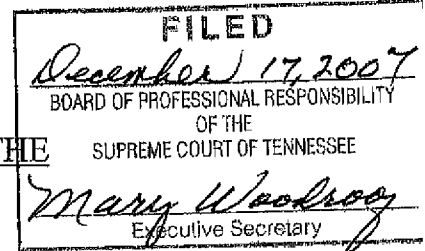


IN DISCIPLINARY DISTRICT V OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY OF THE  
SUPREME COURT OF TENNESSEE



In Re: )  
)  
**JOHN JAY HOOKER** (BPR 5118) An )  
Attorney Licensed to Practice in Tennessee ) DOCKET NO. 2005P-1519-5-SG  
(Davidson County) )

**FINDINGS AND JUDGMENT**

This matter came on for a hearing on Friday, November 30, 2007, before a Hearing Panel consisting of Joe M. Looney, Chair, Anne Clayton Martin, and Mary Jo Price, upon the Petition for Discipline filed by the Board of Professional Responsibility, the Answer of the Respondent, the testimony of the witnesses heard by the Hearing Panel, and the entire record in the cause. The Hearing Panel has also considered the proposed Findings of Fact and Conclusions of Law filed by Disciplinary Counsel and the Respondent, and has further considered the additional exhibits filed by the Respondent on or about December 5, 2007. From all of this, the Hearing Panel takes the following actions and makes the following findings and judgments.

**1. PRELIMINARY MATTERS**

1.1 The Hearing Panel first considered the Respondent, John Jay Hooker's, Motion to Recuse and Motion to Dismiss under Rule 12 of the Tennessee Rules of Civil

Procedure. With regard to the Motion to Recuse, the Hearing Panel denied the Motion finding that Mr. Hooker's Motion actually addressed itself to the entire lawyer discipline system and not to this particular Hearing Panel or any member of the Hearing Panel. Recusal of a judge is appropriate whenever the Judge's impartiality might reasonably be questioned. Mr. Hooker's Motion does not question the impartiality of the Hearing Panel, or any member of the Hearing Panel. His objection would as readily apply to the next Hearing Panel, which might be appointed if this Hearing Panel recused itself. The members of the Hearing Panel have also reviewed in detail each element of Supreme Court Rule 10, Canon 3(E), regarding disqualification of judges, and find none of the instances cited in that Canon to be applicable here.

1.2 The Respondent, John Jay Hooker, on October 1, 2007 also filed a Motion that the charges against him be dismissed under Rule 12 of the Tennessee Rules of Civil Procedure alleging that the Hearing Panel did not have jurisdiction under Article I, Sections 1 and 2, and Article VI, Section 16, of the Tennessee Constitution, and asking that the Hearing Panel find that Rule 11 of the Tennessee Rules of Civil Procedure is unconstitutional. The Hearing Panel overruled the Respondent's Rule 12 Motion, finding that it was beyond the scope of this Panel's jurisdiction to address the jurisdictional issues raised by the Respondent and in attempting to address the constitutionality or the unconstitutionality of Rule 11 of the Tennessee Rules of Civil Procedure.

1.3 The Respondent, John Jay Hooker, had also filed a "MOTION TO REQUIRE THE ATTENDANCE OF JUDGE KURTZ AND THE OTHER SUBPOENAED

