

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

JES BEARD)	
Petitioner,)	
v.)	No. 07-0662
)	
BOARD OF PROFESSIONAL)	
RESPONSIBILITY OF THE)	
SUPREME COURT)	
OF TENNESSEE)	

Findings and Conclusions

This cause came to be heard on the 17th day of July 2008 before Jon Kerry Blackwood, Senior Judge, sitting by designation upon the Writ of Certiorari filed by the Petitioner, and the Entire Record in this case.

On May 16, 2007, a Hearing Committee issued its findings and conclusions pursuant to an original Petition for Discipline filed by the Board of Professional Responsibility and two Supplemental Petitions for Discipline filed by the Board. In the original Petition for Discipline, the Committee found that Petitioner violated disciplinary rules of the Code of Professional Responsibility DR1-102(A)(1), (4), (5), (6), and DR7-102(A)(1), (3), (5), (8), and Rules of Professional Conduct 1.1, 1.3, 3.1, 3.2, and 8.4(a), (c), and (d). The Committee found that the Petitioner violated the Rules of Professional Conduct 1.1, 1.2(a), 1.3, 1.4 and 8.4 pursuant to the First Supplemental Petition. In the Second Supplemental Petition, the Committee found Petitioner violated Rules of Professional Conduct 3.3(a)(1)(b), (c), (d), 3.4(b), 4.1(a) and 8.4(a), (c), and (d). The Hearing Committee entered judgment imposing a suspension from the practice of Law for two (2) years.

This cause relates to three separate instances of alleged attorney misconduct. The Hearing

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Committee granted the Board a default judgment on both supplemental petitions for discipline in light of Petitioners willful and unexcused failure to participate in the discovery process. The Hearing Committee, thereafter, heard proof on the original petition filed by the Board and also on the issues of the extent of discipline to be imposed against Petitioner established by the default judgment entered on the supplemental petitions.

Original Petition

The original petition concerned a case in which the Petitioner represented the husband in a divorce proceeding in Hamilton County. The wife, Julie McGehee Lopez [hereinafter referred to as "Complainant"] proceeded *pro se*. At the conclusion of the divorce hearing on September 16, 2003, the trial court ordered the Petitioner to prepare the divorce decree. After several weeks elapsed and no decree had been entered, the trial court wrote a letter to Petitioner and Complainant which directed the parties to file a decree by November 15 or the case would be dismissed. Prior to the issuance of this letter, Complainant had contacted Petitioner to inquire about the status of the decree. The Petitioner began preparations of the final decree on November 14. The Petitioner claimed at the hearing that he had lost his notes and was preparing the decree from memory. The Final Decree prepared and submitted by Petitioner contained numerous errors and was inconsistent with the Memorandum Opinion entered by the trial court.

The Complainant retained an attorney to file a Motion to Alter or Amend the Final Decree and for sanctions. A transcript of the divorce proceeding was attached to this motion and it clearly indicated that the final decree entered by Petitioner was inaccurate. The Petitioner admitted at the hearing before the Hearing Committee that his decree was inaccurate. Additionally, Petitioner claimed that he did not receive the September 16 letter from the trial court imposing the deadline for the entry of the decree until November 12. The Petitioner further asserted that he called the

Complainant and spoke to her regarding the proposed order. The Complainant denies that this phone call ever occurred.

On or about November 15, 2003, the Complainant received a copy of the decree. She noted the inaccuracies of the decree. Shortly thereafter, Petitioner called the Complainant to discuss visitation over Thanksgiving. The Complainant advised Petitioner of the errors and hung up. The Hearing Committee found that Complainant was a credible witness and that Petitioner knew or should have known after this conversation that the proposed decree contained errors. He took no action to rectify his mistakes until the Motion to Alter or Amend was filed. When the Motion to Alter or Amend the Final Decree was heard, the trial court found that the decree should be altered. Sanctions were entered by the trial court against the Petitioner.

The Petitioner asserted that if Complainant had contacted him regarding these errors, he would have corrected the Decree. The hearing Panel found this explanation not credible. Even after Petitioner received the transcript of the divorce hearing, the Petitioner did not concede that errors were made and opposed efforts to correct them. In contrast to the Petitioner, the Hearing Committee found that the Complainant was credible.

