IN THE SUPREME COURT OF TENNESSEE
OF THE UNITED STATES

LARRY EDWARD PARRISH, ESQ.	)	
Petitioner	)	
v.	)	**No.**_____
BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE	)	
Respondent	)	

TO THE HONORABLE SONIA SOTOMAYOR, SIXTH CIRCUIT JUSTICE

APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

COMES NOW, applicant, Larry Edward Parrish, Esq., a member of the Bar of this Court (hereinafter "**Applicant**"), pursuant to ***Rules of the Supreme Court of The United States***, Rule 13.5, and respectfully applies to The Honorable Sonia Sotomayor, Circuit Justice for the Sixth Circuit, for an extension of time **from November 26, 2018 to** and including **January 4, 2019**, within which to file a petition for certiorari, pursuant to Supreme Court Rule 13.1.

FOR CAUSE, as evidence that the instant application is in good faith, attached, as **Exhibit A hereto**, is a copy of the current draft of the anticipated petition for certiorari, the completion of which is being interrupted as below stated.

FOR FURTHER CAUSE, the Tennessee Supreme Court is the court of last resort in Tennessee.

FOR FURTHER CAUSE, on August 28, 2018, the Tennessee Supreme Court filed its mandate (judgment), effective September 7, 2018, converting the August 14, 2018 Tennessee Supreme Court Opinion into a final order.

FOR FURTHER CAUSE, a true and exact copy of the Opinion and its attached judgment are attached as **Exhibit B hereto**.

FOR FURTHER CAUSE, on August 24, 2018, a petition to rehear the appeal to the Tennessee Supreme Court, a true and exact copy of which is attached as **Exhibit C hereto**) and denied by Order of the Tennessee Supreme Court on August 28, 2018 (a true and exact copy of which is attached as **Exhibit D hereto**).

FOR FURTHER CAUSE, the jurisdiction of this Court is attached by Title 28 ***United States Code*** § 1257(a).

FOR FURTHER CAUSE, no person other than Applicant seeks the extension for which the instant Application applies.

FOR FURTHER CAUSE, unless extended, the date on which the petition for certiorari (Exhibit A hereto) is **due** to be filed on **November 26, 2018** (14 days after this Application is filed).

FOR FURTHER CAUSE, on November 12, 2018 (yesterday, late afternoon), Applicant's ophthalmologist scheduled surgery, which is not an emergency but a priority and not elective, needs to be performed on November 21, 2018 and includes pre-surgery medications and post-surgery recovery.

FOR FURTHER CAUSE, the defect for which surgery is required impedes the vision of Applicant making necessary certain restrictions in the normal course of Applicant's routine, including completing the draft which is Exhibit A hereto.

FOR FURTHER CAUSE, presuming no unanticipated complications, Applicant is expected to be restricted from activities, which would include completion of the draft of Exhibit A hereto.

FOR FURTHER CAUSE, this is the first application for an extension and granting of the Application will not prejudice any persons and will not materially interfere with administration of justice by the Court.

WHEREAS, Applicant respectfully urges Your Honor to enter an order **extending** the date by which the subject petition for certiorari must be filed up **to and including January 4, 2019**.

Respectfully Submitted,

PARRISH LAWYERS, P.C.
Counsel to Applicant

By: _____

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Memphis, TN 38120
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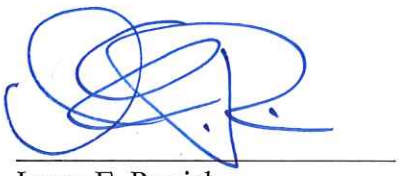
Fax: (901) 767-4441

CERTIFICATE OF SERVICE

I, Larry E. Parrish, do hereby certify that I have forwarded a true and exact copy of **Application For Extension Of Time Within Which To File Petition For Certiorari** via email, followed by True Filing Server Process:

Alan D. Johnson, Esq.
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, Tennessee 37027
(615) 361-7500
AJohnson@TBPR.org



Larry E. Parrish

on the 13th day of November 2018.

No. _____

In The
Supreme Court of the United States

_____

Larry Edward Parrish. Esq.
Member of Supreme Court Bar,
Petitioner,

v.

Tennessee Supreme Court Board of Professional Responsibility

Respondent.

_____

On Petition for a Writ of Certiorari to the Supreme Court of Tennessee

_____

Petition For A Writ Of Certiorari

Larry Edward Parrish
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1661 International Dr.
Suite 400
Memphis, TN, 38120
901-603-4739

November 2018

Counsel for Petitioner

Questions Presented

This case presents the following **issues**:

1. Should the judgment of the Tennessee Supreme Court below be reversed because the Tennessee Supreme Court arbitrarily punished Petitioner/lawyer as if his "pure speech" was "nonspeech" and/or "incidental speech?"

   Petitioner/lawyer contends that the answer is **yes**. (*infra* at ___ - ___).

2. Should the judgment of the Tennessee Supreme Court below be reversed because, in the below quasi-criminal proceedings, the Tennessee Supreme Court employed a standard that fails to meet minimum Fourteenth Amendment due process requirements (notice and a fair trial) and the prerequisite First Amendment requirements necessary before the **false statement exception** to free speech is invokable?

Petitioner/lawyer contends that the answer is **yes because** (1) the so-called "objective standard" was not precedent in Tennessee when the words in question were used and filed by Petitioner/lawyer, (2) what a "reasonable attorney" might "believe," on its face, is a void for vagueness standard and (3) the so-called "objective standard's" exclusion of any and all evidence probative of the truth/falsity question denied Petitioner/lawyer opportunity to defend the false-words allegation by a truth defense (*infra* at ___ - ___).

3. Should the judgment of the Tennessee Supreme Court be reversed because the combination of the Rules of Professional Conduct (hereinafter "**RPC**"), Model Rule 8.2(a)(1) (hereinafter "**Rule 8.2(a)(1)**"), combined with the so-called "objective standard," with its fictitious "reasonable attorney" standard, combined with *American Bar Association Standards For Imposing Lawyer Sanctions* (hereinafter "**ABA Standards**") section 6.12, made it impossible, in advance of Petitioner/lawyer penning the words in the recusal motion, to know that using the words for which Petitioner/lawyer has been sanctioned would risk being punished by the State, much less what the penalty could be?

   Petitioner/lawyer contends the answer is **yes**. (*infra* at ___ - ____).

Parties to the Proceeding Below

The only petitioner is Petitioner/lawyer, an individual human being who is an attorney, licensed to practice law, by the State, since May 1968, admitted to the Bar of this Court, since 1980, and to the Bar of an additional 20 state and federal courts throughout the United States, and never before disciplined, other than by the sanction adjudicated by the Opinion.

The only Respondent is the State of Tennessee, acting by and through its wholly controlled agency, the Board of Professional Responsibility of the Supreme Court of Tennessee.

Corporate Disclosure

There are no corporate entities who are parties.

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Table of Authorities

Petition for Certiorari

Petitioner/lawyer respectfully requests a writ of certiorari to have this Court review the record below

that produced the Opinion filed by the Tennessee Supreme Court, on August 14, 2018, effectuated by issuance of the Tennessee Supreme Court's August 28, 2018 mandate which was executed on September 7, 2018.

Opinion Below

The Opinion is not yet published in the Official Reporter, Southwest 3d, but, in due time, will be. It is now retrievable on Westlaw at 2018 WL 3853472 (Addendum pp. ___ - ___). The Opinion, unless reversed or recalled by the Tennessee Supreme Court, is binding *stare decisis* common law precedent in Tennessee (*infra* at___) and persuasive precedent throughout all jurisdictions in the United States.

Jurisdiction

This Court's appellate jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

Constitutions, Statutes & Regulations Statement of the Case

United States Constitution amend. I
United States amend. XIV
Constitution of Tennessee, Article 1, section 8 (Law of the Land Clause).

Statement of the Case

This case presents, in pristine form, the issue of whether the so-called "objective" "reasonable attorney" test for regulating attorney speech, outside the courtroom itself, violates the First Amendment.

This case also presents the issue of whether the state can impose discipline on an attorney for uttering "false" statements without requiring the disciplinary authority to prove the actual falsity of the statements and without permitting the attorney to admit evidence to prove that the statements are true.

Finally, this case presents the issue of whether a state can impose discipline on an attorney for written truthful pure speech under a novel standard, of which the attorney had no actual nor "should have known" notice at the time the statements were written.

Instant Appeal's Prelude

The present controversy started, in October 2010, when Petitioner/lawyer, as the attorney for a probate estate client, on undisputed facts and indisputable controlling (i.e., never overruled) black letter precedent favoring the estate's position, very routinely filed a petition for an order requiring a bank trust department to show cause why a certain putative trust should not be declared nonexistent and the "assets" of the nonexistent trust's "corpus" be

distributed to certain heirs-at-law. This would appear to be a mundane lawsuit, and, indeed, it was just that and ought to have concluded in a very few weeks.

Unexpectedly, Petitioner/lawyer's client was immediately confronted with probate and appellate court adjudicators who expressed dissatisfaction with the relief sought by the lawsuit. The reasons for the dissatisfaction were not justifiable by the indisputably controlling precedent. The court's dissatisfaction, though sometimes heated, was not accompanied by an animus toward the parties or counsel.

The dissatisfaction stemmed from a thinly-veiled realization that the result of following controlling precedent advocated by Petitioner/lawyer's client would be disruptive to a certain category of estate settlors, beneficiaries, the business practices of trust and estate lawyers in Tennessee.

The issue, boiled down, is a decade's-long status quo in the trust and estate world, across Tennessee, persisting in open defiance of indisputable black letter precedent that outlaws that status quo. Thus, in court, Petitioner/lawyer and his client were like the bull in the China shop, appearing before adjudicators and defendants who have spent and continue to spend their professional lives, without challenge, thriving in the China shop threatened by a disposition of the lawsuit filed by Petitioner/lawyer's client in accord with long-enduring precedent in Tennessee.

Petitioner/lawyer's client never disputed nor conceded the pragmatic effect of applying the

precedent but constantly argued that pragmatic effect is an irrelevancy to the adjudicators who were oath-bound to faithfully apply the controlling precedent. This is not to say that adjudicators are not entitled to have personal feelings, pro or con, about what the result of applying precedent is.

The one and only message of the recusal motion was clear. Because the trial court and the intermediate appellate court lacked the power to overrule the controlling precedent, those adjudicators had no discretion, no power nor authority but to apply the precedent, no matter how distasteful or how ominous the result of applying the precedent might be in the minds of the adjudicators.

This Case

Petitioner/lawyer contends that, under the unsustainable guise of "false statements," this case is about Petitioner/lawyer's license to practice law being suspended because Petitioner/lawyer, for a client, by a wholly written, post-judgment recusal motion, called out the adjudicator's methods and work-product, i.e., a result-oriented adjudication.

Petitioner/lawyer asserted that the result-oriented adjudication denied Petitioner/lawyer's client access to black letter controlling precedent which the adjudicator knew was controlling and, if applied, would yield a result the adjudicator did not desire.

First Amendment's False Statement Exception

By the no-evidence twist, Tennessee's newly-created so-called "objective test" is facially unconstitutional.

Tennessee's "objective test" creates **novel precedent**, i.e., precedent that what the fictitious, otherwise undefined, "reasonable attorney" decides to "believe" is wholly determinative of what, for the First Amendment false statement exception, is false.

In Tennessee, the fictitious "reasonable attorney" has no proven age, no proven experience, no proven background and has been provided no evidence bearing on the credibility of the adjudicator, the credibility of accused lawyer and no evidence concerning the record and no evidence as to what the law on point is.

Yet, this make-believe person is the sole arbiter of whether a statement by a lawyer, for a client, in a written motion to recuse, which includes no presentation "in a courtroom itself," is First Amendment-protected or, because the fictitious uninformed "reasonable attorney" **believes** the statement is false, this pretend-like belief is enough to suspend a lawyer from making a living practicing law.

If this is enough to suspend, what is to stop Tennessee from disbarring a lawyer because this fictitious uninformed "reasonable attorney" believes a lawyer's statement is false?

The only way Tennessee's fictitious "reasonable attorney" could possibly conclude that the words of Petitioner/lawyer are false is based on an unspoken irrebuttable presumption that Tennessee adjudicators would never fail to consider binding precedent. This is a standard vaguer than is the vaguest standard reasonably imaginable.

More enlightened jurisdictions do not employ the so-called "reasonable attorney" standard[1] but, instead, strictly require the disciplinary authority to prove, by evidence, that what the disciplinary authority alleges to be false, in fact, is false, just as such statements must be proven by evidence in other contexts. Some jurisdictions require the disciplinary authority to prove falsity by clear and convincing evidence.[2]

Inherent in the **false statement exception to** First Amendment **free speech** protection is that the statement be established to be false by due process.

No-Evidence

The Supreme Court's opinion creates another **novel precedent**, i.e., that, when a "false" statement is a prerequisite to imposition of a suspension of license sanction, the falsity of the statement requires zero evidence, other than the statement itself; thus, an accused lawyer's demand for strict proof of alleged falsity is of no avail, and an accused lawyer's tender of

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evidence to prove that the statement is true is able to be rejected as irrelevant/immaterial.

From the outset, continuously throughout the disciplinary proceedings and the ongoing present, the disciplinary authority has contended that it has no burden to present any evidence, other than the undisputed recusal motion, to prove that what it alleged to be false, in fact, is false. The Hearing Panel (roughly equivalent to a 3-lawyer judge-jury combination appointed by the disciplinary authority) and the Tennessee Supreme Court affirmed the contention of the disciplinary authority that no evidence, other than the undisputed recusal motion, is required to prove whether the 1,868 words the Tennessee Supreme Court extracted from the 12,444-word recusal motion, in fact, are false statements. See *infra* at __-__.

The disciplinary authority tendered no evidence, other than the undisputed recusal motion, to prove that what, in the recusal motion, it alleged to be false, in fact, is false. See *infra* at __-__.

Petitioner/lawyer testified at Hearing Panel's open-court hearing and repeated prior sworn statements that the words, all of them, in recusal motion are true and provable, by evidence, as true.

Most states have no appellate level precedent, one way or the other, on point. More than just Tennessee will be affected by the precedent the Opinion creates because only a handful of states have weighed in on this issue, and the lack of authority in the precedent marketplace means that a certiorari

denied label on this case will give increased credence to the Opinion as persuasive precedent from state-to-state.

The so-called "objective test" standard is illogically deemed to be "objective" because the touchstone is whether the standards of a fictitious "reasonable attorney" would cause the fictitious "reasonable attorney" to "**believe**" the speech is false.

To come under the false statement exception to First Amendment protection, it goes without saying that the speech must be false, irrespective of what any fictitious "reasonable attorney" may be inferred by the court to "**believe.**"

Without any evidence, the disciplinary authority takes the statement to the disciplinary court (e.g., the Hearing Panel), and the disciplinary court, summarily, announces that a fictitious "reasonable attorney" "**believes**" the statement is "false;" on this summary announcement, the lawyer is able to be suspended for violating an ethical consideration (e.g., Rule 8.2(a)(1)) that can be imposed only if the lawyer's statement is "false."

Petitioner/lawyer contends that the so-called "objective tests," all of them, are constitutionally defective as void for vagueness, but that contention aside, the so-called "objective test" created below for Tennessee is so devoid of the remotest semblance of fundamental fairness required by Fourteenth Amendment due process that there is none but a disingenuous argument able to be posited in its favor.

The upshot is that, in Tennessee, the fictitious "reasonable attorney" standard, on which a person's First Amendment right hangs, can be excluded from First Amendment protection, without the necessity for an inkling of evidence other than the statement. This is dangerous revolutionary thinking.

The "no-evidence" requirement of the new Tennessee rule sets it apart from the rule adopted by both the Ohio and the Massachusetts supreme courts.[3]

Sequence Of Erroneous Events Below

The State of Tennessee, through its Supreme Court (herein "**Supreme Court**"), overturned a public censure sanction of the Supreme Court's Disciplinary authority (hereinafter either "**disciplinary authority**" or "**BPR**") hearing panel (hereinafter "**Hearing Panel**") and, in place of the public censure of petitioner (hereinafter "**Petitioner/lawyer**"), adjudicated a suspension of law license (6 months, with 30 days active and 5 months on probation with no conditions or restrictions on practicing law during the probation).

The public censure/suspension was for pure speech (no nonspeech, no incidental speech) used by Petitioner/lawyer in a written recusal motion, after the final judgment of an intermediate appellate court, prior to the lapse of time within which to file the immediately-thereafter filed petition to rehear.

