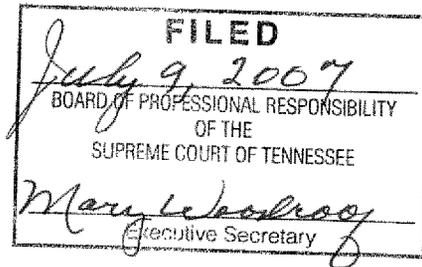


IN THE DISCIPLINARY DISTRICT II
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



Re: Nathaniel Anderson, Respondent
An Attorney Licensed to Practice
Law in Tennessee
(Knox County, BPR No. 23216)

BOPR Docket No. 2007-1650-2(k)-TH

Board of Professional Responsibility, Petitioner

JUDGMENT OF THE HEARING PANEL

This cause came to be heard by the Hearing Panel of The Board of Professional Responsibility of the Supreme Court of Tennessee on June 27, 2007, pursuant to Rule 9 Rules of the Supreme Court of Tennessee. This Hearing Panel, Todd J. Moody, Chairman, Ursula Bailey and Charles Dungan make the following findings of fact and submit its judgment in this cause.

I.

STATEMENT OF THE CASE

This is an attorney disciplinary action brought relative to the Respondent, Nathaniel E. Anderson of Knoxville, Tennessee. The Board of Professional Responsibility filed a Petition for Discipline on January 2, 2007. A Scheduling Order was entered by this Panel on February 13, 2007 and filed on February 16, 2007 ordering the Respondent to file his Answer by February 16, 2007. The Respondent failed to file an Answer or otherwise response to the Petition to Discipline within the time permitted.

A Motion for Default Judgment was filed on March 7, 2007 by Petitioner, The Board of Professional Responsibility, as a result of Respondents failure to file an Answer by February 16, 2007. Pursuant to § 8.2, Rule 9, Rules of the Supreme Court of Tennessee, when a Respondent fails to answer a Petition the charges are admitted by the Respondent. As a result, an Order of Default was entered by the Hearing Panel and was filed on April 23, 2007. In addition, Petitioner, The Board of Responsibility through its Disciplinary Counsel filed a Motion to Produce on January 2, 2007. There was no response by Nathaniel E. Anderson. A Scheduling Order from this Panel that was filed on February 16, 2007 which ordered the Respondent to file his Answer and responses to the Motion to Produce by February 16, 2007. The Respondent did not comply with this Order.

This Hearing was set pursuant to Notice of Hearing dated and filed February 19, 2007. On June 25, 2007, disciplinary counsel for the Board filed a Trial Memorandum which was mailed to all interested parties, including the members of the Hearing Panel and Respondent. There have been no Trial Memorandums or other pleadings filed by the Respondent or received from him by the Board or Hearing Panel.

The Hearing Panel heard evidence presented by the Petitioner, The Board of Responsibility through the disciplinary counsel. The Respondent Nathaniel E. Anderson did appear to respond to the Petition for Discipline and he stated that he did not receive the Order of Default that was entered and filed in this case. He explained that he took no action to attempt to set aside the default because as of March he had mailed his Answer (which was not received by the Board) and he had not received either the Board's Motion

for Default or the Order of Default. He explained that he had a change of address.¹ Respondent stated that he did file a response (Answer) to the Petition in March, 2007. He stated that he mailed his Answer along with a response to the Board's discovery request. He could not explain why the Board did not receive his Answer and response to discovery.

II.

FINDINGS OF FACT

The following findings of fact are based upon the Petition for Discipline filed by the Petitioner, The Board of Responsibility, the Trial Memorandum filed by the Petitioner, the Board of Responsibility and the evidence presented at trial. The Respondent, Nathaniel E. Anderson, never filed an Answer to the Petition for Discipline and as a result in accordance with § 8.2, Rule 9, Rules of the Supreme Court of Tennessee when a Respondent fails to answer a Petition, the charges are admitted by the Respondent.

