

requests the Board do as the Tenth Circuit, the Fifth Circuit, the Eastern District, and the Southern District have done and not move forward until the Fifth Circuit has ruled on the appeal of the sanctions order.

POSTURE OF RESPONSE

Subject to the motion for continuance, Sharpe submits the following opposition to any discipline.

The basis of the appeal of the sanction order dated August 18, 2025, is the filing by Sharpe of an emergency motion for stay in the Fifth Circuit under Rule 8 (2)(D) of the Federal Rules of Appellate Procedure of an order signed by the Honorable Mark Pittman, U.S. District Judge² did not engage in practicing law in the Northern District of Texas. No order prohibits Sharpe from practicing in the Fifth Circuit. The district court's order of suspension is based, in part, on J. Robert Forshey's (Receiver) Motion to Show Cause, To Enforce Panel Orders Against J. Shelby Sharpe.³ Receiver's motion does not ask the district court to enforce any of the district court's orders, only of a panel.⁴

Receiver's motion contended that because Receiver was requested by the Fifth Circuit to file a response to the emergency motion he wanted reimbursement for the expense in having to do so.⁵ Receiver's motion additionally alleged that Sharpe by representing his clients on appeal Sharpe had to have "given legal advice" in the Northern District and lastly that by representing

² Ex. "A"

³ Ex. "B"

⁴ Exhibit "B" p. 5.

⁵ Exhibit "B" p. 6

his clients in the Fifth Circuit he has a conflict of interest with other clients of Sharpe, namely Dale and Linda Behan, hereafter “Behans,” who were involved in litigation in an Arkansas state court.⁶

Sharpe was first hired to represent the clients for the appeal to the Fifth Circuit after those clients perfected their own appeal of the district court’s order without Sharpe’s help.⁷ Concerning the alleged conflict of interest Receiver contends it is caused by Sharpe representing his clients on appeal, but the appeal does not involve Sharpe’s clients Behans, whose interest were not adverse to Sharpe’s clients in the Arkansas litigation.⁸

DISTRICT COURT OPINION AND ORDER

The Board needs to be aware that certain statements in the district court’s opinion and order must be addressed in order for the Board to have a clearer picture of the district court rulings.

The footnote at the bottom of page 1 of the opinion is misleading. What the district opinion does not state is that the dismissal of the appeals by the Fifth Circuit was based on the appeals becoming moot as the result of Receiver being appointed, not for lack of merit of the appeals.⁹ In fact, the Fifth Circuit’s opinion in a footnote beginning on page 6 reads:

“This opinion concludes only that these appeals are moot, not that the Behans’ arguments are without foundation. Indeed, on the record and arguments before us, we question whether the Turnover Order’s conveyance of stock to Weslease granted Weslease any rights in real property owned by River North, a non-judgment debtor third party. See *Dole Foods Co. v. Patrickson*. 538 U.S. 468, 475 (2003). (An individual shareholder, by virtue of his ownership of share, does not own the corporation’s assets”, *Bollore S.A. v. Imp. Warehouse, Inc.* 448 F.3d 317, 322 (5th Cir. 2006). (“Texas courts construing the turnover statute have expressly and consistently held that it may be used to reach only the assets of parties to the judgment, not the assets of non-judgment [debtor] third parties.”) The Behans

⁶ Ex. “B” pp. 5-6.

⁷ Ex. “C” pp.4-5.

⁸ Ex. “B” p. 5.

⁹ Ex. “D”

may continue to press their substantive arguments in district court proceedings involving the receiver, or in appeals arising out of the same.”¹⁰

Thus, there is no ruling in all of the appeals Sharpe has taken that the district court ruled correctly.

The district court opinion further states that because “Sharpe filed two state court suits on behalf of River North” the district court began “disciplinary proceedings” against him.¹¹ Sharpe was ordered to dismiss the state court suits and was fined for filing them.¹² This is one of the appeals covered by implication in the footnote that Sharpe’s conduct in filing the state court suits is according to law.¹³

Next, the district court opinion declares that Sharpe made a \$100,000 loan for his clients Behans without their knowledge to pay a co-counsel he hired for services in appealing a case.¹⁴ The district court ordered Sharpe to disgorge the money to Weslease 2018 Operating, L.P.¹⁵ However, the Fifth Circuit after it initially administratively stayed the district court’s order later in lifting the stay wrote:

“On the merits, the district likely erred. . . . Assuming Weslease brought this motion as a derivative claim on behalf of River North, it appears Weslease did not comply with Oklahoma’s demand requirement. [authorities cited] . . . Nor does it seem that Weslease complied with Federal Rule of Civil Procedure 23.1. . . .

“In the alternative, assuming this was a direct claim by Weslease in its individual capacity, Texas law does not permit a shareholder to ‘recover damages individually for injury to the corporation.’ [authorities cited] And under Texas law, a lawyer’s fiduciary duties generally extend only to his clients – here, River North and the Behans. [authorities cited] . . .

¹⁰ Ex “D” pp. 6-7

¹¹ Ex “A” pp. 2-3

¹² Ex “A” p 3

¹³ Ex. “D” pp. 6-7.

