

ENTERED

JUN 07 2018

**IN THE CHANCERY COURT FOR KNOX COUNTY
AT KNOXVILLE, TENNESSEE**

HOWARD G. HOGAN

JOHN O. THREADGILL,

Petitioner,

v.

**BOARD OF PROFESSIONAL
RESPONSIBILITY,**

Respondent.

No. 194080-3

BPR Docket No. 2012-2174-SG(14)

MEMORANDUM OPINION AND ORDER

A Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee entered a Judgment on May 22, 2017 ordering the disbarment of John O. Threadgill, an Attorney who is licensed to practice law in the State of Tennessee. Mr. Threadgill was previously disbarred on June 6, 2012 and July 12, 2012. The previous disbarments are not at issue in this matter.

A Petition for Final Discipline was filed December 17, 2012 and was not heard until March 20, 2017. In a judgment dated May 22, 2017, the Board made certain findings in regards to a "final discipline to be imposed as a result of the verdict of guilty" in relation to the criminal conviction of Mr. Threadgill on a single count indictment of attempting to evade or defeat the payment of income taxes and concluded Mr. Threadgill should be disbarred. It is from that Board decision that this timely appeal arises pursuant to Tenn. Sup. Ct. R. 9, §33.

Mr. Threadgill filed a timely petition for certiorari to review the panel's decision. The proper standard of review is set out at Tenn. Sup. Ct. R. 9, §33.1.

FINDINGS OF FACT

The panel made the following findings of fact:

1. That at all material times, Mr. Threadgill did and does possess a Tennessee law license. Mr. Threadgill is therefore subject to the disciplinary procedures set forth in Rule 9 of the Rules of the Tennessee Supreme Court.
2. On June 6, 2012, Mr. Threadgill was disbarred by order of the Supreme Court of Tennessee for misappropriating client funds and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.
3. On July 12, 2012, Mr. Threadgill was disbarred a second time by order of the Supreme Court of Tennessee for practicing while his license was suspended, and misappropriation of client funds.
4. On November 14, 2012, Mr. Threadgill was found guilty , by a jury, on a single county indictment of attempting to evade or defeat the payment of income taxes.
5. Mr. Threadgill appealed his conviction, and on July 11, 2014, the conviction was affirmed.
6. Mr. Threadgill was sentenced to 51 months imprisonment.
7. The actions resulting in Mr. Threadgill's criminal conviction took place prior to the first two disbarments.
8. On December 13, 2012, the Supreme Court of Tennessee entered an Order of Enforcement referring the matter to the Board for the institution of formal disciplinary proceedings "in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the verdict of guilty."
9. Mr. Threadgill has not petitioned the Supreme Court of Tennessee to obtain permission to surrender his license.
10. On or about December 5, 2016, Mr. Threadgill notified the Board of his release from federal prison confinement.
11. At the hearing of this matter, the conviction of Mr. Threadgill was stipulated.
12. The presented evidence that the hearing of this matter regarding six sanctions against Mr. Threadgill by the Supreme Court of Tennessee. Such sanctions were as follows;
 - a. 1994- private informal admonition;
 - b. 2000- private informal admonition;
 - c. 2009- one year suspension;
 - d. 2010- private informal admonition;
 - e. 2012- disbarment; and
 - f. 2012- second disbarment.
13. The sanctions set forth above were based, in part, on findings of plagiarism, misappropriation of monies belonging to a client or third-party, and charging an unreasonable fee.

14. Mr. Threadgill was licensed to practice in law in the State of Tennessee in 1967, and has substantial experience.

15. Mr. Threadgill was provided the opportunity to submit supplemental evidence to this Panel following his attendance at the March 20, 2017 hearing. Such evidence includes sworn letters from Norbert Ackermann, Jr., Charles W. B. Fels, R. Culver Schmid, and his daughter, Alana Threadgill Armstrong. Further, Mr. Threadgill submitted a portion of the federal court trial transcript. This Panel has reviewed and given consideration to all such filings.

16. At the hearing of this matter, Mr. Threadgill presented testimony in explanation of his income tax issues which were the subject of the federal court criminal conviction.

