they contact the Colonial Dames; specifically, Fletch Coke as a point person.

After sending the introductory letter to new members of the Metro Council, Mr. Walker met with Ms. Blalock, and she mentioned that there was an old cemetery in her district that she wanted to know more about. Specifically, in December 2015 and January 2016, Ms. Blalock and Mr. Walker exchanged emails, and in one email to Mr. Walker, Ms. Blalock asked him to look around for a place to relocate the bodies at the cemetery at issue. Mr. Walker acknowledged that he received the email, but testified that Ms. Blalock never told him about her constituents filing a Petition to relocate the cemetery.

Ms. Blalock, on the other hand, testified that she told Mr. Walker about the Petition; however, in her deposition, she testified that the meeting with Mr. Walker had nothing to do with the lawsuit.

The hearing Panel found that Ms. Blalock did not tell Mr. Walker about the lawsuit in their first meeting. Furthermore, based upon Ms. Blalock's inquiry about finding a location to relocate the individuals buried at the Rains Cemetery, and her statement that the cemetery was in poor condition, Mr. Walker notified Fletch Coke, the point person at the Colonial Dames.

Fletch Coke found some descendants and, together with the Historical Commission and Rains family descendants, raised money for the restoration of the cemetery. The Historical Commission and descendants of the Rains family subsequently employed Dan Allen ("Mr. Allen"), an archeologist and stone conservator, to undertake restoration. Mr. Allen began work on the Rains Cemetery in February 2016 and completed restoration of the cemetery in August 2016.

Mr. Allen testified that he viewed the remains at Mt. Olivet, where the Rains cemetery was relocated, and found that some of the headstones were broken and pieces of others were missing. He further stated that the marble used for the headstones is no longer available and they cannot be restored to the post-restoration condition.

At some point after the Rains family became involved in the restoration project, or shortly before, Marjorie Lynn Anderson and her mother, Judy Rains Anderson, sent emails to Mr. Walker, Executive Director of the Metro Historical Commission, expressing their opposition to the move and asked the Historical Commission oppose the move.

Mr. Walker sent emails to the mother and daughter and assured them that he would notify Ms. Blalock of their positions and that he would be sure to contact them if “the owner decides to petition the court to remove the graves.” *Joint Stipulation of the Parties*. Mr. Walker testified that he then told Ms. Blalock in a phone conversation that family members opposed the relocation of the cemetery.

Furthermore, on one occasion, Ms. Blalock saw Mr. Allen, the archaeologist and stone conservator, working on the restoration of the cemetery and asked him what he was doing. Mr. Allen testified that he met Ms. Blalock while working on the restoration of the cemetery and that it was “very early in the process.” Tr. p. 28. Mr. Allen told her that he was restoring the cemetery and being paid for the work by the Historic Commission and some family members. Ms. Blalock testified that she called Mr. Holleman “right when I pulled off [from the cemetery]” and told him “exactly the conversation she had with Mr. Allen. Tr. p. 83.

Mr. Holleman testified that he does “recall a conversation where [Ms. Blalock] told me she encountered someone at the cemetery.” Tr. pp. 138-139. Specifically, Ms. Blalock told him

that she saw someone at the cemetery at the behest of the Historical Commission but denies there was any mention of family.

Because Mr. Allen completed the restoration work on the cemetery in August 2016, the Hearing Panel found that Ms. Blalock's conversation with Mr. Allen, and phone call to Mr. Holleman on the same day as the conversation, occurred as early as February to March 2016, but no later than August 2016.

After speaking with Mr. Allen, Ms. Blalock contacted Mr. Walker from the Historical Commission with whom she had previously discussed the possibility of relocating the Rains Cemetery. According to Ms. Blalock, Mr. Walker would not discuss the ongoing work at the cemetery with her. On another occasion, Ms. Blalock spoke with Mr. Walker, who told her that he knew of family members who were opposed to moving the cemetery. Specifically, Mr. Walker told Ms. Blalock that Fletch Coke from the Colonial Dames had the names of additional family members, but that Ms. Coke did not want to speak with Ms. Blalock. Ms. Blalock also told Mr. Holleman about the conversation with Mr. Walker.

Mr. Walker testified that he spoke with Ms. Coke, who told him the descendants did want to talk with Ms. Blalock about moving the cemetery because they didn't want it moved. Mr. Holleman, however, denied that he was told anything about members of the Rains family being involved with the restoration of the cemetery.

At no time did Mr. Holleman take steps to communicate with Mr. Walker about the restoration work at the cemetery. Although he was told that Fletch Coke was involved in the cemetery work, and he knew Ms. Coke, Mr. Holleman never contacted her to learn about it.