First Supplemental Petition

The First Supplemental Petition involved the complaint of Raymond Murray Jr. The Petitioner represented Mr. Murray in a child support matter. A hearing on that matter was held on September 8, 2003, and the matter was taken under advisement. The Petitioner advised Mr. Murray that he would probably have to pay \$12,000.00 to \$16,000.00 and recommended a quick settlement for \$8,000.00. On October 13, 2003, the trial court issued its opinion ordering Mr. Murray to pay \$10,500.00 in back child support, but with a credit of \$2,555.00. On October 14, Petitioner advised Mr. Murray that the trial court had ordered him to pay \$15,00.00, but Petitioner had not read the

opinion. Shortly thereafter, Petitioner advised Mr. Murray that there was an offer to settle for \$10,000 and suggested that they settle before adversary Counsel read the trial court's opinion. Mr. Murray immediately paid the money. The parties entered into an agreement. A few hours later, Petitioner advised Mr. Murray to stop payment on the check because the trial court's opinion had ordered that the adversary was responsible for \$14,552.38 of necessities which Mr. Murray had paid. The Agreed Order was entered October 16, 2003. Later the trial court found the Agreed Order to be binding upon the parties.

Mr. Murray filed a professional negligence action against Petitioner. After various legal issues were argued, a trial of this complaint occurred on July 10, 2006. A judgment was entered against Petitioner in the amount of \$16,697.38.

Second Supplemental Petition

The Second Supplemental Petition involved the Petitioner's representation of a mother in a dependent and neglect action in the Juvenile Court of Hamilton County. There was a hearing conducted on May 19, 2004, before a Juvenile Court Referee, in which the State of Tennessee was awarded custody of one child. The Findings of the Referee were filed on June 1, 2004, and Petitioner was present in Court on that date. He received a copy of the findings and they were discussed with the Referee. The parties were advised that they had five days to request a hearing before the Presiding Judge and ten days thereafter to appeal to Circuit Court. The father was not present at this June 1 hearing.

On April 22, 2005, counsel for the father filed a Bill of Exceptions and Motion to Allow Appeal stating that the father had not been served with a copy of the June 1, 2004 Order. At this April 22 hearing, the Petitioner orally joined the Motion filed by the father on behalf of the mother. On April 25, the Petitioner filed a brief supporting his application to appeal. In the brief, the

Petitioner asserted that the first he became aware of the June 1 Order was July or August 2004. He further asserted that he was not served with this June 1 Order until April 11, 2005. On April 27, the Petitioner filed an Affidavit on behalf of the mother stating that she had not received the June 1 Order until April 11, 2005.

Mr. Sam Morehead, Counsel for the State of Tennessee, brought to the Petitioner's attention in mid April or early May 2005 that Petitioner had received a copy of the June 1 Order. A tape recording of the June 1, 2004, hearing indicated that Petitioner was present on June 1 and, in fact, asked questions about the Order. The Petitioner did not correct his representation regarding the receipt of the June 1 Order to the Juvenile Court.

Findings

Rule 9 Section 1.3, Tennessee Supreme Court Rule provides that a court may not overturn or modify the decision of the Hearing Committee unless the Hearing Committee's findings, conclusions or decisions are : (1) in violation of Constitutional or statutory provisions; (2) in excess of the Committee's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in light of the entire record.

Default judgment was granted by the board on both Supplemental Petitions. The Hearing Committee found that in several instances the Petitioner was not credible. In other instances, his explanation for his misconduct were described by the Hearing Committee as disingenuous.

This Court finds that the Petitioner's misrepresentations in the Juvenile Court were not accidental. This Court further finds that the Petitioner's explanation for his failure to prepare the divorce decree show a lack of candor and are not credible. In summary, the findings and conclusions of the Hearing Committee are supported by material and substantial evidence.

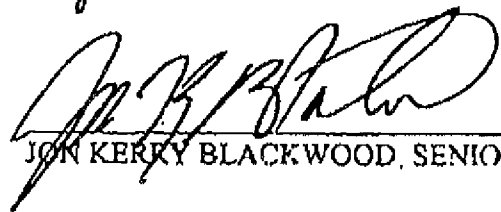
The Hearing Committee imposed a two year suspension in each case. The Committee found as aggravating factors the following:

- (a). Substantial experience in the practice of Law;
- (b). Petitioner's behavior constitutes a pattern of misconduct;
- (c). Multiple offenses; and
- (d). Prior discipline.

This Court finds that these aggravating factors are established by the record. The record reveals that the Petitioner has received censures and admonitions on numerous occasions. In addition, the Petitioner engaged in bad faith and obstruction of the discovery process of the disciplinary proceeding. The Hearing Committee found no mitigating factors. The record supports that finding.

In conclusion, the Findings of the Hearing Committee are affirmed and the Petitioner is suspended from the practice of Law in each case for a period of two (2) years. These judgments are to be served concurrently.

ENTER this the 7th day of August 2008.



 JON KERRY BLACKWOOD, SENIOR JUDGE

CERTIFICATE OF SERVICE

I, _____, Clerk, hereby certify that I have mailed a true and exact copy of same to all Counsel of Record this the _____ day of _____, 2008.

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