

FILED

JUN 01 2011

Clerk of the Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: HERBERT S. MONCIER, BPR #001910

An Attorney Licensed to Practice Law in Tennessee
(Knox County)

BOPR NO. 2008-1766-2-SG

NO. M2011-00595-SC-BPR-BP

ORDER OF ENFORCEMENT

On July 30, 2008, Disciplinary Counsel of the Board of Professional Responsibility ("Board") filed a petition for discipline against Mr. Herbert S. Moncier. A supplemental petition for discipline was filed on September 28, 2009. After Mr. Moncier filed responses to the petition and supplemental petition, a Hearing Panel of the Board convened for a multi-day hearing at which Mr. Moncier was represented by counsel. On January 13, 2010, the Hearing Panel issued its judgment finding Mr. Moncier had violated certain of the Tennessee Rules of Professional Conduct and imposing an eleven-month, twenty-nine-day suspension, with all but forty-five days of the suspension probated. The Hearing Panel also required Mr. Moncier to have a practice monitor and to obtain an additional twelve hours of ethics continuing legal education during the probationary period. The Board considered the Hearing Panel's Judgment on March 12, 2010.

Thereafter, Mr. Moncier appealed the Hearing Panel's judgment, and a special trial judge was appointed pursuant to Tenn. Sup. Ct. R. 9, section 1.5. On September 10, 2010, the trial judge filed a memorandum opinion and order affirming in part and reversing in part the Hearing Panel's judgment and remanding to the Hearing Panel for reconsideration of the appropriate discipline.

On February 1, 2011, following this Court's decision in Bd. of Prof'l Responsibility v. Cawood, 330 S.W.3d 608 (Tenn. 2010), the Board filed a motion asking the trial court to set aside its September 10, 2010 memorandum opinion and order on the ground that Mr. Moncier's petition for writ of certiorari was insufficient to confer subject matter jurisdiction upon the trial court because it failed to satisfy the requirements of Tennessee Code Annotated section 27-8-106. On February 18, 2011, the trial court granted the Board's motion, vacated the September 10 memorandum opinion and order, and dismissed Mr. Moncier's appeal. On the same date, February 18, 2011, Mr. Moncier filed a motion to alter or amend, and the trial court immediately denied the motion. Mr. Moncier then filed a notice of appeal from the trial court's February 18, 2011 order, and the Appellate Court Clerk's Office docketed the appeal as E2011-00616-SC-R3-BP.

On March 9, 2011, the Board submitted a proposed order of enforcement and protocol memorandum to this Court pursuant to Tenn. Sup. Ct. R. 9, section 8.4, which, in relevant part, provides as follows:

If the judgment of the hearing panel is that the respondent shall be disbarred or suspended for any period of time in excess of three months and no appeal therefrom is perfected within the time allowed therefore, . . . the Board shall forward a copy of the judgment . . . to the Supreme Court of Tennessee. The Court shall review the recommended punishment provided in such judgment . . . with a view to attaining uniformity of punishment throughout the state and appropriateness of punishment under the circumstances of each particular case. The Court may direct that the transcript or record of any proceeding be prepared and filed with the Court for its consideration.

If the Court finds that the punishment appears to be inadequate or excessive, it shall issue an order advising the Board and the respondent that it proposes to increase or to decrease the punishment. If the Court proposes to increase the punishment, the respondent attorney shall have twenty (20) days from the date of the order to file a brief and request oral argument; if the proposal is to decrease the punishment, the Board shall have twenty (20) days within which to file a brief and request oral argument. Reply briefs shall be due within twenty (20) days of the filing of the brief of the party upon whom the burden of persuasion rests. If oral argument is requested it shall be promptly granted. Upon termination of such proceedings as are requested the Court may modify the judgment of the hearing panel . . . in such manner as it deems appropriate.

On March 14, Mr. Moncier filed a motion seeking to stay the enforcement of discipline until the conclusion of his appeal in case number E2011-0616-SC-R3-BP. In the alternative, Mr. Moncier asked for an opportunity to respond to the Board's proposed order of enforcement. On April 26, 2011, this Court denied Mr. Moncier's motion for stay, but granted his alternative request for an opportunity to respond to the order of enforcement.