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The recusal motion was in writing only, with **no** "in the courtroom itself" *(infra* at ____) proceedings permissible, for in-chambers disposition by the judges. The appellate judges denied the recusal motion.

The recusal motion was 12,444 words, all of which argued that the judges had disqualified themselves from ruling on the petition to rehear by filing a result-oriented final judgment.

The BPR filed a formal complaint against Petitioner/lawyer charging that Petitioner/lawyer's words in the recusal motion were "false" accusations against the appellate judges and, therefore, Petitioner/lawyer had no First Amended Protection.

After the Hearing Panel public censure sanction, the BPR initiated an appeal seeking a suspension sanction rather than a public censure. Petitioner/lawyer, as an appellee, opposed the suspension sanction.

The intermediate appellate court (confusingly referred to in the record as "trial" or "circuit" court) increased the sanction from a public censure to a suspension. Petitioner/lawyer appealed.

On August 28, 2018, the Supreme Court affirmed the increase of the public censure sanction to a suspension sanction.

On August 14, 2018, the Supreme Court filed its opinion (hereinafter "**Opinion**") affirming the suspension sanction.

On September 7, 2018, the August 14, 2018 Opinion became effective.

On September 11, 2018, the Supreme Court denied Petitioner/lawyer's motion for stay of execution of the Opinion's mandate, pending the instant petition.

Outcome Below

The complaint initiating charges (Addendum p. ___) against Petitioner/lawyer, in pertinent part, reads as follows:

ALLEGED VIOLATIONS

43. It is alleged that Mr. Parrish violated the following Rules of Professional Conduct:

***

Rule 8.4
MISCONDUCT

It is professional misconduct for a lawyer to:

***

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation

The Hearing Panel's July 23, 2015 order (Addendum pp. __-__), in pertinent part, reads as follows:

> B. The Board's Motion for Judgment on the Pleadings
>
> The Board has alleged Respondent violated the following Rules of Professional Conduct:
>
> ***
>
> Rule 8.4(c). It is professional misconduct for a lawyer to...engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
>
> ***
>
> 5. Summary
>
> The Hearing Panel does not find a violation of Rule 8.4(c). (emphasis added).

The Hearing Panel's Final Order (RoA Vol. 20, AR Vol. 18 at 3071) reads as follows:

> The panel also concluded that Respondent had not violated Rule 8.4(c) of the Rules of Professional Conduct. (emphasis added).

The Supreme Court's precedent conforms the level of a sanction for unethical words of a lawyer to

the ABA Standards.[4] The Opinion, in pertinent part, reads as follows (2018 WL 3853472 *12):

> [A]BA Standard 6.12 applies, not ABA Standard 6.13. Under ABA Standard 6.12, the presumptive sanction is suspension, not a reprimand.

ABA Standards (Addendum pp. __-__), in pertinent part, reads as follows:

> 6.0 Violations of Duties Owed to the Legal System
>
> 6.1 False Statements, Fraud, and Misrepresentation
>
> [t]he following **sanctions** ... in cases involving ... **dishonesty, fraud, deceit, or misrepresentation to a court:**
>
> ***
>
> 6.12 **Suspension** is generally appropriate **when** a lawyer knows that false [i.e., **dishonest misrepresentation**] statements ... submitted to the court.

ABA Standard 6.12 applies only to conduct that "involves dishonesty, ... or misrepresentation to a court;" Petitioner/lawyer was exonerated of violating

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RPC 8.4(c) charge, i.e., dishonesty and misrepresentation.

The Opinion, in pertinent part, reads as follows (2018 WL 3853472 *7):

> When reviewing judgment in a disciplinary proceeding, ... Just as the trial court did, we [Supreme Court] ... "shall not substitute its judgment for that of the hearing panel as to the weight of the evidence on questions of fact." (citations omitted).

The Hearing Panel's ruling that Petitioner/lawyer did not engage in conduct that "involves dishonesty ... or misrepresentation" is irreversible by the Tennessee Supreme Court and, explicitly, the Opinion states that the Hearing Panel's findings of fact were not reversed.

The complaint initiating charges, in pertinent part, reads (Addendum p. __) as follows:

Rule 8.2
JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or that is made with reckless disregard as to its truth or falsity concerning qualifications or integrity of the following persons:

(1) a judge

The Hearing Panel, in its July 23, 2015 order, in pertinent part, adjudged (Addendum at ___) as follows:

> 2. Rule 8.2(a)(1)
>
> Rule of Professional Conduct 8.2 prohibits an attorney from making false statements concerning the integrity or qualifications of a judge). An attorney violates Rule "making accusations of judicial impropriety that a **reasonable attorney** would **believe** are **false.**" *Gardner*, 793 N.E.2d at 432
>
> [B]oard [Hearing Panel] finds ... [Petitioner/lawyer] made **statements** about the integrity of Judge ... that **a reasonable attorney would believe were false.** [I]ncluded accusations that the Judges: purposefully ignored binding law, purposefully fabricated facts, manipulated and rigged the legal system, acted in a manner that indicated they had taken bribes, abused their judicial power, surrendered their impartiality, and ruled against his clients due to personal sympathies and bias. These accusations were made with reckless disregard as to their truth or falsity. Respondent violated Rule **8.2(a)(1)** [not Rule 8.4(c)]. (emphasis added).

There is not now nor has there ever been an ethical rule that an attorney violates Rule 8.2(a)(1) by "making accusations of judicial impropriety that a reasonable attorney would **believe** are **false**."

The Opinion, in pertinent part, reads as follows (2018 WL 3853472 *10):

> We [the Tennessee Supreme Court] hold that the objective "reasonable attorney" standard is the appropriate standard to apply in a disciplinary proceeding involving an attorney's **in-court speech** [see *infra* at ___]. Utilizing this objective standard, (fn. omitted) the hearing panel found that Mr. Parrish had made statements in the motions to recuse about the integrity of the judges on the Court of Appeals that a reasonable attorney would **believe** to be false, and that Mr. Parrish had made those statements with reckless disregard as to their truth or falsity. (emphasis added).

The issue here is in the context of a written recusal motion filed with the Clerk of the intermediate appellate court and never presented "in the courtroom itself" (*infra* at ___) and was decided by the adjudicators in chambers.

Recusal Motion Unique

That this is a recusal motion case separates this case, in case-dispositive ways, from all of the

cases cited as controlling or persuasive precedent in the Opinion, i.e., the Opinion cites to no case involving a recusal motion.

The recusal motion at issue is a 12,444-word meticulous dissection of the final judgment of an intermediate appellate court. This dissection was designed to make clear to the judges how and why the final judgment is a deliberately conceived result-oriented adjudication, i.e., an adjudication designed to deviate (turn a blind eye) from (not overturn) controlling black letter precedent, known to the judges.

A recusal motion is designed to be an *ad hominem* accusation directly to and about the adjudicator who the recusal motion seeks to recuse. Ordinarily, the accused adjudicator adjudicates the accusation against the adjudicator; this self-judging is a practice (i.e., the defendant adjudicates whether the "defendant" is guilty or innocent) otherwise unknown to Anglo-American jurisprudence and is constitutionally suspect. See Addendum pp. ___ - ____.

No matter what words are used to state the reason for the recusal, the recusal motion's bottom line is that the adjudicator has engaged or will appear to have engaged in judicial misconduct, if the adjudicator has or continues to adjudicate the case at hand.

There is no motion like a recusal motion. **The office of the recusal motion is unique.** The recusal motion, by its very nature, sets up an adversarial relationship (no matter how otherwise professionally

amicable the relationship might be) between the adjudicator and the litigant whose case the adjudicator is assigned to adjudicate.

To assuage the inherent adversarial nature of the recusal motion, included among its **12,444** words, the following **315** words are part of the recusal motion (RoA Vol. 3, AR Vol. 1 at 12-13):

> Counsel [here Petitioner/lawyer] for Estate [Petitioner/lawyer's client] has known Judge Farmer, professionally, since the early 1970s and has never questioned his integrity. Judge Farmer and counsel [Petitioner/lawyer] for Estate [client] have personal friends in common and share, according to counsel's understanding, a deep and enduring commitment to the Judeo-Christian Work and Family Ethic.
>
> Counsel [Petitioner/lawyer] holds no ill-will, no grudges, maintains respect for Judge Farmer's skill as a judge, considers his feelings in this case to be an aberration and, if the occasion aberration (sic) arose, would freely commiserate with Judge Farmer the same as if this motion had never been filed.
>
> Estate [client] and counsel [Petitioner/lawyer] for Estate regret the necessity to file this motion, but Estate is an entity-person with

fiduciary duties to the nine heirs-at-law ... Estate's counsel [Petitioner/lawyer] has a fiduciary duty to Estate [client], which indirectly translates into a fiduciary duty to the heirs.

What has motivated Judge Farmer to do to Estate [client] what he is doing may very well be a high-minded and a moralistic sense of "duty" to prevent what, in his eyes, is an injustice that would occur if Judge Farmer evenhandedly applied unexceptional and organic law well-known to Judge Farmer.

Presuming, for argument's sake, that Judge Farmer has been motivated and continues to be motivated to do what Judge Farmer has done to Estate [client] by a high and compelling sense of moral duty, the result for Estate [client]is exactly the same as if Estate [client] was victimized by a judge with sinister motives.

Judge Farmer is no rookie. He has continuously served as an intermediate appellate judge in Tennessee since March 1986 (over 30 years) and has amassed a trophy case of opinions that evidence minute familiarity with Tennessee law and the skill and scholarship to rightly divide Tennessee

law, when he is of a mind to do so. (emphasis added). See Addendum pp. ___ - ____.

While the Opinion quotes, verbatim, 1868 words, denoted by bullet points (Opinion at 2018 WL 3853472 *2 - *5) (Addendum pp. ___-___), from the recusal motion, the above-quoted 315 words nowhere appear in the Opinion nor are the 315 words generally acknowledged to be part of the recusal motion. But, the next to last bullet point in the Opinion (at *4) includes the **recusal motion's words as follows: "[m]akes no accusation that Judge ... has taken a bribe; this is completely out of the question ...."** (emphasis added).

Reading the recusal motion's bullet-pointed words, quoted in the Opinion (Addendum pp. ____ - ____), one would reasonably conclude that words like the 315 words immediately above quoted words would not be found in the recusal motion because, read with the 315 above-quoted words, the recusal motion paints a markedly different picture of the integrity of the judge than the picture the Opinion says the recusal motion paints.

Considering the 315 above quoted words from the recusal motion, **what the recusal motion actually says about the judge** is that he is a highly qualified jurist, extremely knowledgeable of the law, of high moral character and a man of integrity. The recusal motion spoke a derogatory critique of the judge's **methods and work-product** in the case at hand.

Tennessee Precedent-On-Precedent

In a case from which there has never been an inch of retreat, most recently was cite as authority in 2012, created Tennessee's precedent-on-precedent, in ***Polk v. Faris,*** 17 Tenn. 209 (1836), and explained its holding as follows (17 Tenn. at 232-33):

> If the rule were, however, exclusively of feudal origin, its authority would not be thereby diminished, nor would that circumstance justify courts of justice in withholding obedience to it, or in refusing to give to it its full effect. For, as is justly remarked by the same learned judge last referred to, "there is hardly an ancient rule ... but what had in it more or less of a feudal tincture; but, whatever their parentage, they are now adopted by the common law of England, incorporated into its body, and so interwoven into its policy that no court of justice in the kingdom had either the power or (he trusted) inclination to disturb them." Whatever may have been the origin of the rule ... . It is a rule ... . It is this ... [that] has ... preserved ... sustaining the fabric of the modern social system.
>
> ***
>
> [at 235]
>
> [A]s our ancestors brought the rule with them across the Atlantic, and it

> formed an element of our colonial law, it must continue, until abrogated by statutory enactment ... . The conclusion is that every **rule of law** once established continues to be so, whilst the subject of it exists, until altered by solemn act of legislation. (emphasis added).

Faris has been cited in Tennessee as extant precedent in 2012 and remains extant today, unmitigated as black letter precedent. [5]

See ***Mays By and Through Mays v. Henderson,*** 1992 WL 117058 (Tenn. Ct. App. 1992) at *3:

> As an intermediate appellate court, we are required to follow the principles enunciated by the Supreme Court of Tennessee unless they are dicta or unless they have been modified or reversed. Barger v. Brock, 535 S.W.2d 337, 341-42 (Tenn.1976) (lower courts bound by decisions of higher courts); Haun v. Guaranty Ins. Co., 61 Tenn. App. 137, 138, 453 S.W.2d 84, 94 (1969) (Supreme Court's decision that has not been overruled is the law of the state); Shepherd Fleets Inc. v. Opryland USA, Inc., 759 S.W.2d 914, 921-22

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> (Tenn.Ct.App.1988) (Supreme Court's dicta not binding in later cases). Thus, we should not presume to depart from the Tennessee Supreme Court's interpretation of a statute or rule simply because we would have interpreted the statute or rule differently. See Bloodworth v. Stuart, 221 Tenn. 567, 572, 428 S.W.2d 786, 789 (1968); Richardson v. Johnson, 60 Tenn. App. 129, 136, 444 S.W.2d 708, 711 (1969). (emphasis added).

In re Hickey

There is case-dispositive never mitigated black letter controlling precedent that is dispositive of the disciplinary proceedings below. Though repeatedly brought to the attention of all the adjudicators below, it was never alluded to by any adjudicator below. Petitioner/lawyer makes mention of the precedent here to suggest that the precedent is a worthy model for controlling precedent incorporated into the Fourteenth Amendment.

In re Hickey, 258 S.W. 417, 429 (Tenn. 1923) (hereinafter "***Hickey***") is of case-dispositive significance in the instant case. As stated, throughout the proceedings below, certainly not by oversight, the fact that the ***Hickey*** precedent existed was/is known to the Tennessee Supreme Court. Ignoring known

precedent is a result-oriented adjudication trademark.[6]

In ***Ramsey,*** the Tennessee Supreme Court professed to be following already in-place Tennessee *stare decisis* precedent controlling the outcome in ***Ramsey***. This Court stated, in *Ramsey,* as follows (771 S.W.2d at 121):

> As stated, ... in In re Hickey, ..., 258 S.W. 417, 429 (1923), "the members of the bar have the best opportunity to become conversant with the character and efficiency of our judges. No class is less likely to abuse the privilege, as no other class has as great an interest in the preservation of an able and upright bench. The rule contended for by the prosecution [disciplinary authority], if adopted in its entirety, would close the mouths of all those best able to give advice, who might deem it their duty to speak disparagingly." (emphasis added)

Respondent respectfully suggests that to truly appreciate the holding in *Ramsey*, it is necessary to examine even more closely the holding of this Court in ***Hickey.***

In ***Hickey,*** the Tennessee Supreme Court was presented with facts involving a lawyer who admittedly had animosity toward a sitting judge and who, admittedly and unabashedly, attacked the judge

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verbally in a newspaper article. This Court summarized the verbal attack as follows (258 S.W. at 425):

> He [disciplined lawyer] denied that he ever charged Judge Drinnon with being corrupt. He admitted that he was angry ..., and ... criticisms mainly to that of incompetency, insufficiency, and inability to properly preside over the circuit court. The defendant ... took the position that he [disciplined lawyer] was protected ... by ... freedom of speech ... .
>
> He admitted that prior to the Rutledge incident he had never announced to any one that he was going to have to go after Judge Drinnon. He testified, in effect, that Judge Drinnon permitted ... [the judges] courts to drag, and [judge] failed to dispatch business properly beginning with the very first term of court, which he held in 1918.
>
> ***
>
> In its reduced form, the publication charges that Judge Drinnon is wholly unfit and incapacitated to hold the circuit court, and that, as a result, the court has broken down and has ceased to function.

***

> The next question is: Was the court justified, under the law and the facts, in suspending the defendant [disciplined lawyer] from the practice of law in the courts of this state for 30 days? (emphasis added).

In ***Hickey,*** the Supreme Court did not ground the constitutional right of the attorney in the First Amendment; rather, it anchored its conclusion in the Tennessee Constitution, Article 1, § 19 (hereinafter "Art. 1, § 19").

In ***Hickey,*** the Supreme Court stated as follows (258 S.W. at 429):

> In our opinion, the facts did not justify the [disciplined lawyer's] publication of the article ... .
>
> Our constitutional (Art. I, § 19) provision as to free speech is as follows:
>
> > "The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. * * *" Article 1, § 19. (ellipses in original).

