

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

LORING E. JUSTICE,	)	
	)	Petitioner,
	)	
vs.	)	No. <u>203310-2</u>
	)	
	)	<u>NOTICE OF ENTRY</u>
BOARD OF PROFESSIONAL RESPONSIBILITY	)	
OF THE SUPREME COURT OF TENNESSEE,	)	
	)	Respondent.

FINAL DECREE ON THE REVIEW OF THE HEARING COMMITTEE PANEL  
DISCIPLINARY PROCEEDINGS

Having conducted a review of the transcript of evidence before the hearing panel as well as the panel’s findings and judgment, and having considered the arguments of the Board and the Attorney, set forth in their Briefs and made orally at the hearing held June 7, 2022, the Court makes the following findings of fact and conclusions of law:

1. This case is an appeal from the decision of a BOPR hearing panel, pursuant to Tenn. Sup. Ct. R. 9, §33.1.

**PRELIMINARY LEGAL STANDARDS & CONCLUSIONS**

2. The review of the trial court in a §33.1 appeal is to be “on the transcript of the evidence before the hearing panel and its findings and judgment.” *Id.*

3. This court may only reverse or modify a hearing panel decision if,

[t]he rights of the party 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 procedures; (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.

Tenn. Sup. Ct. R. 9 §33.1 (b); *BOPR v. MacDonald*, 595 S.W.3d 170 (Tenn. 2020).

4. “Absent these limited circumstances, the hearing panel’s decision should not be disturbed on appeal.” *Hancock v. BOPR*, 447 S.W.3d 844, 850 (Tenn. 2014).

5. In determining whether the hearing panel’s findings as to rule violations were supported by substantial and material evidence, this Court must uphold the hearing panel’s decision if it “is supported by such relevant evidence as a rational mind might accept to support a rational conclusion. We look at whether the record contains a reasonably sound factual basis for the hearing panel’s decision. A reasonably sound basis is less than a preponderance of the evidence but more than a scintilla or glimmer.” (internal quotation marks omitted) (internal citations omitted) *Beier v. BOPR*, 610 S.W.3d 425 438 (Tenn. 2020).

6. This court may not “substitute it’s judgment for that of the hearing panel’s as to the weight of the evidence on questions of fact.” *Napolitano v. BOPR*, 535 S.W.3d 481, 496 (Tenn. 2017); Tenn. Sup. Ct. R. 9, §33.1(b).

7. “A hearing panel abuses its discretion by applying an incorrect legal standard, or reaching a decision which is against logic or reasoning that causes an injustice to the party complaining.” (brackets, quotation marks, and citations omitted) *BOPR v. Sheppard*, 556 S.W.3d 139, 146 (Tenn. 2018). Under this deferential standard of review, “where reasonable minds can disagree over the propriety” of a hearing panel’s decision, it will be upheld. *Sallee v. BOPR*, 469 S.W.3d 18, 42 (Tenn. 2015).

8. “A hearing panel’s decision is arbitrary and capricious if it is not based on any

course of reasoning or exercise of judgment, or . . . disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.”

(quotation marks and citations omitted) *BOPR v. Parrish*, 556 S.W.3d 153, 163 (Tenn. 2018).

9. “Mr. Justice challenges the Hearing Panel’s rulings on certain evidence. As the challenger, Mr. Justice bears the burden of establishing that the Hearing Panel abused its discretion.” *BOPR v. Justice*, 577 S.W.3d 908, 924 (Tenn. 2019).

10. “Tennessee law draws no distinction between the probative value of direct and circumstantial evidence.” *BOPR v. Justice*, 577 S.W.3d 908, 928 (Tenn. 2019).

## PROCEDURAL HISTORY

11. This matter was initiated by a Petition for Discipline against Mr. Justice that was filed by the Tennessee Board of Professional Responsibility on January 4, 2018. (Administrative Record, hereafter “AR,” entry 1). After voluminous preliminary proceedings, a final hearing was held before a Hearing Committee Panel on January 14, 2021, and Findings of Fact, Conclusions of Law and Judgment of the Hearing Committee Panel was filed March 26, 2021. (AR 117), (hereafter referred to as “Panel Decision”)

12. Two procedural issues have been raised on behalf of Mr. Justice. The imposition of an alleged inappropriate discovery sanction against Justice, and the Panel’s denial of Justice’s second motion for summary judgment. (Appellant’s Brief, filed April 1, 2022 at p. 2).

13. With regard to the discovery sanction the following events are relevant:

- 7/18/18 Board’s interrogatories served on Justice.
- 9/20/18 Justice’s objections to interrogatories (no answers).
- 9/28/18 Board’s Motion to Compel Answers. (AR 28).
- 4/23/19 Panel’s hearing on Board’s Motion to Compel.
- 6/5/19 Order granting Motion to Compel. (AR 50).
- 9/1/20 Panel’s Fifth Scheduling Order, again Ordering Justice to comply with the previous Order (AR 50) granting the Board’s Motion to Compel Answers to Interrogatories. In this Fifth Scheduling Order (AR 69) Justice was again ordered to respond to the interrogatories of the Board, within 14 days.
- 9/18/20 Counsel for the Board emailed counsel for Justice copies of the Board’s first set of interrogatories, the Order compelling answers, and the Fifth Scheduling Order. (AR 73, Exhibit 4).
- 10/7/20 Counsel for the Board emailed counsel for Justice requesting the answers to interrogatories and compliance with the

previously entered Orders compelling discovery. Copies of the interrogatories, the two previous Orders, and a copy of the Board's Motion to Compel Answers were attached. (AR 73, Exhibit 5).

