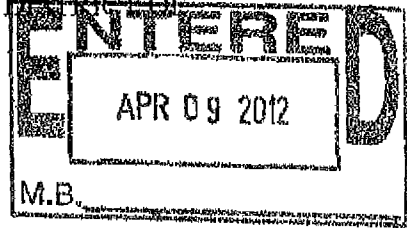


IN THE CHANCERY COURT FOR THE THIRTIETH JUDICIAL DISTRICT OF  
TENNESSEE AT MEMPHIS



WILLIAM T. WINCHESTER,

Petitioner,

vs.

No. CH-11-0492-1

BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE SUPREME COURT OF TENNESSEE,

Respondent,

and,

ROBERT E. COOPER, JR., ATTORNEY  
GENERAL AND REPORTER,

Intervenor-Respondent.

JUDGMENT

This case is before the court upon a motion to dismiss for failure to prosecute filed by the respondent, Board of Professional Responsibility and a motion to recuse filed by the petitioner, William T. Winchester. The parties, by agreed order, agreed that these motions could be determined by the court without oral argument. Thereafter, the petitioner filed a supplemental motion to recuse alleging the court has a "professional and financial interest in the outcome of the constitutional issues." Based, in part, upon the court's determination as to the respondent's motion to dismiss for failure to prosecute, the court is of the opinion that it has no professional or financial interest in the outcome of petitioner's constitutional issues.

This petition for writ of certiorari was filed by Mr. Winchester on March 21, 2011. Tennessee Supreme Court Rule 9, section 1.3 provides that the respondent in a disciplinary proceeding may have a review of the judgment of a hearing committee in the manner provided by T.C.A. 27-101 et seq., except as otherwise provided in the rule. With respect to the filing of a writ of certiorari, Tennessee Code Annotated section 27-9-109(a) provides that "immediately upon the grant of a writ, the board or commission shall cause to be made certified and forwarded to such court a complete transcript of the proceedings in the cause, containing also all the proof submitted before the board or commission." Tennessee Supreme Court Rule 9, section 23.1 provides, however, that the respondent and not the Board of Professional Responsibility shall file

the transcript. Thus, Mr. Winchester has the responsibility to file the transcript in the trial court and he has failed to do so. In the opinion of the court, his petition should be dismissed.

In his motion to recuse, Mr. Winchester alleges that Rule 9, Section 1.5, of the Rules of the Supreme Court violates the requirement of Article VI, Section 4, of the Tennessee Constitution that judges must be "elected by the qualified voters of the district or circuit to which they are to be assigned." Section 1.5 provides that when an attorney files a petition for writ of certiorari pursuant to Tennessee Code Annotated section 27-9-101 *et seq.*, in the circuit or chancery court seeking a review of determination by a disciplinary hearing panel, the "Chief Justice shall designate a trial judge or chancellor, regular or retired, who shall not reside within the geographic boundaries of the chancery division or circuit court wherein the office of the [attorney] was located at the time the charges were filed by the Board." The Tennessee Supreme Court has the inherent supervisory power to regulate the practice of law. Thus, it could have authorized anyone to review hearing panel decisions or provided for another method of review. It is the court's opinion, Article VI, Section 4, of the Tennessee Constitution is not violated by Rule 9, Section 1.5 provision that the review be by a "trial judge or chancellor, regular or retired, designated by the Chief Justice.

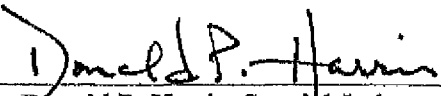
Petitioner also alleges that the Senior Judge Enabling Act violates Article VI, Section 4, of the Tennessee Constitution since it authorizes former judges with at least eight years experience to be designated a senior judge. Tennessee Code Annotated section 17-2-303(a) of that act provides, however, that the Supreme Court is only authorized to appoint a senior judge "after it has made an affirmative finding that the effective administration of justice in one (1) or more districts requires additional judicial resources." Article VI, Section 11, of the Tennessee Constitution provides that "[t]he legislature may by general laws make provision that special Judges may be appointed, to hold any Courts the Judge of which shall be unable or fail to attend or sit, or to hear any cause in which the Judge may be incompetent." In the opinion of the court, the Senior Judge Enabling Act falls within the constitutional provision allowing the legislature to provide for special judges to be appointed when the elected judge is unable to attend or sit and does not violate Article VI, Section 4.

Finally, the petitioner alleges that Supreme Court Rule 9, Section 1.5 is unconstitutional because it allows for the appointment of a regular or retired judge from another district to hear disciplinary appeals without following the procedure described in Maxwell Medical, Inc. v. Chumley, 282 S.W.3d 893 (Tenn. Ct. App. 2008). Maxwell Medical outlines a procedure for appointing a substitute judge pursuant to Tennessee Code Annotated section 17-2-118 if for good cause a judge is unable to hold court. As stated above, the Tennessee Supreme Court has the inherent supervisory power to regulate the practice of law and could have authorized anyone to review hearing panel decisions in the manner it proscribed. In this case, it provided for the designation of "a trial judge or chancellor, regular or retired, who shall not reside within the geographic boundaries of the chancery division or circuit court wherein the office of the [attorney] was located at the time the charges were filed by the Board." Thus, in this case, the

designee is not sitting because a judge is unable to sit but because the Supreme Court determined it appropriate under its power to supervise the practice of law. This issue is without merit.

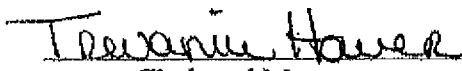
It is, therefore, ORDERED that the petition for writ of certiorari filed by the petitioner be dismissed for failure to prosecute. The costs of this cause shall be taxed to the petitioner, William T. Winchester, for which execution may issue, if necessary.

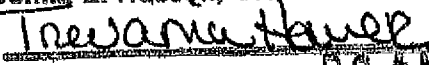
This 9<sup>th</sup> day of April 2012.

  
Donald P. Harris, Special Judge  
Sitting by designation of the  
Tennessee Supreme Court

CERTIFICATE

The undersigned hereby certifies that a copy of the foregoing Judgment has been forwarded to William T. Winchester, 5625-F Pearl Drive, #320, Evansville, IN 47712; Sandy Garrett, Disciplinary Counsel, Board of Professional Responsibility, 10 Cadillac Drive, Suite 220, Brentwood, TN 37027; and E. Mitchell Porcello, Assistant Attorney General, P.O. Box 20207, Nashville, TN 37202, this the 17<sup>th</sup> day of April 2012.

  
Clerk and Master

**ATRUE COPY-ATTEST**  
Donna L. Russell, Clerk & Master  
By   
D.O. & M.