

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

FILED

2011 JUN -9 PM 3: 01
BOARD OF PROFESSIONAL
RESPONSIBILITY

IN RE:)

HARRY MAX SPEIGHT, BPR #007455)

Respondent, an Attorney)

Formerly Licensed and)

Admitted to Practice Law)

in Tennessee)

(Weakley County))

No.: 2010-1982-8-SG(14)

RW EXEC. SEC'

JUDGMENT OF THE HEARING COMMITTEE

This cause came to be heard on the 2nd day of June, 2011, by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee. The cause was heard pursuant to Tennessee Rules of the Supreme Court 9. This Hearing Committee, P. Allen Phillips, Chair, James Hamilton, and Anthony Lee Clark, makes the following findings of fact and submits its judgment in this cause as follows:

I. STATEMENT OF THE CASE

1. A Petition for Discipline was filed on March 15, 2011, charging Respondent with violation of the disciplinary rules.
2. Respondent was duly served with the Petition and filed a Response on April 4, 2011.
3. A Notice of Appointment of Hearing Panel was filed on April 19, 2011, designating the above captioned attorneys as the Hearing Panel. The Hearing Panel chose the undersigned Chair as of the date of the hearing.
4. On May 6, 2011, a Notice of Hearing was filed setting the hearing for Thursday, June 2, 2011, in Trenton, Tennessee.
5. A supplemental Response was filed by Respondent on May 13, 2011.
6. On June 2, 2011, the Hearing Panel convened at the Circuit Court room of the Gibson County Circuit Court, 295 North College Street, Trenton, Tennessee, for the purpose of conducting a hearing on said matter.

II. FINDINGS OF FACT

7. On September 9, 2010, Respondent, upon a plea of guilty, was convicted of conspiracy to make false statements and defraud the government, and aiding and abetting in same, a violation of 15 USC §714M(a) and (d), and 18 USC §2.
8. The date the "offense ended" was noted by the United States District Court for the Northern District of Mississippi as being January 30, 2006.
9. As of January 30, 2006, Respondent remained a licensed attorney in the state of Tennessee, and thus subject to the jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee. A certified copy of the plea in Respondent's criminal case was made part of the record in the Board's Petition for Final Discipline.
10. Prior to Respondent's plea of guilty and conviction, Respondent had been disbarred by the Supreme Court of Tennessee in an Order dated August 14, 2008. In said disbarment, Respondent was found to be in violation of Disciplinary Rules 1.15 and 8.4(a), (b), (c), and (d) of the Tennessee Rules of Professional Conduct.
11. Respondent consented to the disbarment by Affidavit and acknowledged that the material facts alleged in the Petition for Discipline were true and that, if the charges were prosecuted, no successful defense could be made. Hence, as of August 14, 2008, Respondent was disbarred from the practice of law in Tennessee.
12. Tennessee Rules of Professional Conduct Rule 8.4 "Misconduct" provides that it is:

. . . professional misconduct for a lawyer to: . . . (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice.

RPC 8.4 (2011).

III. CONCLUSIONS

13. In this matter, the Board contends that the Respondent violated Tennessee Rule of Professional Conduct 8.4 by pleading guilty to the felony offenses of

conspiracy to make false statements and defraud the government, and aiding and abetting, both in violation of the United States Criminal Code.

14. Respondent submits that since he was disbarred on August 14, 2008, and has not applied for reinstatement, that the present action has no merit in that he cannot be disbarred twice. Further, Respondent contends that he knows of no jurisdiction for taking the same action twice, i.e. disbaring him a "second time" for the conduct at issue in the case at bar.
15. Further, since he has not been reinstated to the practice of law after his first disbarment, Respondent contends "there is no viable purpose to this proceeding, other than attempted embarrassment to my family." He further demands that the Board of Professional Responsibility be required to prove its jurisdiction over him to disbar him a second time.
16. The Hearing Panel concludes that the Board of Professional Responsibility does indeed have jurisdiction over Respondent in the instant action. The conduct complained of in the Petition for Final Discipline occurred at a time when Respondent was a licensed attorney in the state of Tennessee. Specifically, according to the proof produced by the Board, Respondent was guilty of an offense against the laws of the United States which did not end until January 30, 2006. Obviously, this offense ended during a time in which Respondent had not yet been disbarred on August 14, 2008. Hence, the Panel concludes that the Board indeed has jurisdiction over the Respondent, as he was an attorney in the state of Tennessee at the time of the offense complained of hereunder.
17. The Panel has carefully considered the contention of Respondent that he, having been disbarred once, at first reading may be the subject of an action which is unnecessary. The Panel is mindful of Respondent's current situation of being incarcerated in a federal institution in Indiana, obviously unable to attend his disciplinary hearing, and further, that he was not represented by counsel at said hearing. However, the Panel took note of Respondent's written responses to the Petition for Final Discipline and carefully considered his assertions made in said filings.
18. The Hearing Panel concludes that Respondent was indeed disbarred by Order of the Supreme Court of Tennessee on August 14, 2008, for conduct in violation of Tennessee Rules of Professional Conduct 1.15 and 8.4(a), (b), (c), and (d).