- 10/9/20 Board's Motion for Sanctions for Noncompliance with Discovery Orders. (AR 73).
- 10/15/20 Justice Response to Motion for Sanctions alleging that "supplementation" of Justice's Response to the Board's interrogatories "has occurred." (AR 76 at Footnote 1).
- 10/15/20 Respondent served Supplemental Responses to the Board's First Interrogatories (copy attached as Exhibit 1 to AR 92).
- 10/16/20 Panel hearing on Motion for Sanctions, and other motions. A transcript of that hearing was filed. (AR 93, discussion of motion for sanctions on p. 59-72).
- 10/19/20 Order granting Board's Motions for Sanctions filed. (AR 78).
- 11/2/20 Counsel for Justice files Notice of Impossibility and Motion to Continue which argues the alleged inappropriateness of the sanction imposed. (AR 92 at p. 5-8).
- 11/3/20 Order Amending Order Entered on October 19, 2020. (AR 97). The amendment merely corrected a reference to the date of the Panel's Order granting the original motion to compel.
- 12/23/20 Justice's Motion to Alter and Amend Sanctions Order. (AR 100).
- 12/28/20 Board's Response to Respondent's Motion to Alter or Amend Sanction Order. (AR 103).
- 12/29/20 Order denying Motion to Alter and Amend Sanctions Order filed. (AR 104).

14. With regard to the Motion for Summary Judgment the following actions before the Panel are relevant.

- 11/13/18 Justice filed a Motion for Summary Judgment. (AR 31 and 32).
- 12/17/18 Board's Response to Motion for Summary Judgment asserting need for discovery before being required to respond. (AR 38).
- 4/23/19 Hearing held on Justice Motion for Summary Judgment and other motions, including Board's Motion to Compel (*See*, para. 13, above), and the Board's Motion to Deem Allegations Admitted, all related to the recalcitrance of Justice to squarely address his responsibility for the statements in the juvenile court filings.
- 4/25/19 Justice's Notice Regarding Failure to Comply with Tenn. R. Civ. P. 56.07 and Tenn. R. Civ. P. 56.03. (AR 47).
- 6/5/19 Order granting Board's Motion to Compel, deferring Board's Response to the Motion for Summary Judgment pending completion of discovery, and setting deadline for Board response of September 30, 2019. (AR 50). The Order also required Justice to file an amended answer either admitting or denying the allegations in para.'s 12-19 of the Petition for Discipline or they would be deemed admitted. *Id* at p. 3.
- 9/30/19 Board's Response to Motion for Summary Judgment and Rule 56 Statement of Undisputed Facts Response. (AR 58).
- 4/29/20 Order Denying Motion for Summary Judgment. (AR 66).

15. At the Final Hearing, the Board called one witness, Mr. Justice, who was not present and was not subpoenaed. Counsel for Mr. Justice did not call any witnesses. Panel Decision at p. 3.

16. At the request of counsel for Mr. Justice, the record was left open until January 29, 2021 to allow respondent/appellant to late-file several exhibits. *Id*, at p. 1.

17. Respondent/Appellant filed exhibits 32-41 on January 14, 2021, and the Board

objected to exhibits 39 and 40, because they were unauthenticated transcripts. Respondent was given additional time to cure the deficiency on exhibits 39 and 40, but did not do so. *Id.* at p. 4.

## PROCEDURAL CHALLENGES BY JUSTICE

### Failure to Grant Summary Judgment Motion.

18. Justice asserts that his motion for summary judgment was required to be granted by the Panel. The basis for this assertion is that the Board's response to the motion for summary judgment, in which it requested additional time to obtain discovery, was not supported by an affidavit as required by Rule 56.07. (Appellant's Brief at p. 2, 18).

19. The decision regarding whether to grant additional time for discovery before requiring a response to a motion for summary judgment is within the discretion of the tribunal making that decision. *Regions Financial Corp. v. Marsh USA, Inc.*, 310 S.W.3d 382, 401 (Tenn. App.), *perm app. denied* (2009).

20. Although the Board did not appropriately support its request for additional time to conduct discovery with an affidavit as required by Rule 56.07, this Court FINDS the Panel did not abuse its discretion by allowing the Board additional time to obtain discovery.

21. The record before the Panel demonstrated that the Board had sought discovery from Justice on the issues raised in his motion for summary judgment, regarding whether he was responsible for the statements in his pleadings filed in the underlying juvenile case. (AR 28).

22. The record before the Panel revealed that the Board had been required to file a motion to compel responses to interrogatories, which was pending at the time the Board filed its response seeking additional time to file a substantive response to the Justice motion for summary judgment. (AR 28).

23. The record before the Panel confirmed that answers to the Board's interrogatories



had not been provided as the parties argued the Board's motion to compel at the same hearing as the Panel considered the Board's request that its response to the motion for summary judgment be deferred to allow for completion of discovery. (AR 50).

24. The record before the Panel showed that Justice had not admitted or denied the Petition for Discipline allegations relating to his responsibility for the juvenile filings. (AR 2, 29, 50).

25. While the Board should have submitted an affidavit along with its response requesting additional time to complete discovery, the facts that would have been alleged in such an affidavit are clearly apparent in the Administrative Record existing before the Panel at the time it granted the Board's request.

26. The Board did not abuse its discretion in granting additional time.

27. Even if the granting of additional time for the Board to respond to the motion for summary judgment were an abuse of discretion, Justice still would not have been entitled to have his summary judgment motion granted because it "merely repeats the legal conclusion that the Board cannot prove its case." Order Denying Motion for Summary Judgment. (AR 66). For example, the Motion for Summary Judgment asserts that "there is no evidence Justice **knew about** the filings before they were filed." Motion for Summary Judgment at p. 6 (emphasis in original). (AR 31). But the filings referred to in the Petition for Discipline contain a signature block indicating they were prepared and filed by "Loring Justice, PLLC, Loring E. Justice, BPR #019446, and B. Chadwick Rickman, BPR #017534" as attorneys for Mr. Justice in his juvenile matter.

28. Mr. Justice and his law firm were counsel of record in the case. His name appears

in every signature block. He was also the client and a party to the proceedings. These facts, without any additional evidence, defeat the conclusory legal argument that “there is no evidence . . .” that Justice knew about, read, prepared or approved the filings.

