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

IN RE; MATTHEW F. STOWE,
BPR NO. 29994, Respondent
An Attorney Licensed to Practice
Law in Tennessee
(Carroll County).

DOCKET NO. 2016-2558-7-KH

JUDGMENT OF THE PANEL

THIS MATTER came on to be heard on May 19, 2017, upon the Petition for Discipline filed by the Tennessee Board of Profcssional Responsibility ("Petitioner" and "Board"), the Response of District Attorney General Matthew F. Stowe ("Respondent" and "Stowe") upon the testimony of Dr. Amy McMaster Hawes ("Hawes"), Mr. John Lott ("Lott"), Stowe, and Assistant District Attorney Robert Adam Jowers ("Jowers"), and upon the entire record of this cause.

We have viewed and assessed the credibility of the witnesses. In doing so, we have resolved any issues of credibility of the witnesses as set out herein.

We have reviewed the Tennessee Rules of Professional Conduct 4.4, Respect for Rights of Third Persons; 4.2, Communication with a Person Represented by Counsel; and 8.4, Misconduct.

We have considered the aggravating factors laid out in the Petition.

Burden of Proof

The burden of proof for the Petitioner is to prove its allegations by a preponderance of evidence. Flowers v. Board of Professional Responsibility, 314 S.W.3d 882, 892 (Tenn., 2010).

Brief Summary of Relevant Facts and Proceedings

This case results from a Complaint filed against Stowe after a series of email exchanges between Stowe, Hawes, a potential expert witness in the upcoming murder trial of State v. Golden and Lott, Hawes's Supervisor at the Knox County Regional Forensic Center. Hawes was a Medical Examiner for Forensic Medical in Davidson County when the Golden case originated in 2015. After she conducted the examination for Carroll County, Hawes moved to Knoxville to become an employee of Knox County Regional Forensic Center.

Hawes and, initially, Jowers communicated back and forth about dates for Dr. Hawes in Court testimony in the Golden matter as well as Hawes's previously-planned vacation. This presented Hawes and Jowers with some scheduling difficulty. Ultimately the dates needed for her In Court Testimony fell on the planned vacation week. However, Hawes emailed Jowers:

> Ok. That is disappointing. Please make sure that I have a properly served subpoena, and as requested below I will need a copy of the complete medical examiner file with the photographs and evidence chain of custody documentation from the Nashville office. In addition, I think the County may require prepayment of the invoice, but I am checking with Mr. John Lott, the Senior Director of the office for clarification. I will hold you to your assurance that my testimony will be complete by the 22nd. (Exhibit E to Petition for Discipline).

This exchange ultimately led Stowe to get involved in an attempt to secure Hawes's testimony even though Hawes had agreed to come to Court. Thereafter, Stowe emailed Hawes and Lott on different occasions. The emails contained language, which troubled Hawes and Lott and which ultimately led to the filing of the underlying Petition. All of those emails were properly introduced into the evidence in these proceedings.

The material factual allegations in the Petition are largely unchallenged, and a review of the Answer as well as the testimony at the hearing shows that Stowe admits to authoring the emails. At the hearing, Stowe in fact re-adopted and doubled-down on what he had previously

emailed and said to Hawes and Lott. The only real issues at stake are whether such conduct rises to the level of breaching the Rules of Professional Conduct and what penalty, if any, would therefore be required or warranted.

As such, at issue is Stowe's conduct in the following emails and circumstances:

1. An email of August 21, 2015, to Hawes wherein Stowe states:

   God grant us the patience to get through the trial dealing with this ridiculous individual.

   In his Answer, Stowe acknowledges the authenticity of the email. At the hearing, he testified that he was indeed referring to Hawes in the email. It was unclear to the Panel if this email was sent by Stowe intentionally to Hawes or by mistake. On its face, it would seem to be intended to Jowers but sent to Hawes by mistake. We conclude Stowe believed Hawes was a "ridiculous individual."

2. An email of August 24, 2015, to Hawes and Jowers wherein Stowe states:

   All kidding aside, enough with the vacation. You're distracting my assistant who needs to be preparing to do very serious work. He'll be contacting you shortly about the trial prep. You're [sic] testimony is going to be crucial to the case, and we need you to be well prepared.

3. After the August 24 email, Hawes responded to Stowe and Jowers that all future communication to her would need to be directed to her supervisor, Lott.

4. On August 26, 2015, Stowe emailed Hawes:

   Supervisor or not, if you blow this trial, I'm holding you personally responsible.