INDIVIDUALS WHO WERE DIRECTLY OR INDIRECTLY INVOLVED IN THE SANCTIONS AND A SUPPLEMENTAL MOTION UNDER T.R.C.P. 12 TO DISMISS THE CHARGES ON THE BASIS THAT JUDGE KURTZ 'MAY BE INTERESTED' IN SUBJECT MATTER OF THE CASE BEFORE HIM AND THEREFORE HAD NO JURISDICTION TO ISSUE THE SANCTIONS OR FILE THE COMPLAINT UNDER THE BOARD BASED ON THE SANCTIONS UNDER TENN. CONSTI. ART VI, §11". Mr. Steven A. Hart, Special Counsel for Robert E. Cooper, Jr., Attorney General and Reporter, appeared before the Panel and explained that on November 29, 2007, he and Mr. Hooker had appeared before the Honorable Claudia Bonnyman, Chancellor for the Chancery Court of Davidson County, Tennessee, and presented to Chancellor Bonnyman the Attorney General's Motion to Quash Subpoenas issued by Mr. Hooker for Chief Justice Barker, Justice William Koch, former Justice A. A. Birch, Chancellor Ellen H. Lyle, Judge Walter Kurtz, and former Attorney General Paul Summers. At the conclusion of that hearing, Chancellor Bonnyman had granted the Motion to Quash of the Attorney General and Reporter. It was agreed by both parties that Mr. Hooker had the opportunity to participate in the hearing before Chancellor Bonnyman and that he did not question the jurisdiction of Chancellor Bonnyman to rule on the Motion to Quash. Accordingly, the Hearing Panel found that Mr. Hooker's Motion presented an issue which was rendered moot, given the decision made by Chancellor Bonnyman.

## **2. FINDINGS OF FACT**

The Hearing Panel considered exhibits filed by Disciplinary Counsel, the testimony of the Respondent, John Jay Hooker, and the testimony of Honorable Maclin Davis, Attorney at Law, who testified on behalf of the Respondent, John Jay Hooker. After considering the testimony and the record as a whole, the Hearing Panel finds as follows:

2.1 In Hooker v. Sundquist, 107 S.W.3<sup>rd</sup> 532 (Tenn. App. 2002), the Respondent, Hooker, sued Governor Sundquist alleging that the Governor, Lt. Governor, Speaker and Attorney General violated the Tennessee State Constitution by holding fundraisers where “meat and drink” were served. The Attorney General’s office, on behalf of the Governor and other defendants, filed a motion to dismiss and sought Rule 11 sanctions. Circuit Judge Thomas Brothers granted the motion to dismiss but denied the defendant’s motion for sanctions. The Governor appealed the dismissal of the motion for sanctions. On appeal, the Court of Appeals held that the Respondent was subject to Rule 11 sanctions for filing a complaint on grounds which he knew or should have known were already definitively ruled upon.

2.2 By an Order filed June 27, 2003, Circuit Judge Brothers imposed Rule 11 sanctions against the Respondent as follows:

1. The Respondent was banned from filing further complaints in Circuit or Chancery Court for the 20th Division until the Respondent paid all outstanding court costs in which the Respondent was the plaintiff and the case was dismissed.

2. Any complaint filed by the Respondent within the next twenty four (24) months must be submitted to Special Master for review concerning:

a. Whether the complaint alleged violations of Article X, Section 3 of the Tennessee Constitution and/or T.C.A. 2-19-126; and,

b. Whether the filings were frivolous and/or duplicative.

2.3 The Respondent appealed this sanction and the Court of Appeals upheld the sanction. [See Hooker v. Sundquist, 150 SW3d 406 (Tenn. App. 2004)]

2.4 On July 13, 2004, the Respondent filed suit against Appellate Judges Frank Crawford, Holly Kirby, David R. Farmer, Allen Highers, and Circuit Judge Thomas W. Brothers. The basis of the Respondent's lawsuit was that these Judges acted without jurisdiction in imposing Rule 11 sanctions against the Respondent in Hooker v. Sundquist. The Respondent asserted that by imposing Rule 11 sanctions these Judges have "intentionally violated the criminal laws, Tennessee Code Annotated, Sections 39-17-309 [civil rights intimidation] and are subject to civil suit for malicious harassment under T.C.A. Section 4-21-701." The Respondent sought compensatory damages in an indeterminate amount and punitive damages in the amount of \$3,000,000.00 per Judge.

2.5 On July 23, 2004, Respondent amended his Complaint and asserted the following:

It is alleged that the conduct of the Defendants/Judges in an effort to protect the corrupt system under which they have been and are to be elected and/or re-elected.