29. The Motion for Summary Judgment is not supported by an affidavit from Mr. Justice, in which he swears that he did not know about, or read, prepare or approve the filings before they were filed. In the absence of such averment(s) the name, address, telephone number, and BOPR number of Mr. Justice on each of the filings (Tenn. R. Civ. Pro. 11.01) along with his filing, submitting, and advocating for such filings (Tenn. R. Civ. Pro. 11.02) constitutes his certification that the filings were not presented for any improper purpose, and that the factual contentions had evidentiary support. In short, Justice is responsible for the content of the filings made under his name. It would require actual averments that he did not read, prepare, approve, or know about the filings to require the Board to come forward with any evidence, beyond the filings themselves to show Justice was responsible for them at the summary judgment stage. Therefore, his unsupported Motion for Summary Judgment was properly denied.

**Imposition of Discovery Sanction.**

30. Justice asserts that the Panel abused its discretion when it sanctioned him for his failure to answer the Board’s interrogatories or comply with the Panel’s two previous Orders requiring answers to the interrogatories.

31. As set forth in para. 13 in the Procedural History Section, above, it is clear that the Panel gave Justice multiple opportunities to appropriately answer the Board’s interrogatories, which had been outstanding for almost 2 ½ years, and which he had been ordered to answer over a year earlier, and again over a month before the hearing on the motion for sanctions. (*See*, AR 50, AR 69).

32. Tenn. R. Civ. P. 37.02 empowers the Panel to impose the specific sanction which was imposed in this case.

33. Justice's late filed "supplementation," on the night before the hearing on the Board's Motion for Sanctions, provides no answers, only further objections and obfuscation. (*See*, Exhibit 1 to AR 92).

34. Throughout these proceedings Justice and his attorney have engaged in a pattern of gamesmanship in an effort to avoid directly addressing his responsibility for the scandalous and impertinent statements contained in his filings in the juvenile court. (*See*, AR 2, AR 3, AR 9, AR 15, AR 21, AR 28, AR 29, AR 31, AR 33, AR 45, AR 46, AR 48, AR 50, AR 66, AR 69, AR 73, AR 76, AR 79, AR 92, AR 100, AR 104, AR 116; Petition for Review filed September 27, 2021; Appellant's Brief filed April 1, 2022).

35. Any lesser or other sanction would not be "just" in regard to defendant's obstreperous and willful failure to answer the Board's interrogatories. Tenn. R. Civ. P. 37.02.

36. Even if the Panel's imposition of this sanction was an abuse of discretion, any error was harmless. As is set forth above in para. 27, 28 and 29, and as will be set forth below, Justice is responsible for the statements made in the filings in his juvenile court case.

## Rule Violations

### Justice's Responsibility for the Filings.

37. Justice is responsible for all the statements in his filings as attorney of record, listed in the signature block along with his address, telephone number, and BOPR number. Rule 11, Tenn. R. Civ. P. (*See* para. 27, 28 and 29, above). Further, the appropriately entered discovery sanction imposed by the Panel in this case deemed as admitted that Justice prepared, read, and/or approved the pleadings at issue. (AR 78, 97, 104).

38. In addition, at a hearing on Justice's Motion for Interlocutory Appeal held February 2, 2017, Justice argued on behalf of the Motion, beginning his remarks with the following:

“Your Honor, these proceedings have transcended the bounds of legitimacy, and the reason that they have is that this Court, in essence, joins those regimes that are often sanctioned in international systems for allowing the commodification or sale of a human being, and here that being [the child].”

(Trial Exhibit 9, Transcript at p. 4, Bates stamped p. 008361).

39. Justice went on to specifically refer to portions of his motion or brief and to orally make arguments, though somewhat less aggressively, in his presentation that were contained in his Motion and Brief. *See*, e.g. (Trial Exhibit 9), Transcript at p. 41, 42, 43, 44 (Bates stamped p. 008371; p. 47, Bates stamped p. 008372; p. 60, Bates stamped p. 008375; p. 63, 64, Bates stamped p. 008376; p. 66, 67, 68, Bates stamped p. 008377; p. 69, 70, 71, Bates stamped p. 008378; p. 73, 74, 75, 76, Bates stamped p. 008378; p. 84, Bates stamped p. 008381; p. 96, Bates stamped p. 008384; p. 103, 104, Bates stamped p. 008386; p. 106, 107, Bates stamped p. 008387; p. 110, Bates stamped p. 008388; p. 118, 120, Bates stamped p. 008390; p. 125, 126, Bates stamped p. 008392; p. 148, Bates stamped p. 008397.

40. Finally, in his "Amended Motion to Recuse with Motions for Disclosure, and other Motions Incorporated" Mr. Justice, as required by Rule 10B, Tenn. R. S. Ct., swore, under penalty of perjury that the assertions in his Motion were "true and correct," and that the Motion was not presented "for any improper purpose, such as to harass or to cause unnecessary delay, or needless increase in the cost of litigation." Declaration of Loring Justice signed March 7, 2017, attached to the aforesaid Motion. (Trial Exhibit 6).

41. Mr. Justice's firm name, individual name and BOPR number appear on all of the filings. Obviously, he advocated for the Motion for Interlocutory Appeal. (Trial Exhibit 9). Obviously, he signed a verification swearing to the allegations in the Amended Motion to Recuse, etc. (Trial Exhibit 6). The Motion to Recuse also incorporates by reference all of the allegations set forth in the Motion for Interlocutory Appeal. (Trial Exhibit 6). This is more than substantial and material evidence to support the finding of the Panel regarding Justice's responsibility for the filings at issue. It is beyond a preponderance of the evidence, it is beyond clear and convincing evidence, it is beyond a reasonable doubt that Loring Justice is responsible for the content of these filings as a licensed attorney in the State of Tennessee. Rule 11.02, Tenn. R. Civ. P.

