

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

FILED

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BOARD OF PROFESSIONAL
RESPONSIBILITY

RW

EXEC. SEC.

IN RE: Sherman Ames, III
BPR No. 007163
Attorney Licensed to
Practice Law in Tennessee
(Bradley County)

Docket No. 2009-1868-3-KH

**JUDGMENT OF THE HEARING PANEL UPON
PETITION FOR DISCIPLINE**

This matter came to be heard before the undersigned Hearing Panel of the Board of Professional Responsibility of the Tennessee Supreme Court ("Panel") on November 29, 2011, upon the Petition for Discipline filed by the Board of Professional Responsibility and the entire record. The Panel in this matter consisted of Elisabeth B. Donnovin, C. Crews Townsend, and Leah M. Gerbitz, the latter of whom was selected by the Panel members to serve as the Chairperson of the Panel.

After carefully considering the law applicable to this matter, along with entire record in this cause, including the pleadings filed and previous orders entered, the joint stipulations agreed to by Disciplinary Counsel and the Respondent Sherman Ames, III ("Mr. Ames"), the testimony of Mr. Ames, the exhibits introduced into evidence at the hearing, and the arguments of counsel for the Board of Professional Responsibility and Mr. Ames, the Panel issues this Judgment. The Panel unanimously finds that Mr. Ames committed violations of Tennessee Rules of Professional Conduct 4.1(a), 5.5(a), 5.7, 7.1(a), 7.5(a), and 8.4(a&c). The Panel also concludes and finds that a suspension from the practice of law in this State for a period of six (6) months is the

appropriate sanction for the violations, considering the nature of the misconduct and the aggravating factors present in this matter.¹

PROCEDURAL HISTORY

The Board filed a Petition for Discipline on November 30, 2009. Respondent filed an Answer to the Petition for Discipline on December 10, 2009. A pre-hearing conference was conducted on February 11, 2010 for the purpose of setting a trial schedule. A Case Management Order was entered on February 12, 2010. A Revised Case Management Order was entered on July 16, 2010 setting the trial of this matter for November 12, 2010.

The parties filed Joint Stipulations on October 21, 2010 agreeing to the admissibility and authenticity of Exhibits A and B to the Petition for Discipline. (Exs.1&2) These consist of letters by Michael Hall, Assistant Attorney General for the State of Washington, and Marie Connolly, an investigator with the Montana Commission on the Unauthorized Practice of Law.

Upon request of Mr. Ames, the hearing was reset for December 29, 2010. Mr. Ames again requested a continuance of the December 29, 2010 hearing date, and the panel held a telephonic conference on January 19, 2011. During the conference the hearing was reset the for March 29, 2011, but on February 4, 2011 an Order was entered placing Mr. Ames on disability inactive status.

On November 8, 2011, Mr. Ames's disability inactive status was terminated, and the previously scheduled hearing was held on November 29, 2011. The Board took the position that Mr. Ames violated RPC 4.1(a), 5.5(a), 5.7, 7.1(a) and 5(a-b) and 8.4(a-c).

¹ The Panel finds that the twenty one (21) day period of time from the termination of Mr. Ames's disability inactive status on November 8, 2011 until the hearing date on November 29, 2011 should be credited toward the 6 month suspension period.

FINDINGS OF FACT

Given the procedural posture of this case and the stipulations of the parties, many of the material facts are either admitted or are deemed to have been admitted. However, testimony offered at the hearing also supplemented these facts, and as such, the Panel makes the following findings of fact:

On June 26, 2008, the Board received a copy of a letter by Michael Hall, Assistant Attorney General for the State of Washington, regarding alleged ethical misconduct by Mr. Ames. (Ex. 1)

On July 3, 2008, a complaint was filed by Marie Connolly, an investigator with the Montana Commission on the Unauthorized Practice of Law, alleging ethical misconduct by Mr. Ames. (Ex. 2)

Mr. Ames was licensed to practice by the State of Tennessee in 1980. Mr. Ames is not licensed to practice law by any other state. Mr. Ames lived in Montana from approximately 2005 until 2010. Respondent was not licensed to practice law in Montana. For part of the time Mr. Ames resided in Montana, his license to practice in Tennessee was suspended from August 28, 2007 until it was reinstated on July 30, 2008.

