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CIRCUIT COURT

IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE

CONNIE LYNN REGULI)
Petitioner/Respondent,)
)
v.)
)
BOARD OF PROFESSIONAL)
RESPONSIBILITY OF THE SUPREME)
COURT OF TENNESSEE)
Respondent/Petitioner.)

No. 2014-9 and 2014-30

BPR No. 2012-2139-6-SG

FILED 12/10/14
ENTERED BOOK _____ PAGE _____
DEBBIE McMILLAN BARRETT

JUDGMENT

This case is before the Court upon a Petition for Certiorari filed by Connie Reguli (Docket No. 2014-9) and upon a Petition for Certiorari filed by the Board of Professional Responsibility (Docket No. 2014-30). The petitions were consolidated for review by Order entered on April 30, 2014.

Decision of the Hearing Panel

On November 18, 2013, a hearing panel entered Findings of Fact and Conclusions of Law finding that Ms. Reguli committed ethical misconduct by violating Rules of Professional Conduct 1.4(a)(4) and (b), Communication; 1.5(f), Fees; 1.16(d)(4) and (6), Declining or Terminating Representation; 7.4(b), Communication of Fields of Practice and Specialization; 8.1(b), Bar Admission and Disciplinary Matters; and 8.4(a) and (d), Misconduct.

The hearing panel concluded that Ms. Reguli should be suspended from the practice of law for eleven (11) months and twenty-nine (29) days, which should be served on probation. The panel determined that Ms. Reguli must engage a probation/practice monitor during her

probation. The panel further required Ms. Reguli to get an assessment of her emotional state and seek and complete counseling for any emotional issues. The hearing panel determined that restitution was not applicable in this matter.

On November 25, 2013, the Board filed a Motion to Alter or Amend requesting that the panel clarify the responsibilities of the probation/practice monitor, that they amend the judgment to provide that the Tennessee Lawyer's Assistance Program ("TLAP") will provide the mental health assessment, and that the panel specify the ABA Standards applicable in this matter. Ms. Reguli filed a response and a motion seeking post-trial relief on December 4, 2013.

On December 27, 2013, the panel entered an Amended Findings of Fact and Conclusions of Law granting the Board's motion, in part. The Amended Findings of Fact and Conclusions of Law clarified the requirements for the probation/practice monitor and required Ms. Reguli to obtain the mental health assessment from TLAP.

Both parties appealed the decision of the hearing panel.

Standard of Review

The standard of review for this matter is found at Tennessee Supreme Court Rule 9, Section 1.3 (2006)¹, which states in pertinent part:

The respondent-attorney (hereinafter "respondent") or the Board may have a review of the judgment of a hearing panel in the manner provided by [Tennessee Code Annotated section] 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 Chancery 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

¹ A new version of Tenn. Sup. Ct. R. 9 became effective January 1, 2014; however, this case is governed by the prior 2006 version.

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.

In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

Tenn. Sup. Ct. R. 9, § 1.3 (2007). Under this standard, the Chancery Court may modify the Hearing Panel's judgment upon a finding that:

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[.]

Board of Professional Responsibility v. Love, 256 S.W.3d 644, 653 (Tenn. 2008); *see also*, *Hughes v. Board of Professional Responsibility*, 259 S.W.3d 631 (Tenn. 2008).

Issues for Review

The Board's appeal is based solely upon the refusal of the hearing panel to order Ms. Reguli to pay restitution to Mr. Castleman. Ms. Reguli raises eight (8) issues for review by this Court. Each is discussed in turn below.

1. Ms. Reguli contends that the hearing panel chair, Joseph Baugh, acted outside the scope of his authority and in an unprofessional manner. Therefore, she asserts, the memorandum and the findings of the hearing panel are void. She objects to evidentiary rulings, remarks made by Mr. Baugh, and the signatures affixed to the hearing panel judgment and amended judgment.

Evidentiary Rulings

The Court has reviewed the record and concludes that Mr. Baugh did not act outside the scope of his authority or in an unprofessional manner. Mr. Baugh was the panel chair, and as such, was authorized to lead the proceedings by making decisions regarding evidence. Additionally, it is also apparent from the record that the other panel members were actively participating in the hearing. Ms. Reguli has not demonstrated that any of the evidentiary decisions she contests were an abuse of discretion simply because the panel chair exercised his authority to deliver the decision of the panel. See *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (quoting *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000) (under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to propriety of the decision made."))