**Justice's Disparaging Statements About Judge Ash and the Court's Admonishments and Orders to Stop Making Such Statements.**

42. November 17, 2016, at a hearing held this date, Rickman was arguing on behalf of Mr. Justice, who was also present and representing himself along with Mr. Rickman at this hearing. After Rickman made reference to the allegations against the court of corruption, etc., Judge Ash states:

"Wait a minute. For the record, for the record,  
Mr. Rickman, I should find you in contempt of

court for you to imply that this Court is fixed or corrupt, and that's exactly what you were implying because you relate back to all of my rulings. That is entirely inappropriate.

But I'm not going to find you in contempt of court. I'm going to hope that you will rethink those words because they are offensive and false and damage the judicial system."

(Trial Exhibit 15, Transcript p. 232-235, p. 16-21 of attachments to BPR Response to Motion to Enforce Subpoena).

43. **December 6, 2016**, in Mr. Justice's "Motion for Expanded Holiday Co-Parenting," served, this date in the juvenile proceeding, the following statement is made:

"The Court repeatedly is confused or pretends that the burden of proof is on defendant to show some change has occurred. The Court persistently articulates differing and nebulous standards for defendant to transcend and then changes them when defendant does." (footnotes omitted)

(Trial Exhibit 2 at p. 2).

44. **December 6, 2016**, in Mr. Justice's "Motion to Strike Report of Dr. James Murray" filed this date in the underlying proceeding, the following statements are made:

"The appearance, perhaps not the reality, but the appearance is the Court is deliberately stacking the record to assist its favored party, the plaintiff."

(Trial Exhibit 3 at p. 2).

"The Court simply knows better than this, as we all do and such an aberrant decision is evidence the Court has profound disdain for Defendant. Such the Court cannot see the best interest of [the child]."

*id* at p. 3.

45. In addition, Justice claimed that admitting Dr. Murray's report would "make this process more farcical than it already is." *id*.

46. **December 15, 2016**, at a hearing held this date, Judge Ash admonished attorney Rickman and attorney Justice to “stop their practice of making negative comments about this court personally. They have continued to do that. I’ve asked them please to stop doing that.” (Trial Exhibit 4, Transcript p. 8, Bates stamped p. 008348). After giving several examples of the inappropriate derogatory comments, Judge Ash said, “[o]nce again, I’m respectfully asking Mr. Rickman and Mr. Justice to stop putting these comments in their filings. . . . and so once again I am begging you to please refrain from inappropriate conduct and putting these things in their pleadings.” (Trial Exhibit 4, Transcript p. 10, Bates stamped p. 008350).

47. **December 30, 2016**, in Mr. Justice’s “Motion for Interlocutory Appeal by Permission of the Trial Court under Tenn. R. App. 9 of the Trial Court’s December 9, 2016 Order,” filed this date, Judge Ash is accused of:

- ignoring child abuse (Trial Exhibit 5 at p. 2);
- conducting an unorthodox trial that is fundamentally and structurally flawed and so unfairly prejudicial that the child and Justice cannot receive a fair adjudication, *id* at p. 3;
- presiding over a nonsensical trial structure, *id*;
- attempting to hijack the presentation of the Defendant’s case, intimidate witnesses, *id*;
- belligerently hijacking the proceedings when they are going well for Justice, *id*;
- hijacking the trial, going off on a lengthy soliloquies and brow beating. *id* at p. 4;
- not being detached and aloof, *id*;
- demonstrating profound bias and prejudice, *id*;

- exhibiting frank anger and bias, stepping out of the role of neutral fact finder and into the role of advocate, *id* at p. 5;
- abusing his discretion and undermining the appearance of integrity of the proceedings, *id*;
- losing objectivity, *id* at p. 6;
- issuing a bizarre evidentiary ruling, *id*;
- having “lost its way,” *id*;
- making an evidentiary ruling so bizarre that it could properly be described as a farce, *id*;
- giving Ms. Nelson odd and preferential treatment, undermining the appearance of impartiality, *id*;
- having a loss of objectivity, *id* at p. 7;
- appearing to be biased or incompetent, *id* at p. 8;
- simply playing a shell game with a child, *id* at p. 9;
- depriving the child and Justice of a fair trial, *id*;
- yelling at a witness, *id*;
- appearing to be biased, *id* at p. 10;
- tolerating child psychological abuse, *id*;
- angrily excoriating Mr. Justice for raising serious issues, *id*;
- taking offense to evidence demonstrating that the child and Justice cannot receive a fair trial, *id* at p. 11;
- angrily rebuking Justice, *id*;
- demonstrating a loss of judgment making the proceedings have the appearance of corruption, *id*;
- having a demeanor so hostile that it precludes a fair trial, *id*;



- yelling at a witness, *id*;
- allowing opposing counsel to inappropriately touch Justice during cross examination, *id* at p. 12;
- giving the appearance of being a judge who is “in the bag,” *id*;
- demonstrating the persistent demeanor of Yosemite Sam, *id*;
- making statements that create an “obvious problem regarding the appearance of corruption, inconsistent with fundamental fairness, due process, and the ability of [the child] and [Justice] to get a fair trial,” *id* at p. 13;
- attempting to coerce a result in the case that would preclude appellate review, *id*;
- being willfully blind to Ms. Nelson’s child abuse, *id*;
- going bizarrely off the record and chatting up Ms. Nelson, *id* at p. 14;
- stubbornly refusing to change venue “fostering the appearance of corruption in a case in which we already have documented judicial corruption ...,” *id*;
- covering for Ms. Nelson’s alleged inappropriate conduct and suggesting it was acceptable for her to commit contempt, *id* at p. 15;
- assisting Ms. Nelson, *id*;
- giving the appearance of bias, impropriety and an absence of impartiality in the proceedings, *id*;
- taking personal offense and responding in an angry tone to attorney Rickman, *id*;
- hurting the child because he did not like Justice or liked Ms. Nelson too much, *id* at p. 16;
- making a decision that would appear to demonstrate “that something is wrong with the Court,” *id*;