In ***Hickey***, the Supreme Court platformed Tennessee's *stare decisis* precedent on the explicitly quoted provisions from *Ex parte Steinman,* 3 Penn. 220, 239 (1884) (hereinafter "*Steinman*") and *People v. Green*, 3 Penn. 374, 378 (1884) (herein after "*Green*") opinions.

In ***Hickey***, the Supreme Court answered, in the negative, the question (i.e., whether the lawyer constitutionally could be suspended for 30 days for "going after" the judge by a verbal attack the Tennessee Supreme Court explicitly held could not be justified by facts). The reason for the negative answer is stated in ***Hickey*** as follows (258 S.W.2d at 428):

> If the defendant [disciplined lawyer] were acting within his constitutional rights in criticizing the court, then it would follow that his conduct was not such as to render him unfit to practice his profession. (emphasis added).

To support this conclusion, the Supreme Court adopted, as part of its holding in ***Hickey***, a lengthy quotation from *Steinman*, reading, in ***Hickey***, as follows (258 S.W. at 429):

> Chief Justice Sharswood, in *Steinman* said:
>
> > 'The first is the new provision on the subject of the liberty of the press which has been

introduced into the Bill of Rights of the Constitution of 1874, and the second is that at that time the judiciary was not elective. Judges in 1835 were appointed by the Governor, and their tenure of office was during good behavior. There might then be some reason for holding that an appeal to the tribunal of popular opinion was in all cases of judicial misconduct a mistaken course and unjustifiable in an attorney. The proceedings by impeachment or address were the course and the only course which could be resorted to effectually to remedy the supposed evil. To petition the Legislature was then the proper step. ... . now the right and the duty of a lawyer to bring to the notice of the people who elect the judges every instance of what he believes to be corruption or partisanship. No class

of the community ought to be allowed freer scope in the expression or publication of opinions as to the capacity, impartiality or integrity of judges than members of the bar. They have the best opportunities of observing and forming a correct judgment. They are in constant attendance on the courts. Hundreds of those who are called on to vote never enter a courthouse, or if they do, it is only at intervals as jurors, witnesses or parties. To say that an attorney can only act or speak on this subject under liability to be called to account and to be deprived of his profession and livelihood by the very judge or judges whom he may consider it his duty to attack and expose, is a position too monstrous to be entertained for a moment under our present system.' (emphasis added).

Following the quote from *Steinman*, the Tennessee Supreme Court, in ***Hickey***, additionally adopted a lengthy quote from *Green* as follows (258 S.W. at 429):

In People v. Green, supra, it was said:

> 'There is a marked difference between the attorney and the nonprofessional citizen; the former is as much an officer of the court as the clerk or sheriff, and his oath of office should lead him at all times and in all places to encourage and strengthen the judges and courts in the discharge of their official duties; but so far as this liberty of speech in connection with judicial action is concerned, his official character in no way affects him; he may talk with his neighbors, and freely comment upon the judge's official conduct in matters no longer pending, and he may criticize the same through the public press; for such acts he will be answerable

only as other citizens are.'
(emphasis added).

There is no case reported where a lawyer has been disciplined by a suspension for communicating non-invective words, conveying information, rather than abusive diatribe attacking the judge, and with no accompanying nonspeech act/omissions.

The recusal motion at issue here includes not a single crude or vulgar word. The words of Fieger did not communicate information but simply were a tirade of personal abuse of the judge. The punishment of the lawyer was for nonspeech, not for speech, and/or for acts/omissions which so intruded on a governmental interest which, relative to the value of the "speech" involved, reduced the "speech" incidental to the outweighing governmental interest being harmed.

The strongest adjectives the Opinion uses to describe Petitioner/lawyer's words are "pejorative" and "derogatory." Again, Petitioner/lawyer's derogatory/pejorative words were only used to describe the methods and work-product (opinion) of the intermediate appellate court; no such words were used to sully the character of any judge.

Petitioner/lawyer's 2013 recusal motion caused the adjudicators to pass on the recusal motion to the attorney disciplinary board. The BPR filed a formal disciplinary complaint against Petitioner/lawyer on

the ground that words used in the recusal motion were unethical falsehoods, thus, not protected speech.

The recusal motion contains no invective nor any crude word. The recusal motion, in accord with written rules of the Supreme Court, is procedurally flawless. Nothing other than the words used by Petitioner/lawyer, in the wholly written (i.e., never orally presented in the courtroom itself), motion caused the Supreme Court to suspend Petitioner/lawyer's license.

The Opinion affirms the Hearing Panel's findings of fact but fails to note that the Hearing Panel, as a matter of fact, adjudicated that Petitioner/lawyer did NOT engage in any **DISHONESTY** or any **MISREPRESENTATION** to any court. Because the Supreme Court adopted the "reasonable attorney" standard, a reader would come away with the distinct thought that Petitioner/lawyer did the exact opposite, i.e., engaged in dishonesty and misrepresentation to a court, even though the irreversible and explicitly unreversed holding of the Hearing Panel was that Petitioner/lawyer did not engage in dishonesty or misrepresentation.

The unreversed finding by the Hearing Panel is that a "reasonable **attorney**" (*infra* at __-__) would "**believe**" the quoted **words are false**. Application of the "reasonable attorney" standard to Petitioner/lawyer's protected speech violates the First Amendment because it punishes Petitioner/lawyer for speech that has never been found to be factually false, deceptive or prejudicial to the administration of justice.

Before Petitioner/lawyer wrote and filed the recusal motion, what the fictitious "reasonable attorney" might "believe" is false had never been precedent in Tennessee. Thus, there was no way humanly conceivable for Petitioner/lawyer, beforehand, to figure out that, if Petitioner/lawyer wrote and filed the recusal motion, Petitioner/lawyer could have his license to practice law suspended when the clearest conceivable Tennessee precedent contradicted the so-called "reasonable attorney' rule.

Nothing more bluntly signals this than the rulings of the Ohio Supreme Court and the Massachusetts Supreme Court opinions instituting the "reasonable attorney" standard, both, listing Tennessee as having precedent that is inconsistent with the "reasonable attorney" rule which those courts were adopting for their jurisdictions.

Because, for a lawyer to be in violation of Rule 8.2(a)(1) requires the statement to be "false" and because **Petitioner/lawyer denied** that the statements were **false** (and tendered evidence to prove, objectively, the truth of Petitioner/lawyer's statements), if Petitioner/lawyer is to have his licenses revoked for making the statements, the statements had to be adjudicated to be "false." There has never been an adjudication that any of the words in the recusal motion were false. The Opinion excuses the necessity for an adjudication that any word in the recusal motion be adjudicated to be false.

Because Petitioner/lawyer's statements were neither **nonspeech nor incidental speech**, for the

statements to be exempt from protection by the First Amendment, the statements **had to be adjudicated** to be **false in a way consistent with due process**.

The Opinion materially changes the "false" statement part of Rule 8.2(a)(1) and replaces "false" with the belief of a "reasonable attorney" that a statement is "false," excluding access (e.g., right to confront and cross-examine) the "reasonable attorney" and the opportunity to present evidence by which to prove that Petitioner/lawyer's statements are true.

This is a material change to Rule 8.2(a)(1) that occurred only by the Supreme Court, unilaterally, so adjudicating the changes, years after the recusal motion was written and filed; the material changes, undisputedly, are *ex post facto* in relation to Petitioner/lawyer's speech conveyed by the recusal motion.

The precedent created by the Tennessee Supreme Court is that (1) wholly written speech (including no invective nor crude language besmirching the judge's integrity or character), (2) in a wholly written recusal motion allowing for no oral argument, (3) filed in compliance with governing procedure, (4) after the entry of a final judgment of an appellate court, (5) not allowing for a hearing, in court or out of court, is a time, place and manner where and when there are no First Amendment free speech protections, for pure speech (no nonspeech, no incidental speech).

Speech v. Nonspeech/Incidental Speech

Petitioner/lawyer was sanctioned, by a suspension of law license, by the Supreme Court, for speech (not nonspeech, not conduct incidental to speech). Petitioner/lawyer engaged in no conduct nor omission for which Petitioner/lawyer was disciplined.

The speech/nonspeech dichotomy is a case-dispositive distinction that sets the instant case apart, in constitutionally significant ways. Never before has the Supreme Court decided an attorney discipline case where the discipline was imposed for non-invective words, conveyed for no purpose but communication, with zero nonspeech tinge.

The First Amendment protects speech. Communication which is not speech does not come under the First Amendment's umbrella of protection. Likewise, speech can be regulated when it is joined with speech where the conduct threatens a governmental interest that outweighs the value of the conjoined speech.

In the instant case every word for which Petitioner/lawyer was sanctioned was speech in the purest form.

Every case the Opinion cites as precedent authorizing Petitioner/lawyer's punishment involved nonspeech and/or incidental speech; therefore, those authorities do not invoke application of the First Amendment.

The Sixth Circuit homed in on the core issue in ***Fieger v. Michigan Supreme Court,*** 553 F.3d 955 (6th Cir. 2009) by the following words at 964-65:

> In assessing Fieger's speech, the court explained that:
>
> > [t]o call a judge a "jackass," a "Hitler," a "Goebbels," a "Braun" and to suggest that a lawyer is "declar[ing] war" on them and that the judge should "[k]iss [the lawyer's] ass," or should be anally molested by finger, fist, or plunger, is, to say the least, not to communicate information; rather, it is nothing more than *personal abuse.* We conclude that such coarseness *in the context of an officer of the court participating in a legal proceeding* warrants no First Amendment protection when balanced against this state's compelling interest in maintaining public respect for the integrity of the legal process. ***United States v. O'Brien,*** 391 U.S. 367, 377, 88 S.Ct.

1673, 20 L.Ed.2d 672 (1968). (emphasis added).

> *Id.* at 142 (emphasis added). The defendant justices prudently clarified that MRPC 3.5(c) and MRPC 6.5(a) do not preclude lawyers generally from expressing "disagreement" or "criticism, even strong criticism," of judges. *Id.* at 143. Indeed, the court specifically noted that "lawyers have an unquestioned [First Amendment] right to criticize the acts of courts and judges." *Id.* at 144 (citing *In re Estes*, 355 Mich. 411, 94 N.W.2d 916 (1959)). In Fieger's case, however, the court determined that his remarks about participants in a pending legal proceeding were so unambiguously "vulgar and crude" as to be undeserving of constitutional protection. *Fieger*, 719 N.W.2d at 144. Fieger's outrageous remarks were made during the time allowed to file a motion for reconsideration before the very panel to which the comments were directed, and such a motion was indeed filed in the immediate aftermath of the remarks (emphasis added).[7]

In all prior cases where the Supreme Court has disciplined lawyers who asserted a First Amendment defense, the denial has come in situations where the

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communication was incidental to the discipline for other unethical acts/omissions and/or was classifiable as nonspeech.

Every case cited (Addendum pp. ___- ___) by the Tennessee' Supreme Court's opinion as authority to punish Petitioner/lawyer is the ilk of the nonspeech "outrageous remarks" that make no pretense to speak words defensible as truth. What the Opinion cites as precedents are cases about nonspeech, which is a constitutionally different category of communication, in comparison with the recusal motion's pure speech.

This Court made the distinction in the case cited in ***Fieger*** in the above quotation. In ***United States v. O'Brien***, 391 U.S. 367 (1968), in part pertinent here, the Court opined as follows (at 376):

> We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea. However, even on the assumption that the alleged communicative element in O'Brien's conduct is sufficient to bring into play the First Amendment, it does not necessarily follow that the destruction of a registration certificate is constitutionally protected activity. This Court has held that when 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech

> element can justify incidental limitations on First Amendment freedoms. (emphasis added).

Petitioner/lawyer's license was suspended for no reason other than the words included in the recusal motion; there is no contention that there are any nonspeech acts/omissions at issue in the instant case. The words were in a recusal motion filed precisely in compliance with controlling rules of procedure. There has never been any oral exchange, in court or out of court, and there was none anticipated because of the recusal motion. The briefing and oral argument were completed, and the final judgment entered, subject only to the possibility of a written motion to rehear, not including an oral presentation. There were no outbursts, no histrionics, no confrontations, nothing but words in one motion to recuse, properly filed.

The suspension sanction was for no reason other than that the words were (*supra* at ____; *infra* at ____) deemed to be "false." While the Opinion labels some of the words "pejorative" and "derogatory," the suspension sanction (which is the only sanction at issue) was not because the words were "pejorative" or "derogatory," but only because some unclearly specified words were labeled falsely pejorative or falsely derogatory. Remove the falsity, and the suspension sanction is out.

Gentile Void For Vagueness Standard

By *dicta*, this Court has indicated that there are some constrictions on attorneys' First Amendment speech rights in some disciplinary situations. But this Court has never decided how pervasive the constrictions are or what standards control how to identify which statements are First Amendment-protected and which are not protected and/or why not.

In ***Gentile v. State Bar of Nevada***, 501 U.S. 1030 (1991) (hereinafter "***Gentile***"), this Court reversed the Nevada Supreme Court's imposition of a lawyer sanction for the lawyer's speech because the rule on which the sanction was based was void for vagueness. The rule in question was lengthy and rife with details. See Addendum p. ___.

By *dicta*, this Court has indicated that there are some constrictions on attorneys' First Amendment speech rights in some disciplinary situations. But, this Court has never decided how pervasive the constrictions are or what standards control how to identify which statements are First Amendment-protected and which are not protected and/or why not.

In ***Gentile*** (at 1071), this Court included *dicta* that "in the courtroom **itself**, during a judicial proceeding" (emphasis added), a lawyer's free speech rights are more limited than in other contexts. This Court did not hold that there are no First Amendment protections for speech "in the courtroom itself" or anywhere else. Although this Court has never held that free speech rights are "**extremely circumscribed**" during a judicial proceeding, the

Opinion attributes this Court with having held (Opinion, 2018 WL 3853472 *8) that, in that context, free speech rights are "**extremely circumscribed.**"

Unable to be overemphasized is the reality that nothing about the recusal motion occurred "**inside**" of a "**courtroom**" nor was there to be anything reasonably describable as a "**judicial proceeding.**"

Moreover, the **Opinion unmistakably misquotes *Gentile's dicta***, by leaving out, with no ellipsis to indicate the deletion, the words "**in the courtroom, itself** ... ." (emphasis added). The **recusal motion** of Petitioner/lawyer, beyond debate, **was not "in the courtroom itself."**

Conclusion

Ready to type....

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November 2018

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Only the Westlaw citation is currently available.

Supreme Court of Tennessee,
AT JACKSON.

BOARD OF PROFESSIONAL RESPONSIBILITY
v.
Larry Edward PARRISH

No. W2017-00889-SC-R3-BP
|
April 4, 2018 Session
|
FILED 08/14/2018

Synopsis

Background: Board of Professional Responsibility instituted attorney disciplinary proceedings. Hearing panel made findings of fact and conclusions of law and recommended public censure as sanction for attorney's misconduct. Board petitioned for writ of certiorari. The Circuit Court, Shelby County, No. CT-001608-16, Robert E. Lee Davies, J., affirmed hearing panel's findings but determined that six-month suspension was appropriate sanction for attorney's misconduct. Attorney appealed.

Holdings: The Supreme Court, Lee, J., held that:

[1] pejorative statements attorney made about judges in recusal motions filed in state court were not protected by First Amendment, and provided basis for finding that attorney violated professional conduct rules, and

[2] six-month suspension, rather than public censure, was appropriate sanction for attorney's misconduct.

Affirmed.

West Headnotes (15)

[1] **Attorney and Client**
Power and duty to control

Attorney and Client
Review

45 Attorney and Client
45I The Office of Attorney
45I(B) Privileges, Disabilities, and Liabilities
45k32 Regulation of Professional Conduct, in General
45k32(3) Power and duty to control
45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k57 Review

The Supreme Court, as the source of authority for the Board of Professional Responsibility and all of its functions, bears the ultimate responsibility for enforcing the Rules of Professional Responsibility and the ultimate disciplinary responsibility for violations of the ethical rules governing attorneys practicing in the state.

Cases that cite this headnote

[2] **Attorney and Client**
Review

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k57 Review

The Supreme Court reviews judgments in disciplinary proceedings against attorneys in light of its inherent power and fundamental right to prescribe and administer rules pertaining to the licensing and admission of attorneys.

Cases that cite this headnote

[3] **Attorney and Client**
Review

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k57 Review

When reviewing a judgment in an attorney disciplinary proceeding, the Supreme Court's standard of review is the same as that applied by the trial court; just as the trial court did, the Supreme Court reviews the transcript of the evidence presented before the hearing panel, as well as the hearing panel's findings and judgment.