Remarks of Panel Chair Baugh

Ms. Reguli argues that Panel Chair Baugh made repeated rude and derogatory remarks to her throughout the hearing. The record demonstrates that Mr. Baugh was a very engaged panel member and he often posed questions to both parties during the final hearing. Ms. Reguli represented herself in this matter and, therefore, she was necessarily subject to fact questions as a witness and to legal questions as an advocate for herself. The panel chair is entitled to ask questions of a witness: "The court may interrogate witnesses." *Tenn. R. Evid. Rule 614* Likewise, attorneys for litigants should be prepared to answer questions and to argue their respective positions. This Court finds that Ms. Reguli has failed to demonstrate that the comments and questions of Mr. Baugh were prejudicial in any respect.

Signature of Panel Members

Ms. Reguli argues that it was an abuse of discretion for the Panel Chair to sign the findings of fact and conclusions of law with permission of the other two panel members. This issue is without merit. There is no evidence that the panel chair acted "unilaterally" or that the judgments were entered without the knowledge or consent of Mr. Garner and Mr. Vandivort. There is no evidence that there was a bad faith motive on the part of Mr. Baugh or a detriment to Ms. Reguli.

2. Ms. Reguli contends that the hearing panel erred by failing to allow discovery regarding the method of appointment of the hearing panel; therefore, she contends, the hearing panel decisions are void for unlawful procedure. Ms. Reguli made several attempts during the disciplinary proceeding for discovery related to the Board's internal process for appointing the hearing panel, which included an attempt to subpoena the Board Chair, the Executive Secretary for the Board, and the filing of "demand(s) for compliance disclosure." Ms. Reguli did not provide any argument or authority in her brief to this Court other than referring the Court to the pleadings that she filed with the Hearing Panel. The Court has reviewed the record and finds no error in the decisions of the hearing panel with respect to this issue.

Ms. Reguli's requests for discovery sought internal communications by the Board Chair and the Executive Secretary for the Board regarding the selection of a hearing panel members. These communications are deemed confidential by Tenn. Sup. Ct. R. 9, § 25.3. See also *Reguli v. Vick*, 2013 Tenn. App. LEXIS 733 (Tenn. Ct. App. Nov. 7, 2013) (trial court erred in granting an attorney's petition under the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503, seeking the disclosure of documents relating to disciplinary proceedings because the documents were confidential and privileged from disclosure).

3. Ms. Reguli contends that the hearing panel erred by failing to disqualify Krisann Hodges, Disciplinary Counsel, for having a personal interest in the health issues of the respondent attorney. Therefore, she contends, the hearing panel decision should be set aside.

The Court finds no merit to this issue whatsoever. Ms. Reguli has mischaracterized the circumstances surrounding the internal email and the letter dated June 27, 2012 that she received from Ms. Jones, prior Chief Disciplinary Counsel. The potential illness of a respondent can be important to disciplinary cases for a number of reasons, and the Court strongly disagrees with Ms. Reguli that it is impermissible for Disciplinary Counsel to share such information amongst themselves. Further, sharing such information is not proof of a personal interest or conflict.

4. Ms. Reguli contends that the hearing panel erred because its decisions were arbitrary and capricious and characterized by an abuse of discretion, and that the decisions were unsupported by substantial and material evidence.

A 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." *Jackson Mobilphone Co. v. Tennessee Pub. Serv. Comm'n*, 876 S.W.2d 106, 110-111 (Tenn. Ct. App. 1993) (citing *State ex rel. Nixon v. McCanless*, 176 Tenn. 352, 354, 141 S.W.2d 885, 886 (1940); *Wagner v. City of Omaha*, 236 Neb. 843, 464 N.W.2d 175, 180 (Neb. 1991); *Ramsey v. Department of Human Servs.*, 301 Ark. 285, 783 S.W.2d 361, 364 (Ark. 1990)).

In order to assess the substantiality of evidence upon review, "the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact." *Tenn. Sup. Ct. R. 9, § 1.3*. A reviewing court must determine whether substantial and material evidence

supports a hearing panel's decision and "whether the evidence 'furnishes a reasonably sound factual basis for the decision being reviewed.'" *Threadgill v. Bd. of Prof'l Responsibility*, 299 S.W.3d 792, 807 (Tenn. 2009) (quoting *City of Memphis v. Civil Serv. Comm'n of Memphis*, 216 S.W.3d 311, 317 (Tenn. 2007)).

