

IN DISCIPLINARY DISTRICT III  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE

FILED

2012 JUL -6 PM 2:55

BOARD OF PROFESSIONAL  
RESPONSIBILITY

*RW* EXEC. SEC'Y

IN RE: PAUL DONALD RUSH,  
BPR No. 23865, Respondent,  
An Attorney Licensed to  
Practice Law in Tennessee  
(McMinn County)

DOCKET NO. 2012-2136-3-RW

---

PETITION FOR DISCIPLINE

---

Comes now the Petitioner, the Board of Professional Responsibility of the Supreme Court of Tennessee, by and through Disciplinary Counsel (hereinafter referred to as the Board), pursuant to Rule 9 of the Rules of the Supreme Court, and files this Petition for Discipline against Paul Donald Rush, and would respectfully show:

1. Respondent Rush is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee since 2004. Respondent's most recent address as registered with the Board of Professional Responsibility is 130 Washington Ave NE, Ste. 1, Athens, TN, 37371, being in Disciplinary District III. Respondent's Board of Professional Responsibility number is 23865.

2. Pursuant to Section 1, of Rule 9, Rules of the Supreme Court of Tennessee, any attorney admitted to practice law in Tennessee is subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts.

3. Pursuant to Section 3 of Rule 9, Rules of the Supreme Court of Tennessee, the license to practice law in Tennessee is a privilege and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Tennessee Rules of Professional Conduct shall constitute misconduct and shall be grounds for discipline.

4. Respondent has failed to conduct himself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited *infra*.

**File No. 33416-3-PS**  
**INFORMANT -- JOHN C. CAVETT, JR., ESQ.**

5. The Board received a letter dated August 19, 2010, from attorney John C. Cavett, Jr., about misconduct of Respondent. A copy of this letter and attachment is attached hereto as Exhibit A.

6. In his letter, Mr. Cavett states that he was ordered by 10<sup>th</sup> Judicial District Criminal Court Judge Amy Reedy to report Respondent's conduct to the Board and the judge also ordered Respondent to self-report his conduct to the Board.

7. Attached to Mr. Cavett's letter is Judge Reedy's July 8, 2010 Order explaining Respondent's prosecutorial misconduct. See attachment to Exhibit A.

8. On August 23, 2010, the Board sent Respondent a letter enclosing Mr. Cavett's letter, stating that it had opened an investigative file and requesting a response within ten days of receipt of the letter. A copy of the letter is attached hereto as Exhibit B.

9. On September 8, 2010, Respondent provided a written response. A copy of the letter is attached hereto as Exhibit C.

10. Mr. Cavett represented defendant Michael Younger in a capital murder case in which three people were killed.

11. Respondent Rush, an Assistant District Attorney General, assisted in prosecuting Mr. Younger's case.

12. At trial, the prosecution planned to call as a witness Anita Wilson, to whom Mr. Younger allegedly made a statement implicating himself in the murders.

13. As there were no eyewitnesses to the murders, Ms. Wilson was an important witness for the prosecution.

14. Before the murder trial, another Assistant District Attorney General, James Stutts, who was not involved with the murder case, was informed by Detective Illingworth that he was investigating Ms. Wilson for stealing, fraudulently endorsing and cashing her employer's checks.

15. Ms. Wilson had been fired from that employment.

16. However, at the time, Ms. Wilson had not been arrested or indicted in connection with the ongoing investigation.

17. Later, Detective Illingworth told Assistant District Attorney Stutts that Ms. Wilson was a witness in the murder case.

18. At the time he learned of Ms. Wilson's role in the murder case, Assistant District Attorney Stutts instructed Detective Illingworth to inform Respondent of the pending investigation of Ms. Wilson so that Respondent could then advise Mr. Younger's lawyers.

19. Detective Illingworth then promptly informed Respondent of the investigation of Ms. Wilson in March 2010.

20. Respondent then instructed Detective Illingworth to let him know if he obtained an indictment against Ms. Wilson, as that information would need to be disclosed to Mr. Younger's defense counsel.

