

# EXHIBIT "EE"

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**FILED**

NOV 30 2016

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

TY CLEVINGER )

Respondent )

Member of the Bar of the District  
Court for the District of Columbia )Attorney Grievance  
Docket No. 15-19**ORDER**

This matter comes before the Disciplinary Panel (hereinafter "Panel") for approval of the terms of settlement resolving the issues raised by the charges filed by Committee on Grievances against the Respondent, Ty Clevenger.

**BACKGROUND**

The Committee on Grievances ("COG"), pursuant to LCvR 83.16(d)(7), submitted charges to the Panel alleging that Ty Clevenger, a member of the Bar of this Court, violated certain Rules of Professional Conduct.<sup>1</sup> See Dkt. 1. In particular, Mr. Clevenger was charged with:

## 1. Violation of Rule 8.4(d) – Misconduct

It is professional misconduct for a lawyer to:

(d) Engage in conduct that seriously interferes with the administration of justice

## 2. Violation of Rule 3 – Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law.

## 3. Violation of Rule 3.2 – Expediting Litigation

<sup>1</sup> The factual support and specific charges of violations of the Rules of Professional Conduct were previously submitted to the Panel as COG Exhibit 2.

- (a) In representing a client, a lawyer shall not delay a proceeding when the lawyer knows or when it is obvious that such action would serve solely to harass or maliciously injure another.
- (b) A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

The charges filed against Mr. Clevenger were the result of COG's investigation that was spurred by a letter of complaint sent to COG by Patrick Kearney.<sup>2</sup> Mr. Kearney's letter of complaint to COG arose out of very contentious litigation in the case of *Wade A. Robertson v. William C. Cartinhour*, 1:09-cv-1642. That case was litigated in the United States District Court for the District of Columbia before United States District Court Judge Ellen Huvelle.<sup>3</sup> The litigation of *Robertson v. Cartinhour* involved battles on many fronts, in multiple courts, and included the filing of multiple appeals. These multiple court battles and appeals resulted in the Respondent being sanctioned, not only by Judge Huvelle, but also by the then-Chief Judge of this Court, a bankruptcy court judge, and the United States Court of Appeals for the District of Columbia Circuit ("the D.C. Circuit").

The Panel notes that, in a Memorandum Opinion, Judge Huvelle listed and summarized several events involving sanctions against Mr. Clevenger that occurred since the Court dismissed *Robertson I* on March 16, 2012. Those events included:

1. On April 2, 2012, Chief Judge Lambert imposed sanctions of \$7,249.00 against Messrs. Robertson and Clevenger jointly because they had filed a frivolous bankruptcy case in an attempt to stall litigation in this district in front of Judge Huvelle. Judge Lambert found that the sanctions were warranted because of the "groundless nature of the [bankruptcy] appeal, unfounded whatsoever in the law."

<sup>2</sup> Mr. Kearney was opposing counsel in a case against one of Mr. Clevenger's clients. The letter from Mr. Kearney is dated December 29, 2014, and is COG's Exhibit 1.

<sup>3</sup> *Robertson v. Cartinhour* resulted in a jury verdict against Mr. Clevenger's client in the amount of \$3.5 million in compensatory damages and \$3.5 million in punitive damages.

2. On April 3, 2012, the D.C. Circuit affirmed the jury's \$7 million verdict in *Robertson I* and found that Robertson presented "no meritorious argument on appeal."
3. On May 4, 2012, Bankruptcy Judge Teel granted a motion for sanctions and fined Messrs. Clevenger and Robertson \$10,000 each, finding that "Clevenger joined Robertson in knowingly and in bad faith advancing frivolous arguments in [the] bankruptcy case."
4. On June 12, 2012, Mr. Clevenger filed an appeal in the D.C. Circuit seeking review of this Court's dismissal of *Robertson II*.
5. On June 25, 2012, Chief Judge Lamberth ordered Messrs. Clevenger and Robertson to show cause why they "should not be enjoined from further filings [in the bankruptcy-related matters], filing further appeals from the underlying bankruptcy case, and from filing new related matters in this district court." Chief Judge Lamberth responded to their objections on July 25, 2012, by listing the egregious behavior engaged in dating back to the inception of *Robertson I*.<sup>4</sup>

The Panel has determined that there is both a factual and legal basis for the charges filed by COG against Mr. Clevenger. The Panel notes that Mr. Clevenger submitted written responses to the charges filed by COG. Those responses included: Mr. Clevenger's Motion to Dismiss, Dkt. 6, a Motion to Permit Discovery, Dkt. 4, and a Motion to Transfer, Dkt. 5. In the Motion to Dismiss, Mr. Clevenger alleged that he was a victim of selective prosecution. *See* Dkt. 6 at 2-3. However, in a written Order issued by this Panel on October 26, 2016, all of Mr. Clevenger's motions were denied. *See* Dkt. 25. With regard to the selective prosecution defense, this Panel stated in its Order that Mr. Clevenger "has not identified any evidence that would support a 'colorable claim' of selective prosecution." *Id.* at 2.

<sup>4</sup> *See* COG Exhibit 33 - *Robertson v. Cartinhour*, 883 F. Supp. 2d 121, 124 (D.D.C. 2012).

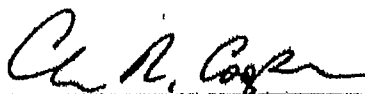
An evidentiary hearing was scheduled in this matter for November 29, 2016. Meanwhile, at the conclusion of the motions hearing on October 14, 2016, the parties were encouraged to explore ways in which this matter could be resolved. Consistent with the Panel's encouragement to work toward a resolution, it was reported to the Panel that Mr. Clevenger and COG entered negotiations and have reached a settlement.

#### ORDER

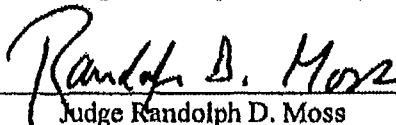
Based upon the agreed terms reached by the parties, it is on this 30<sup>th</sup> day of November 2016, hereby ORDERED that:

1. Respondent, Ty Clevenger, be and is hereby suspended from practicing law in the United States District Court for the District of Columbia for 120 days from November 29, 2016.
2. Respondent, Ty Clevenger, is hereby fined in the amount of \$5,000.00 (Five Thousand Dollars) to be paid in full by no later than December 30, 2016.
3. The letter of resignation (Attachment A) from the Bar of this Court that is signed by Respondent and which takes effect on March 29, 2017 (120 days from November 29, 2016), is accepted by this Panel and is incorporated as an integral part of this Order.


SO ORDERED.



Judge Christopher R. Cooper



Judge Randolph D. Moss



Judge Amit Mehta