5. On August 26, Hawes responded to Stowe and Lott:

   Your comments and tone are harassing, unprofessional, and threatening. I re-iterate my request that you send all communication regarding this case to my supervisor.

6. On August 26, Stowe responded to Hawes:

Your request is duly noted. Regardless of what you think of my comments, I hope you heard them. I'm not going to repeat myself.

7. At around the same time on August 26, Stowe sent the email (#6), he emailed Lott:

   Will you please get said employee's head screwed on straight with respect to the upcoming murder trial? If you cannot do so, I'm going to stop everything I'm doing and drive to wherever both of you are. I'll be bring [sic] the victim's family with me, and the two of you can explain to them why you cannot do for their loved one what every other professional in the State of Tennessee routinely does in murder cases.

8. At this point, on August 26 at 2:10 PM Eastern Daylight Time, Lott emailed Stowe and Myers Morton, Knox County Attorney, to instruct Stowe to communicate through the Knox County Legal office. Lott indicated that Stowe's "threats" necessitated this course of action.

9. Replying to Lott and Jowers—but not Morton—at 3:40 PM EDT, Stowe stated:

   Both you and Dr. Hawes are not yet defendants in a criminal matter. I will not be working through your lawyer unless and until one or both of you are criminal defendants. You are free to consult with an attorney as you see fit for legal advice on your own time.

   Until then, we have a trial for which to prep. You have asked for compensation from this office as well as an accommodation based on Dr. Dawes [sic] schedule. Until you fix things, both of these are off the table, as is any other further form of largess from this office. The trial is scheduled to last five days, and Ms. Dawes [sic] will be under subpoena for its entirety until released. For free.

   You have my number. Please use it when you and she finally figure out what's important in life and are prepared to get justice for the victim's family.

   -M

   P.S. [Jowers] please dispense with the compensation request and make sure Ms. Dawes [sic] scheduling is in conformance with this e-mail.

See Petition, Exhibit F.

10. At 3:47 PM EDT and 4:35 PM EDT on August 26, Myers Morton emailed Stowe to request that all communication be through the Knox County Legal Office. At 6:30 PM on August 31, Stowe emailed Morton, Lott, and Hawes the following:

> **It's my hope that we have all resolved this matter and are ready to move ahead together as a team. Please consult with your clients [sic] let me know if you disagree. Based on the difficult history, I will attempt to limit my interaction with both individuals so they can remain focused on their job.**
>
> **To the extent it is of historical interest, I do not believe they have any right whatsoever to attempt to interpose you between me and them, and that you have no right whatsoever to interject yourself into our dispute. Hopefully this issue is no longer relevant. If you disagree, please forward any precedent you have that you believe gives them a right to counsel under these circumstances. Otherwise, please have a good day, and should our paths cross again, hopefully it will be under less adversarial conditions.**

(These emails are set out as Exhibits, E, F, and G to the Petition for Discipline)

On August 26, 2015, Hawes filed her Complaint with the Board of Professional Responsibility. See Petition, Exhibit A. Ultimately, the Golden matter went to trial at a later date after the Trial Court granted a continuance requested by the Defense. Hawes was not called as a witness at the ultimate trial. A Stipulation as to her testimony was worked out. Jowers testified the results of the Trial were not affected by the use of the Stipulation versus Hawes testifying at Trial.

Summary of Testimony

In her testimony, Hawes essentially testified in support of the statements in the petition while supporting the introduction of the various emails exchanged between her and Stowe. She further testified that she is an employee of Knox County and is in no way involved in setting fees for services as an expert witness.

She saw "red flags" in Stowe's email to her wherein he stated that "[Hawes and Lott] were not yet criminal defendants." Due to the acrimony that developed between Stowe and

Hawes, she worried that if Stowe was not pleased with her testimony in the Golden trial, Stowe would seek some form of retribution against her. She viewed his actions as threatening. As such, she planned to travel to the trial with her personal lawyer, Alex Little.

Lott testified that the emails were unprofessional and threatening, particularly the emails threatening to have Stowe and the victim's Family come to their place of business and making he and Hawes criminal defendants.

In his testimony, Stowe adopted his earlier emails and stated that he "just kept thinking [Lott and Hawes] would wake up" and, presumably, do as he instructed them.

Stowe acknowledged that as an elected official, he safeguards special authority and admitted on cross-examination that a reasonable person should be "very concerned" that a District Attorney General can institute criminal proceedings against an individual.

