

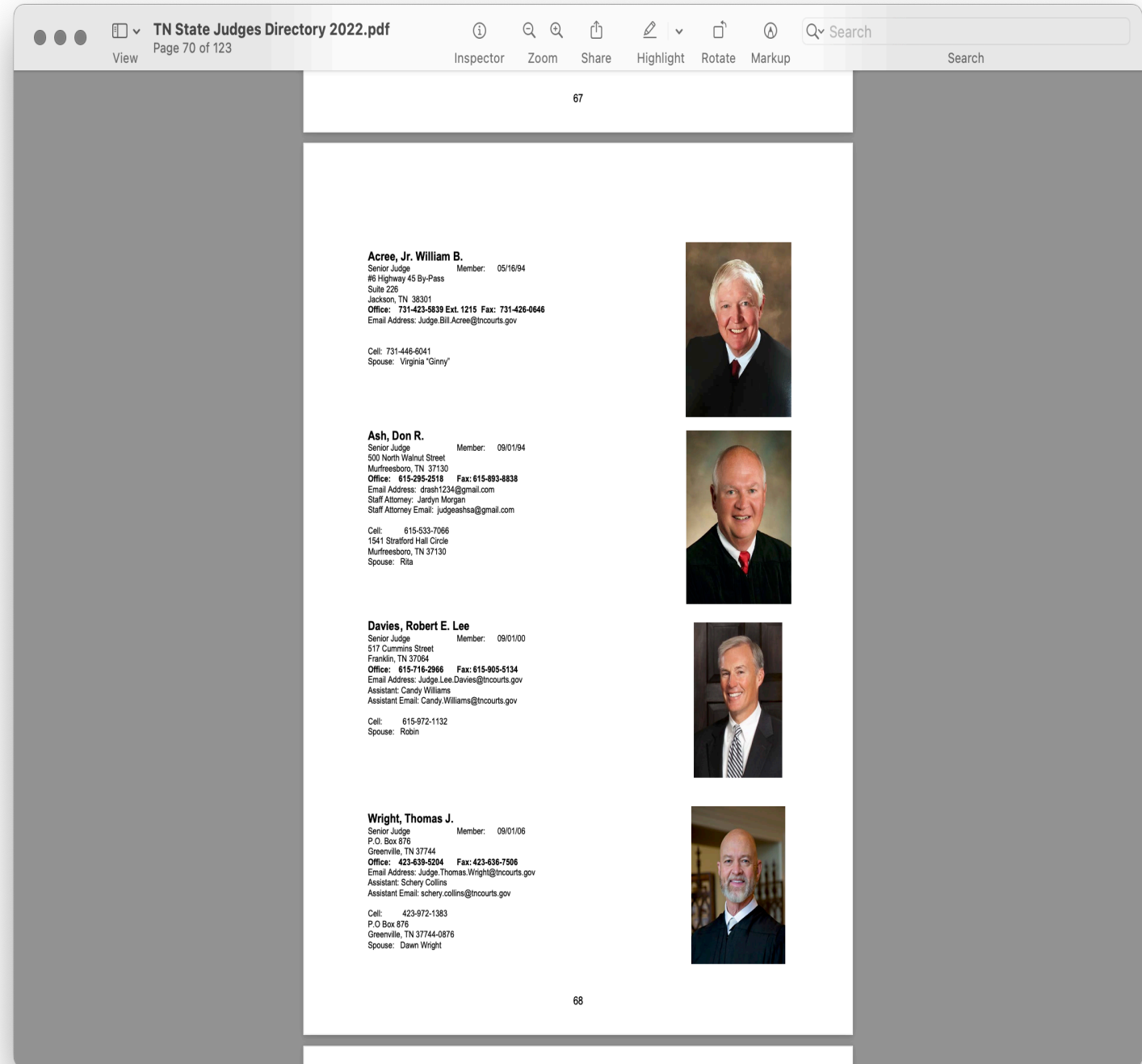
A background image showing a group of business professionals in a meeting. A woman in a grey blazer is gesturing with her hand while talking. A man in a dark suit and striped tie is visible on the left. In the foreground, a person's hand is pointing at a tablet displaying a presentation with charts and text. Another person is holding a smartphone. The scene is set in a bright, modern office environment.

Appeal of a Finding by the Board of Professional Responsibility

Justice Holly Kirby
Senior Judge Don R. Ash
Murfreesboro, Tennessee

Normally Heard by One of the State's Senior Judges

- Appointed by the Tennessee Supreme Court to either a two- or four-year term (Based on the age of the Judge)
- Hear cases across the State when local Judges recuse or have some other issue
- Work is allegedly part-time (110 days a year)
- I love my job !!!



