

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

BOARD OF PROFESSIONAL )  
RESPONSIBILITY OF THE )  
SUPREME COURT )  
OF TENNESSEE )  
)  
)  
v. )  
)  
JOHN JAY HOOKER. )

Nos. 08-234-4, 08-200-4

CLERMONT MASTER  
DAVIDSON CO. CHANCERY CT.  
D.C. & M.

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FINDINGS AND CONCLUSIONS

On December 17, 2007, a Hearing Panel entered its findings and conclusion of law pursuant to a Petition for Discipline filed by the Board of Professional Responsibility. The Hearing Panel found that respondent violated RPC. 3.1, 8.2 and 8.4. As a result of these violations, the Panel imposed as discipline a public censure pursuant to Section 4.4 Rule 9 of the Supreme Court. From those findings, both the Respondent and the Board of Professional Responsibility filed Writs of Certiorari. On October 9, 2008 this Court heard oral arguments and has reviewed the transcript of the December 17, 2007 hearing.

The facts of this case are not in dispute. The Respondent filed a lawsuit in the Davidson County Circuit Court alleging that Governor Sundquist violated the Tennessee Constitution by conducting a fund raiser in which "meat and drink" were served. The Attorney General for the State of Tennessee filed a Motion to Dismiss and requested that the trial court impose sanctions for a frivolous lawsuit. The trial court granted the motion to dismiss but denied sanctions. The Governor appealed the denial of sanctions. The Court of Appeals affirmed the dismissal by the trial court and remanded the matter to the trial court for the imposition of sanction. *Hooker v. Sundquist*, 107

S.W.3d 532 (Tenn. Ct. App. 2002). On June 27, 2003, the trial court imposed sanctions on the Respondent including the requirement that any complaint filed by Respondent alleging a violation of the Constitution of Tennessee be first submitted to a special master for screening to determine if the lawsuit was frivolous. The Respondent appealed the trial court ruling. The trial court's ruling was affirmed by the Court of Appeals. *Hooker v. Sundquist*, 150 S.W.3d 406 (Tenn. Ct. App. 2004). On July 13, 2004, the Respondent filed a lawsuit in Davidson County, Tennessee, against the Judges of the Court of Appeals, the Attorney General and Judge Thomas Brothers. The lawsuit challenged the court's jurisdiction to impose sanctions. On October 6, 2004, Circuit Court Judge Walter Kurtz granted the defendant's Motion to Dismiss the Complaint. Judge Kurtz also found that the lawsuit was frivolous and imposed sanctions. The sanctions installed another screening process for a period of five years for any lawsuit filed by Respondent. On January 5, 2005, Respondent filed a Motion to Recuse Judge Kurtz. This Motion accused Judge Kurtz of dishonesty and official misconduct. Respondent made further allegations that Judge Kurtz was corrupt, unfit for office and suggested that Judge Kurtz' conduct subject the Judge to a criminal indictment. The trial judge's imposition of sanctions in this case was affirmed by the Court of Appeals. *Hooker v. Crawford*, 2006 Tenn. App. LEXIS 30. As a result of this litigation, the Board of Professional Responsibility filed a Petition for Discipline.

Tennessee Supreme Court Rule 9, Section 1.3 states in pertinent part:

The respondent-attorney or the Board may have a review of the judgment of a hearing panel in the manner provided by Tenn. Code Ann. § 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.

The Respondent has made a polite, gracious and eloquent argument before both the Hearing Panel and this Court in summarizing his actions in filing the above-mentioned lawsuits. His argument consists of his efforts on behalf of the sovereign people of Tennessee to oppose clear violations of the Tennessee Constitution by elected officials. The gravamen of his argument is that Respondent is discharging his role as an attorney interpreting the Tennessee Constitution. He insists his lawsuits are not frivolous, but his actions are based on his perceived role as a 'whistle blower'. Respondent further proclaims that if in the discharge of these duties, he is censured, he would consider such censure a badge of honor. The Respondent does not clearly articulate which of the five ground for reversal or modification he relies upon. The Court surmises that his argument rests upon the assertion that the Hearing Panel's findings that his lawsuits were not meritorious are not supported by evidence that is both substantial and material. Thus, as a Constitutional warrior for the people, his lawsuits cannot be frivolous because he is convinced that prior court rulings were erroneous. Respectfully, Respondent's entire argument misses the point.

The proceeding is not about an attorney's right to zealously litigate the constitutionality of various provisions of the Tennessee Constitution, nor is it about the retention system in Tennessee for appellate judges. This proceeding is not about an attorney's privilege to be the guardian of the rights of the sovereign people of Tennessee. This proceeding concerns the question of whether an attorney in the discharge of these perceived "roles" is subject to the Rules of Professional

Responsibility as promulgated by the Tennessee Supreme Court. With this principle in mind, the Court will examine the findings of the Hearing Panel.

