

SUPREME COURT OF TENNESSEE

Board of Professional Responsibility v. Reguli

489 S.W.3d 408 · Decided October 1, 2015

SUMMARY

The Tennessee Supreme Court reviewed attorney-discipline proceedings against Connie Reguli arising from her handling of a client retainer, representations concerning professional certification on her website, and another client matter. The court affirmed the trial court's restitution order but otherwise reinstated the hearing panel's suspension and probation requirements. The court rejected challenges concerning the hearing panel's authority, selection process, disciplinary counsel's disqualification, evidentiary support, and the constitutionality of Tennessee's disciplinary system.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Sharon G. Lee, Chief Justice; Cornelia A. Clark; Holly Kirby; Frank G. Clement, Jr., Special Judge
JURISDICTION	Tennessee
DECIDED	October 1, 2015
DISPOSITION	other
PROCEDURAL POSTURE	Both Connie Reguli and the Board appealed from a trial court order affirming the hearing panel's findings but modifying the panel's disciplinary sanction. The Tennessee Supreme Court reviewed the disciplinary hearing panel's findings and sanction.
STANDARD OF REVIEW	The Court applies the same standard of review as the trial court. It will reverse or modify a hearing panel decision only when the petitioner's rights were prejudiced because the panel's findings, inferences, conclusions, or decisions violated constitutional or statutory provisions, exceeded jurisdiction, resulted from unlawful procedure, were arbitrary or capricious or an abuse of discretion, or were unsupported by substantial and material evidence. The Court does not substitute its judgment for the panel's on the weight of evidence or factual questions, defers to credibility determinations, reviews legal questions de novo, and reviews evidentiary and disqualification decisions for abuse of discretion.
PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion; precedential.

PARTIES

Connie Reguli, Board of Professional Responsibility of the Supreme Court of Tennessee v. Connie Reguli, Board of Professional Responsibility of the Supreme Court of Tennessee

TOPICS

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QUESTIONS PRESENTED

1. Whether the hearing panel's findings were void because its chair exceeded his authority.
2. Whether the panel erred by denying disclosure requests concerning the appointment process for panel members and whether the selection procedure was unlawful.
3. Whether disciplinary counsel should have been disqualified because of an email concerning Reguli's illness.
4. Whether the panel's factual findings and legal conclusions were arbitrary, capricious, an abuse of discretion, or unsupported by substantial and material evidence.
5. Whether the disciplinary sanctions, including probation and restitution, were arbitrary, capricious, or inconsistent with the ABA Standards.
6. Whether Tennessee's attorney disciplinary system violated due process or was otherwise unconstitutional.
7. Whether the trial court erred by modifying the hearing panel's probationary period and conditions.

HOLDINGS

1. The hearing panel chair acted within his authority when ruling on evidentiary issues with the advice and consent of the other panel members, and the record did not show that he improperly signed the order for the other members.
2. Reguli waived appellate review of her disclosure request by failing to obtain a ruling, and her challenge to the use of a random rather than rotating selection process did not establish unlawful procedure or warrant vacatur.
3. The hearing panel did not abuse its discretion by declining to disqualify disciplinary counsel based on an email and letter expressing concern about Reguli's illness.
4. Substantial and material evidence supported the findings that Reguli violated RPC 1.4(a)(4), 1.4(b), 1.5(f), 1.16(d)(6), 8.1(b), 8.4(a), 8.4(d), and 7.4(b).
5. The \$10,000 payment was a security retainer rather than a general retainer or fixed fee earned upon receipt, and the unearned balance had to be returned when representation ended.

6. An attorney is responsible for misleading statements on the attorney's website even when the information was entered or maintained by a third party.
7. The trial court properly added \$7,800 in restitution but improperly reduced and restructured the suspension and probation and eliminated the TLAP-evaluation condition; the hearing panel's original sanction was reinstated.
8. Tennessee's attorney-discipline system and its preponderance-of-the-evidence standard do not violate due process, and Reguli's remaining constitutional objections lacked merit.

KEY QUOTATIONS

“A “lawyer who collects a security retainer draws it down pursuant to an agreed hourly rate as the lawyer earns the fees by performing legal services for the client.”” (at 421-22)

“Whether websites are maintained by the attorney or a third party, the attorney has the ultimate responsibility for monitoring and reviewing the advertisement to ensure compliance with ethical rules.” (at 423)

FACTUAL BACKGROUND

Reguli accepted a \$10,000 payment from Robert Castleman under a fee agreement providing that the money would be held in escrow and hourly fees charged against it. Castleman discharged Reguli after several weeks and requested an accounting and refund, but Reguli retained approximately \$7,800 in unearned funds and did not timely provide the requested accounting. Reguli's website represented that she had family-law and divorce certifications even though she was not certified as a specialist. The hearing panel also considered, but dismissed for insufficient proof, an allegation concerning Reguli's representation of Sayuri Pope.