Cases that cite this headnote

[4] **Attorney and Client**
Review

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k57 Review

In an attorney disciplinary proceeding, the trial court reviews questions of law de novo, but shall not substitute its judgment for that of the hearing panel as to the weight of the evidence on questions of fact.

Cases that cite this headnote

[5] **Attorney and Client**
Review

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k57 Review

Like the trial court, the Supreme Court will reverse or modify the hearing panel's decision in an attorney disciplinary proceeding only when the rights of the party filing the petition for review have been prejudiced because the hearing panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the hearing 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 and material in the light of the entire record.

Cases that cite this headnote

[6] **Attorney and Client**
Review

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k57 Review

In determining whether substantial and material evidence supports the hearing panel's decision in an attorney disciplinary case, the Supreme Court evaluates whether the evidence furnishes a reasonably sound factual basis for the decision being reviewed.

Cases that cite this headnote

[7] **Attorney and Client**
Trial or hearing

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k54 Trial or hearing

A hearing panel's decision in an attorney disciplinary case is arbitrary and capricious if it is not based on any course of reasoning or exercise of judgment, or disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.

Cases that cite this headnote

[8] **Attorney and Client**
Trial or hearing

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k54 Trial or hearing

A hearing panel abuses its discretion at an attorney disciplinary proceeding if it applies an incorrect legal standard or reaches a decision that is against logic or reasoning that causes an injustice to the party complaining.

Cases that cite this headnote

[9] **Attorney and Client**
Deception of court or obstruction of administration of justice

Constitutional Law
Statements regarding judge or court officials

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k42 Deception of court or obstruction of administration of justice
92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(S) Attorneys, Regulation of
92k2046 Statements regarding judge or court officials

Pejorative statements attorney made about judges in recusal motions filed in state court were not protected by First Amendment, and provided basis for finding at attorney disciplinary proceeding that attorney violated professional conduct rules prohibiting conduct intended to disrupt a tribunal, the making of statements known to be false or with reckless disregard for truth concerning qualifications or integrity of a judge, conduct involving dishonesty, fraud, deceit, or misrepresentation, and conduct prejudicial to administration of justice; statements were in-court statements, reasonable attorney would believe statements in question to be false, and attorney made statements with reckless disregard as to truth or falsity. U.S. Const. Amend. 1; Tenn. Const. art. 1, § 19; Sup.Ct.Rules, Rule 8, Rules of Prof.Conduct, Rules 3.5(e), 8.2(a), 8.4(c), 8.4(d).

Cases that cite this headnote

[10] **Attorney and Client**
Deception of court or obstruction of administration of justice

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k42 Deception of court or obstruction of administration of justice

Under the objective standard for determining whether an attorney's accusations of judicial impropriety violate any professional conduct rules, the court assesses the statements in terms of what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances and focusing on whether the attorney had a reasonable factual basis for making the statements, considering their nature and the context in which they were made; it is the reasonableness of the belief, not the state of mind of the attorney, that is determinative.

Cases that cite this headnote

[11] **Attorney and Client**
Character and conduct

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k38 Character and conduct

The objective "reasonable attorney" standard is the appropriate standard to apply in a disciplinary proceeding involving an attorney's in-court speech.

Cases that cite this headnote

[12] **Attorney and Client**
Definite Suspension

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment;Disposition
45k59.13 Suspension
45k59.13(2) Definite Suspension
45k59.13(3) In general

Six-month suspension, rather than public censure, was appropriate sanction for attorney's misconduct in making pejorative statements about judges in recusal motions he filed in state court, which misconduct violated professional conduct rules prohibiting conduct intended to disrupt a tribunal, the making of statements known to be false or with reckless disregard for truth concerning qualifications or integrity of a judge, conduct involving dishonesty, fraud, deceit, or misrepresentation, and conduct prejudicial to administration of justice; attorney made such statements knowingly, not negligently, accusing judges of being dishonest and ignoring established law, skewing and ignoring facts, and violating their oaths to decide cases fairly and impartially. Sup.Ct.Rules, Rule 8, Rules of Prof.Conduct, Rules 3.5(e), 8.2(a), 8.4(c), 8.4(d).

Cases that cite this headnote

[13] **Attorney and Client**
Standards and guidelines

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment;Disposition
45k59.5 Factors Considered
45k59.5(2) Standards and guidelines

In determining the appropriate sanction in an attorney disciplinary matter, the American Bar Association (ABA) Standards serve as guideposts, and they direct the court, in applying the Standards, to consider: (1) what ethical duty the lawyer violated, (2) the lawyer's mental state, (3) the extent of the actual or potential injury caused by the lawyer's misconduct, and (4) any aggravating or mitigating circumstances.

Cases that cite this headnote

[14] **Attorney and Client**
Factors in aggravation

Attorney and Client
Factors in mitigation

Attorney and Client
Presumptive, baseline, or preliminary potential sanction

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment;Disposition
45k59.5 Factors Considered
45k59.5(4) Factors in aggravation
45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment;Disposition
45k59.5 Factors Considered
45k59.5(5) Factors in mitigation
45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment;Disposition
45k59.6 Presumptive, baseline, or preliminary potential sanction

Generally speaking, the American Bar Association (ABA) Standards suggest the appropriate baseline sanction in an attorney disciplinary case, and aggravating and mitigating factors may justify an increase or reduction in the degree of punishment to be imposed.

Cases that cite this headnote

[15] **Attorney and Client**
Review

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k57 Review

The Supreme Court evaluates each instance of attorney discipline in light of its particular facts and circumstances, even as it considers the sanctions that have been imposed in prior cases that present similar circumstances so as to maintain consistency and uniformity in disciplinary proceedings.

Cases that cite this headnote

Direct Appeal from the Circuit Court for Shelby County, No. CT-001608-16, Robert E. Lee Davies, Senior Judge

Attorneys and Law Firms

Larry E. Parrish, Memphis, Tennessee, Pro Se.

Alan D. Johnson, Brentwood, Tennessee, for the appellee, Board of Professional Responsibility.

Sharon G. Lee, J., delivered the opinion of the Court, in which Jeffrey S. Bivins, C.J., and Cornelia A. Clark and Roger A. Page, JJ., joined. Holly Kirby, J., not participating.

OPINION

Sharon G. Lee, J.

*1 This is a direct appeal of a disciplinary proceeding involving a Memphis attorney who filed motions to recuse containing pejorative statements about three appellate judges. A hearing panel of the Board of Professional Responsibility found that the attorney had violated multiple Rules of Professional Conduct and that his sanction should be a public censure. The trial court agreed that the attorney was guilty of misconduct but modified the hearing panel's decision, determining that the appropriate sanction was a six-month suspension, with thirty days served on active suspension and the remainder on probation. We hold that the attorney's pejorative statements in the motions to recuse were not protected by the First Amendment and there was material and substantial evidence of noncompliance with the Rules of Professional Conduct. In addition, we hold that the hearing panel acted arbitrarily and capriciously in determining that the attorney should receive a public censure rather than suspension. We affirm the judgment of the trial court.

I.

This disciplinary action arises from pejorative statements made by attorney Larry E. Parrish in motions to recuse three judges on the Tennessee Court of Appeals after an adverse decision.

Mr. Parrish represented David Morrow and Judy Wright, the nephew and niece of Helen Goza, regarding a trust Ms. Goza had established for her son, John Goza. Under the terms of the trust, any assets remaining in the trust after the death of Mr. Goza were to be disbursed to various charities. After Mr. Goza's death, Mr. Parrish, on behalf of Mr. Morrow and Ms. Wright, filed an action in the Shelby County Chancery Court seeking a declaratory judgment that the trust was not valid and that they were entitled to the trust's remaining assets. The chancery court granted summary judgment, finding that the trust was valid. The Court of Appeals affirmed. *Morrow v. SunTrust Bank*, No. W2010-01547-COA-R3-CV, 2011 WL 334507 (Tenn. Ct. App. Jan. 31, 2011) ("*Goza I*").

While the appeal in *Goza I* was pending, Mr. Morrow was appointed administrator of the Estate of John Goza. Mr. Parrish, representing the Estate and Mr. Morrow as administrator, filed a petition in probate court to require SunTrust Bank to turn over to the Estate the assets of the trust based on th asserted invalidity of the trust. Soon after, the Cou

of Appeals issued its ruling in *Goza I*, affirming the validity of the trust. SunTrust Bank then asserted that the probate case was barred by res judicata. The probate court denied the petition on that basis, and the Court of Appeals affirmed. *In re Estate of Goza*, 397 S.W.3d 564 (Tenn. Ct. App. 2012) ("*Goza II*").

Next, Mr. Parrish, as attorney for the Estate, sued SunTrust Bank in the Shelby County Circuit Court. The circuit court dismissed that action, finding that the validity of the trust was res judicata and that it lacked subject matter jurisdiction. The Court of Appeals affirmed the circuit court in a memorandum opinion [1] authored by Judge David Farmer and joined by Judge Steven Stafford and (then)-Judge Holly Kirby. The Court of Appeals also determined the appeal was frivolous and awarded SunTrust Bank its attorney's fees and costs. *Goza v. Wells*, No. W2012-01745-COA-R3-CV, 2013 WL 4766544 (Tenn. Ct. App. Sept. 4, 2013) ("*Goza III*"). Mr. Parrish moved for a rehearing and to recuse Judge Farmer. Mr. Parrish later filed motions to recuse Judges Stafford and Kirby. [2]

1 Rule 10 of the Rules of the Court of Appeals of Tennessee provides that the Court of Appeals with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

2 The motions to recuse Judge Kirby and Judge Stafford were substantially identical to the motion to recuse Judge Farmer.

The judges submitted the recusal motions to the Board of Professional Responsibility ("the Board"). [3] The motions include the following statements by Mr. Parrish:

*2 • Estate's motion is grounded on Estate's contention that Estate has been denied access to indisputable organic law of Tennessee applied to indisputable facts, and that access has been denied because of a prejudicial and baseless bias, evidently the result of personal sympathies/sensitivities of Judge Farmer.

• In contrast, if Estate shows that Judge Farmer (1) ruled the opposite of what he knew undebatable law to be, (2) wrote as fact that which he knew not to be fact to avoid the effect he knew would be required, if he acknowledged what he knew to be fact, (3) ruled as if *ipse dixit* was a holding and decision, (4) gave *obiter dictum* preclusive effect, (5) used half-truths to fabricate justification for judicial misconduct, (6) without the slightest justification, demeaned counsel for Estate to create a scapegoat for his judicial misconduct, (7) used the Memorandum Opinion as a vehicle to include unnecessary *obiter dictum* as a means, practically speaking, to prejudge case-dispositive issues pending in trial courts and, thereby, usurp the role of the trial courts to adjudge the issue independently and, finally, (8) awarded attorney's fees against Estate based on fabrication, Estate will have established that Judge Farmer is serving, in this case, encumbered by a prejudice and bias against Estate to manufacture an outcome against Estate, in the teeth of indisputable organic law and indisputable fact that dictate the opposite.

• This is not about miscalling balls and strikes; this is about rigging the game.

• Estate's motion further is grounded [sic] how that Judge Farmer adjudicated the appeal in the instant case so as to violate the rights of Estate guaranteed by the *Tennessee Constitution*, Art. I, Section 17 (open courts), thereby, engaging in judicial misconduct which requires Judge Farmer's recusal. The same judicial misconduct violates the procedural and substantive due process rights of Estate and the heirs guaranteed by the *United States Constitution*, Fifth Amendment and Fourteenth Amendment.

• There is absolutely no way under the sun for Estate to fail to prevail in the instant appeal.

except by judges deciding the appeal to turn a deaf ear and blind eye to the clearest possible provisions of § 35-15-203.

- Judge Farmer has victimized Estate by saying of a statute, i.e. *Tennessee Code Annotated* § 35-15-203, that it divests circuit court of subject matter jurisdiction, even though a person minimally literate in the English language could very easily read the statute and know, without hesitation, that the statute does exactly the opposite.

- This is an aberrant misstatement of clear law known to Judge Farmer....

- Placing the subject erroneous *ipse dixit* in Judge Farmer's Memorandum Opinion, in practical effect, is a prejudgment designed to prejudice Estate in cases not before Judge Farmer.

- Additionally, the erroneous *ipse dixit* in Judge Farmer's Memorandum Opinion is a setup, i.e., the point is to forewarn Estate not to exercise its right to an appeal in the case where the erroneous *ipse dixit* is dispositive and, if Estate exercises Estate's right to appeal, Judge Farmer is poised to punish Estate for not heeding Judge Farmer's forewarnings.

- Though it takes slightly more acumen than minimal literacy in the English Language, any person trained in the law and minimally versed in how the law treats *ipse dixit* and *obiter dictum*, at once, can see that the court of appeals never before has "held" or "decided" that the putative trust exists.

*3 - The repeated statements in Judge Farmer's Memorandum Opinion that the court of appeals, twice before, "held" or "decided" that the putative trust exists, for Judge Farmer, is a convenient and illegitimately purposeful fabrication.

- In an effort to provide a façade of legitimacy to Judge Farmer's inclusion about the putative trust, Judge Farmer builds a construct on the false presupposition that § 35-15-203 divests circuit court of subject matter jurisdiction, if the putative trust exists.

- The illegitimate purpose for Judge Farmer injecting commentary into Judge Farmer's Memorandum Opinion on the subject of the putative trust is to prejudge, erroneously, if (which is certain to occur) the issue is presented to the court of appeals in the future.

- By use of a memorandum opinion, Judge Farmer insulates his manipulation/rigging of the legal system from review by the Tennessee Supreme Court, i.e., the Supreme Court, even moreso [sic] than in the past, reiterates that it is not an error-correcting court. Therefore, a memorandum opinion, which has zero effect on Tennessee law, has zero chance of being reviewed by the Supreme Court. Knowing this, Judge Farmer is confident that Judge Farmer's patent error and abuse of Judge Farmer's judicial power will remain effective to accomplish Judge Farmer's illegitimate objectives.

- Judge Farmer has done a masterful job of covering up the fact that Judge Farmer has stepped out of Judge Farmer's role as an even-handed Judge and into the role of adversary of the Estate, willing to abuse the power of his judicial office to deny Estate's access to unexceptional organic law of Tennessee well-known to Judge Farmer.

- Many authors, among them Alfred Lord Tennyson, have observed that the half-truth is the most sinister of all deception. The point is that sprinkling into deception particles of truth, misused and taken out of context, makes it much harder to detect deception than a straight out misstatement of objective fact. Judge Farmer has used the half-truth in constructing Judge Farmer's Memorandum Opinion. Judge Farmer's Memorandum Opinion is a patchwork of snippets of truth glued together by adhesive design to close to Estate access to controlling organic law.

- It is the contention of appellant, the Estate of John J. Goza, Deceased (hereinafter "Estate"), as a litigant in the instant appeal and in related proceedings, has been and continues to be denied access to the benef

of the organic law of Tennessee by a demonstrated bias and/or appearance of bias, seemingly anchored in Judge Farmer's personal sympathies/sensitivities that dictate an outcome inconsistent with Tennessee's organic law.

- Let it be clear that Estate finds no fault with Judge Farmer's personal sympathies/sensitivities. The fault Estate finds is in Judge Farmer permitting his personal sympathies/sensitivities to prejudice him in exercise of his undeviating *duty* to apply organic law, even if doing so produces a judgment that offends Judge Farmer's personal sympathies/sensitivities.

- [T]he personal sympathies/sensitivities are visceral, i.e., based on pure assumptions and presumptions without a scintilla of evidence on which to base a finding of fact consistent with Judge Farmer's personal sympathies/sensitivities. Maybe Judge Farmer's [sic] excuses the lack of evidence with what reasonably would be described as a "Come on now, you know and I know" approach appropriate for common parlance and unknown to the legal system and legal process.

*4 • [T]he rights of heirs to receive their inheritance from a predeceased ancestor has been part of the organic law of Tennessee, uninterruptedly, since 1796 and part of Anglo-American jurisprudence since time *in memoriam* [sic], the personal sympathies/sensitivities of Judge Farmer to the contrary notwithstanding.

- [F]or Judge Farmer to be influenced to ignore organic law by his personal sympathies/sensitivities in order to manipulate an outcome to deny the heirs of John J. Goza their inheritance and get the Cash to charities is usurpation of the value judgment of the General Assembly and violates separation of powers guaranteed by *Tennessee Constitution*, Art. I, Section 17 (constraints on the judiciary) and Art. VI.

- Judge Farmer knows the ropes as well as anybody. These characteristics make Judge Farmer's Memorandum Opinion in this case stand out as uncharacteristic. Only the most simpleminded person would conclude that, in this case, Judge Farmer made inadvertent mistakes.