Stowe eventually apologized to Hawes after she filed her Complaint with the Board. His letter to the Board in response to her Complaint, however, contained much more of the same language and hostility as his prior email exchanges. See Trial Exhibit 6.

In his testimony, Jowers admitted that Hawes never stated she would not attend the Golden trial. He likewise agreed that despite his displeasure with having to have his assistant drive 5 hours up and back to serve the trial subpoena, it was not unreasonable for Hawes to be served with a subpoena to secure her testimony as she requested. Jowers acknowledged that at no time did he formally move the Trial Court for a new trial date so as to accommodate Hawes' requested in Court testimony dates although he did speak informally with the Trial Judge regarding possible new trial dates. He did not find Hawes's conduct to be "ridiculous."

Stowe believed that Hawes was refusing to attend the trial without prior payment of a fee to her employer. Stowe takes the position that Hawes's action was tantamount to a refusal to

testify and, therefore, justified or at least explained his response to Hawes. For the reasons set out below, we disagree with Stowe's position, find in favor of the Board, and order a public censure pursuant to the Rules of Professional Conduct.

Findings of Fact

We find the following:

1. Stowe sent each of the emails attributed to him introduced in the trial and attached as Exhibits to the Petition.

2. At no time has Stowe denied or otherwise quibbled with the language contained in his prior emails. In fact, when given the opportunity to explain his conduct as expressed in the emails, Stowe defended them and admitted at trial, "I was rude."

3. Dr. Hawes never stated that she would not participate or attend the Golden trial, nor did she intimate as such.

4. Stowe admits as much in his Answer: "Dr. Hawes does not specifically state she won't come [...]." See Answer, paragraph 36.

5. Dr. Hawes was not involved in setting or collecting fees on behalf of her employer for her time spent testifying as an expert witness and did advise Stowe of this.

6. Dr. Hawes felt intimidated, harassed, and threatened by Stowe's conduct.

7. Hawes eventually hired an attorney in private practice (Alex Little) to represent her.

8. At no time did Hawes or Lott engage, show intent to engage, or attempt to engage in any criminal conduct.

9. Hawes and Lott reasonably believed they might be criminally charged or prosecuted or that Stowe might otherwise carry out other threats against them, including driving to where they were to confront them with the victim's family. Hawes felt Stowe was in a position to damage

her credibility and career as a medical examiner and would do so if she failed to do as he instructed.

10. Hawes reasonably believed that Stowe would hold her personally responsible for any loss of the Golden criminal trial.

11. Stowe, though frustrated at having to expend time and energy to secure Hawes' participation in trial, overreacted in his communications, which themselves were detrimental to his relationship with someone who aimed to serve the ends of justice.

12. Stowe's emails with Hawes were threatening and disrespectful.

13. Stowe acted intentionally.

14. Because he serves as District Attorney General with both the resources and ability to bring and prosecute criminal conduct, Stowe is in a position of power. He had the power to back up his threats.

15. Stowe was licensed in Tennessee in 2011 but practiced law in Texas for many years before moving to Tennessee and eventually running for District Attorney General. He has substantial experience in the practice of law.

16. Stowe eventually apologized in writing to Hawes (after the Complaint by her was made to the Board) and engaged other remedial measures but only after replying to her Complaint with a letter to the Board, which essentially memorialized his prior statements and needlessly solidified his commitment to treat Hawes and Lott as potential criminal defendants. (See Trial Exhibit 6).

Applicable Law

Initially, we recognize that all parties were under certain stressors to participate in and complete a murder trial as well as accommodate their individual personal and professional commitments. Such is the nature of law practice for the lawyer, the parties, the witnesses and those otherwise involved in the administration of justice. Nevertheless, the context does not justify the negative and threatening approach taken by the Stowe in this matter. General Stowe had the upper hand and was in a clear position to extend the olive branch and failed to do so until the Hawes Complaint was filed against him. For this reason, his conduct fell below the standards expected of lawyers in this State and especially those who represent the State and Community to the public at large.

The Board seeks to sanction Stowe based on three separate theories. We address each below.

Rule 4.4: Respect of the Rights of Third Persons

> (a) In representing a client, a lawyer shall not:
> (1) use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such person; [...].

In this case, Stowe admits to sending the emails to Hawes and Lott. The tone of his communication with them was intimidating and could only be designed to embarrass and indeed burden Hawes and Lott. Hawes felt compelled to hire an attorney to guide her and possibly defend her in the face of what she perceived to be threats of a possible indictment or other criminal sanction. The language and overall tone of Stowe's emails and the results they wrought—a State's witness genuinely afraid of criminal prosecution to the point of hiring counsel—served no justifiable purpose. Nothing in these facts warranted such threats. Stowe

eventually apologized for his conduct; unfortunately, what was said cannot now be unsaid. The Board has sustained its burden for a violation of Rule 4.4.