¹⁴ Ex. “A” p. 3.

¹⁵ Ex. “E”

“Finally, we are not certain Sharpe’s actions constituted a ‘clear and serious violation of TDRPC 1.08(a). . . . fee forfeiture is not available here.’”¹⁶

The district court opinion charges that Sharpe never replied to Weslease’s allegation that he and Behans “induced a third party into ‘putting down a non-refundable deposit’” contrary to district court “orders that Behans refrain from exercising control over River North or its assets.”¹⁷ But, Sharpe did reply.¹⁸ He filed a declaration of Dale Behan stating under oath that Sharpe had nothing to do with the real property transaction.¹⁹ In response to the special prosecutors report Sharpe denied “‘signing’ a contract to sell real estate on behalf of River North Farms . . . nor did Mr. Sharpe make any knowingly false statement to any putative purchaser” and he “did not sign any contract for sale.”²⁰

RECEIVER’S MOTION

Following is a summary of Receiver’s motion asking the district court to enforce panel decisions that the district court based the suspension of Sharpe.

- (1) In essence, the motion alleges that Sharpe has practiced in the Northern District of Texas since being ordered by a three-judge panel not do so without first seeking permission from the panel.
- (2) The motion contends that "Sharpe's representation of the Appellants in filing the Stay Motion violates the provisions of the Panel's Orders." Motion, paragraph 4.
- (3) The motion goes on to allege that "Sharpe was clearly required to give legal advice in

¹⁶ Ex. “F” pp. 4-5

¹⁷ Ex. “A” pp. 3-4

¹⁸ Ex. “G” p.3, Ex. “H” p. 31, paragraphs 7 and 8, Ex. “I” p.2

¹⁹ Ex. I” p. 2

²⁰ Ex. “H” p. 31

relationship to litigation pending in the Northern District and the application of Fed. Rule of Appellate Procedure 8(a)." Motion, paragraph 7.

(4) The motion also contends that by "filing the Stay Motion, Mr. Sharpe is representing new clients in the Northern District in violation of the Panels' Orders." Motion, paragraph 9.

(5) Next, the motion alleges that "by necessity" Sharpe had to "consult with and advise Appellants in litigation ... in the Northern District." In connection with this allegation, it is alleged that "advising clients on how to obtain a stay of an order entered by a court in the Northern District is also practicing law in the Northern District," This conduct is alleged to be "taking new clients in relation to matters pending in the Northern District" violates "the prohibition of the Panel Orders. Motion: paragraphs 10 and 11.

(6) Lastly, the motion contends that because "Appellants have brought suit against both the Behans and the Receiver in state court in Independence County, Arkansas" this "creates a clear conflict of interest as Mr. Sharpe cannot sue his former clients (the Behans) or the Receiver as their successor in interest." Motion, paragraph 12.

SUMMARY OF SHOW CAUSE ORDER

Following is a summary of the show cause order that gave notice to Sharpe of what he was to defend at the hearing.

(1) The order stated that Sharpe filed the motion to stay the district court's order pending appeal that "Sharpe was required to first file a motion to stay this Court's order in the district court," which the Court declares required him to counsel the "Behans and Appellants on obtaining a stay" is "practicing law in the Northern District."

(2) The order declared that developing the record in the district court is practicing law in

the Northern District.

- (3) The order further stated that the emergency motion that Sharpe filed establishes he is now "representing new clients in the Northern District of Texas," which is contrary to the Panel's order that Sharpe not represent any new clients without first obtaining permission from the Panel.
- (4) Lastly, the order stated that because Sharpe has represented the Behans for years and recently his clients brought suit in Arkansas against the Behans and the Receiver, Sharpe has a conflict of interest in representing his new clients on appeal in the Fifth Circuit.

HEARING TESTIMONY

The only witness to testify at the hearing other than on attorney fees was Sharpe.²¹ Thus, his testimony is uncontradicted.

Sharpe testified that he had no contact with his clients until he was asked to prepare fee agreement letters for him to represent them on appeal to the Fifth Circuit.²² Sharpe also testified that he had never represented his clients in the Northern District of Texas.²³ He was asked no other questions about doing anything in the Northern District of Texas other than questions about Rule 8 of the Federal Rules of Appellate Procedure that has a subsection on asking a district court for a stay, which he did not do.²⁴

²¹ Ex. "J"

²² Ex/ "J" p. 14, 18

²³ Ex. "J" p. 25

²⁴ Ex. "J" p. 22

The district court questioned Sharpe about new cases he has taken since appearing before the panel.²⁵ Sharpe responded that he was taking no new cases in the Northern District.²⁶ Sharpe was then asked about new cases he had taken in state court and appeals he was involved as it related that he represented to the panel he was winding down his practice.²⁷