21. Respondent did not inform Mr. Younger's defense counsel that Ms. Wilson was a suspect in the forged check case until on or about May 3, 2010, approximately a day or two prior to trial.

22. Defense counsel promptly made a Motion to Dismiss the charges against Mr. Younger for prosecutorial misconduct because the information about Ms. Wilson was not timely disclosed.

23. On May 6-7, 2010, the trial court conducted a hearing on the Motion to Dismiss and took proof. A copy of the hearing transcript is attached hereto as Exhibit D.

24. At the conclusion of the hearing, the trial court stated that, in March 2010, Respondent was in possession of evidence that was relevant for impeachment of Ms. Wilson and that he was required to disclose the information to the defense at that time but he failed to do so.

25. Respondent had a duty to timely disclose to Mr. Younger's defense counsel the information that Ms. Wilson was under investigation.

26. Respondent failed in this duty.

27. The court ordered Respondent to report his conduct to the Board. See Exhibit D, pages 71-73 of the hearing transcript.

28. Respondent did not report his conduct to the Board, as ordered by the court.

29. The court declared a mistrial in Mr. Younger's case on May 8, 2010.

30. The mistrial was based on Respondent intentionally soliciting a statement from a prosecution witness that violated the Court's May 3, 2010 Order relative to inadmissible

testimony pursuant to Tenn. Rule of Evidence, 404(b). A copy of the Order of Mistrial is attached hereto as Exhibit E.

### **ALLEGED VIOLATIONS**

31. The acts and omissions by Respondent constitutes ethical misconduct in violation of Rules of Professional Conduct 3.4 (a) and (c); 3.8 (d); and 8.4 (a) and (d) as set forth below:

#### **Rule 3.4 FAIRNESS TO THE OPPOSING PARTY AND COUNSEL**

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; or

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; or

#### **Rule 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR**

The prosecutor in a criminal matter:

(d) shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, shall disclose to the defense and, if the defendant is proceeding *pro se*, to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

#### **Rule 8.4 MISCONDUCT**

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;

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

### AGGRAVATING FACTORS

32. After misconduct has been established, aggravating circumstances may be considered in deciding what sanctions to impose against Respondent, pursuant to ABA Standards for Imposing Lawyer Sanctions, Section 9.2.

33. Respondent's substantial experience in the practice of law is an aggravating circumstance justifying an increase in the degree of discipline to be imposed. Respondent has practiced since 2004.

34. Respondent's refusal to acknowledge the wrongful nature of his conduct is an aggravating circumstance justifying an increase in the degree of discipline to be imposed.

WHEREFORE, the Petitioner requests that a Hearing Panel be appointed from Disciplinary District III to hear testimony, receive evidence, make findings of fact and order such disciplinary action against Respondent as it deems appropriate.

Respectfully Submitted,

Nancy S. Jones  
Chief Disciplinary Counsel

By: Rachel L. Waterhouse  
Rachel L. Waterhouse, BPR # 013634  
Deputy Chief Disciplinary Counsel  
10 Cadillac Drive, Suite 220  
Brentwood, Tennessee 37027  
(615) 361-7500

**NOTICE TO PLEAD**

**TO: Paul Donald Rush**

You are hereby notified that you are required to file your Answer with Rita Webb, Executive Secretary, Board of Professional Responsibility, 10 Cadillac Drive, Suite 220, Brentwood, TN 37027, and serve a copy of your Answer upon Disciplinary Counsel within twenty (20) days after service of this Petition. If you fail to file an Answer, the matter shall be deemed admitted.

*Rachel L. Waterhouse*

Rachel Waterhouse, BPR No. 013634

**CERTIFICATE OF SERVICE**

I certify that a copy of this Petition for Discipline has been served upon Respondent, Paul Donald Rush, by sending a copy to 130 Washington Ave NE, Ste. 1, Athens, TN, 37371, via Regular Mail and Certified Mail, Return Receipt, No. 7011 1150 0000 6097 7867, on this, the 6<sup>th</sup> day of July, 2012.

*Rachel L. Waterhouse*

Rachel Waterhouse, BPR No. 013634