- To all of the undebatable propositions of law and fact, Judge Farmer effectively turns a deaf ear fixated on making a result that satiates Judge Farmer's sympathies.

- Estate does not wish to create the impression that there is naiveté which keeps Estate from reading between the lines of Judge Farmer's Memorandum Opinion; indeed, Estate perceives that Judge Farmer intended the non-subtle message between the lines be received and headed [sic] as a shot over the bow. The loud message that bleeds through comes [sic] from between the lines is unmistakable and threatening to Estate.

- In a nutshell, what rings clear, on reading Judge Farmer's Memorandum Opinion's commentary, concerning what is tagged *Goza I* and *Goza II*, is that Judge Farmer does not feel Estate's case, insofar as it seeks distribution of the residue of Mrs. Goza's revocable trust to John Goza's heirs, is "right" or "just," and Judge Farmer does not intend, no matter what, ever to render a decision that mandates what Judge Farmer feels is "wrong" or "unjust."

- Added to this feeling, what rings true from what is on the lines of Judge Farmer's Memorandum Opinion is that, if Estate can prove the fraud and the conversion by the individuals who are defendants in the instant case, collecting damages from the individuals would deplete neither the fee income to SunTrust or the amount to be dribbled out, presumably, to charity, does not offend the [sic] Judge Farmer's feelings about what is "right" and "just."

- What role does a judge's oath, practically speaking, play in the day-to-day functioning of a judge? Are there times when it is permissible for judges to lay aside their oath to render a judgment that, though not what the law

dictates, is what the judge feels is the "right" thing to do.

- From the outset, Estate makes it clear that Estate has no evidence, has looked for no evidence and makes no accusation that Judge Farmer has taken a bribe; this is completely out of the question. By this, Estate means that there is no evidence that Judge Farmer, in exchange for cash or any other thing of value, has agreed with another person to do what Estate accuses Judge Farmer of having done.

- Having said that, Estate takes note of the fact that money received by a bribe-taking judge is not the harm such a bribe wreaks on the legal system, on legal process and on the litigants who are victimized by a bribe.

*5 • The harm a bribe wreaks on the legal system and the litigant-victims is what happens when a judge abandons his/her oath of office, surrenders up the impartiality that is essential to a judge functioning in an adjudicative role evenhandedly applying law to facts found from evidence adduced according to rules of evidence.

- While Estate has sought no evidence and has no evidence that Judge Farmer sold his oath and surrendered his impartiality in exchange for money, Estate respectfully suggests that Judge Farmer, in order to victimize Estate as a litigant, has abandoned the loyalty to his oath of office, has surrendered his impartiality and has abused the power entrusted to him by the judicial office he holds and has switched from his role as a judge to become an adversary of Estate. This, in Estate's opinion, is official action of the kind referenced in Rule 8 (RPC), Preamble, section 5.

- Otherwise stated, although there is no evidence that Judge Farmer received a bribe to do what he is doing, Judge Farmer is doing what a bribe-taking judge would do to victimize a litigant who was targeted by a bribe. To a litigant who is targeted, it is totally immaterial what caused the judge to victimize the litigant.

3 Rule of Professional Conduct 8.3(a) provides that "[a] lawyer who knows that another lawyer has committed a violation of the Rules of Professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the Disciplinary Counsel of the Board of Professional Responsibility." Tenn. Sup. Ct. R. 8, RPC 8.3(a) (2013).

Based on Mr. Parrish's statements in the recusal motions, the Board filed a Petition for Discipline against Mr. Parrish alleging violations of Rules of Professional Conduct 3.5(e),[4] 8.2(a)(1),[5] 8.4(a), 8.4(c), and 8.4(d).[6] In July 2015 after an evidentiary hearing, a Board hearing panel issued a written decision finding that Mr. Parrish had violated:

- Rule 3.5(e) by including statements in the motions to recuse that "constituted abusive and obstreperous conduct intended to disrupt the Tennessee Court of Appeals proceedings involving [Mr. Parrish's] client";

- Rule 8.2(a)(1) by making "statements about the integrity of Judges Farmer, Kirby and Stafford that a reasonable attorney would believe were false" and making those statements "with reckless disregard as to their truth or falsity";

- Rule 8.4(d) by making statements in the motions to recuse that "were prejudicial to the administration of justice"; and

- Rule 8.4(a) by violating Rules 3.5(e), 8.2(a)(1), and 8.4(d).

4 "A lawyer shall not: ... (e) engage in conduct intended to disrupt a tribunal." Tenn. Sup. Ct. R. 8, RPC 3.5(e) (2013).

5 "A lawyer shall not make a statement that the lawyer knows to be false or that is made with reckless disregard as to its truth or falsity concerning the qualifications or integrity of ... (1) a judge...." Tenn. Sup. Ct. R. 8, RPC 8.2(a)(1) (2013).

6 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;

....

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice[.]

Tenn. Sup. Ct. R. 8, RPC 8.4 (2013).

*6 After a subsequent evidentiary hearing in January 2016, the hearing panel issued a written decision stating that it "considered the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions," and therefore had considered "the duty violated; [Mr. Parrish's] mental state, the injury caused by [Mr. Parrish's] misconduct, and the existence of aggravating and mitigating factors." Without identifying which of the ABA Standards for Imposing Lawyer Sanctions ("ABA Standards") it had applied, the hearing panel concluded that a public censure was the appropriate sanction for Mr. Parrish's conduct.

The Board appealed by filing a Petition for Writ of Certiorari in the Shelby County Circuit Court. Following a hearing, the trial court affirmed the hearing panel's findings that Mr. Parrish had violated Rules 3.5(e), 8.2(a)(1), 8.4(a), and 8.4(d). The trial court also determined that although the hearing panel did not articulate the particular ABA Standard(s) on which it had relied, ABA Standards section 6.0—Violations of Duty Owed to the Legal System—applied.

Under section 6.0, ABA Standard 6.13 provides that "[r]eprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false ... and ... causes an adverse or potentially adverse effect on the legal proceeding." Under ABA Standard 6.12, "[s]uspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court ... and takes no remedial action, and ... causes an adverse or potentially adverse effect on the legal proceeding."

After reviewing the record, the trial court found that ABA Standard 6.12 (suspension) applied because Mr. Parrish knew the statements in the motions to recuse were false. The trial court also found that ABA Standard 6.32 applied because Mr. Parrish's statements were "prejudicial to the administration of justice and significantly undermine[d] the integrity and public confidence in the administration of justice." ABA Standard 6.32 provides that "suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and ... causes interference or potential interference with the outcome of the legal proceeding."

The trial court then identified the mitigating and aggravating factors that it considered in determining the appropriate sanction for Mr. Parrish's misconduct. The trial court cited Mr. Parrish's positive reputation in the community and the lack of prior discipline as mitigating factors. As aggravating factors, the trial court considered Mr. Parrish's substantial experience in the practice of law and his refusal to acknowledge the wrongful nature of his conduct.

Based on ABA Standards 6.12 and 6.32 and the mitigating and aggravating factors, the trial court held that Mr. Parrish should be suspended for six months, with one month to be served on active suspension and the remaining five months on probation. Mr. Parrish appealed to this Court.

II.

[1] **[2]** The Supreme Court of Tennessee, as the source of authority for the Board of Professional Responsibility and all of its functions, bears the ultimate responsibility for enforcing the Rules of Professional Responsibility and the ultimate disciplinary responsibility for violations of the ethical rules governing attorneys practicing in Tennessee. *Garland v. Bd. of Prof'l Responsibility*, 536 S.W.3d 811, 816 (Tenn. 2017) (citations omitted); *Sneed v. Bd. of Prof'l Responsibility*, 301 S.W.3d 603, 612 (Tenn. 2010) (citing *Doe v. Bd. of Prof'l Responsibility*, 104 S.W.3d 465, 469–70 (Tenn. 2003)). This Court reviews judgments in disciplinary proceedings against attorneys "in light of our 'inherent power ... [and] fundamental right to prescribe and administer rules pertaining to the licensing and admission of attorneys.' " *Bd. of*

Prof'l Responsibility v. Allison, 284 S.W.3d 316, 321 (Tenn. 2009) (quoting *In re Burson*, 909 S.W.2d 768, 773 (Tenn. 1995)).

*7 **[3]** **[4]** **[5]** **[6]** **[7]** **[8]** When reviewing a judgment in a disciplinary proceeding, this Court's standard of review is the same as that applied by the trial court. *Long v. Bd. of Prof'l Responsibility*, 435 S.W.3d 174, 178 (Tenn. 2014) (citing *Hoover v. Bd. of Prof'l Responsibility*, 395 S.W.3d 95, 103 (Tenn. 2012)). Just as the trial court did, we review the transcript of the evidence presented before the hearing panel, as well as the hearing panel's findings and judgment. *Garland*, 536 S.W.3d at 816 (citing Tenn. Sup. Ct. R. 9, § 33.1(b)). [7] The trial court reviews questions of law de novo, but "shall not substitute its judgment for that of the hearing panel as to the weight of the evidence on questions of fact." *Sallee v. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 36 (Tenn. 2015) (quoting Tenn. Sup. Ct. R. 9, § 1.3 (2010) and citing *Bd. of Prof'l Responsibility v. Cowan*, 388 S.W.3d 264, 267 (Tenn. 2012)). Like the trial court, we will reverse or modify the hearing panel's decision only when

> the rights of the party filing the Petition for Review have been prejudiced because the hearing panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the hearing 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 and material in the light of the entire record.

Long, 435 S.W.3d at 178 (quoting Tenn. Sup. Ct. R. 9, § 1.3 and citing *Bd. of Prof'l Responsibility v. Love*, 256 S.W.3d 644, 653 (Tenn. 2008)). "In determining whether substantial and material evidence supports the panel's decision, the Court evaluates whether the evidence 'furnishes a reasonably sound factual basis for the decision being reviewed.' " *Sneed*, 301 S.W.3d at 612 (quoting *Threadgill v. Bd. of Prof'l Responsibility*, 299 S.W.3d 792, 807 (Tenn. 2009)). A hearing panel's decision is arbitrary and capricious if it "is not based on any course of reasoning or exercise of judgment, or ... disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion." *Hughes v. Bd. of Prof'l Responsibility*, 259 S.W.3d 631, 641 (Tenn. 2008) (quoting *City of Memphis v. Civil Serv. Comm'n*, 216 S.W.3d 311, 316 (Tenn. 2007)). A hearing panel abuses its discretion if it "appl[ies] an incorrect legal standard or reach[es] a decision that is against logic or reasoning that causes an injustice to the party complaining." *Sallee*, 469 S.W.3d at 42 (quoting *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001)).

7 Because this disciplinary action was initiated in October 2013, we apply the pre-2014 version of Rule 9. *See Garland*, 536 S.W.3d at 816.

First Amendment

[9] Mr. Parrish contends that the statements he made in the motions to recuse are protected speech under the First Amendment of the United States Constitution and Article 1, § 19 of the Tennessee Constitution. Both the hearing panel and the trial court concluded that Mr. Parrish's statements in the motions to recuse violated Rules of Professional Conduct 3.5(e), 8(a), 8.2(a)(1), and 8.4(d) and are not entitled to constitutional protection. We agree.

This Court has in past disciplinary proceedings distinguished between in-court and out-of-court statements in determining whether the First Amendment protects an attorney's speech. In *Board of Professional Responsibility v. Slavin*, 145 S.W.3d 538 (Tenn. 2004), we held that pejorative statements made by an attorney in motions and other pleadings filed in state and federal courts were not entitled to First Amendment protection.

*8 In *Ramsey v. Board of Professional Responsibility*, 771 S.W.2d 116, 121 (Tenn. 1989), the Court applied the subjective "actual malice" standard established by the United States Supre

Court in *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), [8] to determine whether the attorney's out-of-court statements to the media were constitutionally protected. There, we held that an attorney's out-of-court statements to the media were protected by the First Amendment, explaining that after a case has concluded, an attorney has the right to make statements that criticize the court and the judiciary, "so long as the criticisms are made in good faith with no intent ... to willfully or maliciously misrepresent the persons and institutions or bring them into disrepute."

8 In the context of a defamation action, the United States Supreme Court held in *Sullivan* that a public official could not recover damages without proving that "the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." 376 U.S. 254, 279–80, 84 S.Ct. 710.

In *Slavin*, we explicitly distinguished *Ramsey* because the statements at issue in *Slavin* were made during in-court judicial proceedings, and "[*i*]*n the context of judicial proceedings*, an attorney's First Amendment rights are not without limits." *Slavin*, 145 S.W.3d at 549 & n.9 (emphasis added). Notably, in *Ramsey*, we held that although the attorney's out-of-court comments to news media were protected by the First Amendment, the attorney's conduct during in-court judicial proceedings—refusing to obey the court's orders, slamming the courtroom door, and refusing to answer the judge's questions—was sanctionable because it was "prejudicial to the administration of justice." *Ramsey*, 771 S.W.2d at 122–23.

In *Slavin*, we noted that the United States Supreme Court has stated that "during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed." 145 S.W.3d at 549 (quoting *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1071, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991)). The distinction between in-court and out-of-court speech is supported by the rationale that "[a]lthough litigants and lawyers do not check their First Amendment rights at the courthouse door, those rights are often subordinated to other interests inherent in the judicial setting." *Slavin*, 145 S.W.3d at 549. We also quoted with approval the observation made by the Supreme Court of Kentucky that the statements at issue need not be false to constitute attorney misconduct because "[t]here can never be a justification for a lawyer to use such scurrilous language with respect to a judge in pleadings or in open court." *Slavin*, 145 S.W.3d at 549 (quoting *Ky. Bar Ass'n v. Waller*, 929 S.W.2d 181, 183 (Ky. 1996)). [9]

9 The attorney in *Waller* filed numerous "scandalous and bizarre" pleadings, including one stating in its opening paragraph that the current judge was "much better than that lying incompetent ass-hole [sic] [he] replaced if [the current judge] graduated from the eighth grade." 929 S.W.2d at 181–82.

By our holding in *Slavin* that the attorney's in-court speech was not entitled to First Amendment protection, "we intend[ed] to limit an attorney's criticisms of the judicial system and its officers to those criticisms which are consistent in every way with the sweep and the spirit of the Rules of Professional Conduct." *Id.* at 550 (citing *Fla. Bar v. Ray*, 797 So.2d 556, 560 (Fla. 2001)). [10]

10 This case, like *Slavin*, is distinguishable from the situation in *Ramsey*, which involved out-of-court speech. Whether an attorney's out-of-court speech continues to be subject to an actual malice standard in a disciplinary proceeding is not presently before the Court.

***9** This Court's rulings in similar cases, including cases that were not analyzed in terms of the First Amendment, are consistent with our holding in *Slavin*. In *Farmer v. Board of Professional Responsibility*, 660 S.W.2d 490, 491 (Tenn. 1983), we affirmed discipline for an attorney for "scurrilous and improper language" in briefs that he had filed accusing the Court of Appeals of making intentionally false findings of fact and calling the judges and opposing counsel liars. In affirming the sixty-day suspension imposed by the hearing panel, we noted that the attorney had written the "briefs and other documents in question and deliberately chose to use language and tactics which cannot be tolerated in the

legal profession." *Id.* at 493. More recently, in *Bailey v. Board of Professional Responsibility*, 441 S.W.3d 223 (Tenn. 2014), we affirmed a sixty-day suspension where an attorney's misconduct in court—repeatedly violating the court's orders and admonitions during a jury trial—resulted in a mistrial. We noted that "[e]ven if an attorney believes that the court has issued an erroneous ruling, zealous representation of a client 'never justifies the use of disrespectful, unprofessional or indecorous language to the court.' " *Id.* at 234 (quoting *In re Moncier*, 550 F.Supp.2d 768, 807 (E.D. Tenn. 2008)). In *Hancock v. Board of Professional Responsibility*, 447 S.W.3d 844, 853 (Tenn. 2014), we found an attorney had violated Rule of Professional Conduct 3.5 by stating in an e-mail to a judge that he was a "bully" and a "clown" because "[t]he conduct need not occur inside a courtroom to be disruptive to a tribunal." *See also Ward v. Univ. of the South*, 209 Tenn. 412, 354 S.W.2d 246, 249 (1962) (stating that although it is proper for an attorney to point out the court's errors in a brief, it is not acceptable for the attorney to "insert matters which are defamatory, scandalous, impertinent and untrue" into a brief, and the court will not "tolerate, either orally or by brief, ... abuse of the ... judge....").