Mark Casey, a Washington attorney, contracted with the Washington Department of Labor and Industries ("Department") to negotiate asbestos claims. Mr. Casey obtained approval to subcontract with Mr. Ames in a third-party asbestos claim ("Markealli" claim). Under the terms of the subcontract, Mr. Ames would assist Mr. Casey in dealing with corporate counsel, product identification, interpreting some of the medical information on the Markealli claim, but Mr. Ames would not be involved in the court proceedings or communicate with defense counsel. Further, any money collected on the case would be deposited into Mr. Casey's account. The

Department specifically stated that Mr. Ames was not authorized to perform any work as an attorney on the case.

Mr. Ames, however, performed work on a number of claims before the Department other than Markealli. (Ex.1) In the course of working on the Markealli and other cases, Mr. Ames signed releases and settlement agreements as “Attorney”, “Attorney for Claimant”, and “Attorney for Plaintiff.” Mr. Ames would sign these documents using his Tennessee BPR number of “007163”, and he would faintly strike out the “WSBA”. (Exs. 1, 5, 7, & 8)

Mr. Ames also collected funds from the cases which he deposited into his account. A letter dated January 6, 2008 indicates Mr. Ames sent to Mr. Casey legal fees and client funds. (Ex. 10)

Mr. Ames wrote a number of letters to Mr. Casey and the Department regarding cases in which he held himself out as an attorney with a law office in Montana. (Exs. 4, 6, 9-14) On September 11, 2007, Mr. Ames wrote Mr. Casey on letterhead indicating Mr. Ames was an attorney at law with an office in Montana. (Ex. 4) Mr. Ames’s letterhead does not note that he is licensed to practice only in Tennessee. Further, the dates on the letters made exhibits at the hearing fall within the dates of Mr. Ames’s suspension from practice in Tennessee.

For part of the time he resided in Montana, Mr. Ames was employed by a law firm, Petit Hock and Strauch, PLLC, located in Missoula, Montana. In October 2006, Mr. Ames left this firm, and he took the asbestos related claims with him. On January 5, 2007, Mr. Ames sent an e-mail to Linda Harrell, of Trust Services Inc., confirming that Petit Hock was no longer part of the NGC claims process and that “all claims were to be handled and processed by Sherman Ames.” Ms. Harrell sent a reply confirming that Mr. Ames was the responsible attorney for claims through the Petit firm.” (Ex. 2)

On June 26, 2008, the Department terminated its contract with Mr. Casey due to the unauthorized actions by Mr. Ames. (Ex. 1)

At the hearing, Mr. Ames acknowledged the use of his letterhead was a mistake, and he would not contest the Board on this issue. Mr. Ames, however, did not agree that he was holding himself out as practicing law in Montana or Washington. Mr. Ames also testified that the work done during his suspension related to claims submitted before the suspension began. He testified the work he did was not the "practice of law".

On March 2, 1998 Mr. Ames received a informal admonition from the Tennessee Board of Professional Responsibility regarding the violation of DR 1-102(A)(1); 6-101; and 7-101. (Ex. 16) On August 28, 2007 Mr. Ames's license to practice law was suspended for six months for failing to adequately supervise a legal assistant who had embezzled over \$700,000.00, commingling settlement proceeds with his operating account, and failing to have appropriate trust accounting procedures. (Ex. 17)

During the hearing, Mr. Ames presented facts and argument regarding the circumstances of the two previous disciplinary actions by the Board as well as another matter involving an asbestos claimant from California named Freda King.

Mr. Ames is living in or near Cleveland, Tennessee, and he would like to resume the practice of law in that area.

CONCLUSIONS OF LAW

Tennessee RPC 5.5(a) provides:

A lawyer shall not:

- (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction;

The definitions for “unlawful practice of law” for Washington and Montana respectively are:

§2.48.180. Definitions...

