

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

YARBORO ANN SALLEE,

Petitioner,

vs.

BOARD OF PROFESSIONAL  
RESPONSIBILITY of the Supreme Court  
of Tennessee,

Respondent.



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Docket No. 84028-I

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**ORDER**

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This matter came to be heard on the 5<sup>th</sup> day of May, 2014. A Petition for Certiorari was filed by Yarboro Ann Sallee on October 28, 2012, requesting this court for relief from the Judgment of the Hearing Panel, arguing the judgment is in violation of a constitutional or statutory provision, upon unlawful procedure, in excess of panel's jurisdiction, arbitrary, capricious, an abuse of discretion, and unsupported by the evidence. An Answer was filed by the Board on November 1, 2012. After hearing the presentation and argument of counsel for the Board and Ms. Sallee and the record as a whole, this court finds as follows:

**FINDINGS OF FACT**

1. Ms. Sallee was retained by Frances Rodgers and Vearl Bible to investigate a possible wrongful death action on behalf of their deceased daughter, Lori Noll. Mr. Bible and Ms. Rodgers suspected their daughter's husband, Adam Noll, pushed her down the stairs; however, Knox County medical examiner determined the cause of death accidental and no criminal charges were ever brought against Mr. Noll.
2. Ms. Sallee first met with Mr. Bible and Ms. Rodgers on two occasions. On the second meeting, September 21, 2010, Ms. Sallee stated she would charge \$250 per hour, and, upon request of Ms. Rodgers, Ms. Sallee stated the cost of representation would be

less than \$100,000. At the conclusion of this meeting, the parties agreed to reduce this agreement to writing, however, a written agreement was never executed.

3. Between the meeting on September 21, 2010, and November 28, 2010, Ms. Rodgers made several payments to Ms. Sallee totaling \$50,000.00. On October 15, 2010, Ms. Sallee filed a wrongful death action against Mr. Noll, styled *Frances G. Rodgers, Harley Vearl Bible, on behalf of minors, Julia Noll and Aiden Noll, Individually, and for the Estate of Lori Bible Noll v. John Adam Noll*. At the time this suit was filed, neither Ms. Rodgers nor Mr. Bible were the legal guardian of the minor children or the personal representative of Ms. Noll's estate.
4. In addition to the wrongful death case, and shortly after its filing, Ms. Sallee advised Ms. Rodgers and Ms. Bible to file a custody action in Juvenile Court. On October 19, 2010, Ms. Rodgers paid an additional flat fee of \$4,000, as requested by Ms. Sallee, and Ms. Sallee filed a Petition for Dependent and Neglect in Juvenile Court shortly thereafter.
5. Without the knowledge or consent of Ms. Rodgers or Mr. Bible, Ms. Sallee filed pleadings in the Estate matter regarding Ms. Nolls, seeking to remove Mr. Nolls as executor. Also, after efforts were made to do so by Ms. Rodgers, Ms. Sallee notified the insurance company of the suspicious circumstances surrounding Ms. Noll's death, and the insurance policy was interplead to the Chancery Court.
6. Ms. Sallee did not submit a detailed billing statement to Ms. Rodgers or Mr. Bible during the period from September, 2010, to December 3, 2010, until January 3, 2011, after a complaint for discipline was filed by Ms. Rodgers. Within this statement, Ms. Sallee includes hours billed between December 3, 2010, and January 3, 2011, and bills hours after regular business hours or weekends at 1.5 times her regular rate. Ms. Rodgers denies having agreed to paying a higher rate outside of regular business hours. In two e-mails prior to January 3, 2011, Ms. Sallee did report she had worked more than sixty hours via e-mail on October 9, 2010, and more than "80 plus hours" via e-mail on October 19, 2010.
7. Ms. Rodgers received a draft retainer agreement from Ms. Sallee in December, 2010, which she did not understand or agree. Ms. Rodgers requested to meet with Ms. Sallee, but did not get a meeting; instead, Ms. Sallee sent additional drafts which

included a contingency fee in addition to the previously discussed hourly rate.

Because they could not get a retainer agreement from Ms. Sallee utilizing the terms to which they agreed, Ms. Rodgers and Mr. Bible terminated Ms. Sallee on January 3, 2011.