On May 9, 2011, Mr. Moncier filed a lengthy response to the proposed order of enforcement, formally raising fifteen issues. The following day, Mr. Moncier filed the following separate motions:

Motion For This Court To Assume Jurisdiction of Respondent's Appeal As of Right From Knox County Criminal Court # 96518 And To Consolidate That Appeal With This Case;

Motion For Uniformity-of-Punishment Discovery and to Supplement the Record;

Motion To Consolidate Case E2011-00616-SC-R3-BP with this Case;

Motion to Dismiss or, in the Alternative For An Order for the Parties to Prepare a Joint Record;

Motion For This Court To Await Final Orders And Appeals As of Right In Two Additional Cases Pending in Trial Courts So As To Assume Jurisdiction And To Consolidate Those Appeals With This Case; and

Motion to Consolidate Case E2011-*****-SC-R3-BP With This Case.

On May 24, 2011, the Board filed a reply to Mr. Moncier's response to the order of enforcement and responses in opposition to the foregoing motions.

Having now thoroughly considered the Board's proposed order of enforcement, Mr. Moncier's response, the Board's reply, Mr. Moncier's motions, and the Board's responses to those motions in the context of our review under Tenn. Sup. Ct. R. 9, section 8.4, we conclude that the punishment imposed by the Hearing Panel is neither inadequate nor excessive, but rather is appropriate under the circumstances of this case and consistent with the goal of attaining uniformity of punishment throughout the State.

It is, therefore, **ORDERED, ADJUDGED** and **DECREED** by the Court that:

Mr. Herbert S. Moncier shall be suspended from the practice of law for a period of

1. eleven (11) months and twenty-nine (29) days, pursuant to Supreme Court Rule 9, Section 4.1.

2. The first forty-five (45) days of Mr. Moncier's suspension shall be an active

suspension pursuant to Supreme Court Rule 9, section 4.2.

3. Mr. Moncier's remaining suspension, after the first forty-five (45) days, shall be stayed in conjunction with a period of ten and one-half (10½) months of probation, pursuant to Supreme Court Rule 9, section 8.5.

4. The following conditions are imposed upon Mr. Moncier's probation of ten and one-half (10½) months:

a. Mr. Moncier shall complete an additional twelve (12) hours of

ethics continuing legal education over and above the required three (3) hours of ethics CLE during his period of probation; and

b. The Board of Professional Responsibility shall assign a

practice monitor to monitor Mr. Moncier's practice and court appearances for the duration of his probation and report immediately to the Board any behavior in violation of the Rules of Professional Conduct.

The suspension shall become effective ten (10) days after the date of filing

5. of this Order.

6. Mr. Moncier shall comply in all aspects with Supreme Court Rule 9,

Sections 18 and 19, regarding the obligations and responsibilities of suspended attorneys.

7. Pursuant to Supreme Court Rule 9, Section 24.3, Mr. Moncier shall pay to

the Board of Professional Responsibility the expenses and costs of this matter in the amount of \$22,038.32, and in addition, shall pay to the Clerk of this Court the costs incurred herein, within (90) days of the entry of this Order, for all of which execution may issue if necessary.

8. The Board of Professional Responsibility shall cause notice of this

suspension to be published as required by Supreme Court Rule 9, Section 18.10.

9. Mr. Moncier's "Motion For This Court To Assume Jurisdiction of Respondent's Appeal As of Right From Knox County Criminal Court # 96518 And To Consolidate That Appeal With This Case" is denied as moot.

10. Mr. Moncier's "Motion For Uniformity-of-Punishment Discovery and to Supplement the Record" is denied as moot.

11. Mr. Moncier's "Motion To Consolidate Case E2011-00616-SC-R3-BP with this Case" is denied as moot.

12. Mr. Moncier's "Motion to Dismiss or, in the Alternative For An Order for the Parties to Prepare a Joint Record" is denied as moot.

13. Mr. Moncier's "Motion For This Court To Await Final Orders And Appeals As of Right In Two Additional Cases Pending in Trial Courts So As To Assume Jurisdiction And To Consolidate Those Appeals With This Case" is denied as moot.

14. Mr. Moncier's "Motion to Consolidate Case E2011-*****-SC-R3-BP With This Case" is denied as moot.

PER CURIAM