

SUPREME COURT OF TENNESSEE

M. Josiah Hoover, III v. Board of Professional Responsibility of the Supreme Court of Tennessee

395 S.W.3d 95 (Tenn. 2012) · No. E2011-02458-SC-R3-BP · Decided November 16, 2012

SUMMARY

The Tennessee Supreme Court affirmed the judgment upholding M. Josiah Hoover III's disbarment after a hearing panel considered five complaints alleging professional misconduct. The court rejected challenges concerning the denial of a continuance, consideration of misconduct reported by another attorney, sufficiency of the evidence, the severity of disbarment, and supplementation of the appellate record.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Gary R. Wade, Chief Justice; Janice M. Holder; Cornelia A. Clark; William C. Koch, Jr.; Sharon G. Lee
JURISDICTION	Tennessee
DECIDED	November 16, 2012
DOCKET	E2011-02458-SC-R3-BP
DISPOSITION	affirmed
PROCEDURAL POSTURE	Attorney disciplinary appeal from the Knox County Chancery Court's judgment affirming a hearing panel's disbarment order. The Tennessee Supreme Court reviewed the matter on direct appeal.
STANDARD OF REVIEW	The Supreme Court applies the same standard as the trial court under Tennessee Supreme Court Rule 9, section 1.3. It may reverse or modify the hearing panel's decision only if the decision violates constitutional or statutory provisions, exceeds the panel's jurisdiction, results from unlawful procedure, is arbitrary or capricious or an abuse of discretion, or is unsupported by substantial and material evidence. The court will not substitute its judgment for the panel's as to the weight of the evidence. A continuance ruling is reviewed for abuse of discretion and will not be disturbed absent prejudice.
PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion; precedential

PARTIES

M. Josiah Hoover, III v. Board of Professional Responsibility of the
Supreme Court of Tennessee

TOPICS

administrative law agency adjudication judicial review of agency action standard of review
appellate procedure

PRACTICE AREAS

attorney discipline professional responsibility administrative law appellate procedure

QUESTIONS PRESENTED

1. Whether the hearing panel abused its discretion by denying Hoover's motion to continue the disciplinary hearing.
2. Whether the hearing panel improperly considered Hoover's misconduct in Edwards v. Powers based on a complaint filed by an attorney who was not involved in that matter.
3. Whether substantial and material evidence supported the hearing panel's findings of professional misconduct.
4. Whether disbarment was an excessive or inappropriate sanction under the circumstances.
5. Whether the trial court erred by denying Hoover's post-judgment motion to supplement the record with additional evidence.

HOLDINGS

1. The hearing panel did not abuse its discretion by denying Hoover's last-minute motion for a continuance because the motion was based on outstanding discovery, the hearing had been scheduled for months, the Board was prepared to proceed, and Hoover failed to show prejudice.
2. The hearing panel properly considered Hoover's misconduct in Edwards v. Powers even though the complainant was not involved in that case.
3. The hearing panel's findings that Hoover violated multiple Rules of Professional Conduct were supported by substantial and material evidence.
4. Disbarment was an appropriate sanction and was not arbitrary, capricious, or an abuse of discretion.
5. The trial court properly denied Hoover's motion to supplement the record with a deposition transcript and case file.

KEY QUOTATIONS

“The Supreme Court, as the source of authority of the Board of Professional Responsibility and all of its functions, has the ultimate disciplinary authority pertaining to the licensure of attorneys.” (395 S.W.3d at 97)

“Our standard of review on appeal is identical to that of the trial court and, in consequence, a reversal is warranted only when the panel’s “findings, inferences, conclusions, or decisions” fall within one of the five circumstances enumerated in Rule 9, section 1.3.” (395 S.W.3d at 98)

“Because RPC 8.3 provides that a lawyer with knowledge of conduct by another lawyer that meets these criteria “shall inform” the BPR, Neuenschwander was not only authorized to report the misconduct in Edwards, he was obligated to do so, irrespective of whether he was involved in the case.” (395 S.W.3d at 99)

FACTUAL BACKGROUND

Hoover represented several clients in matters involving a bankruptcy claim, an appeal, and a divorce, and the hearing panel found that he charged an unreasonable fee, failed to satisfy a judgment, missed an appellate briefing deadline, failed to communicate with clients, and failed to prepare adequately for a deposition. The panel also considered Hoover's repeated misconduct in federal and state litigation, including violations of court orders, procedural rules, and sanctions orders. Hoover had an extensive prior disciplinary record, including a prior suspension and multiple reprimands or admonitions. The panel found multiple ethical violations and aggravating factors and ordered disbarment.

PROCEDURAL HISTORY

The Board of Professional Responsibility filed a petition alleging five instances of professional misconduct. After a hearing panel sustained the complaints and ordered disbarment, Hoover sought review in the Knox County Chancery Court, which affirmed. Hoover appealed to the Tennessee Supreme Court and also sought to supplement the record with additional evidence; the Supreme Court affirmed and denied relief concerning the supplemental record.

DISPOSITION

affirmed

CASES CITED

- Whitton v. Hoover, 313 S.W.3d 262, 265 (Tenn. Ct. App. 2009)
- Edwards v. Powers, No. 2:00-0775, 2003 WL 25674812 (S.D.W. Va. June 5, 2003)
- Rayburn v. Bd. of Prof'l Responsibility, 300 S.W.3d 654, 660 (Tenn. 2009)
- Hughes v. Bd. of Prof'l Responsibility, 259 S.W.3d 631, 640-41 (Tenn. 2008)
- Flowers v. Bd. of Prof'l Responsibility, 314 S.W.3d 882, 891, 893 (Tenn. 2010)
- Lockett v. Bd. of Prof'l Responsibility, ___ S.W.3d ___, ___, 2012 WL 2550586, at *3-4, *6-7 (Tenn. July 3, 2012)
- Bd. of Prof'l Responsibility v. Love, 256 S.W.3d 644, 653 (Tenn. 2008)
- Jackson Mobilphone Co. v. Tenn. Pub. Serv. Comm'n, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993)
- Hunter v. Ura, 163 S.W.3d 686, 709-10 (Tenn. 2005)
- Blake v. Plus Mark, Inc., 952 S.W.2d 413, 415 (Tenn. 1997)

- Lee Med., Inc. v. Beecher, 312 S.W.3d 515, 524 (Tenn. 2010)
- Sneed v. Bd. of Prof'l Responsibility, 301 S.W.3d 603, 612, 617 (Tenn. 2010)
- Bd. of Prof'l Responsibility v. Allison, 284 S.W.3d 316, 327 (Tenn. 2009)
- Spence v. Allstate Ins. Co., 883 S.W.2d 586, 596 (Tenn. 1994)
- Milligan v. Bd. of Prof'l Responsibility, 301 S.W.3d 619, 625 n.21 (Tenn. 2010)

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