

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

2015 OCT -8 PM 2: 21

BOARD OF PROFESSIONAL
RESPONSIBILITY

Kew
EXEC. SEC.

IN RE: **ROBIN KATHLEEN BARRY**
BPR # 21843, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Houston, Texas)

DOCKET No. 2014-2332-0-WM

JUDGMENT OF THE HEARING PANEL

This matter came to be heard on the 30th day of September, 2015 for final hearing on the Board's Amended Petition for Discipline before Peter Christopher Sales, Panel Chair; Aaron Tillman Raney, Panel Member; and Janelle Anne Simmons, Panel Member. William C. Moody, Disciplinary Counsel, appeared for the Board. Ms. Barry appeared *pro se*.

STATEMENT OF THE CASE

This is a disciplinary proceeding against the Respondent, Robin K. Barry, an attorney licensed to practice law in Tennessee. Ms. Barry was licensed to practice Texas in 2001 and in Tennessee in 2002. A Petition for Discipline, Docket No. 2014-2332-0-WM, was filed on June 27, 2014. An Amended Petition for Discipline was filed on January 7, 2015. Ms. Barry filed an Answer to Amended Petition for Discipline on February 6, 2015. Because this matter was initiated before the Board prior to January 1, 2015, it is governed by Tenn. Sup. Ct. R. 9 (2006).

FINDINGS OF FACTS

File No. 36188-0-WM- Complaint of Miranda Adams

Ms. Barry was temporarily suspended in Tennessee for failing to respond to this complaint on August 6, 2013 and has not been reinstated. Ms. Barry has not practiced in Tennessee since 2011 and is licensed and practicing in Texas.

Daniel Gill fathered a child by Miranda Adams. Ms. Adams retained Ms. Barry on February 4, 2009 to represent her in a juvenile court custody petition against Mr. Gill. The retainer agreement called for a \$1,650.00 retainer against which Ms. Barry would bill Ms. Adams \$200 per hour. The agreement stated that Ms. Barry would provide Ms. Adams with periodic statements. (Exhibit 1)

Shortly afterwards, Mr. Gill died. Ms. Adams was the beneficiary of an insurance policy on the life of Mr. Gill. Alicia Harris is a former wife of Mr. Gill by whom Mr. Gill also fathered a child. As a result of the terms of the divorce decree between Ms. Harris and Mr. Gill, Ms. Harris made a claim upon Ms. Adams that she was entitled to a share of the insurance proceeds. Ms. Barry and Ms. Adams verbally modified the terms of the retainer agreement so that Ms. Barry would represent her in the dispute over the insurance proceeds. Ms. Barry told Ms. Adams that she was not required to pay an additional retainer.

The only trust account records that Ms. Barry maintained were the check stubs. She kept no ledger or journal documenting the transactions in her trust account. She is unable to locate her check stubs at this time. It was Ms. Barry's routine to write on the deposit slip the name of the client whose funds were being deposited. It was also her routine to write on the memo line of trust account checks the name of the client on whose account the check was being written.

On May 4, 2009, Ms. Barry deposited \$100,000.00 of the insurance proceeds to her trust account. At the time of the deposit, the balance in her trust account was \$5.00. (Exhibit 9, pp. 6, 16-17) The \$100,000.00 was to be held in her trust account until such time as the dispute with Ms. Harris was resolved. Until such time, the balance in her trust account should never have dropped below \$100,000.00.

A written agreement dated March 28, 2011 was entered into between Ms. Adams and Ms. Harris by which Ms. Harris was to be paid \$95,000.00 from the insurance proceeds held in trust by Ms. Barry. (Exhibit 2) Between the \$100,000.00 deposit of May 4, 2009 and the settlement agreement of March 28, 2011, the minimum balance in Ms. Barry's trust account was \$87,974.37 on May 1, 2010. (Exhibit 9, p. 30) At the time of the \$95,000.00 settlement agreement, the balance in Ms. Barry's trust account was \$92,055.46. (Exhibit 9, p. 74) On February 24, 2011, Ms. Barry deposited \$3,000.50 to her trust account. (Exhibit 9, pp. 74, 85-87) This deposit was an earned fee from Ms. Barry's client, Lisa Chamberlain, and should have been deposited to her operating account. It was deposited to her trust account instead so Ms. Barry would be able to write a check to Ms. Harris' attorney in the amount of \$95,000.00 in satisfaction of the March 28, 2011 settlement agreement. On March 24, 2011, Ms. Barry wrote check number 1079 to Mrs. Harris' attorney in the amount of \$95,000.00. (Exhibit 9, pp. 92)

On May 15, 2005, 11 days after depositing the \$100,000.00 received from Ms. Adams to her trust account, Ms. Barry wrote trust account check number 1058 in the amount of \$7,691.50 to Jennifer Duke. (Exhibit 9, pp. 22) As a result, the balance in the trust account was \$92,313.50. (Exhibit 9, p. 7) No other deposits were made to the trust account between the \$100,000.00 deposit and the \$7,691.50 check.