- inappropriate threatening of contempt having the appearance of intent to chill zealous advocacy, evidencing bias or the appearance of impartiality (sic), *id* at p. 17;
- conducting the juvenile case in a manner that “the appearances regarding the integrity of this proceeding are as pungent as ‘the force of a five-week-old, unrefrigerated dead fish,’ (citation omitted),” *id*;
- inappropriately placing himself in the role of expert regarding co-parenting issues, the absurdity of which is palpable, *id* at p. 20;
- demonstrating bias and a “fixed proceeding” by rejecting expert testimony, *id*;
- being unwilling or failing to provide the child with a normal childhood, *id*;
- using “moving goal posts” for Justice regarding how he could achieve expanded co-parenting time, *id*;
- appearing as a bully and attempting to intimidate against zealous advocacy for the child’s welfare, *id* at p. 21;
- attempting to intimidate a witness, *id*;
- rudely, abruptly, and disparagingly denying Justice’s Motion for Individual Therapy for Ms. Nelson, *id*;
- yelling at a witness, *id*;
- addressing one of Ms. Nelson’s witnesses “as one would address the Queen of England, if they were ambassador to the Court of St. James,” *id* at p. 23;
- playing master of ceremonies, *id*;
- mistreating witnesses who are favorable to Justice, *id* a p. 24;
- being more interested in making the Roane Co. courthouse crowd happy and receiving their daily smiles than in caring for the child’s best interest, *id* at p. 25;
- giving self-serving soliloquies as back door self-glorification or for secondary gain, *id* at p.26;

- articulating “another, differing, nebulous and ever-shifting standard for what must be proven to achieve the normalized, unsupervised co-parenting schedule for Justice and the child, *id* at p. 29;
- appearing to place an insurmountable burden on Justice to secure unrestricted co-parenting time, *id*;
- ignoring or being unaware of Tennessee law, *id* at p. 30;
- presiding over a “tragic miscarriage of justice,” *id*;
- making a ruling “that is aberrant to the case law,” *id* at p. 31;
- using “the *ipso facto* fallacy that is the province of tyrants: it is so because I say it is so, without explanation,” *id*;
- creating an appearance of bias or corruption by ignoring the court’s own expert, *id*;
- running from certain evidence as if it was the Black Plague, *id* at p. 32;
- failing to address the case law, *id*;
- persistently rejecting well-articulated legal arguments, *id*;
- engaging in judicial misadministration, undertaking a “bizarre, crawling years-long trial structure,” chatting up Ms. Nelson off the record, and failing to comment on Ms. Nelson’s attempt to sell unsupervised time with the child is so grave it is a violation of Justice’s federal civil rights, *id* at p. 34;
- allowing the child to be “held hostage for over three years,” and be “withheld from [Justice] to extract money from him,” *id* at p. 35;
- tolerating Ms. Nelson’s “morally sick, illegal, commodification of a human being,” *id* at p. 36;
- giving an appearance of corruption by ignoring the commodification of the child, *id*;
- suppressing evidence of hostage negotiations, *id*;
- running from certain issues as if they are the Ebola virus, creating an appearance that the court is not objective, *id* at p. 38;

- fostering the appearance of corruption by failing to comment on the excluded “hostage negotiation” evidence, *id* at p. 40;
- failing to stop or even address Ms. Nelson’s extortion and hostage negotiation tactics, *id* at p. 42;
- sanctioning child abuse, *id* at p. 43;
- seeking to impose “gaslighting” or an “Emperor’s New Clothes” scenario on Justice and Rickman, *id* at p. 45;
- grossly improperly threatening contempt, *id*;
- abdicating his role to appoint an expert and deferring to Ms. Nelson, investing her with judicial authority, *id*;
- allowing the attempted selling of unsupervised time with the child and deputizing the attempted seller, Ms. Nelson, with authority to select all medial providers, violating Justice’s federal constitutional rights by being so shocking to the conscience, *id* at p. 46.

48. **January 2, 2017**, an Order memorializing Judge Ash’s order, given orally at the December 15, 2016 hearing, to stop the derogatory comments was filed in January 2017. The Order was signed by Judge Ash January 2, 2017. (Trial Exhibit 15, p. 38 and 39 of the attachments to the BPR Response to Motion to Enforce Subpoena).

49. **February 2, 2017**, at a hearing held this date, Judge Ash ordered Justice and Rickman to stop making insulting and derogatory comments about the judge. (Trial Exhibit 9, Transcript p. 69-82, Bates stamped p. 008378-008381; p. 236, Bates stamped p. 008419).

50. **February 10, 2017**, in an Order filed this date, Justice and Rickman are admonished in detail to refrain from making insulting, negative, and derogatory comments about the Court. (Trial Exhibit 8). In the Order Justice and Rickman “are specifically ordered to refrain from making negative or offensive comments about this Court and its rulings, either by

illustration or otherwise, both in court and in future pleadings.” (Trial Exhibit 8 at unnumbered p. 10-11).