This matter concerns three separate complainants included in the same Petition for Discipline. The counsel for Petitioner the Board of Responsibility alleges that the three complaints filed against Respondent, two by clients, David and Jessica Ollenbittle and Michelle Ann Reischman and the third by his former law partner Lori Liang (also referred to as Lori Liane Long in the Petition) set forth a pattern of neglect and "abandonment" of cases of his clients as well as his own case.

Relative to file number 28339-2(K)-TH, (Lori Anne Liang, complainant) among these allegations which are admitted as a result of the Respondents default, are that he

¹ It was confirmed by Respondent that his home address has remained the same. Correspondence from Mary Woodruff shows that documents were also sent to his home address. The Respondent denies receiving these documents.

formed a partnership with Complainant, Lori Liang, an attorney. That eventually he reduced his work hours from approximately 40 hours a week to approximately ten hours a week; that he would remain absent from the office for several days at a time; that he was evasive in explaining his absences; that he “padded” his time; that he stopped returning phone calls; and that he had as many as 48 voicemail messages on his voicemail to which he had not responded. In addition, Ms. Liang received phone calls from Respondent’s clients expressing dissatisfaction being unable to reach him. One client, Stacy Roberts, whose calls had not been returned, requested her file. Another client, Dan Lungquist had no knowledge of the status of his case since the Respondent had not returned his calls. Some of the clients complained that Respondent had not appeared at scheduled court hearings. In another case Respondent’s client, Deborah Fisher, complained that Respondent failed to enter a Final Order and Release of Lien on her property. Although Ms. Liang requested that Respondent consent to her signing the Order and Release, Respondent did not respond. In Ms. Shawn Shidell’s case, the Respondent prevailed in the case but did not prepare the Final Order or respond to her phone calls. She ultimately requested her file and was compelled to obtain new counsel to complete the case. Another one of Respondent’s clients complained that the Court ordered Default Judgment and Respondent failed to appear. Respondent admits that the Default Judgment was taken in Blount County and entered when he did not appear. The Respondent did not respond to the Disciplinary Counsel’s request for a copy of the file in which the Default Judgment was entered.

The U.S. Bankruptcy Court entered a Show Cause for a contempt order to the Respondent. The Disciplinary Counsel requested pleadings and communications relative

to the Bankruptcy Court issue but the Respondent did not respond to the Disciplinary Counsel. The Respondent has blamed these various problems on a heart condition making him pass out and/or depression.

After the termination of the partnership or separation between Ms. Lori Liang, attorney and Respondent, Respondent did not properly notify his clients of the separation or appropriately complete a separation and handle the closing or transfer of his trust account funds. Furthermore, Respondent continued to use partnership letterhead.

File number 29292-2(K)-TH concerns David F. and Jessica R. Ollenbittle. With regard to the Ollenbittle matter, the Ollenbittles had initially contacted the consumer assistance program of the Board of Professional Responsibility which notified the Respondent and requested a response. Respondent did not respond. As a result, the inquiry was converted to a Complaint assigned to Disciplinary Counsel. On July 3, 2006, Respondent was notified of the Complaint and was requested to file a response. He did not file a response. Ms. Ollenbittle had a six year old daughter who is a child by a prior marriage. David Ollenbittle intended to adopt the child. The Respondent was retained to handle the adoption. Although the Respondent informed the Ollenbittles that he had filed a Complaint for the adoption in November or December of 2005, but that the natural father failed to respond, in fact, he did not file the Complaint until July 13, 2006.

The adoption hearing took place on the adoption on April 11, 2006. The clients had driven from their home in Illinois for the purpose of the hearing. However, the signature page regarding the putative father registry was not included and the Respondent was unable to find the necessary documents and so the adoption was not completed on April 11, 2006. The Respondent blamed the problem on the biological

father. The Respondent subsequently did not respond to letters and calls from the clients regarding the adoption. The Respondent stated that the Ollenbittle case was ultimately brought to a conclusion. The Ollenbittle's complain that Respondent neglected their effort to adopt and the Riechaman's site Respondent for neglect in their divorce, including a failure to file the necessary pleadings.

