

IN DISCIPLINARY DISTRICT V
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

IN RE: WINSTON BRADSHAW SITTON, DOCKET NO. 2018-2904-5-KH

Respondent.

ORDER

This matter coming before the Hearing Panel (the "Panel") for hearing on November 8, 2019, the Panel having considered the arguments of counsel and Respondent Winston Bradshaw Sitton ("Sitton"), the testimony by Sitton, the exhibits admitted into evidence, and the entire record in this matter, the Panel enters this Order as follows:

Statement of the Case

This is a disciplinary proceeding against Sitton, an attorney licensed to practice law in Tennessee in 1997. A Petition for Discipline was filed against Sitton on August 23, 2018. Sitton filed a Response to the Petition on September 18, 2018.

Sitton submitted a conditional guilty plea that was presented to the Panel on February 27, 2019. A hearing was conducted on March 26, 2019, to consider the conditional guilty plea. On March 27, 2019, the Panel entered an order rejecting the conditional plea.

Sitton filed a motion to recuse the Panel on July 8, 2019. The Board filed a response to the motion on July 12, 2019, and the Hearing Panel entered an order denying the motion to recuse on July 23, 2019.

Sitton also filed a motion in limine on October 29, 2019. The Board filed a response on November 1, 2019. On November 8, 2019, before the beginning of the hearing in this matter, the Panel ruled on the Motion in Limine. Because the motion only raised evidentiary objections that were more appropriate to be raised during the hearing, the Panel denied the Motion in Limine. After the motion in limine was denied, Respondent made no other objection to the admissibility of the Facebook postings which were offered in evidence.

During the hearing on November 8, 2019, five (5) exhibits were admitted into evidence. The Board called Sitton to testify as a witness. When the Board's direct examination was complete, Sitton was given wide latitude to testify extensively on his own behalf. No party offered any other witness to testify. It should be noted that Sitton described to the Panel how he had initially pursued obtaining the testimony of a Ms. Lauren Houston either at a deposition or as a witness at the hearing. Sitton described how he had decided to stop pursuing those efforts because, according to him, forcing her to provide testimony would be too hard on her and would be an expensive process.

Findings of Fact

1. Sitton's testimony was erratic and contradictory at times. However, through the course of Sitton's testimony, the Panel was able to discern what took place.
2. This matter arises from a series of public Facebook posts made by Sitton. At the time of the events giving rise to this complaint, Sitton was and had been a Facebook "friend" of Ms. Lauren Houston for about a year when the postings at issue occurred. Ms. Houston apparently was engaged in an acrimonious break-up from her one-time boyfriend and father of her son, Jason Henderson.

3. In December 2017, Sitton posted comments on Facebook in answer to Ms. Houston's Facebook post about the legality of carrying a gun in a motor vehicle in Tennessee. Mr. Henderson became aware of the posts and brought them to the attention of the Shelby County District Attorney General, Amy Weirich, who submitted them to the Board.

4. Based upon his connection with Ms. Houston on Facebook, Sitton says that he learned that Ms. Houston had a contentious relationship with Mr. Henderson. Sitton described being aware of abuse and harassment allegations made by Ms. Houston and of alleged violations of child custody arrangements. Sitton described that Ms. Houston had previously filed or sought orders of protection against Mr. Henderson and brought his conduct to the attention of law enforcement.

5. Sometime in approximately December 2017, Ms. Houston made the following post on her Facebook page¹:

I need to always carry my gun with me now, don't I? Is it legal to carry in Tennessee in your car without paying the damn state?

6. Sitton posted the following response:

I have a carry permit Lauren. The problem is that if you pull your gun, you must use it. I am afraid that, with your volatile relationship with your baby's daddy, you will kill your ex_your son's father. Better to get a taser or a canister of tear gas. Effective but not deadly. If you get a shot gun, fill the first couple rounds with rock salt, the second couple with bird shot, then load for bear.

If you want to kill him, then lure him into your house and claim that he broke in with intent to do you bodily harm and that you feared for

¹ Mr. Sitton admitted that he made the posts attributed to him in Exhibits 2 and 3 and that the pages in Exhibit 3 are in the order in which the posts occurred. However, he further testified that before the Exhibit 3-2 post, he also gave Ms. Houston information, an article and advice about the then new Tennessee statute that allowed a gun owner to carry a gun in a motor vehicle as an extension of the owner's home. He also testified for several reasons he advised Ms. Houston that she should not carry a gun in her car. He also testified that the Facebook exchanges occurred over several hours, that other people posted comments as well, and he did not participate the entire time.

your life. Even with the new stand your ground law, the castle doctrine is a far safer basis for use of deadly force.