51. **March 8, 2017**, Mr. Justice filed his “Amended Motion to Recuse with Motions for Disclosure and other Motions Incorporated.” Mr. Justice incorporates by reference all the statements in his previous motions to recuse and the statements in his Motion for Interlocutory Appeal referred to in para. 47, above. (Trial Exhibit 6). In addition, Judge Ash is accused of:

- taking actions “to the abuse of [the child].” *Id* at p. 2;
- being hostile toward Justice, and his counsel, *Id*;
- consistently interjecting his own commentary during testimony, *Id* at p. 3;
- acting bizarrely and incorrectly, *Id*;
- speaking angrily to Mr. Justice, *Id*;
- conducting the trial in a weird, disturbing, indecent and undignified manner, *Id* at p. 4;
- lying and attempting to deceive attorney Rickman, and protect Ms. Nelson, *Id*;
- being disoriented as to time and subject to disqualification, *Id*;
- blessing by judicial notice, an absurd claim of Ms. Nelson, *Id*;
- taking judicial notice “of an allegation that has all the credibility of a claim the moon is made of swiss cheese,” *Id* at p. 6;
- being complicit in Ms. Nelson’s “extortion attempt disguised as a request for reimbursement,” *Id* at p. 7;
- “suppressing evidence that is consistent with Ms. Nelson’s previous attempt to extort money from Mr. Justice in exchange for unsupervised co-parenting, via a bogus claim of judicial notice,” *Id* at p. 8;
- having subconscious bias and bringing the judiciary into disrepute, *Id*;

- appearing corrupt, *Id* at p. 9;
- causing Ms. Nelson to bask in the glow of the trial court's protectionism, *Id*;
- persistently ignoring evidence, *Id* at p. 11;
- running from certain issues "as if they were the Ebola virus," *Id*;
- taking personal offense to defendant's criticisms in his motion for interlocutory appeal, *Id* at p. 12;
- lashing out at Justice, *Id*;
- making an outrageous claim against Justice, *Id*;
- making false claims and false accusations against Justice, *Id* at p. 13;
- being embittered and creating veracity issues about Justice and his counsel, because of the ego injury suffered by Judge Ash due to the revelation of his "own recurrent dishonesty," *Id*;
- being an illegitimate court, *Id*;
- being morally sick, *Id*;
- having obvious antipathy for Justice, *Id* at p. 15;
- having a loss of judgment, *Id*;
- assisting Ms. Nelson and engaging in conduct that is "sick and abusive," *Id*;
- lying about his lack of a relationship with Judge Wicks, *Id* at p. 16;
- being incompetent, *Id*;
- engaging in conduct that is "wildly improper," *Id* at p. 17;

52. In an Order filed April 18, 2017, Justice and Rickman were admonished in detail to stop their slanderous, disrespectful, and derogatory comments about the judge. (Trial Exhibit 7). In the Order, Judge Ash notes that he has asked the attorneys "to cease their personal attacks

on the Court in both written motions and in open court” on “**at least three occasions.**” (emphasis added ) (Trial Exhibit 7 at unnumbered p. 9).

53. The underlying juvenile case, in which the statements at issue in these proceedings were made, took place over numerous hearings and trial days from 2013 until March 2017.

54. According to the Tennessee Court of Appeals, “Mother’s proof took approximately a day and a half. The rest of the two-year period was consumed by Father’s proof and numerous motions.” *Nelson v. Justice*, 2019WL 337040, slip op. at 17 (Tenn. App. 2019).

55. Over all that time, with all those hearings, and hundreds of pages of filings, Justice never recanted, withdrew, or otherwise ever dissociated himself from the statements in his filings which are at issue here. Indeed, through counsel, he still maintains that the statements at issue were objectively reasonable; and, that he had “a reasonable factual basis” for making the statements. (Appellant’s Brief at p. 28-29).

56. The decision of Judge Ash with respect to the underlying case was affirmed by the Court of Appeals “in all respects.” *id.*, slip op. at 1.

57. Permission to appeal the underlying case to the Tennessee Supreme Court was denied September 18, 2019. *id.*

58. Justice’s 130-page complaint against Judge Ash (AR 32, Exhibit 1 to Justice’s Statement of Undisputed Facts, Bates stamped p. 0928-1057) was dismissed by the Board of Judicial Conduct which found that it **did not** rise to the level of judicial misconduct. (AR 31, Exhibit E to Justice Motion for Summary Judgment, Bates stamped 0837).

59. The juvenile case and the actions of Judge Ash have been reviewed by the Court of Appeals, and the Board of Judicial Conduct and no merit was found for Justice's outlandish accusations.

**Legal Standards Applicable to the Charged Rule Violations.**

60. "[P]eJORative statements made by an attorney in motions and other pleadings filed in state and federal courts are not entitled to First Amendment protection." *BOPR v. Parrish*, 556 S.W.3d 153, 163 (Tenn. 2018).

61. In *Bailey v. BOPR*, 441 S.W.3d 223 (Tenn. 2014), the Tennessee Supreme Court "noted that even if an attorney believes that the court has issued an erroneous ruling, zealous representation of a client never justifies the use of disrespectful, unprofessional or indecorous language to the court." (internal quotations marks, brackets and citation omitted) *BOPR v. Parrish*, 556 S.W.3d 153, 164 (Tenn. 2018).

62. Although it is proper for an attorney to point out the court's errors in a brief, it is not acceptable for the attorney to "insert matters which are defamatory, scandalous, impertinent and untrue" into a brief, and the court will not "tolerate, either orally or by brief, . . . abuse of the . . . judge . . . ." *Ward v. University of the South*, 209 Tenn. 412, 354 S.W.2d 246, 249 (1962).

63. Abusive and obstreperous conduct by an attorney toward a judge during ongoing litigation violates an attorney's ethical obligation to avoid engaging in conduct intended to disrupt a tribunal. *Hancock v. BOPR*, 447 S.W.3d 844, 853 (Tenn. 2014).

64. In *BOPR v. Slavin*, 145 S.W.3d 538, 549-50 (Tenn. 2004), the Tennessee Supreme Court quoted the Supreme Court of Kentucky which had "observed that the statements need not be false to pursue disciplinary action." *Id* at 549.



“Respondent appears to believe that truth or some concept akin to truth, such as accuracy or correctness, is a defense to the charge against him. In this respect he has totally missed the point. There can never be a justification for a lawyer to use such scurrilous language with respect to a judge in pleadings or in open court. The reason is not that the judge is of such delicate sensibilities as to be unable to withstand the comment, but rather that such language promotes disrespect for the law and for the judicial system. Officers of the court are obligated to uphold the dignity of the Court of Justice and, at a minimum, this requires them to refrain from conduct of the type at issue here. Thus, an attorney’s speech may be sanctioned if it is highly likely to obstruct or prejudice the administration of justice.”