In a third matter, file number 29558-2(K)-TH (Michelle Anne Reischman) a client, Ms. Reischman filed a Complaint against the Respondent. Respondent never filed a response to the Complaint with the Board of Professional Responsibility. Ms. Reischman retained Respondent to file a divorce and sent a check for \$1,500.00 for attorney fees. Ms. Reischman attempted to contact the Respondent without a response. When he finally did respond after several weeks he admitted that he had failed to file any pleading on her behalf. She terminated his employment. The Respondent agreed to refund the \$1,500.00 attorney fee, however, he falsely told her that he had drafted an Answer, Counter-Claim and Motion and billed her for documents he had not prepared. Furthermore, he wrote her a check for \$1,187.00 for funds that he did not have in his bank account. In response, Mr. Anderson stated that he had attempted to withdraw from the Reichman case but that she had continued to use his services. He admitted he wrote a bad check out of his business account (not his trust account) for the partial refund of the legal fee. He stated that he did ultimately send a check to Mr. Reichman's attorney to forward to Ms. Reichman. He then stated that the case had been brought to a conclusion.

Respondent is guilty of a pattern of "neglect" including failure to enter Orders, allowing a Default Judgment to be entered against his clients, and for failure to take proper action in a bankruptcy case where Judge Stair entered a Show Cause Order.

III.

CONCLUSIONS OF LAW

As a result of the fact that the allegations in the Petition are deemed admitted due to the failure of the Petitioner to answer and the subsequent Motion for Default and Order of Default, it is deemed admitted that the Respondent is guilty of a pattern of neglect which constitutes of violation of R.P.C. 1.3. Furthermore, there is a pattern of failure to adequately communicate, or failure to communicate at all, amounting to a violation of R.P.C. 1.4. Failure to communicate is included under ABA Standards as a failure of diligence.

Respondent failed to refund Ms. Reischman's unearned fees and thereby collected from her an excessive fee, violating R.P.C. 1.5 and 1.16(d).² Disciplinary Counsel Mr. Hunt argued that a one (1) year suspension could be appropriate. He argued that this is a failure to communicate and a neglect case. He argued that the aggravating factors include:

- (1) Misrepresentations: regarding his whereabouts to his former law partner; lied to clients about calls and filing pleadings, ie. "padding his time";
- (2) Failure to respond to the Board of Professional Responsibility;
- (3) Financial: since he bounced a check for a fee refunded to the client and mishandled his trust funds.

The Disciplinary Counsel argued that a one (1) year suspension was appropriate. The Disciplinary Counsel argued that in the alternative to a one (1) year suspension, if a suspension of less than a year were imposed it should be conditioned upon having

² The Respondent stated that he did eventually mail a check to Mr. Reischman's attorney to forward to Ms. Reischman.

another attorney monitor the Respondent weekly and reporting to the Board monthly on his progress and status.

Respondent failed to clarify ambiguity as to his client's trust funds arising from his firm's dissolution or separation or otherwise acted or failed to act to protect and preserve his client's trust funds. He failed to remove his partner, Ms. Lori Liang's name from the trust account. He failed to maintain control of the account, compelling his law partner to close the account and mail the proceeds in the account to Respondent. Respondent's failure to provide an explanation or accounting to the funds violates R.P.C. 1.15. As a result, the Respondent was negligent in dealing with client property.

There were misrepresentations made by Respondent. Respondent falsely advised the Ollenbittle's that he filed a Petition for Adoption when he did not do so until six months later. He falsely advised them that the biological father was at fault for not providing necessary document when it was due to his own neglect.

Respondent falsely told his client Ms. Reischman that he had drafted an Answer, Counter-Complaint, and Motion when he had not done so. These were misrepresentations that violate RPC 8.4(c).

IV.

FINDINGS OF AGGRAVATING AND MITIGATING CIRCUMSTANCES

The hearing panel finds that in accordance with the ABA standards for imposing lawyer's sanctions, Standard 9.32, factors which can be considered in mitigation. Mitigating factors include the absence of a prior disciplinary record. In accordance with the ABA Standards for imposing lawyer's sanctions, Standard 9.2, aggravating factors or circumstances include the following:

- a. A pattern of misconduct;
- b. Multiple offenses;
- c. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency.

V.