Character Witnesses

Character witnesses testified for Mr. Holleman. However, Mr. Holleman's character is not at issue.

STANDARD OF REVIEW

The standard of reviews for appeals of the Board is set out in Tennessee Supreme Court Rule 9, § 33.1(b), which provides:

The reviews 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 hearing panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The trial court may, in its discretion, permit discovery on appeals limited only to allegations of irregularities in the proceeding. The court may affirm the decision of the hearing panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the part filing the Petition for Review have been prejudiced because the hearing panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the hearing 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 hearing panel as to the weight of the evidence on questions of fact.

Furthermore, “[a]lthough 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.” *Board of Professional Responsibility v. Allison*, 284 S.W.3d 316, 322 (Tenn. 2009). This Court will not reverse the decision of the Hearing Panel so long as the evidence “furnishes a reasonably sound factual basis for the decision being reviewed.” *Hughes v. Board of Professional Responsibility*, 259 S.W.3d 631, 641 (Tenn. 2008) (quoting *Jackson Mobilphone Co. v. Tennessee Public Service Commission*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993)).

DECISION OF THE HEARING PANEL

The Hearing Panel found that Mr. Holleman violated five provisions of the Tennessee Rules of Professional Conduct (“RPC”): Rule 1.1 – Competence; Rule 1.3 – Diligence; Rule 3.1 – Meritorious Claims & Contentions; Rule 5.3 – Responsibilities Regarding Nonlawyer Assistance; and Rule 5.4 – Professional Independence of a Lawyer.

Rule 1.1 Competence¹

First, the Hearing Panel held that the Board proved Mr. Holleman violated RPC 1.1 when he misidentified the address of the Rains Cemetery as 399 Ashgrove Drive, Nashville, in the Petition to Quiet Title, the Notice to be published in the *Nashville Ledger*, and the Default Judgement Order. Furthermore, Mr. Holleman violated RPC 1.1 by failing to thoroughly review and verify that the publication notice was actually published in the *Nashville Ledger*, and that the notice itself was correct. Mr. Holleman admitted this at trial, stating that he did not review the publication to ensure that it contained the required notice.

The Hearing Panel further found that Mr. Holleman violated RPC 1.1 by failing to avail himself of available resources to locate Rains family descendants and failing to recognize the significance of notifying all interested persons. Specifically, Mr. Holleman failed to follow-up with Larry Rains about Mr. Rains’ incapacitated brother who was an interested person pursuant to T.C.A. § 46-4-102.

Next, the Hearing Panel found that Mr. Holleman violated RPC 1.1 when he failed to recognize the significance of notifying all interested persons by failing to reach out to Larry Rains to verify the contact information for Rick Rains, his cousin. While Mr. Holleman testified

¹ “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for representation.” RPC 1.1.

that he had tried to call Mr. Rains on the only phone number he had been provided, Rick Rains – the cousin – testified that he never received any phone call from Mr. Holleman.

Finally, the Hearing Panel found that Mr. Holleman violated RPC 1.1 when he delegated the important legal requirement of locating interested persons to a non-lawyer without informing her of the importance of the need to locate interested persons and providing her legal guidance to perform necessary work. Mr. Holleman testified at trial that he allowed Ms. Blalock, who is not an attorney, to take the lead in tracking down descendants. Ms. Blalock admitted that Mr. Holleman never explained the significance of locating descendants.

Rule 1.3 Diligence²

The Hearing Panel held that Mr. Holleman violated RPC 1.3 for five reasons. First, it found that Mr. Holleman failed to confirm that the notice to be published was actually published in the *Nashville Ledger*, and failed to verify that the correct notice had been published in the *Nashville Ledger*. Second, Mr. Holleman violated RPC 1.3 when he failed to exercise reasonable diligence to ascertain the identity and location of Larry Rains' incapacitated brother who, pursuant to T.C.A. § 46-4-102, was an interested person required to be served with the Petition to Quiet Title.

Furthermore, the Hearing Panel found that Mr. Holleman violated RPC 1.3 when he failed to exercise reasonable diligence to contact Ricky Rains in order to ascertain where he could be served with the Petition to Quiet Title. Furthermore, Mr. Holleman failed to avail himself of available resources for locating Rains family descendants. For example, Mr. Holleman knew who Fletch Coke was and that she could likely locate members of the family; however, Mr. Holleman never contacted her.

² "A lawyer shall act with reasonable diligence and promptness in representing a client." RPC 1.3.