Quoting *Kentucky Bar Association v. Waller*, 929 S.W.2d 181, 183 (KY 1996).

65. In *Farmer v. BOPR*, 660 S.W.2d 490 (Tenn. 1983), the attorney accused members of the Court of Appeals of being liars. The attorney contended that his statements were true, and that he was justified in calling members of the Court of Appeals liars. This “defense” was dismissed out of hand by the Tennessee Supreme Court. “Further discussion is unnecessary. It has long been settled in this state that such conduct will not be countenanced in a court of law in this jurisdiction.” *Id* at 491.

66. “When an attorney is of the opinion that the court has issued an erroneous ruling, it is his or her duty as an advocate to seek reconsideration or clarification of that ruling. However, the exercise of this duty of advocacy never justifies the use of disrespectful, unprofessional or indecorous language to the court. Respect and zealous advocacy are not mutually exclusive concepts. When zealous advocacy degenerates into impertinent, scandalous, and insulting language, it is the court’s duty to address squarely the offending conduct, and to tailor a sanction appropriate to the offense. See, e. g., *Commonwealth v. Rubright*, 414 A.2d 106,

110 (1980) ('the judge is the court, and a display of insolence and disrespect to him is an insult to the majesty of the law itself . . . . When carrying out the judicial function, the judge becomes a personification of justice itself. When presiding over any aspect of the judicial process, the judge is not merely another person in the courtroom, subject to affront and insult by lawyers.')

*In re: Moncier*, 550 F. Supp. 2d 768, 807 (E.D. Tenn. 2008) (quoting *Conklin v. Warrington Township*, 2006 WL 2246415 (M.D. Penn. 2006), slip op at 2.

67. The Tennessee Supreme Court has held that "the objective 'reasonable attorney' standard is the appropriate standard to apply in a disciplinary proceeding involving an attorney's in-court speech." *BOPR v. Parrish*, 556 S.W.3d at 166. "Under the objective standard, the court assesses the statements in terms of 'what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances . . . [and] focus[ing] on whether the attorney had a reasonable factual basis for making the statements, considering their nature and the context in which they were made.' *Gardner*, 793 NE 2d at 431 (citations omitted) It is the reasonableness of the belief, not the state of mind of the attorney that is determinative.' *Holtzman*, 573 NYS 2d 39, 577 NE 2d at 34." *BOPR v. Parrish*, 556 S.W.3d at 165-166.

## LEGAL CONCLUSIONS

68. The Panel did not abuse its discretion in imposing the discovery sanction.

69. The Panel did not abuse its discretion in granting the Board additional time to respond to the Motion for Summary Judgment, even though the Board failed to provide an affidavit in support of its request for additional time. Moreover, the Motion for Summary Judgment was correctly denied.

70. Mr. Justice is responsible for the content of the filings at issue which formed the basis for the Petition for Discipline.

71. The filings at issue contain scandalous, defamatory, disrespectful, unprofessional, insulting, abusive and accusatory statements which have no place in public statements by licensed attorneys about judges.

72. The improper statements were published to third parties. There has been no dispute regarding publication.

73. Substantial and material evidence supports the Panel's findings of fact and conclusions of law as to the disciplinary rule violations of Mr. Justice set forth in the Panel Decision.

74. Insulting, belittling, and abusive name-calling of a judge is a violation of the ethical duties imposed upon licensed attorneys in Tennessee, regardless of any factual basis for such words. Mr. Justice referred to Judge Ash as a tyrant, a bully, a liar, and as having the demeanor of Yosemite Sam. Such insulting characterizations are not capable of being supported by an objectively reasonable factual basis. They are simply demeaning, and belittling insults which are abusive toward the court.

75. Allegations that a judge is sanctioning child abuse, playing a shell game with a child, running from evidence like it's the Black Plague, running from issues like it's the Ebola virus, trying to intimidate a party and an attorney into remaining silent and accepting a "gaslighting" or an "Emperors new clothes" scenario, and acting as if the judge were the ambassador to the Court of St. James addressing the Queen of England are insulting, belittling, and abusive characterizations of a judge that are incapable of being supported by an objective factual basis. A duly licensed attorney in the State of Tennessee violates his ethical obligations by making such characterizations of the court.

76. Statements, characterizations, and abusive name-calling of a judge, as occurred in this case, undermines public confidence in the administration of justice and promotes disrespect for the judiciary and the law.

77. Tennessee provides appropriate mechanisms and forums for addressing judicial impropriety or error. Any party aggrieved by a judicial action has the right to appeal. Any person who believes the judge in their case is biased, prejudiced or unfair can file a motion to recuse, and have any denial of the motion reviewed in an expedited appeal. Any person with complaints about the competency, integrity or propriety of a judge may lodge a complaint with the Board of Judicial Conduct.

78. Justice was admonished and ordered on several occasions to stop making derogatory statements about Judge Ash, but he continued to do so. Justice clearly intended for his abusive and obstreperous conduct during the juvenile proceedings to result in disrupting the tribunal; and they did disrupt the proceedings, requiring Judge Ash to issue orders and utilize valuable courtroom time to address the insulting accusations. The scandalous and impertinent statements detracted from consideration of relevant evidence and the merits of the case.

79. The continued and aggressive nature of the accusations, particularly after multiple admonitions and orders to cease, indicate that Mr. Justice was attempting to badger Judge Ash into committing some act of judicial misconduct, or intimidate him into either recusing himself from the case, or issuing the rulings desired by Justice. They were not made for any proper purpose and lacked evidentiary support.

80. The Panel did not abuse its discretion by finding that Justice knew these statements were false or made them with reckless disregard as to their truth or falsity. (See paragraphs 56-59, above). Substantial and material evidence supported this conclusion of the Panel.

