

FILED

2013 FEB 20 PM 3:33

IN THE DISCIPLINARY DISTRICT 0
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

BOARD OF PROFESSIONAL
RESPONSIBILITY

REW
EXEC. SEC.

In Re: DEREK ALAN ARTRIP
BPR #26784, Respondent
An Attorney Licensed to
Practice Law in Tennessee
(Ona, West Virginia)

DOCKET NO. 2012-2148-4-KH

JUDGMENT OF THE HEARING PANEL

This matter came to be heard on the 14th day of February, 2013 for final hearing on the Board's Petition for Discipline before Walter S. Fitzpatrick, III, Panel Chair; Thomas M. O'Mara, Panel Member; and Phillip A. Wright, Jr., Panel Member. Krisann Hodges, Deputy Chief Disciplinary Counsel, appeared for the Board. Mr. Artrip did not appear despite having adequate notice of the date, time, and location of the hearing.

STATEMENT OF THE CASE

This is a disciplinary proceeding against the Respondent, Derek Alan Artrip, an attorney licensed to practice law in Tennessee. The Respondent was licensed to practice in 2008. His current home address is registered with the Board as 57 Hummingbird Lane, Ona, West Virginia, 25545.

A Petition for Discipline, Docket No. 2012-2148-4-KH, was filed on August 16, 2012. The Petition was sent via certified mail to Respondent's office address of 718A South Church Street, Murfreesboro, Tennessee 37130, and Respondent's home address of 2242 Patriot Drive, Murfreesboro, Tennessee 37130, both addresses as registered with the Board and was delivered to Respondent on August 17, 2012. The green card was signed by Amber Hays and returned to

the Board.

An Amended Certificate of Service was filed on September 19, 2012. The Amended Certificate of Service was sent via certified mail to Respondent's home address of 57 Hummingbird Lane, Ona, West Virginia, 25545, as registered with the Board, and was delivered to Respondent on September 21, 2012. The green card was signed by Pamela Artrip and returned to the Board.

No answer to the Petition for Discipline, Docket No. 2012-2148-4-KH, has been filed with the Executive Secretary of the Board of Professional Responsibility and no answer has been served on Disciplinary Counsel.

On November 26, 2012, the Board filed a Motion for Default Judgment and That Allegations Contained in the Petition for Discipline Be Deemed Admitted. On January 24, 2013, the Panel entered an Order of Default. As a result of the Order of Default, the allegations contained within the Petition for Discipline are deemed admitted pursuant to Tennessee Supreme Court Rule 9, Section 8.2.

FINDINGS OF FACT

Since all of the allegations in the Petition for Discipline are deemed admitted, this Panel finds that the following facts have been established.

FILE NO. 34184c-4-PS - COMPLAINANT - ADRIENE PERUZZI

On April 29, 2011, the Board's Consumer Assistance Program received a complaint from Adriene Peruzzi alleging ethical misconduct by Respondent. (Exhibit 1) On May 17, 2011, the Consumer Assistance Program sent a copy of the complaint and a request for a response in a letter to Respondent. (Exhibit 2) After receiving no response from Respondent, the complaint was referred to Disciplinary Counsel and designated File No. 34184c-4-PS. The Respondent did

not submit a timely response to the disciplinary complaint. Ultimately, his failure to respond to the Board's correspondence in this matter resulted in his temporary suspension from the practice of law on July 13, 2012. (Exhibit 9) Mr. Artrip filed a Petition for Reinstatement which was granted; however, the Court ordered several conditions that must occur prior to reinstatement. Mr. Artrip has not met those conditions and remains temporarily suspended.

On November 16, 2010, Ms. Peruzzi paid the Respondent \$832.50 to represent her in an uncontested divorce. On November 23, 2010, she and her husband signed the requisite paperwork, and the Respondent advised them that the divorce would be final in sixty days. After sixty days, Ms. Peruzzi attempted to contact the Respondent because she never received the final divorce decree. The Respondent failed to return her calls.

In April of 2011, Ms. Peruzzi learned that the Respondent never filed the divorce paperwork. She wrote the Respondent a letter asking for an explanation, but the Respondent did not communicate with her.

In correspondence dated October 11, 2011, the Respondent stated that after the filing of the disciplinary complaint, he met with Ms. Peruzzi, had her sign all of the necessary documents, and the divorce was underway. After repeated requests by Disciplinary Counsel, the Respondent finally produced copies of the divorce paperwork that were file-stamped January 18, 2012. (Exhibit 19)

FILE NO. 34818c-4-PS - COMPLAINANT - JENNIFER RAY

On September 28, 2011, the Board's Consumer Assistance Program received a complaint from Jennifer Ray alleging ethical misconduct by Respondent. (Exhibit 10) On October 25, 2011, the Consumer Assistance Program sent a copy of the complaint and a request for a response in a letter to Respondent. (Exhibit 11) After receiving no response from Respondent,

the complaint was referred to Disciplinary Counsel and designated File No. 34818c-4-PS. On January 18, 2012, Disciplinary Counsel sent Respondent a copy of the complaint requesting a response. (Exhibit 12) Ultimately, his failure to respond to the Board's correspondence in this matter resulted in his temporary suspension from the practice of law on July 13, 2012. (Exhibit 9).