Court May Reverse
or Modify the
Panel's Decision if Its
Findings, or
Conclusions are :

- In violation of constitutional or statutory provisions
 - In excess of panel's jurisdiction
 - Unlawful procedure
 - Arbitrary or capricious or abuse of discretion or clearly unwarranted exercise of discretion
 - Unsupported by evidence both substantial and material in light of the entire record
- When looking at the substantiality of evidence, the Court is to consider
 - if the record fairly detracts from its weight
 - but the Court SHALL not substitute its own judgment for that of the hearing panel as to the weight if the evidence on questions of fact

Hughes v. Bd.
Of Prof'l
Responsibility,
259 S.W.3d
631(Tenn.
2008)

- In the broadest sense, the Court is required to determine whether the administrative agency had made a clear error in judgment.
- An arbitrary or capricious decision is one not based on any course of reasoning or exercise of judgment, or one which disregards the facts or circumstances of the case without some basis which would lead a reasonable person to reach the same conclusion.
- Our Tennessee Supreme Court has recognized a decision not supported by substantial and material evidence qualifies as arbitrary and capricious.

Tennessee Supreme Court Rule 9, sec. 33.1

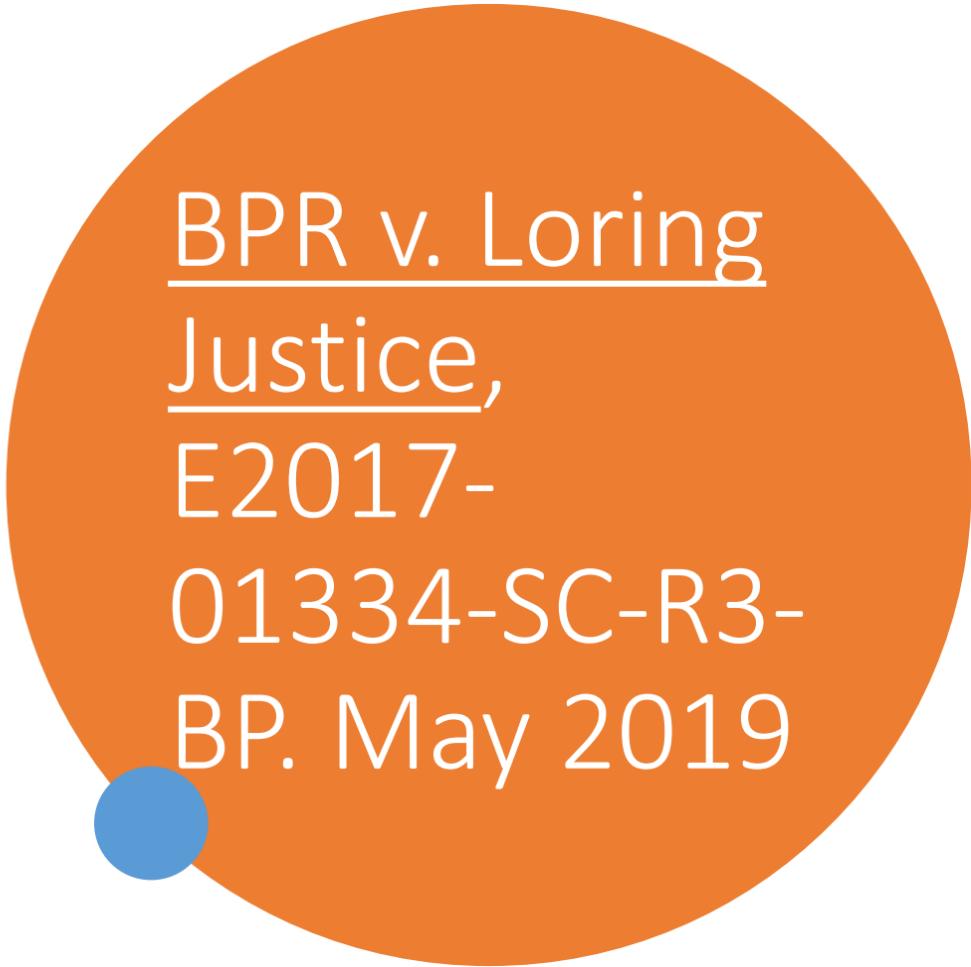
- After Board of Professional Responsibility Finding either side can appeal
- Standard of Review to be applied by trial judge :
 - on the transcript of the evidence
 - Court can take additional proof if allegations of irregularities in procedure as necessary to resolve the issue
 - Court may permit additional discovery on appeal limited to allegations of irregularities in the proceedings

BPR vs. Charles
E. Walker,
M2021-00099-
SC-R3-BP,
October 2021

- Written by Justice Sharon Lee
- Hearing Panel suspended attorney for three years
- Judge Davies affirmed Panel Decision
- The Supreme Court affirms the standard of a hearing panel's decision must be supported by "substantial and material evidence" plus the ruling must not be "arbitrary nor abuse of discretion."