Rule 4.2: Communication with a Person Represented by Counsel

> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

RPC 4.2. The comments to the rule add the following:

> [8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but such actual knowledge may be inferred from the circumstances.

RPC 4.2, comment 8.

In this case, Hawes and Lott requested that Stowe communicate with them through Myers Morton of the Knox County Legal Office. Stowe testified that he initially refused to do so as he believed that Knox County could not represent Hawes in the underlying criminal prosecution of the Golden trial. Even so, four of the five emails on this topic seemed to be rather rapid-fire in nature taking place within the space of less than two hours on the same date. There also appeared to be uncertainty in regards to whether Morton—the County Attorney—could in fact represent Lott and Hawes, and the hearing on this matter did little to clear it up. Hawes later hired private counsel (Alex Little), but there is no proof of communication involving him. Nevertheless, the parties apparently resolved any differences such that further communication was no longer necessary after Morton sent his emails to Stowe.

When reviewing cases that explain and apply this Rule, we find much more egregious conduct at play. See, Monceret v. Board of Professional Responsibility, 29 S.W.3d 455 (Tenn., 2000) (counsel issuing subpoena for and deposing someone without an attorney present). As

such, we believe the Board failed to meet its burden of proof of showing that Stowe violated Rule 4.2. It was not demonstrated that Stowe **knew** that Morton represented Lott and Hawes and continued communication with them after this fact.

Rule 8.4: Misconduct

> It is professional misconduct for a lawyer to:
> (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> [...]
> (d) engage in conduct that is prejudicial to the administration of justice [...].

RPC 8.4. The comments to the rule add the following:

> [7] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director, or manager of a corporation or other organization.

RPC 8.4, comment 7.

We conclude the Board sustained its burden of proof that Stowe violated Rule 8.4. On this record, there exists no justification for calling a witness "ridiculous," and in need of getting "her head screwed on straight." Going the extra mile of threatening criminal prosecution, threatening to haul a victim's family to confront the witness, and threatening to hold someone personally liable if things do not turn out as the prosecution wants is no way to encourage witnesses to participate in the criminal justice process. Hawes is experienced as an expert witness, but she is not a lawyer and would be justifiably concerned about the use of such language against her. Lott would and did feel the same way. Stowe's emails to them were condescending and fractious. The effect was that Hawes and Lott feared criminal prosecution if they did not do as Stowe wished. Witnesses who feel threatened and intimidated is prejudicial to the administration of justice.

For the foregoing reasons, the Panel concludes that the Board sustained its burden of proof for violations by Stowe of Rule 4.4 and Rule 8.4. We dismiss the claim with respect to Rule 4.2.

Because we find violations of these Rules, we must choose to order (1) disbarment, (2) suspension, or (3) publicly censure. See Tennessee Supreme Court Rule 9, section 15 (a).

The Petitioner asserts that there exists certain aggravating factors applicable to this case. Application of aggravating factors is not mandatory. We decline to incorporate any aggravating factors.

We conclude that a Public Censure is the appropriate discipline under these circumstances.

The Findings and Judgment herein may be appealed pursuant to TN Supreme Court Rule 9, Section 33.

IT IS SO ORDERED this the 2ND day of June, 2017.

Floyd S. Flippin, Panel Member

Lowe Finney, Panel Member

S. Jasper Taylor, Panel Member

CERTIFICATE OF SERVICE

The Clerk of the Board of Professional Responsibility is directed to provide a copy of the foregoing to the following:

Krisann Hodges, Esq. &
Sandy Garrett, Esq.
Board of Professional Responsibility
10 Cadillac Drive, Ste 220
Brentwood, TN 37027

Daniel D. Warlick, Esq.
1222 16th Avenue South, Ste 21
Nashville, TN 37212

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Matthew F. Stowe, PO Box 12, Camden, TN 38320-0012, and his counsel, Daniel D. Warlick, 1222 16th Avenue South, Suite 21, Nashville, TN 37212, by U.S. First Class Mail, and hand-delivered to Krisann Hodges, Deputy Chief Disciplinary Counsel, on this the 5th day of June, 2017.

Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a Petition for Review in the Circuit or Chancery court within sixty (60) days of the date of entry of the hearing panel's judgment.