Ms. Barry testified that she does not remember why the check was written to Ms. Duke. Ms. Barry previously represented Ms. Duke in a divorce action. An order was entered in that divorce on October 9, 2006 whereby the marital residence was to be sold and the proceeds placed in Ms. Barry's trust account. The \$7,691.50 was paid to Ms. Duke from the money held in trust for Ms. Adams.

On April 22, 2011, Ms. Barry wrote check number 1079 to herself in the amount of \$75.00. (Exhibit 9, p. 91.) In accordance with her routine to write the name of the client on whose account a check was being written, Ms. Barry wrote "Adams" on the memo line of this check. Ms. Barry wrote no other checks on her trust account where she wrote "Adams" on the memo line. At the time this check was written, the balance in the trust account was \$80.58. (Exhibit 9, p. 76) The closing balance in the trust account on December 31, 2011 was \$.96. (Exhibit 9, p. 78)

On October 11, 2009, Ms. Barry wrote check number 1059 made payable to herself in the amount of \$1,000.00. (Exhibit 9, p. 23) On December 17, 2009, Ms. Barry wrote check number 1060 made payable to herself in the amount of \$600.00. (Exhibit 9, p. 24) On January 7, 2010, Ms. Barry wrote check number 1062 made payable to herself in the amount of \$1,500.00. (Exhibit 9, p. 54) On February 5, 2010, Ms. Barry wrote check number 1063 made payable to herself in the amount of \$1,200.00. (Exhibit 9, p. 55) On February 12, 2010, Ms. Barry wrote check number 1064 made payable to herself in the amount of \$300.00. (Exhibit 9, p. 56) On April 7, 2010, Ms. Barry wrote check number 1066 made payable to herself in the amount of \$1,000.00. (Exhibit 9, p. 57) On July 16, 2010, Ms. Barry wrote check number 1067 made payable to herself in the amount of \$1,500.00. (Exhibit 9, p. 58) On January 2, 2011, Ms. Barry wrote check number 1078 made payable to herself in the amount of \$50.00. (Exhibit 9, p. 90) Ms. Barry testified that she did

not know why these checks were written nor why a client's name does not appear on the memo lines. These eight checks totaling \$7,150.00 were written from the funds held in trust for Ms. Adams.

Ms. Barry never sent Ms. Adams any periodic statements as required by the retainer agreement, she never sent her a bill and she never provided her any accounting for the money held in trust.

On December 23, 2009, Ms. Barry wrote check number 1061 to the Circuit Court Clerk in the amount of \$264.50. (Exhibit 9, p. 25) Ms. Barry wrote "Messick" on the memo line. Ms. Barry represented Mr. Messick in a divorce and this check was in payment of the filing fee. At the time this check was written, no other money had been deposited to the trust account since the deposit of Ms. Adams' \$100,000.00 on May 4, 2009 except for a deposit of \$1,500.00 in cash on October 20, 2009. (Exhibit 9, p. 18) Ms. Barry did not write a client's name on the October 20, 2009 deposit slip. Ms. Barry testified that she does not recall the source of the \$1,500.00 deposit. Ms. Barry made no deposits to her trust account where she wrote "Messick" on the deposit slip. Unless the \$1,500.00 deposit was a retainer paid by Mr. Messick, the \$264.50 was paid from another client's funds. Ms. Barry wrote no other checks where she wrote "Messick" on the memo line. If the \$1,500.00 deposit was a retainer paid by Mr. Messick, the balance of the \$1,500.00 after paying the filing fee went either to Ms. Barry or the Adams settlement.

On October 8, 2011, Ms. Barry deposited a check in the amount of \$1,000 from Chad Charles to her trust account on which he wrote "legal services" on the memo line. (Exhibit 9, p.51) Ms. Barry wrote three checks on the trust account where she wrote "Charles" on the memo line,

number 1072 for \$600.00, number 1075 for \$500.00, and number 1077 for \$500.00, totaling \$1,600.00. (Exhibit 9, pp. 63, 65, and 67) Since Ms. Barry received \$1,000.00 from Mr. Charles and disbursed \$1,600.00 on his account, she utilized \$600 from the funds of Ms. Adams or another client in the process.