In cases analyzed in terms of the First Amendment, courts in numerous other jurisdictions, as well as the United States Supreme Court, have rejected the proposition that the First Amendment provides absolute protection to attorney speech. *Disciplinary Counsel v. Gardner*, 99 Ohio St.3d 416, 793 N.E.2d 425, 439 (2003) (citing *In re Sawyer*, 360 U.S. 622, 646, 79 S.Ct. 1376, 3 L.Ed.2d 1473 (1959) (Stewart, J., concurring in result)) ("Thus, attorneys may not invoke the federal constitutional right of free speech to immunize themselves from even-handed discipline for proven unethical conduct."); *In re Shearin*, 765 A.2d 930, 938 (Del. 2000) (ethical obligations imposed on attorneys qualify their constitutional right to freedom of speech); *In re Pyle*, 283 Kan. 807, 156 P.3d 1231, 1243 (2009) (holding that attorneys' constitutional free speech rights are "tempered by their obligations to the court and bar"); *In re Disciplinary Action Against Graham*, 453 N.W.2d 313, 321 (Minn. 1990) (First Amendment protection of attorney speech is not absolute); *Matter of Westfall*, 808 S.W.2d 829, 835 (Mo. 1991) (the state may restrict a lawyer's constitutional rights where there is a threat to a significant state interest); *Lawyer Disciplinary Bd. v. Hall*, 234 W.Va. 298, 765 S.E.2d 187, 196 (2014) (First Amendment protection of statements critical of judges is not absolute).

A majority of courts that have dealt with attorney speech in disciplinary proceedings have not drawn a distinction between in-court and out-of-court statements in considering the issue and have adopted an objective standard in determining whether attorney speech is entitled to First Amendment protection. *The Florida Bar v. Ray*, 797 So.2d 556, 559–60 (Fla. 2001); *In re Dixon*, 994 N.E.2d 1129, 1136–37 (Ind. 2013); *Attorney Disciplinary Bd. v. Weaver*, 750 N.W.2d 71, 81–82 (Iowa 2008); *In re Cobb*, 445 Mass. 452, 838 N.E.2d 1197, 1213 (Mass. 2005); *Graham*, 453 N.W.2d at 322–23; *Mississippi Bar v. Lumumba*, 912 So.2d 871, 884 (Miss. 2005); *Matter of Westfall*, 808 S.W.2d 829, 837 (Mo. 1991); *Gardner*, 793 N.E.2d at 431–32; *Hall*, 765 S.E.2d at 197 (quoting *Graham*, 453 N.W.2d at 322). The Court of Appeals of New York pointed out in *Matter of Holtzman*, 78 N.Y.2d 184, 573 N.Y.S.2d 39, 577 N.E.2d 30, 34 (1991), that the United States Supreme Court has never extended the *Sullivan* standard to attorney discipline. The *Holtzman* court noted that the application of the subjective "actual malice" standard of *Sullivan* to attorney discipline "would immunize all accusations, however reckless or irresponsible, from censure as long as the attorney uttering them did not actually entertain serious doubts about their truth." *Id.* The use of a different standard—the objective standard—is supported by "the state's interest in protecting the public, the administration of justice, and the legal profession...." *Disciplinary Counsel v. Shimko*, 134 Ohio St.3d 544, 983 N.E.2d 1300, 1305 (2012) (citations omitted).

***10 [10]** Under the objective standard, the court assesses the statements in terms of "what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances ... [and] focus[ing] on whether the attorney had a reasonable factual basis for

making the statements, considering their nature and the context in which they were made." *Gardner*, 793 N.E.2d at 431 (citations omitted). "It is the reasonableness of the belief, not the state of mind of the attorney, that is determinative." *Holtzman*, 573 N.Y.S.2d 39, 577 N.E.2d at 34.

In *Gardner*, the attorney had moved to reconsider, accusing the appellate court of being dishonest and ignoring well-established law, claiming that it had "issued an opinion so 'result driven' that 'any fair-minded judge' would have been 'ashamed to attach his/her name to it' and that the panel did not give a 'damn about how wrong, disingenuous, and biased its opinion is.' " *Gardner*, 793 N.E.2d at 427. The Ohio Supreme Court rejected the attorney's claim that his statements were merely opinions and thus immune from discipline as in the context of a defamation case. Instead, the Ohio Supreme Court adopted the majority approach that the First Amendment does not protect an attorney from discipline "for expressing an opinion, during court proceedings, that a judge is corrupt when the attorney knows that the opinion has no factual basis or is reckless in that regard." *Id.* at 428–29. The *Gardner* court explained that a state's "compelling interest in preserving public confidence in the judiciary supports applying a standard in disciplinary proceedings different from that in a defamation case." *Id.* at 432.

The Massachusetts Supreme Court explained its rationale for adopting the objective standard for attorney discipline cases as opposed to the subjective, or "actual malice," standard applied in defamation actions in terms of the differences in the societal interest served by the two bodies of law. *Cobb*, 838 N.E.2d at 1213. While a defamation action addresses a wrong directed against an individual, in a professional disciplinary action, "the wrong is against society as a whole, the preservation of a fair, impartial judicial system, and the system of justice as it has evolved for generations...." *Id.* Unwarranted statements criticizing judges only serve to weaken the public's trust in the judicial system. *Id.*

The court in *Graham* reasoned that the objective standard was appropriate in attorney disciplinary cases because "[t]he standard applied must reflect that level of competence, of sense of responsibility to the legal system, of understanding of legal rights and of legal procedures to be used only for legitimate purposes and not to harass or intimidate others, that is essential to the character of an attorney...." 453 N.W.2d at 322. Under the objective standard, the fact that the attorney's feelings as expressed in his statements were "genuine" did not negate the finding that he had acted with reckless disregard as to the truth or falsity of his statements. *Id.* at 322–23.

[11] We hold that the objective "reasonable attorney" standard is the appropriate standard to apply in a disciplinary proceeding involving an attorney's in-court speech. Utilizing this objective standard,[11] the hearing panel found that Mr. Parrish had made statements in the motions to recuse about the integrity of the judges on the Court of Appeals that a reasonable attorney would believe to be false, and that Mr. Parrish had made those statements with reckless disregard as to their truth or falsity.

11 The hearing panel, in its order ruling on motions argued during the telephonic hearing of June 29, 2015, began its analysis by stating that the parties had agreed, both in their filings and in oral argument, that in the context of a disciplinary proceeding, the objective standard set forth in *Gardner* applies to evaluate an attorney's statements about the judiciary. Mr. Parrish later claimed in post-hearing filings with the hearing panel and in the trial court proceedings that he had not agreed that the objective standard was correct. The record before this Court does not contain a transcript of the June 29, 2015 telephonic hearing. Although Mr. Parrish did not appeal the ruling of the hearing panel, the trial court held that he had not waived the issue during the hearing before the panel because the Board acknowledged the possibility that there might have been some misunderstanding there between the parties.

***11** In sum, the in-court statements that Mr. Parrish made in the recusal motions were not protected by the First Amendment.[12] The hearing panel's decision that these statements violated

Rules of Professional Conduct 3.5(e), 8.2(a), 8.4(c), and 8.4(d) is supported by material and substantial evidence.

12 Our resolution of the First Amendment claim also resolves Mr. Parrish's claim under Article I, § 19 of the Tennessee Constitution.

Appropriate Sanction

[12] **[13]** Next, we consider whether the appropriate sanction for Mr. Parrish's misconduct is a public censure as found by the hearing panel or suspension as determined by the trial court. In determining the appropriate sanction in an attorney disciplinary matter, the ABA Standards serve as guideposts, and they direct the court, in applying the Standards, to consider:

> (1) What ethical duty did the lawyer violate? (A duty to the client, the public, the legal system, or the profession?);
>
> (2) What was the lawyer's mental state? (Did the lawyer act intentionally, knowingly, or negligently?);
>
> (3) What was the extent of the actual or potential injury caused by the lawyer's misconduct? (Was there a serious or potentially serious injury?); and
>
> (4) Are there any aggravating or mitigating circumstances?

Bailey, 441 S.W.3d at 232 (citing *Maddux v. Bd. of Prof'l Responsibility*, 409 S.W.3d 613, 624 (Tenn. 2013)).

The hearing panel found that the statements made by Mr. Parrish in the motions to recuse "constituted abusive and obstreperous conduct intended to disrupt the Court of Appeals proceedings involving [his] client," and thus violated Rule 3.5(e). The hearing panel also determined that a reasonable attorney would believe that the statements made in the motions to recuse about the integrity of the judges were false, and so those statements violated Rule 8.2(a)(1). The hearing panel also concluded that the statements were prejudicial to the administration of justice, and thus violated Rule 8.4(d). Finally, Mr. Parrish's violations of Rules 3.5(e), 8.2(a)(1), and 8.4(d) violated Rule 8.4(a).

[14] Although the hearing panel stated in its Final Order Imposing Sanction that it had considered the applicable provisions of the ABA Standards, it did not identify which of the ABA Standards it considered. The trial court affirmed the findings of fact made by the hearing panel regarding the violations of the Rules of Professional Conduct. The trial court then looked to ABA Standard 6.0 applicable to violation of duties owed to the legal system to determine what level of sanction was warranted. "Generally speaking, '[t]he ABA Standards suggest the appropriate baseline sanction, and aggravating and mitigating factors may justify an increase or reduction in the degree of punishment to be imposed.' " *Bd. of Prof'l Responsibility v. Barry*, 545 S.W.3d 408, 422 (Tenn. 2018) (quoting *In re Vogel*, 482 S.W.3d 520, 534 (Tenn. 2016)).

Citing the definition of "knowledge" in the ABA Standards, [13] the trial court found evidence in Mr. Parrish's testimony before the hearing panel and in the voluminous pleadings that Mr. Parrish knew the statements in the motions to recuse were false. The trial court then noted that the ABA Standards that recommend a reprimand are conditioned upon a finding that the attorney was negligent, and that the hearing panel "at the very least" had found Mr. Parrish to be "reckless" with regard to the truth or falsity of the statements made in the motions to recuse. The trial court concurred with the finding of the hearing panel that Mr. Parrish made false statements that the appellate judges had "purposefully ignored binding law, purposefully fabricated facts, manipulated and rigged the legal system, acted in a manner that indicated they had taken bribes, abused their judicial power, surrendered their impartiality, and ruled against his clients due to personal sympathies and bias." The trial court found that there was no factual basis for such statements and that the only "fact" Mr. Parrish had was that the Court of Appeals had ruled against his client. Because the trial court determined that the pleadings and the proof submitted to the hearing panel showed that Mr. Parrish acted knowingly, it found that a suspension

was appropriate under ABA Standards 6.12 and 6.32, applicable when a lawyer knows that false statements are being submitted to the court and when a lawyer engages in communication with an individual in the legal system that the lawyer knows to be improper. The trial court further looked to the definition of "injury" in the ABA Standards, [14] and stated that "it goes without saying that statements of this nature by an attorney which falsely accuse a judge of this type of misconduct are prejudicial to the administration of justice and serve to significantly undermine the integrity and public confidence in the administration of justice."

13 The ABA Standards define "knowledge" as: "conscious awareness of the nature of attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." ABA Standards, Black Letter Law, Definitions.

14 The ABA Standards define "injury" as: "harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct." ABA Standards, Black Letter Law, Definitions.

***12** The trial court next considered the applicable aggravating and mitigating factors that it had identified–Mr. Parrish's substantial experience in the practice of law and his refusal to acknowledge the wrongful nature of his conduct as aggravating factors; the absence of prior discipline and Mr. Parrish's positive reputation in the community as mitigating factors. After deciding that the aggravating factors outweighed the mitigating factors, the trial court determined that a six-month suspension was the appropriate sanction, with one month to be served on active suspension and the remaining five months to be served on probation.

We conclude that the hearing panel acted arbitrarily and capriciously in finding that a public censure was warranted. Mr. Parrish made the statements in the recusal motion knowingly, not negligently. Therefore, ABA Standard 6.12 applies, not ABA Standard 6.13. Under ABA Standard 6.12, the presumptive sanction is suspension, not a reprimand. The hearing panel offered no explanation as to why it did not apply ABA Standard 6.12 and no reason is apparent from the record. *See Barry*, 545 S.W.3d at 425 (finding that the hearing panel's decision to impose suspension instead of the presumptive sanction of disbarment under the ABA Standards, in the absence of mitigating factors, was arbitrary or capricious). The hearing panel's decision "seems at odds with the factual findings and assessment ... of the level of intent and culpability found by the hearing panel." *Id.*

[15] Mr. Parrish argues that a public censure rather than suspension is warranted, not based on the ABA Standards or any precedent in prior cases, but because a suspension would be an unconstitutional suppression of his right to free speech on the subject of judicial reform. The Board contends that the suspension imposed by the trial court is appropriate under the ABA Standards. To determine the appropriate sanction, it is helpful to consider sanctions we have imposed in cases with similar facts. "This Court 'evaluate[s] each instance of attorney discipline in light of its particular facts and circumstances,' even as it 'consider[s] the sanctions that have been imposed in prior cases that present similar circumstances so as to maintain consistency and uniformity in disciplinary proceedings.' " *Bailey*, 441 S.W.3d at 236 (quoting *Bd. of Prof'l Responsibility v. Maddux*, 148 S.W.3d 37, 40 (Tenn. 2004)). *See also Napolitano v. Bd. of Prof'l Responsibility*, 535 S.W.2d 481, 502 (Tenn. 2017) (quoting *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 424 (Tenn. 2015)) ("When reviewing disciplinary sanctions, this Court reviews comparable cases to ensure consistency in discipline.").

In *Bailey*, the attorney received a sixty-day suspension for misconduct in court–repeatedly violating the court's orders–resulting in a mistrial. 441 S.W.3d at 237. The attorney in *Farmer* received a sixty-day suspension for statements in an appellate brief calling judges on the Court of Appeals and another attorney liars. 660 S.W.2d at 491. In *Slavin*, we imposed a two-year suspension for pejorative statements made in motions and other pleadings filed in state and federal courts. 145 S.W.3d at 551. In *Ramsey*, we affirmed an attorney's suspension for six months, with fort

five days on active suspension and the remaining 135 days on probation for his in-court behavior of slamming courtroom doors, refusing to obey court orders, and refusing to answer questions from the judge. 771 S.W.2d at 123.

Sanctions imposed in similar cases in other jurisdictions are also instructive. In *Gardner*, the Ohio Supreme Court imposed a six-month suspension for the attorney's comments in a motion accusing the court of being "dishonest and ignoring well-established law" and "so 'result-driven' that 'any fair-minded judge' would have been ashamed to attach his/her name" to the opinion. 793 N.E.2d at 433. The attorney in *Waller* was suspended for six months for comments made in a pleading filed with the trial court calling the previous judge in the case a "lying incompetent ass-hole [sic]" and stating that the new judge would be much better than the previous one if he graduated from the eighth grade. 929 S.W.2d at 181, 183.

***13** Like the attorney in *Slavin*, Mr. Parrish made in-court statements impugning the integrity of the judges, albeit without the repeated misconduct present in *Slavin*. Like the attorney in *Farmer*, Mr. Parrish "deliberately chose to use language and tactics which cannot be tolerated in the legal profession." 660 S.W.2d at 493. And, like the attorney in *Gardner*, Mr. Parrish accused the Court of Appeals judges of being dishonest and ignoring established law, skewing and ignoring the facts, and violating their oaths to decide cases fairly and impartially. 793 N.E.2d at 427.

Although Mr. Parrish claims that his statements were justified by his steadfast belief in judicial reform, attorneys who cross the line from tolerable criticism to unacceptable speech "may not avoid punishment by claiming that their misconduct served the greater good or the interest of their clients, as such exceptions would overwhelm the rules." *Bailey*, 441 S.W.3d at 237 (quoting *Slavin*, 145 S.W.3d at 551). Mr. Parrish's argument in that regard is much like the defense raised by John J. Hooker who was disciplined for filing "frivolous lawsuits using the most baseless invectives." *In re Hooker*, 340 S.W.3d 389, 392 (Tenn. 2011). According to the trial court, Mr. Hooker considered himself a "constitutional warrior for the people" and believed that his lawsuits could not be frivolous for that reason. We noted that Mr. Hooker completely missed the point—the disciplinary proceeding concerned only the question of whether the attorney in fulfilling his perceived role as "constitutional warrior" was subject to the Rules of Professional Conduct. *Id.* at 393.