PROCEDURAL HISTORY

The Board filed a disciplinary petition based on misconduct involving a client fee, website advertising, and another client matter. A hearing panel found multiple violations, dismissed the claim arising from the Pope matter for insufficient proof, and imposed an eleven-month, twenty-nine-day suspension to be served on probation. The trial court affirmed the findings but reduced and modified the sanction and ordered \$7,800 in restitution. The Supreme Court affirmed the findings and restitution order but reinstated the hearing panel's remaining sanction and probation conditions.

DISPOSITION

other

CASES CITED

- Mabry v. Board of Professional Responsibility, 458 S.W.3d 900, 903 (Tenn. 2014)
- Brown v. Board of Professional Responsibility, 29 S.W.3d 445, 449 (Tenn. 2000)
- Doe v. Board of Professional Responsibility, 104 S.W.3d 465, 470 (Tenn. 2003)
- Board of Professional Responsibility v. Cowan, 388 S.W.3d 264, 267 (Tenn. 2012)
- Skouteris v. Board of Professional Responsibility, 430 S.W.3d 359, 362 (Tenn. 2014)

- *Moncier v. Board of Professional Responsibility*, 406 S.W.3d 139, 150, 156 (Tenn. 2013)
- *Board of Professional Responsibility v. Allison*, 284 S.W.3d 316, 322-23 (Tenn. 2009)
- *Board of Professional Responsibility v. Love*, 256 S.W.3d 644, 653 (Tenn. 2008)
- *Sneed v. Board of Professional Responsibility*, 301 S.W.3d 603, 612 (Tenn. 2010)
- *Sallee v. Board of Professional Responsibility*, 469 S.W.3d 18, 40-42 (Tenn. 2015)
- *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001)
- *Sanford v. Waugh & Co.*, 328 S.W.3d 836, 847 (Tenn. 2010)
- *Biscan v. Brown*, 160 S.W.3d 462, 468 (Tenn. 2005)
- *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000)
- *State v. Gilliland*, 22 S.W.3d 266, 273 (Tenn. 2000)
- *Ballard v. Herzke*, 924 S.W.2d 652, 659 (Tenn. 1996)
- *Rachels v. Steele*, 633 S.W.2d 473, 475 (Tenn. Ct. App. 1981)
- *Nashville, Chattanooga & St. Louis Ry. v. Hayes*, 117 Tenn. 680, 99 S.W. 362, 366 (1907)
- *State ex rel. Jones v. Looper*, 86 S.W.3d 189, 202 (Tenn. Ct. App. 2000)
- *Kendricks v. State*, 13 S.W.3d 401, 403 (Tenn. Crim. App. 1999)
- *State v. Culbreath*, 30 S.W.3d 309, 312-13 (Tenn. 2000)
- *City of Memphis v. Civil Service Commission of Memphis*, 216 S.W.3d 311, 316-17 (Tenn. 2007)
- *Jones v. Bureau of TennCare*, 94 S.W.3d 496, 501 (Tenn. Ct. App. 2002)
- *Culp v. Board of Professional Responsibility*, 407 S.W.3d 201, 208 (Tenn. 2013)
- *In re Hyderally*, 208 N.J. 453, 32 A.3d 1117, 1122 (N.J. 2011)
- *In re Anonymous*, 689 N.E.2d 434, 435 (Ind. 1997)
- *Columbus Bar Ass'n v. Dugan*, 113 Ohio St. 3d 370, 865 N.E.2d 895, 897-98 (Ohio 2007)
- *Bailey v. Board of Professional Responsibility*, 441 S.W.3d 223, 232, 236 (Tenn. 2014)
- *Threadgill v. Board of Professional Responsibility*, 299 S.W.3d 792, 799-800, 810 (Tenn. 2009)
- *Lockett v. Board of Professional Responsibility*, 380 S.W.3d 19, 27-28 (Tenn. 2012)
- *People v. Weisbard*, 35 P.3d 498, 509 (Colo. 2000)
- *In re Schmidt*, 130 So. 3d 908, 910, 913 (La. 2013)
- *Walwyn v. Board of Professional Responsibility*, No. M2015-00565-SC-R3-BP, 2015 WL 7770161, at *15-16 (Tenn. Dec. 3, 2015)
- *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 575 U.S. 494, 135 S. Ct. 1101, 191 L. Ed. 2d 35 (2015)

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