WHY DISCIPLINARY PUNISHMENT SHOULD NOT NE IMPOSED

Receiver's motion is solely based on the alleged violations of an order of a three-judge panel prohibiting Sharpe from practicing in the Northern District of Texas without first obtaining permission of the Panel or representing parties in a specified relationship to Dale and Linda Behan is contrary to long standing law set out by the United States Supreme Court as it is throughout the country that a motion for sanctions in violating a court order, which, in essence, is what Receiver's motion is, **MUST** be brought in the court whose order is alleged to be violated. *Ex parte Bradley*, 74 U. S. 364, 372 (1868). As the Second Circuit wrote in *Bruce v. Citigroup, Inc.*, 75 F.4th 297, 303-4 (2nd Cir. 2023), "plaintiff's theory of a free-wielding contempt authority, capable of exercise by one court, would 'present the anomalous proceeding of one court taking cognizance of an alleged contempt committed before and against another court, which possessed ample powers, itself to take care of its own dignity and punish the offender,'" quoting from *Ex parte Bradley*, 74 U.S. 364, 372 (1868). In other words, *Bruce* made it clear that "**only the issuing court may exercise its civil contempt powers to enforce its . . . order.**" 75 F. 4th at 305. (Emphasis added).

Sharpe's conduct in representing his clients in the Fifth Circuit by filing an emergency motion on their behalf cannot under any stretch of anyone's imagination be considered practicing

²⁵ EX. "J" p. 44-45

²⁶ Id.

²⁷ Ex. "J" pp-45-47.

in the Northern District of Texas. A filing in a Circuit is an act done in the Circuit. The filing in question is governed by the Federal Rules of Appellate Procedure and the Local Rules of the Circuit, not the Federal Rules of Procedure that govern the district courts.

Receiver's evidence that the district court admitted at the hearing is conclusive that Sharpe provided no legal services in the Northern District of Texas to his clients he represents on appeal to the Fifth Circuit. Sworn declarations from each of Sharpe's clients, which were undisputed before the district court are that Sharpe was retained to represent them on appeal to the Fifth Circuit and gave them no assistance in the district court nor did he assist with the notices of appeal each filed in the district court.

The clients Sharpe represents on appeal to the Fifth Circuit do not fall within the prohibition of the Panel order that he is prohibited from giving "legal advice to Dale or Linda Behan or their companies, including River North, their former companies, their associated companies, their affiliated companies, or any entity that bears any meaningful relationship to the Behans in any matter of litigation in the Northern District of Texas." The language does not name them even by a category. Also, he is not representing them in the Northern District of Texas, but in the Fifth Circuit. The Panel opinion is clear that the restrictions on Sharpe are limited to the Northern District of Texas.

Likewise, the language prohibiting him from "representing new clients in the Northern District of Texas" is also expressly limited to the Northern District of Texas. The Panel obviously recognized that it had could only place its limitations to the Northern District of Texas since they had no authority beyond the district. The undisputed evidence presented by Receiver, including the declarations of Sharpe's clients, is they are solely his clients in the Fifth Circuit.

Rule 1.08 of the Texas Rules of Professional Responsibility and Rule 1.8 of the American Bar Association Rules of Professional Responsibility describe conduct of a lawyer that creates a conflict of interest. Nothing in the language of those rules is violated in Sharpe filing the emergency motion in a proceeding that Dale and Linda Behan are not parties. Also, a diligent search has failed to disclose any opinion that Sharpe's conduct violates either of these rules.

Furthermore, the emergency motion cannot be a conflict of interest to litigation Sharpe's clients filed in state court in Arkansas where the Behans were only nominal parties in a declaratory judgment suit. Sharpe's clients' interests in the Arkansas suit were not adverse to the Behans' interests, who are not even parties to the appeal to the Fifth Circuit.

The district court sanctioning Sharpe for alleged lack of candor with other courts, not the district court, contrary to the authorities cited above.

Additionally, Sharpe's testimony that he has filed three suits and filed appeals since appearing before the Panel is not, in and of itself, contradictory that he is winding down his practice. The new suits, as Sharpe testified, are short-lived ones he filed for friends, and the appeals involve litigation that is coming to an end.²⁸

The charge for lack of candor to the Circuit is in not telling the Circuit when Sharpe filed the emergency motion that he had been told by Receiver the sale had closed. Besides the fact the district court has no authority to sanction Sharpe for a matter in this Circuit the emergency motion appealed an order authorizing Receiver to sell property of a non-judgment debtor that the district court did not have in *custodia legis*. Sharpe determined the Circuit still could stop the transfer of the property pending appeal if it wanted to do so. Sharpe had no confirmation what the Receiver

²⁸ Ex. "J" p. 48

told him was true. The sale of a non-party's property to apply on a judgment it gets no benefit is a serious matter the Circuit could have stopped pending appeal. The appeal is still pending.

Because the property has been sold ignoring a *lis pendens* still gives Sharpe's clients a remedy in Arkansas state court if the Circuit reverses the district court order.

CONCLUSION

The order that is the subject of these proceedings should not stand up when the Fifth Circuit rules on it for the legal and factual reasons outlined above. Accordingly, no discipline should be imposed on Sharpe now or, alternatively, at least wait for the Circuit to rule on Sharpe's appeal.

Respectfully Submitted


James S. Sharpe