The Hearing Panel found that Respondent violated RPC 3.1 concerning meritorious claims and contentions. The record in this case, including the exhibits containing the *Hooker* and *Crawford* cases *Id.* reveal that the Respondent has a lengthy history of filing lawsuits challenging the conduct of various officials. These lawsuits allege these officials violated Tenn. Const. Art. X § 3. In *State ex rel. Anderson v. Fulton*, 712 S.W.2d 90 (Tenn. 1986) and a decision in Davidson County Circuit Court in *Hooker v. McWhorter*, case No. 98-2246-111 (July 31, 1998), these alleged constitutional violations were dismissed. Respondent was the unsuccessful Plaintiff in the *McWhorter* case. After these cases were decided, Respondent then filed his lawsuit against Governor Sundquist challenging the same conduct that had been previously adjudicated in *Anderson v. McWhorter, Id.* After the *Sundquist* case was dismissed and sanctions were imposed, Respondent filed the *Crawford* lawsuit. After Judge Kurtz dismissed the *Crawford* complaint, Respondent replied with a Motion to Recuse Judge Kurtz, challenging the jurisdiction of Judge Kurtz and his conduct. As Judge Kurtz remarked in his Memorandum Opinion, Respondent's action "was a frivolous lawsuit on top of a frivolous lawsuit." The Respondent knew or should have known that the filings that gave rise to this Petition for Discipline lacked merit. In spite of his long and unsuccessful attempts to reform the election process and his unsuccessful constitutional argument, he continued to file lawsuits and boasts that he will continue to do so until his constitutional interpretation prevails. Clearly the Panel's finding that Respondent violated RPC 3.1 is supported.

The Hearing Panel found that Respondent violated RPC 8.2 and 8.4. RPC 8.2 states in pertinent part:

- (a) a lawyer shall not make a statement that the lawyer knows is false or is made in reckless disregard as to its truth or falsity concerning the qualifications or integrity of the following persons:
- (1) a judge

Respondent's entire history as revealed in these lawsuits contains harsh invectives against sitting judges. In this Petition for discipline, among the many opprobrious terms leveled at Judge Kurtz, were "corrupt", "unfit for office" and the suggestion that Judge Kurtz be indicted. A lawyer has every right to criticize court proceedings and the judges and courts of Tennessee, so long as the criticisms are made in good faith and with no intent or design to maliciously misrepresent those persons and institutions or bring them into disrepute. *Ramsey v. Board of Professional Responsibility of Supreme Court*, 771 S.W.2d 116 (Tenn. 1989). It is the duty of a lawyer to refrain from doing anything which will tend to destroy the confidence of the public in the courts or bring the court into disrepute: Judges not being wholly free to defend themselves and peculiarly entitled to receive the support of the law against unjust criticism and clamor. This is the duty which the attorney owes to his profession, an obligation to which he should subordinate his personal animus toward the particular individual who happens to be filling the office. *Ramsey, Id.* The findings of the Hearing Panel that Respondent's remarks that are the subject of this Petition were intentionally false, are supported.

Finally, the Hearing Panel found that Respondent violated RPC 8.4 which in pertinent part provides:

It is professional misconduct for a lawyer to

- (a) violate or attempt to violate the Rules of Professional Conduct;
- (d) engage in conduct that is prejudicial to the administration of justice.

It is the duty of lawyers to refrain from doing anything that will tend to destroy the

confidence of the public in the courts. *Ramsey, Id.* An attorney may not by speech or other conduct resist a ruling of the trial court beyond the point necessary to preserve a point for appeal. *Board of Professional Responsibility v. Slavin*, 145 S.W. 3d 538 (Tenn. 2004)(quoting *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1071 115 L. Ed.2d 888 (1991)). Thus, an attorney's speech may be sanctioned if it is highly likely to obstruct justice or the administration of justice. These normal restrictions are justified by the integral role that a lawyer plays in the judicial system which requires them to refrain from speech or conduct that may obstruct the fair administration of justice. *Slavin, Id.* (quoting *Office of Disciplinary Counsel v. Gardner*, 99 Ohio St. 3<sup>rd</sup> 416, 2003). It is true, generally speaking, that the disciplinary rules are, indeed, designed for the protection of clients and the public. But, the responsibility is not exclusive. There exist another duty, broader perhaps, that commands this Court to defend the judicial process and those in whom its administration is entrusted. *See*, Tenn. Sup. Ct. Rule 8, DR1-1-102(a) 2002. *See also*, *ABA Standard for Imposing Lawyer Sanctions*. In this regard, we note that in the context of lawyer discipline, the American Bar Association defines "injury" as harm to a client, the public, the legal system, or the professions which results from lawyer misconduct. *Galbreath v. Bd Prof'l Responsibility of the Supreme Court of Tenn.*, 121 S.W.3d 660 (Tenn. 2003).

