

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

FILED

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BOARD OF PROFESSIONAL
RESPONSIBILITY

Fee

EXEC. SEC.

IN RE: WESLEY MARKLAND BAKER
BPR No. 4660
Attorney Licensed to
Practice Law in Tennessee
(Knox County)

DOCKET NO. 2010-1985-2-RS

JUDGMENT

This cause was heard on November 1, 2011 before the Hearing Panel of the Board of Professional Responsibility of the Tennessee Supreme Court upon the Petition for Discipline filed on November 5, 2010 by the Board of Professional Responsibility (the "Board") and the Motion for Default filed by the Board on January 6, 2011 and this Panel's Order entered April 18, 2011, granting the Board's Motion for Default. Disciplinary Counsel Sandy Garrett appeared at the November 1, 2011 hearing for the Board. The Respondent failed to appear. Upon the exhibits introduced into evidence at the hearing, statements of counsel and the entire record herein, the Hearing Panel, consisting of Steve Erdely, Esq., Chair; Debra Thompson, Esq., and Ruth Thompson Ellis, Esq., makes the following Findings of Fact and Conclusions of Law and renders the following Judgment in this matter.

FINDINGS OF FACT

1. The Tennessee Supreme Court temporarily suspended Wesley Baker from the practice of law on September 24, 2010 for failure to respond to the Board's requests for additional information regarding Patrick Mountain's complaint, File No. 32603-2-PS.

2. Beginning in April of 2007, Mr. Baker represented Patrick Mountain in a divorce and in an action to have Mr. Mountain reinstated to his job.

3. In January of 2008, Mr. Baker asked Mr. Mountain for a \$20,000 loan.

4. Mr. Baker advised Mr. Mountain to obtain the funds for the loan from the Complainant's Home Equity Line of Credit (HELOC).

5. The withdrawal of funds from the HELOC violated a court order in the divorce proceeding in which Mr. Baker represented Mr. Mountain.

6. Mr. Mountain took the money from the HELOC and gave it to Mr. Baker.

7. Mr. Baker did not explain to Mr. Mountain that withdrawing funds from the HELOC line was a violation of the injunction.

8. Mr. Baker did not advise Mr. Mountain about a possible conflict of interest between Mr. Baker and Mr. Mountain that may be caused by the loan.

9. Mr. Baker did not advise Mr. Mountain to seek independent counsel prior to making the loan.

10. In May of 2008, opposing counsel moved the court to hold Mr. Mountain in contempt for loaning Mr. Baker money from the HELOC.

11. In August of 2008, Mr. Baker advised Mr. Mountain to pay opposing counsel \$5,000 for attorney's fees in bringing the contempt action.

12. Mr. Mountain made the payment with the understanding that Mr. Baker would pay him back.

13. Later in August of 2008, Mr. Baker admitted to the court his responsibility for Mr. Mountain withdrawing money from the home equity line of credit, acknowledged his responsibility to repay the money and stated that Mr. Mountain had borrowed money from his

401k to replenish the HELOC.

14. Mr. Mountain had not yet borrowed money from his 401k to replenish the HELOC.

15. At the time Mr. Baker represented to the court that Mr. Mountain had borrowed money from his 401k to replenish the HELOC, Mr. Baker was aware that Mr. Mountain had not done so.

16. On September 29, 2009, Mr. Baker executed a promissory note to Mr. Mountain stating that by October 30, 2009, he would repay the original \$20,000 he borrowed and the \$5,000 for opposing counsel's fees, plus interest, resulting in a total due of \$35,590.83.

17. Mr. Baker has not repaid the money to Mr. Mountain.

CONCLUSIONS OF LAW

1. The acts and omissions by Mr. Baker constitute ethical misconduct in violation of Rules of Professional Conduct 1.5, 1.8, 1.15, 3.3(a)(1), 3.4(b)(c), 8.1(b) and 8.4(a)(b)(c)(d).

2. The Hearing Panel has considered ABA 9.1, 9.2 and 9.3 and finds the following aggravating factors:

- a. Mr. Baker's substantive experience in the practice of law since September 11, 1976;
- b. Mr. Baker's dishonest or selfish motive;
- c. Mr. Baker's bad faith for the obstruction of the disciplinary process;
- d. Mr. Baker's prior disciplinary offenses which include:
 - i. a Public Censure filed November 19, 1996;
 - ii. a Private Informal Admonition dated February 8, 1983;
 - iii. a Private Informal Admonition dated April 13, 1984;


- iv. a Private Informal Admonition dated February 3, 1987;
 - v. a Private Reprimand dated November 9, 1998;
 - vi. a Private Informal Admonition dated July 7, 2003;
 - vii. a Private Reprimand dated February 28, 1996;
- e. Mr. Mountain's vulnerability because of the existing attorney-client relationship with Mr. Baker; and
 - f. Mr. Baker's indifference to making restitution.
3. The Hearing Panel finds no mitigating factors.

JUDGMENT

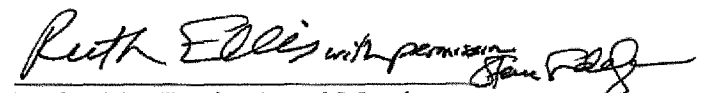
IT IS, THEREFORE, ORDERED BY THIS Disciplinary Panel:

- 1. The Respondent, Wesley Markland Baker, shall be suspended from the practice of law in Tennessee for a definite period of two years and indefinitely thereafter until Mr. Baker makes full restitution to Mr. Mountain and/or Lawyers Fund for Client Protection and pays in full the costs and expenses of this proceeding.

ENTERED ON THIS THE 8th DAY OF November, 2011.


Steve Erdely, Hearing Panel Chair


Debra Thompson, Hearing Panel Member 


Ruth Ellis, Hearing Panel Member