- (1) As used in this section:
 - (a) “Legal provider” means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;
 - (b) “Nonlawyer” means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;
- (2) The following constitutes unlawful practice of law:
 - (a) A nonlawyer practices law, or holds himself or herself out as entitled to practice law;. . . .
 - (e) A nonlawyer shares legal fees with a legal provider.

Rev. Code Wash. (ARCW)

§37-61-201 Who considered to be practicing law.

Any person who holds out to the public or advertises as an attorney or who appears in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who engages in the business and duties and performs acts, matters and things that are usually done or performed by an attorney at law in the practice of that profession for the purposes of parts 1 through 3 of this chapter is considered to be practicing law.

Mont. Code Ann.

During the time Mr. Ames was living and working in Montana, he was never licensed to practice law in Washington and/or Montana. Further, from August 2007 to July 2008, Mr. Ames was suspended from the practice of law in the one state where he was licensed, Tennessee. In his correspondence, Mr. Ames he held himself out to the public as a licensed attorney.

Mr. Ames maintains that he was not practicing law because he was not representing a client in a courtroom. The Panel finds however, that Mr. Ames corresponded as a lawyer and signed documents as a lawyer. He advocated for claimants by facilitating their claims through the asbestos fund process. Whether advising other lawyers or the claimants themselves, Mr. Ames was engaged in activities that constitute the practicing law. The services Mr. Ames provided, at a minimum, constitute document preparation which is prohibited in Washington. *State v. Hunt*, 880 P.2d 96 (1994) Montana has long held that activities similar to those of Mr. Ames in this case are improper. *In re Phillips*, 64 Mont. 492 (Mont. 1922)

Despite Mr. Ames's position that the activities he engaged in while he was suspended in Tennessee were clerical and related to claims submitted before the suspension was in effect, this work still related to the practice of law. Tennessee prohibits suspended attorneys from working in a law practice while on suspension. *Tennessee Formal Ethics Opinion 83-F*. Further, Washington State Bar Association formal opinion provides a disbarred² lawyer may engage in "other, nonlaw-related capacities from such mundane tasks as mowing lawns or washing windows, to more sophisticated employment such as managing a business or property not related to the lawyer's practice of law." *WSBA Formal Opinion 184 (1990)*.

Despite finding Mr. Ames was engaged in the practice of law, the Panel finds Mr. Ames did not advise clients on Montana or Washington law.

Based upon the findings above, the Panel finds Mr. Ames violated Tennessee RPC 5.5 by holding himself out as an attorney in Montana and Washington when he was not licensed or admitted to practice law in those states. He violated RPC 5.5 further by engaging in tasks that constitute the practice of law when he did not hold a license in either state. Finally, he violated

² While Mr. Ames was suspended and not disbarred, the Panel finds the opinion instructive in this matter.

RPC 5.5 by engaging in tasks that constitute the practice of law when he was suspended in Tennessee.

RPC 5.7 applies the RPC to lawyers engaged in “law-related services” when the circumstances are not distinct from the lawyer’s provision of legal services to clients. The proof presented establishes Mr. Ames was also engaged in the provision of law-related services that are not distinct from the provision of legal services to clients. Even though Mr. Ames described the work as consulting, clerical and the non-courtroom representation of clients, he work certainly qualifies as “law-related services” such that RPC 5.7 comes into play. The Panel finds Mr. Ames violated RPC 5.7.

The Panel further finds Mr. Ames violated RPC 4.1(a), 7.1(a), 7.5(a), and 8.4(a&c) all of which address an attorney’s duty to not make material, factual misstatements and/or engaged in acts of dishonesty. Mr. Ames’s communications with attorneys, the Department and claimants contained material misrepresentations of facts or omitted facts necessary to make the statement considered as a whole not materially misleading. Further, Mr. Ames executed releases and settlement agreements in a dishonest manner that did not properly disclose his licensure status. The Panel did not find that Mr. Ames violated RPC 8.4(b) which relates to criminal activity.