81. Mr. Justice engaged in conduct intending to disrupt a tribunal in violation of Rule 3.5(e), Mr. Justice made statements that he knew to be false, or made them with reckless disregard as to their truth or falsity, concerning the qualifications or integrity of Judge Ash in violation of Rule 8.2(a)(1).

82. By violating Rule 3.5(e) and Rule 8.2(a)(1), Mr. Justice engaged in professional misconduct under Rule 8.4(a), and (d), because he violated the Rules of Professional Conduct and he engaged in conduct that was prejudicial to the administration of justice.

## SANCTION

83. In evaluating the hearing panel's sanction, this court must first determine whether the hearing panel properly applied the ABA Standards for Imposing Lawyer Sanctions in identifying a baseline sanction for the unethical conduct. After determining the baseline sanction the court must consider any aggravating and mitigating factors. *Beier v. BOPR*. Tenn. Sup. Ct. R. 9, Section 15.4.

84. The presumptive sanction is determined in each case by considering:

“(1) the ethical duty the lawyer violated – whether to a client, the public, the legal system, or duties as a professional; (2) the lawyer's mental state; and, (3) the extent of the actual or potential injury caused by the lawyer's misconduct.”

85. Any aggravating or mitigating circumstances must be considered in determining whether to increase or decrease the presumptive sanction in a particular case. *BOPR v. Daniel*, 549 S.W.3d 90, 100 (Tenn. 2018).

86. The Panel found that ABA Standards 6.12, 6.22, and 7.2 applied and provided a baseline sanction of suspension from the practice of law. However, the Panel also found that Mr. Justice's misconduct was undertaken “with the intent to obtain personal benefit through securing his desired outcome in the proceeding.” (Panel Decision at p. 18-19). This finding, regarding his intent to obtain a personal benefit by his misconduct, is supported by substantial and material evidence. *See*, para. 78, above.

87. When the attorney knowingly violates a court order causing serious injury or potentially serious injury to a party or causing serious or potentially serious interference with a legal proceeding with the intent to obtain a benefit for himself, the presumptive sanction is disbarment under ABA Standard 6.21 rather than suspension under 6.22.

88. Mr. Justice's actions were intended to cause serious injury to Ms. Nelson by needlessly prolonging and multiplying the proceedings related to their child custody case resulting in additional legal fees, stress, and upheaval in her personal life and needless interference with her professional life by requiring additional portions of her time and attention be devoted to the child custody proceedings rather than the requirements and obligation of her employment.

89. Mr. Justice's actions were intended to cause serious injury to Ms. Nelson by intimidating Judge Ash into ruling in his favor, which would interfere with her exercise of parental rights and harm her relationship with the child.

90. Mr. Justice's actions were intended to cause serious interference with a legal proceeding by intimidating Judge Ash into recusal or into ruling in his favor, or by enticing judicial misbehavior by Judge Ash in response so as to require the appointment of a new judge to preside over the case. Justice's actions actually did cause substantial interference with the case by requiring use of court time and issuance of court orders that should not have been necessary and which detracted from the consideration of the evidence and the merits of the case, and needlessly protracted the litigation.

91. Similarly, when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes serious or potentially serious injury to a client, the public, or the legal system with the intent to obtain a benefit for himself, the presumptive discipline is disbarment under ABA Standard 7. 1, rather than suspension under 7.2.

92. As set forth in paragraphs. 86-90, above, Mr. Justice's actions caused potentially serious injury to Ms. Nelson. His actions also caused serious or potentially serious injury to the

legal system by seriously interfering with the proceedings, undermining public confidence in the judiciary, and subjecting the administration of justice to ridicule.

93. In addition, when an attorney has received a prior suspension for similar misconduct the appropriate sanction is disbarment, pursuant to ABA Standard 8.1. Mr. Justice has been sanctioned previously by disbarment for similar conduct involving making false statements to a court with the intent to obtain a benefit for himself. (Trial Exhibit 11). Thus, ABA Standard 8.1 also applies to the conduct of Mr. Justice in this case.

94. Applying the ABA Standards 6.21, 7.1 and 8.1 to the facts in this case yields a baseline sanction of disbarment. The Panel Decision was in error in determining the applicable ABA Standards in this case and in setting the baseline sanction of suspension.

95. The aggravating circumstances found by the Panel are supported by substantial and material evidence.

96. One additional aggravating factor should also be included in determining the appropriate discipline to be imposed against Mr. Justice. His actions were dishonest or selfishly motivated. ABA Standard 9.22(b).

97. No mitigating factors exist. None were found by the Panel, and none have been alleged by counsel for Mr. Justice.




**JUDGMENT**

98. It is the Judgment of this Court that Mr. Justice should be disbarred from the practice of law.

99. Costs are taxed against Mr. Justice for which execution may issue, if necessary.

Enter:

  
\_\_\_\_\_  
Thomas J. Wright  
Senior Judge

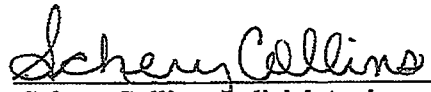
CERTIFICATE OF SERVICE

A true and exact copy of the foregoing Final Decree on the Review of the Hearing Committee Panel Disciplinary Proceedings has been served upon the following persons via email at the email addresses listed:

James W. Milam  
[jmilam@tbpr.org](mailto:jmilam@tbpr.org)

Linn Guerrero  
[linn@loringjustice.com](mailto:linn@loringjustice.com)

On this the 15<sup>th</sup> day of July, 2022.

  
\_\_\_\_\_  
Schery Collins, Judicial Assistant  
to Senior Judge Thomas J. Wright

CERTIFICATE OF SERVICE

I, hereby certify that a true and exact copy of the foregoing was mailed or personally delivered to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

via U. S. Mail, postage prepaid, this the \_\_\_\_\_ day of \_\_\_\_\_, 20 .

\_\_\_\_\_  
Clerk & Master