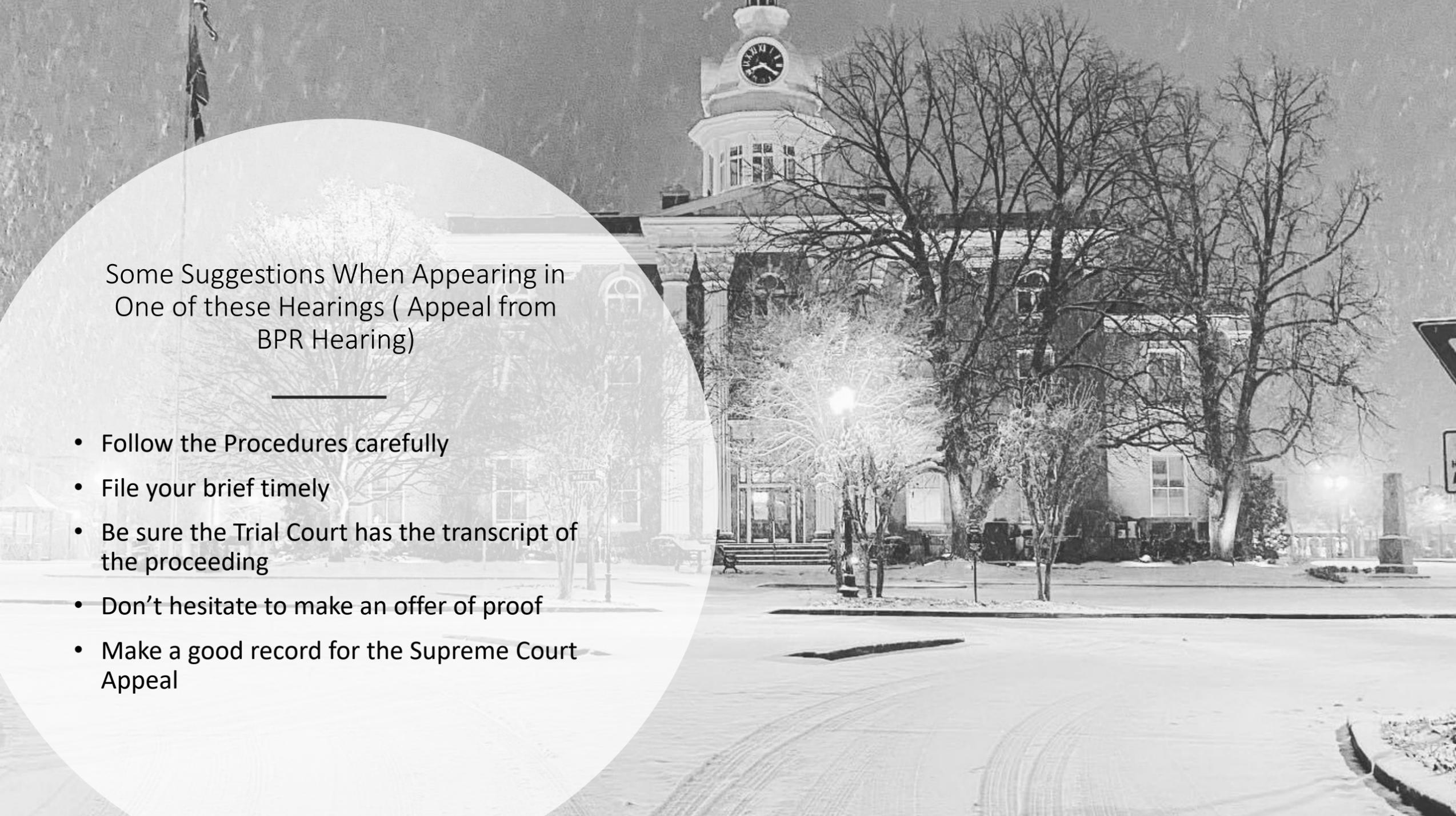
Bailey vs. BPR, W2013-01979-SC-R3-BP, August 2014

- Hearing panel granted a 60 day suspension due to Bailey's alleged disruptive behavior during trial proceedings
- Hearing Panel applied the ABA Standards for Imposing Lawyer Sanctions
- Senior Judge Paul Summers found application of ABA Standards 6.22 and 7.2, assessment of aggravating and mitigating factors, plus imposition of 60 day suspension was arbitrary and capricious as well as an abuse of discretion in light of comparative fault.
- Supreme Court reinstated the Hearing Panel's decision



BPR v. Loring
Justice,
E2017-
01334-SC-R3-
BP. May 2019

- Hearing Panel found misconduct by Justice which included allegedly being dishonest with a Federal tribunal and imposed a one-year active suspension.
- Senior Judge Davies agreed with Board counsel who argued the Hearing panel did not apply the appropriate ABA standard which should have led to disbarment.
- Supreme Court agreed with Davies and Justice disbarred
- Can watch oral argument at Tennessee Supreme Court Videos under case name and number



Some Suggestions When Appearing in
One of these Hearings (Appeal from
BPR Hearing)

- Follow the Procedures carefully
- File your brief timely
- Be sure the Trial Court has the transcript of the proceeding
- Don't hesitate to make an offer of proof
- Make a good record for the Supreme Court Appeal

Thank You !!!