Consequently, they have fraudulently and maliciously, for self-serving reasons in a matter wherein they have an 'interest' violated Article VI, Section 11. (Judges/Interests) (see Appendix). Likewise, these Defendants/Judges have contemptuously and intentionally violated and dishonored the Constitution and violated the criminal laws, T.C.A. Section 39-17-309 and fraudulently violated 'the liberty' and "Property rights" of the Plaintiff to an 'open court' Article 1, Section 17 (Open Court) (see Appendix to secure a 'free and equal election' (see Appendix).

The Respondent further stated in his Amended Complaint:

All the allegations regarding the facts and the claim for damages contained in Count I are herein reiterated, therefore the Defendants/Judges have also intentionally violated the criminal laws, Tennessee Code Annotated Section 39-17-309 and are subject to civil suit for malicious harassment under T.C.A. Section 4-21-107. ...These Defendants/Judges have heretofore enjoyed the respect of the Bar, have sought, and in the minds of the public, have deserved re-election. However, their conduct in this matter is a disgrace to the judicial system and therefore consequently, these Defendants/Judges who were highly respected by this lawyer prior to the fraudulent conduct, should be severely punished in the form of punitive damages so as to deter others and are hereby sued for Three Million Dollars (\$3,000,000.00) each in punitive damage to be placed in a foundation to 'Preserve, protect and defend' the Constitution and compensatory damages to be determined at the time of trial.

2.6 By Order filed October 6, 2004, Judge Walter C. Kurtz of the Fifth Circuit Court for Davidson County, granted the Defendant Judges' Motion to Dismiss. On November 8, 2004, the Court entered a Memorandum and Order finding as follows:

The plaintiff alleged in his complaint and amended complaint that the defendant judges have acted 'in total disregard of their oaths of office'; 'that they fraudulently and maliciously and for self serving reasons ... contemptuously and intentionally violated and dishonored the Constitution and violated the criminal laws'; that they engaged in 'malicious harassment'; 'that their conduct in this matter is a disgrace to the judicial system'; and that they have engaged in 'fraudulent conduct'.

The above recited language found in the complaint and amended complaint is reprehensible and beyond the pale of proper lawyer conduct.

The Court further found in its Memorandum and Order:

This lawsuit against the Judges filed by Mr. Hooker is frivolous. ... The situation here is even more egregious as John Jay Hooker has attacked via a frivolous lawsuit the decision imposing Rule 11 sanctions upon him for filing a frivolous lawsuit. See Hooker v. Sundquist, 107 S.W.3<sup>rd</sup> 532 (Tenn. App. 2002). The Court is facing an unrepentant pro se litigant who files frivolous lawsuits on top of frivolous lawsuits using the most baseless invectives in describing the defendants, and no sanctions thus imposed have been able to temper his judgment or awaken his sense of responsibility as a member of the bar.

Based upon these findings, Judge Kurtz issued the following Order:

- 1) Any complaint filed by the Respondent against a public official or candidate for public office within the next five (5) years in any state trial court in the 20<sup>th</sup> Judicial District be submitted to a Special Master who shall determine if it's frivolous; and
- 2) The Respondent was assessed \$2,500 for attorney fees to reimburse the state; and
- 3) The Respondent was sanctioned \$2,000 for judicial resources wasted; and
- 4) The Respondent was ordered to pay all outstanding court costs.

2.7 On January 5,2005, the Respondent filed a Motion In Accordance with Rule 60.02(5) to Recuse So As To Do Justice. In Respondent's Motion, the Respondent stated:

Your Honor's [referencing Judge Walter Kurtz] dishonest and fraudulent conduct in that regard violates Supreme Court Rule 8.4, and makes Your Honor subject to discipline both by the Court of the Judiciary and the Board of Professional Responsibility, and likewise makes Your Honor subject to indictment by the Grand Jury for Official Misconduct and Official Oppression under T.C.A. Section 39-16-402 and 403.