Respondent references and admits said allegations both at the time of their making and in his written responses to this Petition for Final Discipline. The Panel finds that, obviously, Respondent was disbarred for severe disciplinary violations by Order of the Court on August 14, 2008, but that said disbarment was a result of violations separate and apart from the allegations in this Petition for Final Discipline.

19. The hearing panel further concludes that the actions of Respondent alleged in the instant Petition for Final Discipline constitute a violation of Tennessee Rule of Professional Conduct 8.4(b),(c), and (d). Respondent pled guilty to a federal court indictment in the United States District Court for the Northern District of Mississippi to violating the United States Code; specifically, by committing conspiracy to make false statements and defraud the government, and aiding and abetting. This guilty plea, resulting in a period of incarceration and an extensive amount of restitution, constitutes commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b).

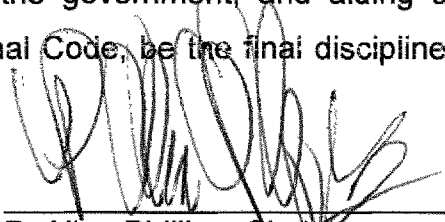
Further, Respondent's conduct in the instant case amounts to conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

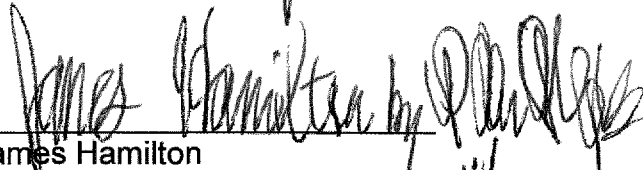
Finally, Respondent's actions in the underlying federal court case also are conduct that is prejudicial to the administration of justice.

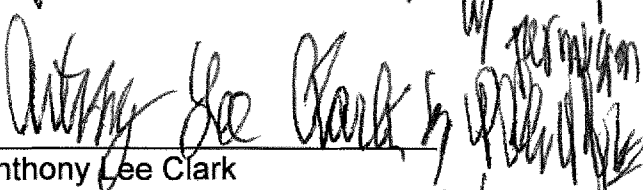
20. The Panel concludes that Respondent's actions as alleged in the Petition for Final Discipline constitute a separate and distinct violation of the Tennessee Rules of Professional Conduct that has not yet been the subject of final discipline. Though the Respondent was disciplined by disbarment on August 14, 2008, the previous disbarment was for actions in a separate matter from the issue in the instant case. The Panel finds that Respondent's actions, to which he pleaded guilty in the United States District Court for the Northern District of Mississippi involved a loss of \$2,888,175.53 for which Respondent was ordered to make full restitution. The Panel concludes that the gravity of Respondent's actions underlying this Petition for Final Discipline constituted a serious ethical violation and one which cannot go unpunished under the Tennessee Rules of Professional Conduct. To simply allow Respondent to contend that he is

“already disbarred” and therefore not subject to further discipline, would have the practical effect of allowing a serious ethical violation to go unpunished. While at first reading it may seem there is no purpose in disbarring a lawyer twice, the ultimate resolution of this matter requires that serious ethical violations be considered and dealt with so as to discourage such conduct in the future by emphasizing the severity of criminal acts reflecting upon an attorney’s honesty, trustworthiness, or fitness as a lawyer; the severity of engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and, most importantly, engaging in conduct that is prejudicial to the administration of justice. Likewise, though Respondent has not been readmitted or applied for reinstatement, he could after five years had elapsed from August 14, 2008, and this serious offense go unpunished or even unnoticed. Allowing this serious violation to go unpunished, even though it is brought to final discipline at the time the attorney has already been disbarred, renders meaningless the provisions of Rule 8.4 governing lawyers’ conduct and would reflect adversely on our state’s justice system by allowing a serious crime to go unnoticed and a serious violation to go unpunished.

Accordingly, it is the JUDGMENT OF THE HEARING PANEL that the requested relief of the Board of Professional Responsibility of the Supreme Court of Tennessee that Respondent be disbarred for his actions of pleading guilty to the felony offenses of conspiracy to make false statements and defraud the government, and aiding and abetting, both in violation of the United States Criminal Code, be the final discipline to be imposed upon Respondent in this matter.

ENTERED: 
P. Allen Phillips, Chair

ENTERED: 
James Hamilton

ENTERED: 
Anthony Lee Clark

[Handwritten notes and signatures in the bottom right corner, including the words "TERMINATION" and "BY PERMISSION"]