On August 26, 2010, Ms. Barry deposited a check in the amount of \$2,500.00 from Kimberly McGahey to her trust account. Ms. McGahey wrote "retainers (sic) fee" on the memo line of her check. (Exhibit 9, p. 49) Ms. Barry wrote five checks on the trust account where she wrote "McGahey" on the memo line, number 1068 for \$257.50, number 1070 for \$400.00, number 1071 for \$400.00, and number 1073 for \$700.00, totaling \$1,807.50. (Exhibit 9, pp. 59, 60, 61, and 64) Ms. Barry wrote no other checks with "McGahey" on the memo line. Since Ms. Barry received \$2,500.00 from Ms. McGahey but disbursed only \$1,807.50, \$692.50 should remain in her trust account. However, the closing balance in the account was \$.96. (Exhibit 9, p. 84) Therefore, \$692.50 of Ms. McGahey's funds were used in paying the settlement to Ms. Harris or were paid to Ms. Barry.

On August 18, 2011, Ms. Barry deposited a check in the amount of \$1,000.00 from Timothy Dawson to her trust account. Mr. Dawson wrote "lawyer fees" on the memo line of his check. (Exhibit 9, p. 46) Ms. Barry wrote check number 1076 in the amount of \$750.00 with "Dawson" written on the memo line. (Exhibit 9, p. 66) Ms. Barry wrote no other checks with "Dawson" on the memo line. Since Ms. Barry received \$1,000.00 from Mr. Dawson but disbursed only \$750.00, \$250.00 should remain in her trust account. Since the closing balance in the account was \$.96, \$250.00 of Mr. Dawson's funds were used in paying the settlement to Ms. Harris or were paid to Ms. Barry.

On June 30, 2010, Ms. Barry deposited a check in the amount of \$1,013.96 from Consensus Mediation Services to her trust account. On September 1, 2010, Ms. Barry deposited a check in the amount of \$1,340.37 from Consensus Mediation Services to her trust account. (Exhibit 9, pp. 41 and 50) These checks were in payment for services rendered. As earned fees, they should have been deposited to Ms. Barry's operating account.

Ms. Barry moved to Texas a few weeks prior to execution of the Harris settlement agreement. She ceased practicing in Tennessee and commenced practicing in Houston, Texas at that time. She did not inform Ms. Adams of her move.

Ms. Adams originally deposited \$100,000.00 in Ms. Barry's trust account but only \$95,000.00 had been paid to Ms. Harris in the settlement. Therefore, there should have remained \$5,000.00 for Ms. Barry to provide an accounting. In the months following the settlement, Ms. Adams and Ms. Barry exchanged a series of emails. Ms. Adams emailed Ms. Barry on March 22, 2011 inquiring about the amount of court costs and when the balance of the funds would be distributed. Ms. Barry replied the same date by saying, "I will send you the remaining funds after court costs and the 150 and any balance to me (if any) are paid." (Exhibit 4) However, at the time Ms. Barry told Ms. Adams she would send "the remaining funds" after paying the court costs there was a balance in her trust account of only \$55.96. (Exhibit 9, p. 75)

On April 14, 2011, Ms. Adams email Ms. Barry again to ask when Ms. Barry would be sending her the remaining funds. Ms. Barry replied that day explaining that she was waiting for the court cost bill. (Exhibit 5)

On June 2, 2011, Ms. Adams emailed Ms. Barry yet again inquiring about the status of the balance. Ms. Barry responded on June 18, 2011 saying that she had received the court cost bill but

was now waiting on the order closing the estate, “then I can do the accounting and refund you the balance.” (Exhibit 6) At this time, the balance in her trust account was \$.96. (Exhibit 9, p. 78) The order closing the estate was entered June 8, 2011. (Exhibit 3)

Having heard nothing in the interim, Ms. Adams emailed Ms. Barry on August 30, 2011 saying she had tried to contact her multiple times by email and telephone without success and asking Ms. Barry to reply. Ms. Barry did not reply until October 25, 2011. She only replied at that time because Ms. Adams had managed to learn of Ms. Barry’s move to Texas and telephoned her at her Houston office, leaving a voicemail message. In her reply, Ms. Barry asked Ms. Adams not to call her at her office. She told Ms. Adams that the file was at her home and she would review the file “this weekend...so we can finish this up.” (Exhibit 7) Ms. Barry never attempted to communicate with Ms. Adams again. Ms. Adams’ final attempt to communicate with Ms. Barry regarding the balance of the funds was an email of November 7, 2012 to which Ms. Barry did not reply. (Exhibit 8)

Approximately two months prior to this hearing, Ms. Barry paid \$5,000.00 to Ms. Adams.