8. After terminating Ms. Sallee, Ms. Rodgers and Mr. Bible requested their file from Ms. Sallee. Ms. Sallee asserted an attorney's lien, stating she would withhold the file until such time as Ms. Rodgers and Mr. Bible's balance was paid, demanding \$82,025.00. In response, Ms. Rodgers and Mr. Bible hired Larry Vaughn to seek possession of the file from Ms. Sallee, paying Mr. Vaughn \$10,000.00 for his retainer fee.
9. In e-mails sent to Mr. Vaughn on March 4 and 7, 2011, Ms. Sallee responded to Ms. Rodgers and Mr. Bible's attempts to retrieve the file by threatening to charge them with the criminal violation of theft of services. Mr. Vaughn filed pleadings in Chancery Court, which ordered Ms. Sallee to release her file to Ms. Rodgers and Mr. Bible.
10. A petition for discipline was filed against Ms. Sallee on December 16, 2011. Ms. Sallee filed a motion to dismiss for lack of jurisdiction and unconstitutionality of procedure on January 23, 2012. In response, the Board filed a response to the motion to dismiss and a motion for default on January 24, 2012.
11. The Hearing Panel entered an order denying Ms. Sallee's motion to dismiss and the Board's motion for default on March 12, 2012. The order of March 12 also directed Ms. Sallee to file an answer within fourteen days to avoid a default judgment being entered. The Board renewed its motion for default on March 29, 2012. On the same date, Ms. Sallee filed her answer as well as a motion requesting the recusal of Hearing Panel Members Timothy Houser and Steve Erdley. The Board's motion for default and Ms. Sallee's motion to recuse were denied by the Hearing Panel on April 12, 2012.
12. A final hearing was held on August 14 and 15, 2012, and the Hearing Panel entered a Judgment on August 30, 2012, imposing a disciplinary sanction against Ms. Sallee of a one (1) year suspension for the violations of Tennessee Rules of Professional

Conduct 1.4 (communication); 1.5 (fees); 1.16 (terminating representation); 4.4 (respect for the rights of third parties); and 8.4 (misconduct).

13. Ms. Sallee appealed the hearing panel's decision to this court, specifically stating the hearing panel's judgment is in violation of constitutional or statutory provisions; in excess of the panel's jurisdiction; made upon unlawful procedure; arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion; or unsupported by evidence which is both substantial and material in the light of the record. Ms. Sallee also asserted the hearing panel denied her due process rights under the Fourteenth Amendment of the United States Constitution and erred in determining one year suspension is appropriate discipline in her case.

#### CONCLUSIONS OF LAW

Having made the aforementioned findings of fact, this court makes the following conclusions of law. First, Tennessee Supreme Court Rule 9, section 33.1(b), states the standard of review for this matter, in pertinent part:

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 hearing panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The trial court may, in its discretion, permit discovery on appeals limited only to allegations of irregularities in the proceeding. The court may affirm the decision of the hearing panel or remand the case for further proceedings. The court may reverse or modify the decision if the 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 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 hearing panel as to the weight of the evidence on questions of fact.

Further, "[A]lthough the trial court may affirm, remand, reverse, or modify a hearing panel decision, the trial court may not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact." *Board of Professional Responsibility v. Allison*, 284 S.W.3d 316, 322 (Tenn. 2009). In particular, this Court will not reverse the decision of a hearing panel so long as the evidence "furnishes a reasonably sound factual basis for the decision being reviewed." *Hughes*, 259 S.W.3d at 641 (quoting *Jackson Mobilphone Co. v. Tenn. Pub. Serv. Comm'n*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993)).

In *Jackson Mobilphone Co. v. Tennessee Pub. Serv. Comm'n*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993), the Court of Appeals provided "the court should review the record carefully to determine whether the administrative agency's decision is supported by 'such relevant evidence as a rational mind might accept to support a rational conclusion.'" (citing *Clay County Manor v. State Dep't of Health & Environment*, 849 S.W.2d 755, 759 (Tenn.1993); *Southern Ry. v. State Bd. of Equalization*, 682 S.W.2d 196, 199 (Tenn.1984)).

Pursuant to Rule 9, §8.1 of the Tennessee Supreme Court Rules, the hearing panel sanctions due to their decision Ms. Sallee violated several Rules of Professional Conduct, specifically:

(a) Rule 1.4, Communication, for failure to "keep her clients reasonably informed as to the services she intended to perform in the Probate proceeding or what efforts she made on behalf of her clients in regard to the life insurance issue."

(b) Rule 1.5, Fees, determining the fee was unreasonable, citing the factors of "the amount involved and the results obtained; the nature and length of the professional relationship with the clients; the statements that [Ms. Sallee] made to the clients regarding the fees she usually charged and the expectations she set with the clients as to total fees to be charged in the matter; because [Ms. Sallee] sought a contingent fee on top of the amounts already paid by hourly billing; and because the fee agreement between [Ms. Sallee] and her clients was not in writing."

(c) Rule 1.16, Declining and Terminating Representation, for failure to “promptly surrender papers and property of the client and work product relating to the Wrongful Death Suit which were necessary to prevent a materially adverse effect on the clients with regard to the ongoing Wrongful Death Suit, and, ultimately required [former clients] to file a separate civil action against [Ms. Sallee].”

(d) Rule 4.4, Respect for Rights of Third Persons, for threatening “to present criminal charges against former clients in order to obtain an advantage in the dispute with them with regard to fees [Ms. Sallee] claimed to be owed and client file materials which [Ms. Sallee] refused to turn over.”

(e) Rule 8.4, Misconduct, for violating the Rules and by engaging in “a course of misconduct that was prejudicial to the administration of justice.”

Given these conclusions regarding the violations of Ms. Sallee, the Hearing Panel also instituted a one (1) year suspension with proof of rehabilitation to be demonstrated in a reinstatement proceeding pursuant to Tennessee Supreme Court Rule 9, §4.2, as discipline for these violations.