Likewise, Mr. Parrish's attempt to justify his conduct by claiming that he is on a crusade for judicial reform misses the point. This case is not about Mr. Parish's beliefs in judicial reform. Rather, this case involves Mr. Parrish's in-court derogatory statements about the integrity of three appellate court judges in violation of the Rules of Professional Conduct.

III.

We hold that Mr. Parrish's pejorative statements in the motions to recuse were not protected by the First Amendment. The hearing panel's decision that Mr. Parrish violated Rules of Professional Conduct 3.5(e), 8.2(a)(1), 8.4(a), and 8.4(d) is supported by material and substantial evidence. The hearing panel, however, acted arbitrarily and capriciously in determining that the appropriate sanction for Mr. Parrish's misconduct was a public censure rather than suspension. Thus, we affirm the judgment of the trial court imposing a six-month suspension, with one month served on active suspension and the remaining five months on probation. We tax the costs of this appeal to Larry E. Parrish, for which execution may issue if necessary.

All Citations

--- S.W.3d ----, 2018 WL 3853472

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IN THE SUPREME COURT OF TENNESSEE
AT JACKSON
April 4, 2018 Session

BOARD OF PROFESSIONAL RESPONSIBILITY v. LARRY EDWARD PARRISH

Circuit Court for Shelby County
No. CT-001608-16

No. W2017-00889-SC-R3-BP

JUDGMENT

This case was heard upon the record on appeal from the Circuit Court for Shelby County, the briefs of the parties, and the argument of counsel. Upon consideration thereof, this Court holds that the hearing panel's finding that Mr. Parrish violated Rules 3.5(e), 8.2(a)(1), 8.4, and 8.4(d) of the Rules of Professional Conduct is supported by material and substantial evidence, but the hearing panel acted arbitrarily and capriciously in determining that the appropriate sanction for Mr. Parrish's misconduct was a public censure rather than suspension. We therefore affirm the judgment of the trial court imposing a six-month suspension, with one month served on active suspension and the remaining five months on probation.

In accordance with the opinion filed herein, it is, therefore, ordered and adjudged that the judgment of the Circuit Court for Shelby County suspending Mr. Parrish is affirmed. We tax the costs of this appeal to Larry Edward Parrish, for which execution may issue if necessary.

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

LARRY EDWARD PARRISH,	
Appellant	
v.	**W2017-00889-SC-R3-BP**
BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE,	No. CT-001608-16 Shelby County Circuit Court
Appellee	

PETITION TO REHEAR FOR COURT'S LACK OF JURISDICTION[1]

Petition

COMES NOW respondent/appellant, Larry Edward Parrish (hereinafter "**Petitioner**"), pursuant to ***Tennessee Rules of Appellate Procedure***, Rule 39(a), and petitions the Court to rehear the instant appeal, and vacate the trial court's judgment, as jurisdictionless, and thereby, reinstate the hearing panel's sanction.

1. **This Court's August 14, 2018 Opinion (hereinafter "this Court's Opinion") evidences, on its face, that neither the trial court or this Court has ever had nor, in the future, can have appellate or subject matter jurisdiction to adjudicate that the hearing panel's public censure sanction is erroneous.**

[1] Footnote 7 (2018 WL 3853472 * 7) reads: "Because this disciplinary action was initiated in October 2013, we apply the pre-2014 version of Rule 9. See Garland, 536 S.W.3d at 816." This makes this case an "old rule case." The current (effective for "new rule cases," filed after 2014), Supreme Court Rule 9, § 15.4(e) prohibits filing a Petition To Rehear a judgment imposing a suspension sanction. The old rule (pre-2014) included no prohibition that restricted filing a Petition To Rehear; thus, Petitioner concludes that Tennessee Rules of Appellate Procedure, Rule 39(a) and Rule 42(a) control the instant case. Accordingly, the instant motion is filed.

EXHIBIT C

Whether an appellate court adjudicated without jurisdiction is an error able to be raised at any time, by any party or by this Court. Indeed, all courts have an obligation to address jurisdiction at any time a court, *sua sponte* or otherwise, detects a jurisdictional issue. ***Duncan v. Duncan***, 672 S.W.2d 765, 767 (Tenn. 1984). ***Konvalinka v. Chattanooga-Hamilton County Hosp. Authority***, 249 S.W.3d 346, 357, n. 21 (Tenn. 2008); ***Dorrier v. Dark***, 537 S.W.2d 888, 890 (Tenn. 1976); ***Peck v. Tanner***, 181 S.W.3d 262, 265 (Tenn. 2005); ***Baugh v. Novak***, 340 S.W.3d 372, 380 n. 5 (Tenn. 2011); ***Hawkins v. Hart***, 86 S.W.3d 522, 531 (Tenn. Ct. App. 2001) perm. app. den. Apr. 29, 2001; ***Bunch v. Bunch***, 281 S.W.3d 406, 410 (Tenn. Ct. App. 2008), ("appellate jurisdiction only" limits the jurisdiction of appellate courts to speak on issues presented by the appellant for review); ***Houston v. Scott***, 2012 WL 121104 *5 (Tenn. Ct. App. 2012) perm. app. den. May 23, 2012. In ***Kinard v. Kinard***, 986 S.W.2d 220, 227 (Tenn. Ct. App. 1998) perm. app. den. Jan. 19, 1999 and Feb. 16, 1999.

Precedent teaches that this Court is obligated, even *sua sponte*, to review whether this Court or a lower court adjudicated without jurisdiction. Petitioner contends that the **only issue** presented for review by this Court (thus, the **only question** over which this Court has appellate jurisdiction) is presented by Petitioner (not by BPR).

The issue is: **Did the trial court err in overturning the public censure sanction**?

Petitioner contends the answer is "yes" because neither this Court nor the trial court had nor can acquire jurisdiction, to reverse the public censure sanction of the hearing panel.

Petitioner contends that this Court has only appellate jurisdiction which strictly restricts this Court to the role of reviewing **only the question presented as an issue in this Court.**

The hearing panel explicitly found and included in both of its adjudications (Jul. 23, 2015 Order pp. 5, 7 sec. 5, first paragraph, RoA Vol. 16, AR Vol. 18 at 2830 - 2837; Feb. 19, 2016

Order p. 1, RoA Vol. 20, AR Vol. 18 at 3071-72) that Petitioner did not violate Rule 8, RPC 8.4(c) i.e., found that **the recusal motion included no sanctionable dishonesty nor sanctionable misrepresentation.**

This no misrepresentation-adjudication by the hearing panel was not objected to by BPR, and in BPR's appeal to the trial court, BPR did not assert that the **8.4(c) no misrepresentation-**adjudication by the hearing panel was an error. The trial court did not review the **8.4(c)** no misrepresentation-adjudication.

This Court's **Opinion reads** as follows (2018 WL 3853472 *11):

> [T]he **trial court found** evidence in Mr. **Parrish**'s testimony before the hearing panel [ ] that Mr. Parrish **knew the statements** in the motion to recuse were **false**. (emphasis added).

BPR's appeal to the trial court raised no issue questioning whether the hearing panel erred by its no misrepresentation-adjudication. Petitioner did not file an appeal to the trial court.

Circuit court, in the instant case, served only as an appellate court (Supreme Court Rule 8.4 (2013) ("If the judgment of a hearing panel is **appealed to the circuit** [ ]."). The appeal from the hearing panel to circuit court, unlike an appeal of a General Sessions to circuit court, does not vest circuit court with de novo original jurisdiction and eradicate the General Sessions (hearing panel) judgment. As an appellate court, circuit court, below, had only appellate jurisdiction. Thus, if an issue is not raised on appeal to the circuit court, as with all appellate courts, circuit court had no subject matter jurisdiction (authority) to adjudicate an issue because appellate courts have no jurisdiction to adjudicate an issue unraised by an appellant in the appeal-initiating document.

Therefore, critical to knowing what appellate jurisdiction circuit court had is knowing precisely what issue BPR raised in BPR's appeal-initiating document. BPR's appeal-initiating document solely raised the issue that the hearing panel found that Petitioner made false statements,

and that in view of false statements the hearing panel found, the hearing panel erred in adjudging a public censure sanction because, where the hearing panel finds false statements, there is no discretion to sanction by public censure. BPR's appeal to circuit court did not raise an issue on appeal that authorized circuit court to review substantiality of evidence or whether Petitioner, in fact, made false statements, meaning that the trial court never had jurisdiction to comb the record to make a de novo original-jurisdiction judgment about whether Petitioner made false statements. The hearing panel had already made a final UNAPPEALED judgment that Petitioner made no misrepresentations in the recusal motion.

Said another way, because BPR did not present as an issue on appeal that the hearing panel erred in finding that Petitioner did not violate 8.4(c), i.e., Petitioner made no misrepresentations, circuit court (trial court) did not have appellate jurisdiction to reverse the hearing panel's UNAPPEALED **8.4(c)** no-misrepresentations judgment. The hearing panel's **8.4(c)** no-misrepresentation judgment had to be raised within 60 days of the hearing panel's judgment, per Supreme Court Rule 8.3 (2013).

The hearing panel ruled that Petitioner was not sanctionable for misrepresentations in the recusal motion, but this Court's Opinion misspeaks as follows (2018 WL 3853472 *11):

> [T]he hearing panel's decision that these statements violated Rules of Professional Conduct [ ] **8.4(c)** [ ] is supported by material and substantial evidence. (emphasis added)

This statement in this Court's Opinion, objectively, is the exact opposite of what the hearing panel adjudged.

This Court's Opinion reads as follows (2018 WL 3853472*7-*8):

> Both the hearing panel and the trial court concluded that Mr. Parrish's statements [all 200 statements?] in the motions to recuse violated Rules of Professional Conduct 3.5(e), 8(a), 8.2(a)(1), and 8.4(d) and are not [none?] entitled to constitutional protection.

The immediately preceding quotation fails to note that, explicitly, concluded that Petitioner did not violate **8.4(c)**, but, explicitly, **concluded** that **Petitioner was not sanctionable for misrepresentations in the recusal motion.**

This Court's Opinion reads as follows (2018 WL 3853472 at *5):

> Based on Mr. Parrish's statements in the recusal motions, the **Board** filed a Petition for Discipline against Mr. Parrish **alleging** violations [ ] of [ ] **8.4(c)** [ ]. In July 2015 after an evidentiary hearing, [ ] a hearing panel [ ] decision finding [ ] Parrish had violated:
>
> - Rule 3.5(e) [ ];
> - Rule 8.2(a)(1) [ ];
> - Rule 8.4(d) [ ]; and
> - Rule 8.4(a) [ ]. (emphasis added)

The Court's Opinion sets out that the BPR complaint charged Petitioner with violation of **8.4(c)** (misrepresentation in the recusal motion) and the hearing panel "issued a written decision" which, affirmatively, found no violation of **8.4(c)** (misrepresentation).

This Court's Opinion reads as follows (2018 WL 3853472 at *6):

> The Board [not Petitioner] appealed [ ] in [to] Circuit Court. [ ] [T]he trial court affirmed the hearing panel's findings that Mr. Parrish had violated Rules 3.5(e), 8.2(a)(1), 8.4(a), and 8.4(d).

This Court's Opinion reads as follows (2018 WL 3853472 at *11):

> The hearing panel found that the statements made by Mr. Parrish in the motions to recuse "constituted abusive and obstreperous conduct intended to disrupt the Court of Appeals proceedings involving [his] client," and thus violated Rule **3.5(e)**. The hearing panel also determined that a reasonable attorney would believe that the statements made in the motions to recuse about the integrity of the judges were false, and so those statements violated Rule **8.2(a)(1)**. The hearing panel also concluded that the statements were prejudicial to the administration of justice, and thus violated Rule

8.4(d). Finally, Mr. Parrish's violations of Rules 3.5(c), 8.2(a)(1), and 8.4(d) violated Rule 8.4(a). (emphasis added).

As for the reckless disregard part of 8.2(a)(1), this is meaningless unless the statement recklessly made is false; recklessly making a true statement is not subject to sanction by suspension. The reckless disregard factor means only that a speaker cannot defend an in-fact false statement by an "I didn't know it was false" response.

The net of what was decided by the hearing panel, without objection of BPR, at the hearing panel or on appeal, is that, though Petitioner did not violate 8.4(c) (communicate by dishonesty or by misrepresentation in the recusal motion), a **"reasonable attorney" would "believe"** that statements about the integrity (see *infra* at 8) of Judge Farmer are false?

Petitioner contends that only the jurisdictionless adjudication (i.e., that Petitioner knew that Petitioner made false statements in the recusal motion), as adopted by this Court, is said in this Court's Opinion to justify this Court vacating the hearing panel's public censure sanction. Petitioner contends that this Court adopting the jurisdictionless adjudication by the trial court does not convert the trial court's adjudication into an adjudication with jurisdiction.

The decision of the UNAPPEALED hearing panel, construed in the only way reason permits, is that its ruling that Petitioner did not violate 8.4(c) precluded a suspension sanction. The hearing panel decided that the fact that a fictitious "reasonable attorney" would "believe" what is not true (i.e., that there were misrepresentations) is not justification for a suspension.

2. **Neither this Court nor the trial court cited any part of the record or any record that provides either a scintilla or an iota of evidence of any kind that Petitioner's statements were false, much less that Petitioner knew, stipulated or conceded in any way that any statements of Petitioner were false, *au contraire*.**

The essential first step in a finding that Petitioner "knew" that what Petitioner stated is false is evidence that what was stated, in fact, is false. If Petitioner did not violate 8.4(c), it is nonsense to say that Petitioner knew that what Petitioner stated was false.

Aside from the fact that the trial court had no jurisdiction, the trial court does not cite to any evidence in the record to support what the trial court "found" (i.e., "that Mr. Parrish knew the statements in the motion to recuse were false") nor does the trial court identify which, from among the 200 or so statements of Petitioner in the recusal motion, the trial court "found" to be false.

Is this to be taken that the trial court "found" all 12,444 words and all approximately 200 thoughts expressed in the recusal motion were known to Petitioner to be false? If not, where, in the trial court's ruling, can it be found which, of the 12,444 words and, approximately, 200 thoughts, the trial court "found" that Petitioner knew to be false? If one surmises (guesses) that the trial court was referring to statements about Judge Farmer's integrity and character, did the trial court find that Petitioner's statements quoted below (*infra* at 8) were false?

Understandably, neither the trial court nor this Court cite to the record to identify precisely which of the approximately 200 statements are false nor cite to the record to point to evidence of falsity. There is zero such evidence in the record to prove that any statement is false. This is not about whether "evidence" was substantial. It is impossible for zero evidence to be substantial.

Petitioner contends that the fictitious "reasonable attorney" standard is constitutionally impermissible, in this case (probably all cases). There was a deliberate decision by BPR not to offer any evidence either to prove that Petitioner's statements were false or to prove the criteria necessary for an attorney to qualify as the standard fictitious "reasonable attorney." The panel decided, on relevancy grounds, to exclude evidence to prove that Petitioner's statements are true.

There are two questions pertinent here. The lack of jurisdiction of this Court blocks this Court from answering questions collateral to jurisdiction; however, the questions bear mention.

First, obviously, the following statements, in the recusal motion are explicitly about Judge Farmer's integrity. The recusal motion reads as follows (RoA Vol. 3, AR Vol. 1 at 12-13):

> Counsel **[Petitioner]** for Estate has known Judge Farmer, professionally, since the early 1970s and has **never questioned** his **integrity. Judge Farmer** and counsel for Estate have personal friends in common and share, according to counsel's understanding, a deep and enduring commitment to the Judeo-Christian Work and Family Ethic.
>
> Counsel **[Petitioner]** holds no **ill-will,** no grudges, **maintains** respect for Judge Farmer's skill as a judge, considers his feelings in this case to be an aberration and, if the occasion aberration (sic) arose, would freely commiserate with Judge Farmer the same as if this motion had never been filed.
>
> Estate and counsel **[Petitioner]** for Estate **regret** the **necessity to file** this **motion, but** Estate is an entity-person with fiduciary duties to the nine heirs-at-law (hereinafter "**heirs**") of Estate's decedent, John J. Goza, and Estate's counsel has a fiduciary duty to Estate, which indirectly translates into a **fiduciary duty** to the heirs. [at 42]
>
> **What has motivated Judge Farmer** to do to Estate what he is doing may very well be a **high-minded and a** moralistic sense of **"duty"** to prevent what, in his eyes, is an injustice that would occur if Judge Farmer evenhandedly applied unexceptional and organic law well-known to Judge Farmer.
>
> Presuming, for argument's sake, that **Judge Farmer** has been motivated and continues to be **motivated** to do what Judge Farmer has done to Estate **by a high and compelling sense of moral duty,** the result for Estate is exactly the same as if Estate was victimized by a judge with sinister motives. (emphasis added).