7. Ms. Houston responded, "I wish he would try."

8. Sitton responded:

As a lawyer, I advise you to keep mum about this if you are remotely serious. Delete this thread and keep quiet. Your defense is that you are afraid for your life _ revenge or premeditation of any sort will be used against you at trial.

9. Sitton's message, prefaced by "as a lawyer," and his Facebook profile clearly identified Sitton as a lawyer.²

10. It was clear from Sitton's testimony at the hearing that, although he says he has never met Ms. Houston in person, he sympathizes and empathizes with her. He was able to describe her life, including her child, her medical conditions, her illegal drug use, her problems with her son's father, and other parts of her life in great detail. Sitton expressed complete confidence that he knew with certainty how Ms. Houston interpreted the Facebook posts at issue in this matter. All or nearly all of this testimony in this regard was clearly hearsay and therefore the Panel did not accept any of the alleged details of Ms. Houston's life as necessarily true. However, it was clear that at all relevant times Sitton felt a personal connection with Ms. Houston and wanted to help her.

11. Sitton testified that, based on all of his knowledge about Ms. Houston's life, she was a "troubled woman" at the time of the Facebook posts.

12. At the time of the Facebook posts, Sitton testified that he believed Ms. Houston's ex-boyfriend had broken into her car within the week preceding the Facebook

² Mr. Sitton acknowledged that consistent with his advice to her, Ms. Houston deleted the Facebook conversation after someone had captured screenshots of postings, some of which are quoted above. See also Exhibit 1.

posts. Sitton testified that he believed a judge recently had told Ms. Houston to get a gun for personal protection.

13. Sitton testified that he was concerned and afraid that Ms. Houston would get into legal trouble due to her repeated Facebook posts about using marijuana in the State of Tennessee to treat her medical condition. Sitton testified that he was concerned and afraid that Ms. Houston would get into legal trouble due to her Facebook posts about transporting marijuana for personal use in her vehicle. While the Panel makes no assessment about whether any of Sitton's statements about Ms. Houston's activities are true, Sitton's clear testimony was that he was concerned and afraid that Ms. Houston was admitting things on Facebook that might lead to legal trouble for her.

14. Similarly, Sitton testified that he was concerned and afraid that Ms. Houston would shoot and kill Mr. Henderson, and that she would get in legal trouble for doing that.

15. Sitton testified that, with his Facebook posts, he identified himself as a lawyer and intended to be giving Ms. Houston legal advice/information. He testified that Ms. Houston engaged him in discussion on Facebook about his legal advice. Sitton testified that he believes Ms. Houston appreciated that he was helping her understand the laws of the State of Tennessee.

16. Part of Sitton's advice was on the escalating use of force—beginning with the advice not to carry a gun in car, but Taser or tear gas would be ok; if she needed more force, then a shotgun loaded with rock salt, followed by bird shot. If that not sufficient, then she should get "loaded for bear." Part of Sitton's advice included his legal advice to Ms. Houston about how to plan an effective defense to murder, if she

came to need lethal force. This sounds harsh – but that is what happened here. In Sitton's own words, he told Ms. Houston that, if she wanted "to kill him," then the "far safer basis for use of deadly force" would be to "lure him into your house and claim that he broke in with the intent to do you bodily harm..." Fortunately for everyone involved, it never came to that.

17. Sitton claims that his Facebook posts about using the "castle doctrine" to lure someone to Ms. Houston's home with the intent to kill him was simply "sarcasm" or "dark humor." The Panel finds this unpersuasive because it is contradicted by Sitton's own testimony and Ms. Houston's own post. The Panel finds that Sitton was concerned that Ms. Houston would kill Mr. Henderson outside of her home and that she would get in trouble for that. The Panel finds that Sitton intended to give her legal advice about a "far safer basis for use of deadly force." Additionally, other people were involved in this publicly posted conversation and a reasonable person reading these comments certainly would not and could not perceive them to be "sarcasm" or "dark humor."

18. Sitton claims that the Petition and the exhibits presented at the hearing provide an incomplete view of the totality of Facebook posts related to this matter. In response, the Panel provided Sitton wide and extensive latitude to fully describe the entire context of his posts that day and his overall online relationship with Ms. Houston. In this way, Sitton has been provided a full and complete opportunity to provide whatever facts and context he wished to the Panel. He acknowledged that he was given the opportunity at the hearing to present the full context of the Facebook conversation.