17. At the hearing of this matter, Mr. Threadgill submitted testimony regarding the impact his conviction and imprisonment has had upon Mr. Threadgill and his family including missing his son's wedding, missing his son's swearing in as an attorney, and the ultimate destruction of his marriage.

18. At the hearing of this matter, Mr. Threadgill submitted testimony in support of his contention that he has been rehabilitated, desires to help others, and his hope to one day provide pro-bono advice and services in South Carolina.

19. At the hearing of this matter, Mr. Threadgill presented testimony through Robert Gidselmann, and Episcopal rector in a church in Knoxville. Testimony from this witness was in support of Mr. Threadgill's character, reputation, rehabilitation and the repercussions disbarment may have upon Mr. Threadgill and his family.

The Court has carefully reviewed the record and finds that each of the panel's findings of fact are supported by substantial and material evidence in the record and are restated verbatim herein as the Court's own findings.

The panel also made the following conclusions of law:

CONCLUSIONS OF LAW

20. John O. Threadgill was found guilty and convicted of a "serious crime" as defined in Tenn. Sup. Ct. R. 9 §2.

21. The policies and rules of the Board of Professional Responsibility of the Supreme Court of Tennessee reference to the use of The ABA Standards of Imposing Lawyer Sanctions when determining discipline. (Policies and rules of the Board of Professional Responsibility of the Supreme Court of Tennessee, §1.12).

22. The Standards for Imposing Lawyer Sanctions, as approved February 1986 and amended February 1992, provides as follows:

5.1 Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation.

5.11 Disbarment is generally appropriate when:

a. a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution; or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

b. a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

(ABA Standards for Imposing Layer Sanctions §5.11)

23. The sole issued before this Panel: Shall be the extent of the final discipline to be imposed, provided that a disciplinary proceeding so instituted will not be brought to hearing until all appeals from the convictions are concluded. (Tenn. Sup. Ct. R. 9 §22.3(c)).

AGGRAVATING AND MITIGATING FACTORS

24. In consideration of §9.0 of the ABA Standards of Imposing Lawyer Sanctions as approved February 1992, this Panel makes the findings set forth below.

25. Mr. Threadgill's prior disciplinary offenses are found to be an aggravating factor.

26. Mr. Threadgill's dishonest or selfish motives are found to be an aggravating factor.

27. A pattern of misconduct is found to be an aggravating factor.

28. Mr. Threadgill's substantial experience in the practice of law is found to an aggravating factor.

29. Mr. Threadgill's underlying illegal conduct, resulting in his conviction, is found to an aggravating factor.

30. Mr. Threadgill's character and reputation are found to an mitigating factors.

31. Mr. Threadgill's conviction and time served in federal prison is found to be a penalty or sanction such that it is a mitigating factor.

The Court finds that the panel's conclusions of law are proper and in harmony with the law of the case and are restated verbatim herein as the Court's own findings.

DISCUSSION

Mr. Threadgill asserts that the panel lacked jurisdiction under Rule 9 of the Tennessee Supreme Court Rules, § 8.1, to discipline him because the conduct leading to the conviction occurred prior to his November 2009 Suspension and June 6, 2012 Disbarment; therefore, he argues, he has already been disciplined for the same conduct. The Court finds and holds that the panel's handling of this issue was correct and Mr. Threadgill - although "disbarred" - still possessed a valid law license; therefore, he was properly disciplined for the conviction. As the Board's brief correctly argues, jurisdiction to discipline a lawyer is based on whether the lawyer is *admitted* to practice law in the State of Tennessee, not whether the lawyer is *able* to practice law. Tennessee Supreme Court Rule 9, § 1.1. The Board's interpretation of the foregoing rule is that their ability to discipline arises where a lawyer possesses a law license, even if previously disbarred. The Court agrees with their interpretation.

Mr. Threadgill also posits that he should not be further disciplined because there is no proof that further discipline will serve the ends of justice. While the Court is somewhat sympathetic to this argument, it cannot substitute its judgment for that of the panel. *Milligan v. Board of Professional Responsibility*, 301 S.W. 3d 619, 635 (Tenn. 2009). The trial Court may reverse or modify a hearing panel's judgment only if it meets one of the following: (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 or material in light of the entire record. Tennessee Supreme Court Rule 9, § 33.1

(b). *Hughes v. Board of Professional Responsibility*, 259 S.W. 3d 631, 640-41 (Tenn. 2008).