Is it to be assumed that the hearing panel found that a fictitious "reasonable" attorney would "believe" that the statements of Petitioner, in these 265 words, were false?

This implicates the taken as a whole rule (RoA Vol. 17, AR Vol. 37 at 2541; Tech. Rec. Vol. 1 at 110; Appellant's Brief, Typographically Corrected pp. 18-20; Amended Reply Brief pp. 9-10) hereinafter discussed (*infra* at 12).

For reasons known to this Court but not to Petitioner, though this Court quotes 1,868 words from the recusal motion (2018 WL 3853472 *2 -*5), the Court's Opinion makes no mention, by quotation or allusion, to any of the 265 above-quoted words.

Second, the **net effect of what the hearing panel decided** is that, though Petitioner is not sanctionable for dishonesty nor misrepresentation in the recusal motion, a fictitious "reasonable" attorney would "believe" that Petitioner, in the recusal motion, made dishonest statements.

Petitioner contends that, if this Court had jurisdiction to consider questions collateral to jurisdiction, a holding by this Court that nothing more is constitutionally needed than a mistaken belief of a fictitious "reasonable attorney" to permit a suspension sanction would create constitutionally impermissible (First Amendment) chilling[2] precedent, i.e., precedent that a lawyer, in a recusal motion, can pejoratively speak honestly about a judge, yet, be held accountable the same as if he spoke dishonestly about the judge.

3. If this Court had jurisdiction, this Court's Opinion would create constitutionally impermissible (i.e., violates the Fourteenth Amendment) precedent that a lawyer can be adjudged to have made false statements by what a fictitious "reasonable" lawyer would "believe," without any evidence to establish, as a fact, either (1) that the statements are false or (2) what criteria qualifies standard fictitious "reasonable" lawyer.

An attorney without any evidence of the basis or lack of basis for a statement, "believes"

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[2] Quelling, discouraging, chilling, stopping, retarding persons from communicating thoughts out of fear that expression of the thoughts will cause governmental power to be used to punish them. ***Weaver v. U.S. Information Agency,*** 87 F.3d 1429, 1441, 1449 (D.R. Cir. 1996); ***Cameron v. Johnson,*** 381 U.S. 741, 756 (1965) (White, J disserting); ***Bates v. State Bank of Arizona,*** 433 U.S. 350, 382 (1977) citing ***NAACP v. Button,*** 371 U.S. 415, 430 (1963); ***Bigelow v. Virginia,*** 421 U.S. 809, 816, 818 (1975); ***Keyishian v. Board of Regents of the University of New York,*** 385 U.S. 589, 601-02 (1967); ***Jacobs v. New York,*** 388 U.S. 431, 433-38 (1967); ***Secretary of State of Maryland v. Joseph H. Munson Company, Inc.,*** 467 U.S. 947, 948, 956-58, 967, 977 (1984); ***Citizens United v. Federal Election Commission,*** 558 U.S. 310, 311-12 (2010); ***Massachusetts v. Oakes,*** 491 U.S. 576, 577, 582-83, 586-87 (1989); ***United States v. Alvarez,*** 569 U.S.709, 712, 717, 723, 733, 737, 739, 752, 754 (2012); ***Dun & Bradstreet, Inc. v. Greenmoss Builders,*** 472 U.S. 749, 763, 771, 780-81, 789-90, 792-94 (1985).

the statement either is false or is true proves that the attorney is not a "reasonable" attorney.

BPR disavowed any obligation to offer any (as in zero) evidence that any of Petitioner's statements were false. The hearing panel affirmatively refused (*infra* at 15) to allow Petitioner, as permitted by Supreme Court Rule 13 (2013), to gather evidence by discovery that Petitioner's statements are true. This combination of unconcern for evidences makes for a standard created by this Court's Opinion that, whether a lawyer's statement is false (not merely pejorative), is what a fictitious "reasonable attorney," who has no (as in zero) evidence from which to discern the basis for a statement, "believes" a statement is false. This standard creates a way for a lawyer's license to be suspended for making false statements, even if the statements, in fact, are true.

There is no ruling in the United States other than this Court's Opinion, that has a standard anywhere remotely like the novel precedent created by this Court's Opinion. Every on-point case, no exception, cited in this Court's Opinion as following an "objective standard" requires evidence to prove that a lawyer's statement is false, **BEFORE**, the fictitious reasonable attorney's belief is called into play. This Court's Opinion eliminates the need for any such evidence.

By this Court's Opinion, Tennessee is out on a weak limb, by itself, with one-of-a-kind precedent that, without any evidence to prove a factual basis that a statement is false, a lawyer's license to practice law can be suspended for making accused false statements. This one-of-a-kind precedent, in effect, is that any statement by a lawyer, in a recusal motion, that can be interpreted or misinterpreted as impugning the integrity of the judge, per se, is a false statement.

A recusal motion is an *ad hominem* indictment explicitly directed squarely at a particular judge accusing that the judge has (or will, if they continue to preside) violate his/her oath of office by judicial misconduct, unless the judge recuses. Every recusal motion can be construed as impugning the integrity of a judge accused of misconduct, by result-orient adjudication.

Thus, in practical effect, this Court's Opinion creates precedent that is the death knell of recusal motions in Tennessee, especially recusal motions to recuse for result-oriented adjudications. What lawyer in his/her right mind, with Petitioner having been sanctioned, would file a recusal motion, especially for result-oriented adjudication.

Petitioner respectfully contends that, per ***Williams v. Pennsylvania,*** 579 U.S. ____, 136 S. Ct. 1899, 195 L.Ed2d 132 (2016)(reversing the Pennsylvania Supreme Court); per ***Rippo v. Baker,*** ___ U.S. __, 137 S. Ct. 905, 197 L.Ed.2d 167 (2017) (reversing the Nevada Supreme Court for focusing whether recusal can constitutionally be restricted to actual bias), made the Fourteenth Amendment the touchstone for recusal motions, the Court's Opinion so chills (better stated freezes) the use of the recusal motions that it would violate the Fourteenth Amendment.

Making the Court's Opinion even more likely to violate the United States Constitution is the holding in ***In re Sawyer***, 360 U.S. 622 (1959) (reversing the Hawaii Supreme Court for **eclectically** judging, rather than taking the lawyer's remarks as a whole) and ***Gentile v. State Bar of Nev.,*** 501 U.S. 1030 (1991) (reversing the Nevada Supreme Court for using a void-for-vagueness standard to assess a lawyer's speech).

4. **Precedent that permits a lawyer to be punished for making "false" statements, if a fictitious "reasonable" lawyer would "believe" a statement made by the accused lawyer is dishonest, is vague and ambiguous beyond the realm of definitive human comprehension; thus, the standard is a patent (on its face) violation of the Fourteenth Amendment, in addition to the Free Speech Clause of the First Amendment (herein "First Amendment") and the Due Process Clause of the Fifth Amendment (hereinafter "Fifth Amendment") of the United States Constitution, plus the Law of the Land Clause of Article 1 § 8 of the Tennessee Constitution (herein "Article 1 § 8").**

5. **If this Court had jurisdiction, the Court's Opinion would create a constitutionally impermissible precedent by holding that there is an out-of-court/in-court dichotomy that separates speech that is First Amendment-protected from speech that is not First Amendment-protected, thereby, using a distinction, without constitutionally permissible difference, to classify speech otherwise First Amendment-protected as unprotected, i.e., <u>time, place and manner</u> exceptions that allow otherwise protected speech to be unprotected, require *ratio decedenti* that establishes a proven-by-evidence strong nexus between a need of**

society so great that it overrides the virtually incomparable powerful need of society to protect freedom of speech. See RoA Vol. 22 p. 20, line 19 – p. 22 line 9.

This Court's Opinion quotes part of a sentence from ***Gentile,*** *supra* at 11 (2018 WL 38553472 *8). The unquoted part of the sentence reads: "It is unquestionable that in the courtroom itself, [ ]." By this quote, Petitioner contends that the Supreme Court does not include a motion filed after the final judgment, after all proceedings "in the courtroom itself" had concluded.

6. **If this Court had jurisdiction, this Court's Opinion would create inadvisable and threatening precedent by, in practical effect, equating a pejorative statement with a false statement, even though pejorative statements are as or even more likely to be true than to be false.**

7. **If this Court had jurisdiction, this Court's Opinion would create inadvisable precedent that, a recusal motion is to be judged by the same standard as a motion or pleading for relief other than recusal.**

8. **While the Court's Opinion quotes 1,868 words (2018 WL 3853472*2-*5) from the 12,444-word recusal motion, the Court's Opinion unconstitutionally (in violation of the First Amendment) lifts those 1,868 words, out of context, apparently considering of no significance to this Court's holding the 265 words in the recusal motion (quoted *supra* at 8) which explicitly address the integrity, character and competence of Judge Farmer, and which diametrically contradict an interpretation, when taken in the context of the 12,444-word work (recusal motion), that the work (recusal motion), taken as a whole, it is impossible to find that Petitioner's statements impugn the integrity, character or competence.**

That a work (e.g., recusal motion) cannot be eclectically analyzed, when adjudging whether the work is protected by the First Amendment, is a First Amendment imperative.

The recusal motion, taken as a whole, says about Judge Farmer that he is a jurist of admirable, even exemplary, integrity, competence and character.

The recusal motion, taken as a whole, portrays Judge Farmer as a jurist with uncompromising integrity who, aberrantly, adjudicated in a way that would be expected from an adjudicator, unlike Judge Farmer.

The recusal motion, taken as a whole, is premised on the fact that the best of humankind are fallible; humans who are the epitome of competence and paragons of virtue (high integrity),

in weak moments, are capable of gross misfeasance. With this, no sane adult could disagree.

9. **The Court's Opinion anchors Petitioner's suspension on a jurisdictionless finding of the trial court that Petitioner knew that statements made by Petitioner were false, more particularly, the Court's Opinion reads as follows (2018 WL 3853472 *6):**

> As aggravating factors, the trial court considered Mr. Parrish's substantial experience in the practice of law and his refusal to acknowledge the wrongful nature of his conduct.

This Court incorporated into this Court's Opinion what the trial court "found," by the trial court ignoring the hearing panel's 8.4(c) no-misrepresentations UNAPPEALED final judgment.

10. **If the Court had jurisdiction, this Court's Opinion would create constitutionally impermissible (violates the First Amendment) precedent that, when determining whether statements of a lawyer made in a recusal motion are sanctionable, pejorative statements are categorically no different from disrespectful deportment, contentious conduct, vitriolic, barbaric, invective, expletive, rancorous, vulgarity, obscene or other illegal or socially condemned acts or omissions.**

The inappropriate (pejorative) language used by Petitioner in part of the recusal motion, in a constitutionally significant way, is different from communication by disrespectful deportment, contentious conduct, vitriolic, barbaric, invectives, expletives, rancorous, vulgarities, immorality or other illegal or socially condemned acts or omissions, but this Court punished Petitioner the same as if Petitioner communicated by means of these societally condemned communication methods (e.g., referring to judges as "barbaric," "assholes" or "liars").

This Court's recording of the April 4, 2018 oral argument in the instant case evidences the following exchange, which adroitly beads in on the heart of the dilemma this case presents. The following colloquy, between Chief Justice Bivens and Petitioner, occurred:

> **Justice**: So, when you say the judges have done a masterful job of covering up the fact that they stepped out of their role as even handed judges and into the role of an adversary of the Estate willing to abuse the power of their judicial offices to deny the Estate's access to the unexceptional organic law of Tennessee – not - you are

> making an accusation that they have failed to - they have committed a criminal act. They have failed to follow their oath. They have committed an impeachable act. And, that's what you're saying, in so many words.
>
> **Parrish**: In so many words? I think – I [Petitioner] can't disagree with that, and I think it is the truth - it is the truth, and it has nothing to do with [ ] disrespect for [Judge Farmer or] any of those three judges, then or now. (emphasis added).

The quoted exchange identifies the sobering seriousness of result-oriented adjudications.

An observer can speak of result-oriented adjudication as passively as this Court spoke in ***Lee Medical v. Beecher***, 372 S.W.3d 515 (Tenn. 2010) (Amended Reply Brief pages 2, 20, 21, 22, describing result-oriented adjudication as a failure to reconcile precedent cited in a case with seemingly contradictory precedent.[3]

One can speak of result-oriented adjudication as bluntly as did Judge Clay, in his dissenting opinion, in ***Gohl v. Livonia Public Schools***, 836 F.3d 672 (6th Cir. 2016) *reh. en. banc.* den. Nov. 15, 2016, describing the majority opinion of his two co-laboring judges as having ignored fundamental and well-settled law, having ignored the most important facts, having ignored evidence not supporting the result the two judges wanted to adjudicate, sidestepping clear precedent from the United States Supreme Court and having lost touch with basic and fundamental precepts of law, all for the purpose of reaching a personally desired result.

One can describe result-oriented adjudication by the words used by Petitioner in the Rule 11 Application in ***Wright v. Buyer***, No. W2018-01094-SC-T10B-CV, pending before this Court (the relevant part of which is **appended hereto** for ready-reference).

Whatever the words are used, "in so many words," the accused judge is charged with

[3] This Court's Opinion does not reconcile its holding with this Court's precedent in *In re Hickey*, 258 S.W.417 (Tenn. 1924). See Appellant's Brief (Typographically Corrected), pages 32-37), arguably is the seminal and most important precedent from this Court germane to the subject of this case.

violation the judge's oath and an impeachable act.

11. This Court's Opinion fails to reconcile the indubitable objective fact that on-point precedent from the United States Supreme Court explicitly fails to relax application of First Amendment protections because the speech in question is by lawyers claimed, by speech, to have violated rules of professional conduct. *See* Appellant's Brief (Typographically Corrected), pages 42-46.

12. What appears as if historical facts, in the Opinion (2018 WL 3853472 *1), will mislead a reader who presumes that what is stated, as if facts, are statements of facts.

Comparing what is stated in this Court's Opinion in the instant case with what is stated in the opinion authored by Judge Farmer (RoA Vol. 19, AR Vol. 17 at 2545-81; RoA Vol. 7, AR Vol. 5 at 689-93), the same inaccuracies appear. What Judge Farmer inaccurately wrote precipitated the subject recusal motion. **But for** Judge Farmer's inaccuracies, all things Goza would likely have ended years ago. Judge Farmer's inaccurate statement of facts seems to roll through Tennessee's judiciary like a snowball rolling down a steep hill.

13. If this Court had jurisdiction, this Court's Opinion would create precedent that violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution (hereinafter "Fourteenth Amendment"), i.e., that a finding of fact that what Petitioner stated was "false" can be made without any (as in zero) evidence of record that what Petitioner said, as a matter of fact, is false.

The evidence of record[4] is all evidence that what Petitioner stated is the truth. This evidence, though never challenged by contrary evidence, even if the trial court had had jurisdiction to consider the issue, had to have been disregarded to have "found" false statements. The hearing panel on motion of BPR, quashed Petitioner's attempt to adduce additional evidence that what Petitioner stated is the truth (RoA Vol. 6, AR Vol. 4 at 562-78; RoA Vol. 7, AR Vol. 5 at 583 – 793; RoA Vol. 8, AR Vol. 6 at 944-64; RoA Vol. 9, AR Vol. 7 at 1040-1086).

Larry E. Parrish (BPR 8464)

[4] RoA Vol. 5, AR Vol. 3 at 414-26, Sworn Ans., including sworn denials to paragraphs 7, 13-15, 17-18, 34-37, 39-42, 45-46 of the BPR Complaint, found in RoA Vol. 3, AR Vol. 1 at 1-9; RoA Vol. 13, AR Vol. 11 at 2231-38, 2226-83, 2318-20; RoA Vol. 18, AR Vol. 16 at 2827; RoA Vol. 14, AR Vol. 12 at 1950-72; RoA Vol. 15, AR Vol. 13 at 2405 - 2538, Petitioner's Second Aff.; RoA Vol. 3, AR Vol. 1 at 358-413, Petitioner's First Aff.)

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON
April 4, 2018 Session

BOARD OF PROFESSIONAL RESPONSIBILITY v. LARRY EDWARD PARRISH

No. W2017-00889-SC-R3-BP

ORDER

On August 22, 2018, the respondent, Larry Edward Parrish, timely filed a petition seeking rehearing of the August 14, 2018 opinion of this Court. *See* Tenn. R. App. P. 39. After careful review, the petition to rehear is denied.

PER CURIAM

HOLLY KIRBY, J., NOT PARTICIPATING