The Respondent has engaged in a systematic assault on the judicial system that has included false statements about judges, slanderous epithets, and frivolous litigation. The findings that Respondent violate RPC 8.4 are supported.

For these vital violations, the Hearing Panel imposed a public censure. A cardinal principle of Tennessee Supreme Court Rule 9 and the *ABA Standards for Imposing Lawyer Discipline* is that there should be uniformity in imposing discipline. In *Farmer v. Board of Professional*

*Responsibility of the Supreme Court*, 660 S.W.2d 490 (Tenn. 1983) an attorney was found to have engaged in conduct prejudicial to the administration of justice. In *Farmer*, the attorney stated that his fellow practitioners were liars and for using "scurrilous and improper language in briefs." The attorney was suspended for 60 days. An attorney that failed to abide by a court order while appearing before the court and slammed the courtroom door was suspended for 180 days. *Ramsey, Id.* In *Galbreath, Id.* at 666, an attorney dissatisfied with the trial court's ruling began a campaign through threats and intimidation to force the judge's recusal. Finally, in *Slavin, Id.* the attorney criticized the life style of a judge, filed baseless and frivolous pleadings, used unacceptable speech and engaged in unjust criticism of the judicial system. The attorney was suspended for 2 years.

In all of the above cases, the attorneys were found to have engaged in conduct prejudicial to the administration of justice. The Respondent's conduct is certainly as egregious as the conduct mentioned above.

The *ABA Standards* also suggest that when imposing discipline, the mental state of the attorney should be examined. Respondent has clearly stated in his argument that he will continue his assault on the judicial system. He continues to assert that the previous court rulings are in error. Finally, he asserts that a censure would be a "badge of honor."

The *ABA Standard* also directs attention to any aggravating or mitigating factor when determining discipline. Neither of these factors were found to exist in this case.

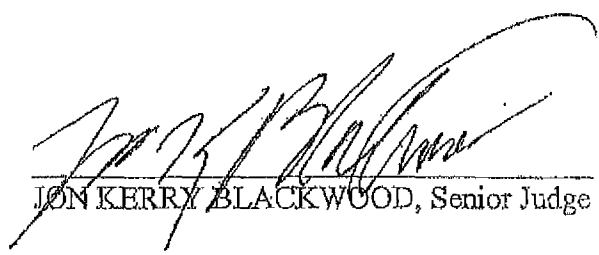
A trial court may reverse or modify the decision of the hearing panel if the decision is arbitrary or capricious or characterized by an abuse of discretion. Under the abuse of discretion standard, a trial court's ruling will be upheld so long as reasonable minds can disagree as to the propriety of the decision made. A trial court abuses its discretion when it applies an incorrect legal

standard, or reaches a decision which is against logic or reasoning that causes an injustice to the party complaining. The abuse of discretion standard does not allow the appellate court to substitute its judgment for that of the trial court. *Eldridge v. Eldridge*, 42 S.W.3d 82 (Tenn, 2001). In applying this standard, the Court is not cognizant of any case wherein a public censure was the prescribed sanction. To the contrary, the cases reveal that suspension is the appropriate discipline. Therefore, if uniformity is a mandate, this Court must find that the Hearing Panel abused its discretion in ordering a public censure. Therefore, the Court orders that the Respondent be suspended from the practice of law for 30 days.

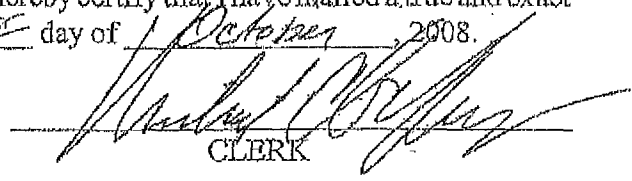
Finally, in Respondent's peroration of his remarks to the Court, he references the Tennessee Constitution and its Declaration of Rights as analogous to the Ten Commandments for governments. It should also be noted that the Rules of Professional Conduct are the Ten Commandments for attorneys.

WHEREFORE, the Court orders that the Respondent is hereby suspended from the practice of law for a period of 30 days,

ENTER THIS THE 30th day of October, 2008.

  
JON KERRY BLACKWOOD, Senior Judge

CERTIFICATE OF SERVICE  
I, Michael C. Grayson, Court Clerk, hereby certify that I have mailed a true and exact copy of same to all Counsel of Record this the 21st day of October, 2008.

  
CLERK

ISSUED

FILED

CLERK OF COURT  
JANUARY 10, 2008