#### 1. Violation of Rules

Regarding the hearing panel’s conclusion Ms. Sallee violated the rules of professional conduct, in her argument and brief, Ms. Sallee points to three items she asserts are not supported by material and substantial evidence in light of the record. First, regarding the hearing panel’s finding Ms. Sallee failed to keep her clients reasonably informed, violating Rule 1.4, and her fee was not reasonable, violating Rule 1.5. Ms. Sallee asserts this is a fee dispute and is inappropriate for a determination by the hearing panel. However, Ms. Sallee also asserts there has been no request by the hearing panel or her former client for a refund or restitution to be paid. As such, this court finds the hearing panel did not exceed its jurisdiction in determining Ms. Sallee’s fees were unreasonable. Further, Ms. Sallee failed to show the hearing panel’s decision was not supported by material and substantive evidence.

Ms. Sallee also argued the hearing panel’s finding she failed to promptly surrender papers, items, or work product, violating Rule 1.16. Ms. Sallee argues her former client did not understand the volume of documents sent to her and her testimony was inconsistent with Ms. Sallee’s testimony regarding the volume and return of documents. Ms. Sallee does admit, however, a document and piece of evidence was withheld from her former clients until such time

as Ms. Sallee was ordered to deliver these items to her former client. This court finds Ms. Sallee failed to show the hearing panel's decision was not supported by material and substantive evidence, as Ms. Sallee concedes to the evidence on which the hearing panel relied.

Finally, Ms. Sallee argued the hearing panel's finding she threatened to present criminal charges against former clients, violating Rule 4.4 of the Rules of Professional Conduct, was inappropriate because the e-mails containing the alleged threats were not authenticated into the record and were never intended to be sent. However, the hearing panel found Ms. Sallee admitted to sending these e-mails and this finding is supported by the record as a whole and, specifically, as the Board of Professional Responsibility argues, Ms. Sallee properly authenticated these documents within her deposition.

## 2. Rules of Professional Conduct applied

Ms. Sallee also alleges the hearing panel incorrectly utilized the old version of the Rules of Professional Conduct. Regarding the violations of Rules 1.4, 1.5, and 8.4, the relationship between the parties and most, if not all, the actions related to these violations occurred prior to January 1, 2011, when the new Rules were enacted. Regarding the violations of Rule 1.16 and 4.4, the rules have no substantial change between those in effect December, 2010, and those in effect January, 2011. As Ms. Sallee failed to raise this concern to the hearing panel, failed to show any prejudice or harm due to the use of the rules enacted in January, 2011, and failed to show any substantive difference between those rules enacted prior to January, 2011, and those under which the violations were found, this court finds the arguments of Ms. Sallee are without merit.

## 3. Discipline

The hearing panel specified Ms. Sallee would be disciplined for the period of one year with proof of rehabilitation to be demonstrated for reinstatement. Regarding the sanctions, the Tennessee Supreme Court stated in *Maddux v. Board of Professional Responsibility of the Supreme Court of Tennessee*, 409 S.W.3d 613, 624 (Tenn. 2013), the ABA standards "are the guideposts hearing panels and courts in Tennessee use when determining appropriate, consistent sanctions for attorney misconduct." (citing Tenn. Sup.Ct. R. 9, § 8.4; *Cowan*, 388 S.W.3d at 268; *Lockett v. Bd. of Prof'l Responsibility*, 380 S.W.3d 19, 26 (Tenn.2012)) In relying upon the ABA Standards, this Court cannot find the hearing panel acted in an arbitrary and capricious manner,



nor can this Court find the panel's decision was unreasonable or characterized by an abuse of discretion.

#### 4. Motion to Consider Post-Judgment Facts

Ms. Sallee filed a Motion to consider post-Judgment facts on April 28, 2014. This court allowed Ms. Sallee to make an offer of proof in order to place these facts on the record. However, Tennessee Supreme Court Rule 9, section 33.1(b), states "if allegations of irregularities in the procedure before the hearing panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations." As these there are no allegations of irregularities of which the additional facts would be necessary to resolve, this court cannot consider the facts presented in Ms. Sallee's motion. This court allows these facts to be introduced as an offer of proof, but finds they are irrelevant and DENIES the motion of Petitioner.

#### CONCLUSION

Ultimately, in review of the hearing panel's decision, this court does not find the panel's findings, inferences, conclusions, or decisions are in violation of constitutional or statutory provisions, in excess of the panel's jurisdiction, made upon unlawful procedure, arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion, or unsupported by evidence which is both substantial and material in light of the enter record. The Court finds the hearing panel's findings of fact and conclusions of law are fully supported by the evidence presented in this matter and reversal or modification of the hearing panel's decision is simply not warranted.

Ms. Sallee failed to demonstrate the hearing panel's conclusions were not supported by substantial and material evidence or their decision was arbitrary and capricious. Ms. Sallee's suspension is fully supported by the facts and this Court must not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

This Court AFFIRMS the decision of the hearing panel and assesses costs to Ms. Sallee.

IT IS SO ORDERED, this the 9 day of May, 2014.



DON R. ASH