This circumstance occasions this lawyer's conviction that Your Honor is **'unfit'** to be a lawyer and/or a judge, which requires this lawyer under his sworn duty to report you to the proper authorities, because Your Honor has failed to comply with the law as mandated by Supreme Court Rule 10-1 and 2. Simply put, your conduct, in my sincere judgment, is a discredit to the judiciary and yourself as a lawyer, which violates all of the foresaid provisions.

It is alleged that Your Honor's deceitful conduct in declining to recuse yourself while a potential candidate, which restrains this lawyer in trying to eliminate the use of food and **'drink'** in the political process to **'induce'** voters to vote and solicit campaign contributions, was ordered by Your Honor to protect Your Honor as regards any possible violation of the Tennessee Constitution Article X, Section 3 (**'meat, drink, money or otherwise'**), and Article I, Section 5 (**'elections-free and equal'**) and Article XI, Section 16 (**'pretense-no general powers'**).

The Respondent further stated in his Motion to Recuse:

This circumstance, which violates Supreme Court Rule 8.4 (**'misconduct'**), is in my opinion as a citizen and as a member of this Bar, a common disgrace and any public official, including judges who have used food and **'drink'** (Article X, Section 3) to solicit and **'induce'** campaign contributions and votes, or who may do so in the future, have **'stolen or will steal'** the political freedom of **'the people'** to an election **'free'** from the use of food and **'drink'** in violation of Article X, Section 3. Likewise, any judge guilty of such conduct should be removed from public office under the explicit self-executing and mandatory language of Article X, Section 3.

2.8 On January 5, 2005, the Respondent appealed Judge Kurtz's Order and on January 17, 2006, the Court of Appeals affirmed Judge Kurtz's Order in all respects. The Respondent filed an Application for Permission to Appeal to the Supreme Court of Tennessee which was denied on September 5, 2006. A Petition for Rehearing was likewise denied on October 9, 2006. (No. M2005-00052-COA-R3-CV) (WL 140379)



### **3. CONCLUSIONS OF LAW**

3.1 The Hearing Panel finds that the conduct of the Respondent, John Jay Hooker, violated the following provisions of the Tennessee Rules of Professional Conduct:

#### **Rule 3.1 MERITORIOUS CLAIMS AND CONTENTIONS**

A lawyer shall not bring or defend or continue with the prosecution of defense of a proceeding, or assert or controvert or continue to assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

#### **Rule 8.2 JUDICIAL AND LEGAL OFFICIALS**

(a) 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 the following persons:

- (1) a judge;
- (2) an adjudicatory officer or public legal officer; or,
- (3) a candidate for election or appointment to judicial or legal office.

(b) a lawyer who is a candidate for judicial office shall comply with the applicable provides of the Code of Judicial Conduct.

**Rule 8.4  
MISCONDUCT**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) . . .
- (c) . . .
- (d) engage in conduct that is prejudicial to the administration of justice;

3.2 The Hearing Panel concludes that the appropriate sanction for the violations of the Respondent is public censure (Rules of the Supreme Court, Rule 9, Section 4.4). In reaching this conclusion, the Hearing Panel has considered the American Bar Association's Standards for Imposing Lawyer's Sanctions approved February, 1986, amended February, 1992, and particularly, Section 6.23 of those Standards, which provides as follows:

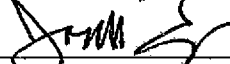
Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

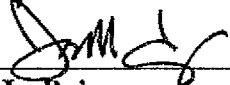
#### 4. ORDER

It is, therefore, **ORDERED** by the Hearing Panel that the Respondent, John Jay Hooker, is found to have violated the Rules of Professional Conduct as noted above, and that his sanction shall be a public censure as provided by Section 4.4 of Rule 9 of the Rules of the Tennessee Supreme Court.

This 14<sup>th</sup> day of December, 2007.

  
\_\_\_\_\_  
Joe M. Looney, Chair

Anne Clayton Martin  
by  (with permission)  
\_\_\_\_\_  
Anne Clayton Martin

Mary Jo Price  
by  (with permission)  
\_\_\_\_\_  
Mary Jo Price