CONCLUSIONS OF THE HEARING PANEL

As a result of the default that was entered in this case, the allegations of the Petitioner for discipline being admitted, the only matter that remains for the hearing panel to decide is the amount of discipline Respondent shall receive. The violations of RPC 1.3, 1.4, 1.5, 1.16(d), 1.15, and 8.4(c), and the mitigating and aggravating factors should be considered in determining the amount of discipline. Standard 4.42 in the ABA Standards for Imposing Lawyer's Sanctions provides that when "a lawyer engages in a pattern of neglect and causes injury or potential injury to a client," a suspension or potential disbarment is appropriate when a lawyer's omissions form a pattern that exceeds a single incidence of malpractice or inadvertent error. ABA Standards 4.41 and 4.42 include failure to communicate as a failure of diligence and therefore, include failure to communicate violations under the same standards. Tennessee decisions have varied since each case is fact specific. During the last six months, the sanctions have varied from disbarment as a result of a pattern of neglect to two years, two and a half years, and one year of suspension. However, in many cases the penalty for similar violations has been less severe. In a case with similar allegations, the case of Steve F. Bailey, he was suspended for 120 days for failing to communicate with clients, neglecting legal matters entrusted to him and failure to promptly respond to disciplinary complaints. Bailey failed

to respond to the Board's petition and a default was entered against him by the Hearing Panel.

As a result of the violations of RPC 1.3 and 1.4, a suspension or disbarment could apply to Respondent. The length of the suspension is dependent upon whether there are other violations or aggravating circumstances.

For violating RPC 1.5 and 1.16(d) concerning fees, ABA Standards 7.2 and 7.3 provide that censure is appropriate for a single instance and a suspension is appropriate if more than one instance or if there are other rule violations. In the case of Tennessee attorney William Ligon, when his excessive fee violation was combined with a pattern of neglect, it resulted in a one year suspension.

With the violation of RPC 1.15 concerning trust funds, censure is appropriate when an attorney is negligent in dealing with client property. As a result of the lack of clarity in the record, it cannot be determined or decided that Respondent was guilty of anything more than neglect with regard to the transfer of his trust funds.

The misrepresentations described herein which violated RPC 8.4(c) are governed by ABA Standard 4.62 which indicate that a suspension is appropriate "when a lawyer knowingly deceives a client, and causes injury or potential injury to the client."

The Respondent's failure to respond to Board complaints or Disciplinary Counsel inquiries, or to Orders from the Hearing Panel violate ABA Standard 7.2 which provide that a suspension is appropriate when attorneys knowingly violate duties owed to the profession and cause a potential injury to the legal system. In the case of Robert L. Randall, he was suspended for sixty (60) days for neglect in representing several clients and for failure to timely respond to the complaint filed against him which had resulted in

a prior suspension of 54 days until he filed a response. In the Glenn B. Hopper, II case the hearing panel found that he neglected the client's case resulting in the dismissal of same and client sanctions. Hopper also failed to communicate with the client, the Board and the hearing panel. He was suspended for thirty (30) days plus an indefinite time thereafter until he paid his client restitution. It is obvious that the discipline imposed for violations varies based upon the facts, circumstances, the nature and severity of the offenses, and the harm to the clients and public.

VI.

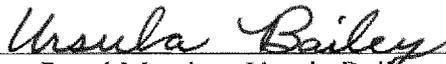
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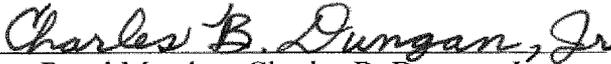
The hearing panel concludes that the amount of discipline the Respondent shall receive shall be as follows:

1. That Respondent, Nathaniel E. Anderson, shall be suspended from the practice of law for a period of one hundred and twenty (120) days.
2. In addition to the suspension, for an additional seven (7) months and 29 days Respondent shall be required to have an attorney monitor him and his practice on a weekly basis with monthly reports to the Board.

Enter this 6th day of July, 2007.


Hearing Panel Chair, Todd J. Moody

 / *by T. J. M. with permission*
Hearing Panel Member, Ursula Bailey

 / *by T. J. M. with permission*
Hearing Panel Member, Charles B. Dungan, Jr.