For this reason, even if the Facebook posts provided to the Panel are incomplete in some way, Sitton has not been prejudiced in any way as a result of that.³

19. Sitton testified that his only intent with the Facebook posts was to convince Ms. Houston that she should not carry a gun in her car. Based on all of the findings set forth in this Order, the Panel does not find this testimony to be credible. The more credible interpretation is that Sitton was concerned that she would shoot Mr. Henderson outside of her home and get in trouble, and that Sitton intended to give Ms. Houston legal advice for a "far safer basis for use of deadly force."

20. Sitton has no remorse for the current situation. While he volunteered that he believed his Facebook posts were "intemperate" and foolish, Sitton also testified that "I don't think what I told her was wrong."

21. The Board has alleged that there are aggravating factors that are applicable. The Panel agrees and finds there are aggravating factors.

22. The aggravating factor with the most weight is the fact that Sitton advised Ms. Houston to delete all of the relevant Facebook posts. To be clear, after Sitton gave Ms. Houston the advice about how to kill someone and still being able to claim a defense, Ms. Houston responded, "I wish he would try." Sitton engaged further in his discussion with Ms. Houston and replied, "As a lawyer, I advise you to keep mum about this if you are remotely serious. Delete this thread and keep quiet. Your defense is that you are afraid for your life..." The Panel finds that this further advice about deleting the Facebook posts confirms that this was no joke to Sitton. He intended this as legal

³ See *In re Pickel*, 493 B.R. 258 n. 8 (Bankr. D. N.M. 2013) and cases cited therein, for standard Mr. Sitton would have had to satisfy to excluded the posts offered, which he failed to do.

advice about how to best plan a defense if she was "remotely serious" about killing Mr. Henderson. This is an aggravating factor which justifies an increase in discipline.

23. The Panel also finds that Sitton's substantial experience in the practice of law and prior disciplinary history are additional aggravating factors that which justify an increase in discipline. As to his prior discipline, it is significant to note that he contests the basis for both the informal admonition in 2005 and the private reprimand in 2015 as unjustified, taking no responsibility for the conduct they concern.

24. Sitton did not present any evidence of mitigating circumstances that might lessen the discipline in this situation.

Conclusions of Law

1. The Panel concludes that the findings described above demonstrate that Sitton has violated Rules 8.4(a) and (d). Giving advice as a lawyer about planning in advance how to claim a defense to killing someone is conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d)⁴. This violation of the Rules of Professional Conduct also constitutes a violation of Rule 8.4(a).

2. At the end of the hearing, Sitton raised a question about whether the Rules of Professional Conduct infringe on his free speech rights under the 1st Amendment of the United States Constitution. The Panel asked Sitton whether he was arguing that the Rules of Professional Conduct themselves violate the 1st Amendment, or if he was complaining about how the rules were being applied in this context. After some discussion, Sitton stated that the rules do not, *per se*, violate the 1st Amendment.

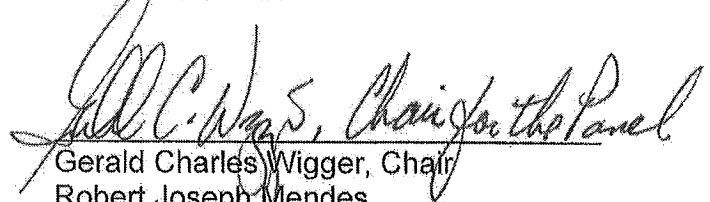
⁴ RPC 1.2(d) provides: A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

Specifically, he acknowledged that the Tennessee Rules of Professional Conduct create permissible restrictions on the speech of a licensed attorney. Sitton's argument instead is about how the rules may be applied in this particular situation. Because the Panel has found that Sitton's Facebook posts were intended to give legal advice about the safest way for Ms. Houston to kill Mr. Henderson and because this is impermissible under the Rules of Professional Conduct, Sitton's constitutional argument must fail.

Order

For the reasons set forth in this Order, the Panel finds that Sitton violated Rule 8.4(a) and (d), and that his license to practice law in the State of Tennessee is hereby suspended for the period of sixty (60) days.

HEARING PANEL


Gerald Charles Wigger, Chair
Robert Joseph Mendes
Matthew Sweeney

DATE: November 13, 2019

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Winston Bradshaw Sitton, 6624 Ellesmere Road, Nashville, TN 37205, by U.S. First Class Mail, and hand-delivered to Alan D. Johnson, Disciplinary Counsel, on this the 13th day of November, 2019.

A handwritten signature in cursive script, appearing to read "Rita Webb", written over a horizontal line.

Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.