Castleman case

With respect to the Castleman case, this Court finds that the hearing panel's findings of fact and conclusions of law were not arbitrary and capricious and that they were supported by substantial and material evidence. In fact, this Court strongly agrees with the hearing panel's conclusions for several reasons. The language of the fee agreement is clear. It provided that "...a retainer of \$10,000 shall be held in escrow and hourly fees shall be charged against this retainer." (Ex. 3) There is no language indicating that she considered it to be a fee earned upon receipt; rather, the expectation that she would draw her hourly fees belies that interpretation. Any other interpretation would permit Ms. Reguli to charge and retain an unreasonable fee, which is clearly not permitted by the Rules of Professional Conduct. It was improper for Ms. Reguli to retain approximately \$7,800.00 in unearned fees and she failed to offer any kind of accounting to Mr. Castleman or the Board until the day of the disciplinary hearing.

Johnson case

With respect to the Johnson case, the Court finds that substantial and material evidence supports the hearing panel's findings that Ms. Reguli violated Rule of Professional Conduct 7.4(b) and that the decision of the hearing panel was not arbitrary and capricious. The Court notes, however, that this violation is minor and technical in nature. Ms. Reguli did not intend to deceive the public; however, she is responsible for the representations made on her website. Further, there is no ambiguity in the evidence supporting this violation. Ms. Reguli

acknowledges that the website stated that she was certified as a specialist in family law and divorce. She acknowledges that she has never been certified as a specialist by the Tennessee Commission on Continuing Legal Education and Specialization. She is not certain how long the website held her out as a specialist although she testified that she would regularly look at the website. Therefore, the Court can find no error in the hearing panel's decision.

5. Ms. Reguli contends that the hearing panel's decision to refer Ms. Reguli to TLAP was arbitrary and capricious. The Court, after reviewing the record and considering the argument of Ms. Reguli, finds that a referral to the Tennessee Lawyer's Assistance Program is not necessary.

6. Ms. Reguli contends that the sanctions imposed by the hearing panel were unlawfully harsh. This Court has reviewed the record and heard arguments of counsel with respect to the appropriate sanctions in this case. The Court may modify the decision of a hearing panel only "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." Tenn. Sup. Ct. R. 9, § 1.3 (2006).

The hearing panel concluded that Ms. Reguli should be suspended from the practice of law for eleven (11) months and twenty-nine (29) days, which should be served on probation. The panel determined that Ms. Reguli must engage a probation/practice monitor during her probation. The panel further required Ms. Reguli to get an assessment of her emotional state and seek and complete counseling for any emotional issues. The hearing panel determined that

restitution was not applicable in this matter.

As indicated in the section above, the Court has determined that it is appropriate to modify the sanction by removing the requirement of a TLAP evaluation. This Court finds that further modification is also appropriate because the hearing panel's sanction is arbitrary and capricious or unsupported by the evidence, as required in Tenn. Sup. Ct. R. 9, § 1.3.

Therefore, the Court finds that the sanction should be modified as follows:

- a) Ms. Reguli shall be suspended for sixty (60) days, all of which shall be suspended with no active time served;
- b) Ms. Reguli shall be placed on probation for one (1) year during which she will be required to engage a practice monitor who shall monitor all engagement letters and contracts or fee agreements to ensure compliance with the Rules of Professional Conduct. Ms. Reguli shall be permitted to redact the names of clients.
- c) If Ms. Reguli violates the terms of probation and probation is revoked, she will be required to serve no more than six (6) months active suspension.

With respect to restitution, the Board has appealed the decision of the hearing panel which did not require restitution. The Board contends that, given the hearing panel's clear determination that the entire fee in the Castleman matter was not earned, it was arbitrary and capricious to deny restitution. The hearing panel made the following finding with respect to Ms. Reguli's failure to refund unearned fees to Mr. Castleman:

Furthermore, we specifically find that in this case that some seven thousand dollars of the fee which she retained was unreasonable for the work provided under the circumstances.