Since the panel's judgment passes scrutiny under the applicable standard for judicial review with regard to the facts and law, the Court is duty bound to leave it undisturbed. Further, the Court believes the panel was well within its discretion to disbar a lawyer after conviction of a felony offense.

Mr. Threadgill also argues that even if he is subject to discipline, disbarment is excessive under the circumstances. The Court summarily disagrees with this argument because, as stated above, the panel was well within its discretion to disbar a lawyer after conviction of a felony offense. Commission of a felony offense is repugnant to the basic requirement for law abiding behavior for lawyers in Tennessee. Neither the bar nor the public would be served by the panel or this Court giving Mr. Threadgill a pass for his criminal conduct.

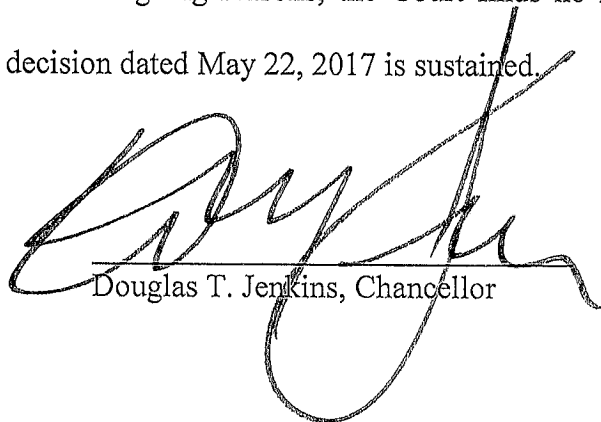
Mr. Threadgill continues to argue in his brief that any sanctions imposed should relate back to his conviction in November 2012. For this position he cites Tennessee Supreme Court Rule 9, §22.5. The Tennessee Supreme Court recently addressed this issue in *Hornbeck v. Board of Professional Responsibility*, 2018 WL 915027, ___ S.W. 3d ___ 2018. (No citation is available). At page 9 of the Court's Hornbeck opinion, the Court held that disbarment does not go in effect until after entry of the Court's Order, which is delayed while the appeal is ongoing. "Thus, participation in the appeal process necessarily postpones the date on which the disbarred attorney becomes eligible to apply for reinstatement. The delay for eligibility for reinstatement must be factored into the lawyer's calculus in deciding whether to accept disbarment at the outset or file an appeal." *Id.* at page 9. In the instant case, Mr. Threadgill has delayed the effective date of his disbarment for several years by asking for it to be delayed until he was released from prison and this appeal. The Court holds that Tennessee Supreme Court Rule 9, §22.5 does not

operate to backdate the effective date of Mr. Threadgill's disbarment to the date of his conviction or suspension.

At the oral argument, a discussion occurred with Mr. Threadgill and Disciplinary Counsel regarding publication of Mr. Threadgill's third disbarment, which occurred May 22, 2017. The Court indicated that it might be amenable on Mr. Threadgill's request to order that the disbarment not be published; however, Tennessee Supreme Court Rule 9, §28.11 mandates publication. The Court is without the discretion to suppress publication of the disbarment.

CONCLUSION

It is therefore ORDERED, for the foregoing reasons, the Court finds no merit in Mr. Threadgill's arguments, and the Panel decision dated May 22, 2017 is sustained.



Douglas T. Jenkins, Chancellor

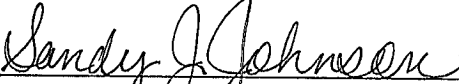
CERTIFICATE OF SERVICE

I certify that I have mailed or personally delivered an exact copy of the foregoing upon the following parties:

John O. Threadgill
1332 S. Sherwood Drive
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A. Russell Willis
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TN Board of Professional Responsibility
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Brentwood, TN 37027

This 7th day of June, 2018.


Clerk & Master/D.C.