Finally, the Hearing Panel found that Mr. Holleman violated RPC 1.3 when, after being placed on notice that the Historical Commission and family members were restoring the cemetery, he filed a motion for default judgement without exercising reasonable diligence to ascertain whether the condition of the cemetery had changed since the time he filed the Petition to Quiet Title.

Rule 3.1 Meritorious Claims and Contentions³

Next, the Hearing Panel found that Mr. Holleman violated RPC 3.1 when he failed to act reasonably to inform himself that the notice had been published in the *Nashville Ledger* before representing to the court that it had been published.

Mr. Holleman also violated RPC 3.1 when he stated to the court in the motion and memorandum to allow further service by publication that “Petitioners have no knowledge of other potential interested parties or how to ascertain such person(s) identity.” R. p. 527.

Finally, the Hearing Panel found that Mr. Holleman violated RPC 3.1 when he represented to the Court in the motion for default that Larry Rains supported the relocation of the cemetery to a perpetual care cemetery without making a reasonable inquiry into whether Mr. Rains actually supported moving the cemetery to a perpetual care cemetery.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants⁴

The Hearing Panel held that Mr. Holleman violated RPC 5.3 by (1) failing to explain to Ms. Blalock the legal significance of locating descendants of the Rains family; (2) delegating the responsibility of locating the descendants of the Rains family to Ms. Blalock; (3) delegating the

³ “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.” RPC 3.1.

⁴ RPC 5.3(c)(1) states: “a lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the Rule of Professional Conduct if engaged in by a lawyer if the lawyer orders, or, with knowledge of the specific conduct, ratifies the conduct involved.”

responsibility of locating the descendants to Ms. Blalock without giving her appropriate directions; and (4) delegating to Ms. Blalock the responsibility of informing Mr. Rains that the cemetery would not be relocated to the fairgrounds.

Rule 5.4 Professional Independence of a Lawyer⁵

Finally, the Hearing Panel held that Mr. Holleman violated RPC 5.4 by delegating the responsibility of locating the descendants to Ms. Blalock and permitting her to make legal judgments that should have been made by him.

After finding that Mr. Holleman had violated these provisions, the Hearing Panel concluded that under the ABA Standards for Imposing Lawyer Sanctions (“ABA Standards”), a reprimand of public censorship was the appropriate baseline sanction. The Hearing Panel then found five aggravating factors and one mitigating factor and concluded that Mr. Holleman should be subject to reprimand in the form of a public censure pursuant to Section 12.4 of Rule 9 of the Tennessee Supreme Court.

RULING

After reviewing the record as a whole and the applicable RPC violations, it is evident that the Hearing Panel sufficiently proved each of the violations, and in doing so, uncovered a pattern of misconduct by Mr. Holleman throughout the adverse possession proceedings with the cemetery. As stated in the Standard of Review, Mr. Holleman must show that the Hearing Panel’s decision was arbitrary and capricious or an abuse of discretion, or that it was not supported by substantial and material evidence.

⁵ RPC 5.4(c) states: “A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.”

In this appeal, Mr. Holleman does not dispute the material facts but contends that under these facts, he did not violate any Rules of Professional Conduct; that is, he did nothing wrong.

In his reply brief, Mr. Holleman states:

Throughout its brief and in the underlying proceedings, the Board fails to articulate an actual nexus between its hyperbolic construction of the events in question and the rules it cites. Substituting its judgment for the review of the Chancery Court in the underlying matter, the argument of the Board is arbitrary, is based on an overreaching abuse of discretion, and is lacking in material evidence to support a finding for public discipline against Holleman. The Order of the Hearing Panel should, therefore, be dismissed.


Pet'r's Reply Br. 3.

In his briefs, Mr. Holleman simply reargues the facts, and suggests that he did not engage in any misconduct at all. Mr. Holleman thus falls short of meeting his burden.

Although it can conceivably be argued that some of the facts found by the Hearing Panel to support an RPC violation, standing alone, may not be sufficient, the cumulative effect of the negligence, lack of diligence, failure to follow applicable law, and delegation of duties to a nonlawyer clearly support violations of the RPC and support the decision of the Hearing Panel. As a result of Mr. Holleman's actions and lack thereof, the final resting places of numerous individuals were disturbed, while others remain covered by a parking lot.

The Court finds that the Hearing Panel's decision is supported by substantial and material evidence, and the decision was not arbitrary and capricious. The Hearing Panel's findings of fact and conclusions of law are AFFIRMED, and the sanction of the Hearing Panel is AFFIRMED.

IT IS SO ORDERED this the 26 day of March, 2020.



WILLIAM B. ACREE, JR.
Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed to the following at their respective addresses, this ____ day of _____, 2020:

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