As stated above, this Court strongly agrees that Ms. Reguli was not entitled to keep the unused portion of the fee in light of the clear language in the fee agreement. If restitution is not required,

Ms. Reguli will continue to benefit from a windfall of fees she simply did not earn. Therefore, this Court finds that the failure of the panel to award restitution was arbitrary and capricious. The hearing panel's judgment shall be modified to require Ms. Reguli to pay \$7,800.00 in restitution to Mr. Castleman. Further, if Ms. Reguli pays the restitution within the first six (6) months of her probation, she will not be required to continue to submit engagement letters and contracts or fee agreements to the practice monitor for the remaining six (6) months of probation.

7. Finally, Ms. Reguli has raised a number of constitutional issues concerning due process, the constitutionality of Rule 9, and the constitutionality of the entire disciplinary process. The Tennessee Supreme Court has already determined that the attorney disciplinary process in Tenn. Sup. Ct. R. 9 is constitutional because it affords appropriate due process: "Tennessee's disciplinary process affords lawyers notice and an opportunity to be heard, as well as other protections, including the right to have counsel present, the opportunity to cross examine witnesses, and the right to present evidence." *Moncier v. Bd. of Prof'l Responsibility*, 406 S.W.3d 139, 156 (Tenn. 2013) This Court notes that while there are parts of the disciplinary process that could be improved, Ms. Reguli was not prejudiced by a lack of due process or by unconstitutional procedure.

CONCLUSION

This Court affirms the findings of the hearing panel in all respects except for the following modifications to the sanction:

1. Ms. Reguli shall be suspended for sixty (60) days, all of which shall be suspended with no active time served; and
2. Ms. Reguli shall be placed on probation for one (1) year during which she will be

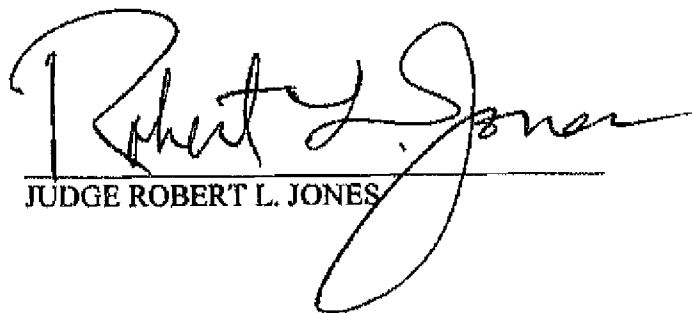
required to engage a practice monitor who shall monitor all engagement letters and contracts or fee agreements to ensure compliance with the Rules of Professional Conduct. Ms. Reguli shall be permitted to redact the names of clients.

3. If Ms. Reguli violates the terms of probation and probation is revoked, she will be required to serve no more than sixty (60) days active suspension.

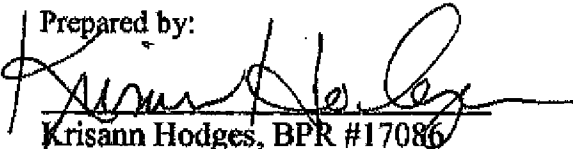
4. The requirement that Ms. Reguli be required to participate in an evaluation with TLAP is reversed.

5. Ms. Reguli shall be required to pay restitution to Mr. Castleman in the amount of \$7,800.00. Further, if Ms. Reguli pays the restitution within the first six (6) months of her probation, she will not be required to continue to submit engagement letters and contracts or fee agreements to the practice monitor for the remaining six (6) months of probation.

IT IS SO ORDERED,


JUDGE ROBERT L. JONES

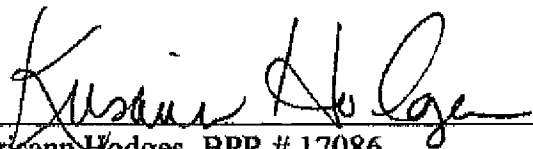
Prepared by:



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CERTIFICATE OF SERVICE

I certify I have served a copy of the foregoing Judgment upon Petitioner, Connie Lynn Reguli, by mailing a copy to her at 1646 Westgate Circle, Suite 101, Brentwood, TN 37027, via regular U.S. mail and e-mail on the 1st day of December, 2014.



Krisann Hodges, BPR # 17086
Deputy Chief Disciplinary Counsel – Litigation