Ms. Barry’s prior disciplinary history consists of a private informal admonition issued on June 28, 2010 for a lack of diligence in representing a client and failing to adequately communicate with that client. (Exhibit 10)

Ms. Barry testified that at the time of these events she was not familiar with running a business and did not realize how important it was to maintain contact with her clients and be diligent about bookkeeping and record keeping. There were unspecified “personal circumstances” at the time. She moved to Texas to get away from those circumstances and testified that she does everything differently now. Ms. Barry testified that she now utilizes a computerized case

management system and keeps meticulous accounting records.

CONCLUSIONS OF LAW

Pursuant to Tenn. Sup. Ct. R. 9, § 3 (2006), the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline. The Respondent has failed to conduct herself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited within the Amended Petition for Discipline.

By distributing \$7,691.50 to Ms. Duke from the funds held in trust for Ms. Adams, Ms. Barry knowingly converted client property causing injury to Ms. Adams. In doing so, she violated RPC 1.15 (Safekeeping Property and Funds) and 8.4(c) (Misconduct).

By distributing \$7,150.00 to herself from the funds held in trust for Ms. Adams, Ms. Barry knowingly converted client property causing injury to Ms. Adams. In doing so, she violated RPC 1.15(a) (Safekeeping Property and Funds) and 8.4(c) (Misconduct).

By depositing to her trust account the earned fees received from Lisa Chamberlain and Consensus Mediation Services, Ms. Barry commingled her own funds with those of her clients. In so doing, she violated RPC 1.15(a) (Safekeeping Property and Funds).

By failing to promptly distribute the balance of the \$100,000.00 after payment of the settlement and failing to provide Ms. Adams with an accounting of the funds, Ms. Barry violated RPC 1.15(d) (Safekeeping Property and Funds).

Ms. Barry failed to adequately communicate with Ms. Adams after her move to Texas. In so doing, she violated RPC 1.4 (Communication).

A preponderance of the evidence demonstrates that the acts and omissions by the Respondent constitute ethical misconduct in violation of Rules of Professional Conduct 1.4, Communication; and 1.15(a) and (d), Safekeeping Property and Funds.

The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has carried its burden and proven the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence.

We find that the following aggravating factors are present in this case and are listed below.

- a. Ms. Barry has a prior disciplinary offense which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against her.
- b. Ms. Barry has shown a dishonest or selfish motive, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against her.
- c. Ms. Barry has shown a pattern of misconduct, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against her.
- d. Ms. Barry has committed multiple offenses, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against her.
- e. Ms. Barry has substantial experience in the practice of law, having been licensed since 2001, which is an aggravating circumstance justifying an increase in the degree of discipline

to be imposed against her.

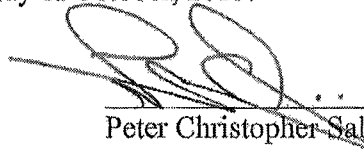
Though the Board recommends disbarment based upon ABA Standard 4.11, based upon the evidence and admissions in this matter, we find the appropriate discipline is a suspension from the practice of law. Ms. Barry shall be suspended for eighteen (18) months. Sixty (60) days of the suspension shall be served on active suspension prospectively. The suspension shall not be retroactive. The remaining sixteen (16) months of the suspension shall be suspended and served on probation pursuant to Tenn. Sup. Ct. R. 9, § 8.5 (2006) subject to the following conditions: 1) Ms. Barry shall commit no further violations of the Rules of Professional Conduct; and, 2) Ms. Barry shall have a practice monitor throughout the period of probation. Within fifteen (15) days of reinstatement to the active practice of law, Ms. Barry shall submit to the Board a list of three (3) proposed practice monitors, all of whom shall be licensed to practice law in Tennessee and/or Texas and whose licenses are in good standing with the Board, and none of whom are in practice with Ms. Barry. The Board shall have sole discretion to designate the practice monitor from the list provided. If Ms. Barry fails to timely provide the list, or if the Board determines that none of the proposed practice monitors is acceptable, the Board shall designate a practice monitor. Ms. Barry shall be responsible for compensating the practice monitor. Ms. Barry will have monthly in-person meetings with the practice monitor who shall provide monthly written reports to the Board. The practice monitor will provide supervision of Ms. Barry's client communications and trust account management.

JUDGMENT

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Ms. Barry should be suspended prospectively


from the practice of law for eighteen (18) months with sixty (60) days active suspension and the remainder to be served on probation subject to the conditions set forth herein.

It is so ordered this 8th day of October, 2015.



Peter Christopher Sales, Hearing Panel Chair

Aaron Raney (w/permission PCS)
Aaron Tillman Raney, Hearing Panel Member

Janelle Simmons (w/permission)
Janelle Anne Simmons, Hearing Panel Member 

NOTICE TO RESPONDENT

NOTICE: This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 (2006) by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ. See Tenn. Code Ann. § 27-8-104(a) and 27-8-106.