The Respondent represented Jennifer Ray in a divorce case. In April of 2011, she sent him a letter terminating the representation. He assured her that he would withdraw from the matter, but thereafter he ceased communicating with her and took no steps to withdraw from the representation. After the Board began investigating this complaint of misconduct, he ultimately did file a withdrawal from the case. (Exhibit 21)

FILE NO. 34178c-4-PS – COMPLAINANT – ERIN ELIZABETH ALLMON

Beginning in 2008, the Respondent represented Ms. Allmon in an attempt to have the parental rights of the child's birth father terminated as to Ms. Allmon's daughter so that Ms. Allmon's husband could adopt the child. The termination of parental rights and adoption were granted on December 2, 2008, but the Respondent failed to submit a final order to the court. Ms. Allmon expected to receive paperwork that she could use to obtain a new birth certificate for her daughter, who was born in Maryland, but she never received the documents, and the Respondent stopped communicating with her.

Upon the filing of the present disciplinary complaint, the Respondent promised to promptly file the final order. (Exhibit 17) Throughout 2011, the Respondent failed to make contact with Ms. Allmon or file a final order. Finally, in a letter dated February 6, 2012, the Respondent sent Ms. Allmon paperwork to sign in order to have a final order entered in the case.

CONCLUSIONS OF LAW

1. The Respondent has failed to conduct himself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited within the Petition for Discipline.
2. As noted above, Respondent has failed to answer the Board's Petition for Discipline. The Hearing Panel has already entered an Order of Default and, therefore, pursuant to Tenn. S. Ct. R. 9, Section 8.2 the charges are deemed admitted.
3. A preponderance of the evidence demonstrates that the acts and omissions by the Respondent constitute ethical misconduct in violation of Rules of Professional Conduct 1.1, Competence; 1.3, Diligence; 1.4, Communication; 1.16(d), Declining and Terminating Representation; 3.2, Expediting Litigation; 8.1(b), Bar Admission and Disciplinary Matters; and 8.4(a) and (d), Misconduct.
4. The main offense in these three matters involves neglect of client matters. In all three cases, the Respondent failed to act with appropriate diligence in the representation of these clients.
5. The Respondent failed to fulfill reasonable client expectations for communication and timely action on their cases.
6. His neglect caused actual and potential injury to his clients.
7. Further, the Respondent failed to respond to disciplinary complaints in a timely manner, thus violating RPC 8.1(b).
8. It is notable that the Respondent was temporarily suspended for his failure to respond. It is even more notable that the Respondent failed to meet the conditions of reinstatement even though he was given an opportunity to begin practicing law again.
9. When disciplinary violations are established by a preponderance of the evidence, the

appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, ("ABA Standards") pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court.

10. The Panel concludes that suspension is the appropriate discipline in this matter pursuant to the following ABA Standards:

4.4 Lack of Diligence

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

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 to the duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system.

11. Pursuant to ABA Standard 9.22, a number of aggravating factors are present in this case and are listed below.

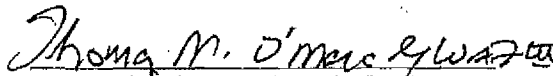
- a) a pattern of misconduct;
- b) prior disciplinary history (private informal admonition on October 15, 2010 – failure to communicate with client and with the Board);
- c) multiple offenses;
- d) substantial experience in the practice of law; and
- e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

CONCLUSION

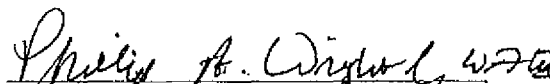
Based on the above mentioned precedent and existing aggravating factors, it is the judgment of this Panel that the Respondent should be suspended from the practice of law for one (1) year. Further, the Respondent shall be required to meet the conditions that have previously been imposed by the Order of Temporary Suspension. Specifically, he is ordered to participate with the Tennessee Lawyer's Assistance Program. Additionally, the Respondent shall be required to engage a practice monitor for one (1) year upon reinstatement.



Walter S. Fitzpatrick, III, Panel Chair



Thomas M. O'Mara, Panel Member *W/pen.*



Phillip A. Wright, Jr., Panel Member *W/pen*

NOTICE TO RESPONDENT

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 by filing a petition for writ of certiorari, which shall be made under oath or affirmation and which shall state that it is the first application for the writ.