RECOMMENDED SANCTION

Once the Panel determines a disciplinary violation has occurred, the Panel shall apply the ABA Standards for Imposing Lawyer Sanctions to determine the appropriate disciplinary sanction. In this case, the Panel is guided by the following Standards:

6.2 Abuse of the Legal Process

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potentially injury to a party or causes interference or potential interference with a legal proceeding

7.0 Violations of Duties Owed to the Profession

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system.

The Panel also considers aggravating circumstances in deciding what sanctions to impose. Mr. Ames's prior disciplinary history is an aggravating circumstance justifying an increase in the degree of discipline to be imposed. Mr. Ames argues in this proceeding that the previous disciplinary proceeding should not be given much weight here because of circumstances surrounding both matters. The Panel disagrees. While the circumstances regarding both matters were distinct and disputed by Mr. Ames, the fact remains that Mr. Ames had already received two disciplinary actions by the Board. With this track record, Mr. Ames was well aware of the necessity to carefully follow the RPC. Frankly, there is no excuse for another violation. The Panel therefore gives great weight to this aggravating factor and finds that the legal profession and administration of justice would be disserved if Mr. Ames did not receive a serious suspension.

After considering the nature of the duty violated, along with the lawyer's mental state, the Panel specifically finds that the ABA Standards recommend that the generally appropriate discipline in this situation is suspension of Mr. Ames. The question next presented, therefore, concerns the length of the suspension.

Section 2.3 of the ABA Standards provides that "[g]enerally, suspension should be for a period of time equal to or greater than six months." The Board urges that a suspension for a period of one year is both necessary and essential. Mr. Ames's position is that suspension is not

warranted, but if the Panel believes that suspension is the appropriate sanction, the period should be minimal and absolutely should not exceed 11 months and 29 days.

Considering the record as a whole, along with the guidance provided by the ABA Standards, and the aggravating factors present, the Panel believes that a suspension of six (6) months is appropriate. The Panel does not lightly reach this conclusion that a six (6) month suspension is the most appropriate sanction for these ethical violations. This period of suspension is significant, and we realize that Mr. Ames's livelihood is at stake. At the same time, however, this Panel takes seriously its obligations under Rule 9 to address and remedy ethical violations, and the Panel firmly believes that the evidence establishes that this sanction is the most appropriate under all of the circumstances.

JUDGMENT OF THE HEARING PANEL

Based upon the pleadings, the evidence and testimony offered at the hearing, the argument of counsel, relevant case law and statutes, and the entire record in this cause, it is therefore

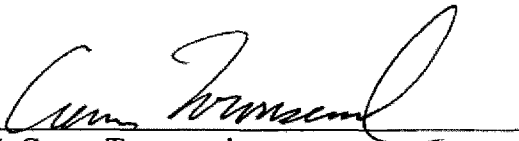
ORDERED, ADJUDGED and DECREED that the Respondent, Sherman Ames III, be suspended from the practice of law for six (6) months for his violations of Tennessee Rules of Professional Conduct 4.1(a), 5.5(a), 5.7, 7.1(a), 7.5(a), 8.4(a&c) ; it is also

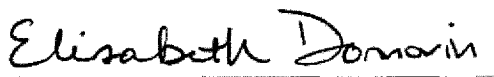
ORDERED, ADJUDGED and DECREED that the twenty one (21) day period of time from the termination of Mr. Ames's disability inactive status on November 8, 2011 until the hearing date on November 29, 2011 should be credited toward the six (6) month suspension period, and it is also

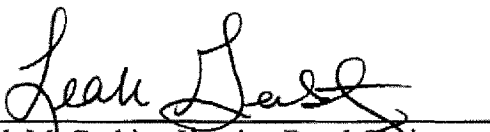
ORDERED, ADJUDGED AND DECREED that Respondent, Sherman Ames III, reimburse the Board of Professional Responsibility for all costs and expenses resulting from this disciplinary hearing.

This, the 14th day of December, 2011.

HEARING COMMITTEE PANEL MEMBERS:


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