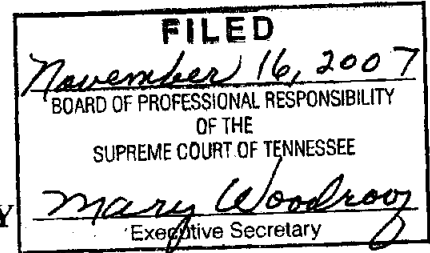


COPY

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



IN RE: JAVIER M. BAILEY, BOPR #14186,
Respondent. An Attorney Licensed to
Practice Law in Tennessee
(Shelby County)

FILE NOS. 29538-9-JJ
29643-9-JJ
29908-9-JJ
30090-9-JJ

PUBLIC CENSURE

The Board of Professional Responsibility considered the above four complaint files at its September, 2007 meeting under Tennessee Supreme Court, Rule 9, and determined that issuance of a Public Censure was appropriate.

FILE NO. 29538-9-JJ

In this matter, Respondent's office accepted \$500 from the Complainant in September of 2005 for partial payment of attorney fees and costs for representation of Complainant and many other officers of the Memphis Police Department in a federal class action suit against the City of Memphis. The suit was dismissed in January, 2006. Respondent never listed or acknowledged this Complainant's status as a client, did not keep him informed about the status of the litigation, and did not respond to the Complainant's August, 2006 certified mail demand for a refund of the \$500. Respondent did not refund this Complainant's \$500 until February 15, 2007 after agreeing to do so on January 2, 2007, and only after the Board made two specific requests in this regard between December, 2006 and early February, 2007.

FILE NO. 29643-9-JJ

The Respondent represented the Complainant in two federal court suits alleging

discrimination against the US Postal Service. The first suit was dismissed because Respondent had not properly effected service on the Postmaster in March of 2004 after more than 120 days after the filing of this action, and he also failed to appear or to notify the Court of his absence at a required March 25, 2004 scheduling conference. The second suit which Respondent filed on October 29, 2004 for this Complainant (a refiling of the first suit), was dismissed with prejudice on May 19, 2005 because Respondent had not filed the second case within 90 days after Complainant received his right to sue letter in late 2002 or early 2003. Respondent also failed to respond to the Government's January 18, 2005 motion to dismiss until May 2, 2005, and only after the Court issued a Show Cause Order to him on April 20, 2005. Further, Respondent did not timely provide to this Complainant a certified mail letter sent to Respondent on September 8, 2005 from the US Postal Service's EEO Office, enclosing a form for Complainant to grieve or request counseling relative to prior action of the Postal Service.

FILE NO. 29908-9-JJ

This complaint involves the Respondent's defense of a client in Circuit Court, and in state and federal criminal matters. Respondent contended to the Board that the client had substantial income throughout 2005 and owed Respondent's firm approximately \$9000 in unpaid fees and expenses, and consequently, Respondent did not purchase or file the transcript, pay the proper fee, or file the form of appearance in the client's 6th Circuit appeal - - resulting in the dismissal of the client's appeal for failure to prosecute on December 29, 2005. Respondent did not notify his client between January through May of 2006 that the 6th Circuit Appeal had been dismissed. However, Respondent filed a motion in March of 2006 with the US District Court requesting the 6th Circuit to reinstate the appeal due to the client's alleged indigency, and

specifically claimed therein that the client has had no meaningful income since his arrest (in 2004) to afford counsel, purchase the transcript or prosecute the appeal - - a position which was inconsistent with other statements to this Board. The motion was granted in June of 2006 and substitute counsel was appointed to handle the appeal at the 6th Circuit. In an unrelated Chancery Court matter which Respondent handled for this client, Respondent failed to respond to the plaintiff's written discovery or to a motion to compel - - resulting in the striking of this client's answer, the entry of a default judgment, against this client, and the setting of a hearing on a writ of inquiry to determine damages. Respondent also failed to appear at the hearing on the writ of inquiry. Further, Respondent spent \$3,000-\$4,000 of fees/costs paid for the client on "experts" in the criminal cases, but he did not fully apprise the client of the need to pay these amounts to such persons at the time, and he did not respond to the client's written requests for explanation until after the filing of the disciplinary complaint.

FILE NO. 30090-9-JJ

In this matter, the Respondent represented home purchasers in a breach of contract action filed against them by the General Contractor. The purchasers contended that the General Contractor had not adequately performed the construction as of December of 2006, and Respondent advised his clients not to turn over the final \$39,373 which represented the last draw due for the contractor to complete the construction. Although Respondent contended that his clients had a right to cover under Tennessee law, to fire the General Contractor and hire a new one, he improperly endorsed the Bank's two party check for \$39,373 made payable to the General Contractor and his clients, and instructed his clients to deposit it without the endorsement of the contractor. The contractor has requested that Respondent's clients interplead the funds into court but thus far, the

trial court has ruled only that Respondent's clients have to provide the construction company with an accounting that the funds are still in escrow or are being used by his clients to pay the construction loan.

CONCLUSION

Respondent has not moved with reasonable diligence and promptness in his clients' federal court matters, contributing to the dismissal of this clients' cases, and he has missed scheduling conferences and other appearances, and has failed to abide by court orders in several cases. Even though Respondent did not appear to have misappropriated the \$500 in costs paid by one Complainant, or the \$39,370 in construction loan funds in another complaint, he mishandled the costs deposit by not having evidence of the deposit of this payment into his escrow account, and he acted in a misleading fashion by having his clients sign, and by advising them to deposit the construction loan check into a special escrow account without the endorsement of the contractor as a necessary party. Accordingly, Respondent violated RPCs 1.3, 1.4(a)(b), (1.15(b) and 8.4(a)(c)(d) by his actions in the four captioned files. Based thereon, Respondent Javier M. Bailey is hereby **PUBLICLY CENSURED** and the captioned files are closed.

FOR THE BOARD:


W. Ferber Tracy, Esq.
Chairman

DATED: 11/15/07

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

NOTICE

TO:

Javier Michael Bailey, Esq.
100 N. Main Bldg., Ste. 3002
Memphis, TN 38103

IN RE: FILE NO(S). 39538-9-JJ; 29538-9-JJ; 29643-9-JJ
29908-9-JJ; 30090-9-JJ

The Board has concluded that your action in the above matter constitutes ethical misconduct and should be concluded by the imposition of discipline.


A copy of the discipline proposed by the Board is attached.

You may within twenty (20) days after your receipt of this Notice demand that the proposed discipline be vacated by demanding that the matter be determined by a formal proceeding. In that event the proposed discipline will be vacated and withdrawn and the matter determined in a formal hearing upon formal charges of misconduct. In the absence of such a demand the proposed discipline will be imposed.

In the event of a formal hearing the full range of discipline provided for in Tennessee Supreme Court Rule 9, Section 4 may be imposed: or, the charges may be dismissed. In addition, pursuant to Rule 9, Section 24.3, costs of the proceeding will be imposed if the formal charges are sustained.

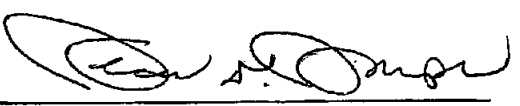
Tennessee Supreme Court Rule 9, Sections 8.1 and 24.3, as amended December 19, 1984, are attached for your information and consideration.

BOARD OF PROFESSIONAL RESPONSIBILITY

By 
Jesse D. Joseph
Disciplinary Counsel

CERTIFICATE OF SERVICE

I certify that I have mailed the within Notice by Certified Mail, Return Receipt Requested 7001 1940 0001 0914 2636 to Respondent at the above address, on this the 4th day of October, 2007.


Jesse D. Joseph
Disciplinary Counsel

8.1 (In pertinent part) The Board may determine whether a matter should be concluded by dismissal, or informal admonition; may recommend a private reprimand or public censure; or, direct that a formal proceeding be instituted before a hearing committee in the appropriate Disciplinary District and assign it to a hearing committee for that purpose. A respondent attorney (hereafter "respondent") shall not be entitled to appeal an informal admonition by counsel or a recommended private reprimand or public censure by the Board, but, he may, within twenty (20) days of notice thereof, demand as of right that a formal proceeding be instituted against him before a hearing committee in the appropriate Disciplinary District. In the event of such demand, the informal admonition shall be vacated and the recommended private reprimand or public censure shall be withdrawn, and the matter disposed of in the same manner as any other formal hearing instituted before a Hearing Committee.

24.3 Reimbursement of costs. In the event that a judgment of disbarment, suspension, public censure, private reprimand or disability inactive status results from formal charges of misconduct filed subsequent to this amendment, the Board shall assess against the respondent attorney the costs of the proceeding, including court reporter expenses for appearances and transcription of all hearings and depositions, the expenses of the hearing committee in the hearing of the cause and the hourly charges of Disciplinary Counsel in investigating and prosecuting the complaint. The Board may for good cause grant appropriate relief to the respondent attorney in assessing such costs. The hourly charges of Disciplinary Counsel shall be based upon the compensation rates as provided to counsel appointed pursuant to T.C.A. 40-14-207, but shall not be subject to the maximum compensation allowed therein. In instances of suspension or disbarment resulting from formal charges of misconduct filed prior to this amendment, the Board shall assess against the respondent attorney the costs of the proceeding; including court reporter expenses for appearances and transcription of all hearings, all deposition expenses and travel expenses of disciplinary counsel in the investigation and trial of the proceeding. Payment of such costs in either event shall be required as a condition precedent to reinstatement of the respondent attorney.