

**IN DISCIPLINARY DISTRICT VI  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE**

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BOARD OF PROFESSIONAL  
RESPONSIBILITY

*RW*  
EXEC. SEC.

**IN RE: ROBERT LOUIS BOOKER,  
BPR No. 24887  
Respondent, a lawyer licensed  
To practice in Tennessee  
(Montgomery County)**

**DOCKET NO. 2016-2608-6-AJ**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
JUDGMENT OF DISCIPLINARY HEARING PANEL**

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**I. Introduction and Procedural History**

The Board of Professional Responsibility (“The Board”) filed a Petition for Discipline against Booker on July 19, 2016 following a Complaint filed against him by a former client, Milton Hendrix. This Complaint is designated as File No. 42813-6-BG. Mr. Booker (“Booker”), filed his Response on August 8, 2016.

On November 22, 2016, the Board filed a Supplemental Petition for Discipline against Booker based upon Complaints filed by David Maland, File No. 37811-6-BG, Judge Ron Clark, File No. 36891-6-BG and E.L. Jenkins, File No. 40384-6-BG. Booker filed his Response to the Supplemental Petition on January 25, 2017.

The Board filed a Motion for Partial Summary Judgment as to the allegations contained in the files Numbered 37811-6-BG, 36891-6-BG and 40384-6-BG on February 2, 2018. Booker did not file a Response to the Motion for Partial Summary Judgment. Rather, he filed a Motion to Strike the Motion for Partial Summary Judgment on February 28, 2018.

On March 21, 2018 the Hearing Panel denied Booker's Motion to Strike and granted the Board's Motion for Partial Summary Judgment. Booker filed a Motion to Alter or Amend the Hearing Panel's Order on March 19, 2018 which Motion was denied by the Hearing Panel on April 3, 2018. The final hearing on the Petition for Discipline alleged in File No. 42813-6-BG was held at the Williamson County Judicial Center in Franklin, Tennessee on April 9, 2018. The Hearing Panel consisted of the Panel Chairman, P. Edward Schell, and panel members Ben Boston and Mark Free. The Respondent, Booker, appeared and represented himself. The Board was represented by disciplinary counsel Alan D. Johnson.

In the Order entered by the Hearing Panel on March 21, 2018, the Panel found that Booker had violated the Texas Rules of Professional Conduct 1.01, 1.04, 8.01, and 8.03(3) regarding his representation of certain clients in the State of Texas. That case is styled *The Estate of Ennis Jenkins, et al., v. City of San Augustine, et al.*, Civil Action No. 9:12:CV-043-RC. As a result of disciplinary proceedings initiated against Booker in the United States District Court for the Eastern District of Texas, *See, In Re: Matter of Robert L. Booker*, Case No. 6:14-MC-8-KNM Booker was barred by that Court from practicing in that Court for a period of three (3) years. Booker appealed this decision and it was subsequently affirmed by the Fifth Circuit Court of Appeals, *See, In Re: Matter of Robert L. Booker*, Case No. 611 Fed. APP. 834 (2015). In granting the Board's Motion for Partial Summary Judgment, the Hearing Panel held that the Doctrine of Offensive Collateral Estoppel precluded Booker from re-litigating those issues previously decided in the Federal Courts in Texas. Booker sought to introduce evidence before the Hearing Panel of matters which had already been litigated. The Board's proof of Booker's violation of the Texas Rules of Professional Conduct consisted of properly authenticated copies of Orders from the Federal Courts.

The trial of the instant case took place on April 9, 2018 at which hearing the Board called Booker to testify and introduced eight (8) exhibits. Booker testified on his own behalf and introduced three (3) exhibits. Closing arguments were held after Booker was given the opportunity to argue to the Board that it should set aside its prior Order granting the Board's Motion for Summary Judgment. The Panel heard Booker's explanation as to why he failed to appear in the Federal Courts in Texas and defend himself against allegations of misconduct. Following legal argument, the Hearing Panel requested that the parties submit proposed Findings of Fact and Conclusions of Law which have been duly considered by the Panel.

## **II. Findings of Fact**

### **FILE NO. 42813-6-BG – COMPLAINANT MILTON T. HENDRIX**

In his proposed Findings of Fact and Conclusions of Law, Booker sets forth what he designates as a "Procedural History", the first 14 paragraphs of which appear to be a recitation of the procedural history of the Civil Rights lawsuit filed in the case designated *The Estate of Ennis Jenkins, et al., v. City of San Augustine, et al.*, Civil Action No. 9:12-CV-043-RC, as well as the subsequent disciplinary proceedings in the Federal Courts of Texas. To the extent that Booker attempts to have this Board adopt the "Procedural History" as well as other statements about the Texas federal proceedings, the Board declines to do so within the context of this disciplinary petition. Likewise, the Board declines to adopt those proposed Findings of Fact set forth in Paragraphs 16, 17, and 18 of Booker's Procedural History. Given the Board's prior Order adjudicating the disciplinary petitions which arose from Booker's activities in the Texas Courts, there is no place for these allegations in the case now under consideration by the Panel.

As to the *Hendrix* Petition, the proof at trial indicated that Milton Hendrix and Booker attended the same church. Hendrix was in possession of a large collection of audio recordings and sheet music, purported to be of some value, which had belonged to Hendrix' deceased brother, James Hendrix. Hendrix solicited Booker's assistance in selling the music collection. Booker took possession of the music collection in 2014 and apparently negotiated with Sundazed Music and Song, Inc. for the purchase of the master recordings and the publishing rights. No agreement was ever reached to sell the rights and the recordings after it was revealed that James Hendrix might have transferred some portion of the royalties before his death. The negotiations with Songs, Inc. were over by February, 2016. In the following month, Booker returned the music collection to Mr. Hendrix. While the negotiations were ongoing, Hendrix filed a complaint against Booker with the Board on August 17, 2015. Hendrix claimed that he had had "sporadic contact with Attorney Booker over the year" and that Booker had failed to return his calls. Hendrix ultimately sent a letter by Certified Mail to Booker terminating the legal representation and requesting a return of the music collection.

Booker testified that he had a written Fee Agreement with Mr. Hendrix and three of Hendrix's siblings. All of the Hendrix siblings were heirs of James Hendrix. No copy of the written Fee Agreement was offered into evidence and Booker testified that he no longer had a copy. Booker testified that the Fee Agreement called for the payment of 25% of the proceeds from the sale of the music collection. The Agreement also apparently included provisions for Booker to collect a higher fee. Booker testified that he did not inform Mr. Hendrix in writing of the status of his negotiations with the music companies. Booker stated that most of his communication was with Reggie Harris, the son of one of Mr. Hendrix's sisters. In his response to the Board Complaint, Booker explained that negotiations were pending for the sale of the

music collection. He provided a redacted copy of the Agreement with Sundazed Music. Booker also accused Hendrix of “dishonest and subversive attempts to exclude his sisters from their fair share in the proceeds.” Booker testified that Mr. Hendrix’s siblings were upset with Hendrix for selling a portion of the music collection without their knowledge. The proposal from Songs, Inc. was in the form of an e-mail. Booker did not provide the Board with a copy of this e-mail and he redacted the copy of the Sundazed contract by striking the name of the purchaser and contact information because he did not want Mr. Hendrix to know who the purchasers were. Booker feared that if Hendrix had the information necessary to contact the purchasers he might have tried to exclude Booker from the transactions. Booker was not keeping his clients properly informed of the status of his negotiations on their behalf. Booker should not have withheld communications such as the e-mail and Sundazed contract from Mr. Hendrix, especially since his reason for doing so was because of the conflict between Mr. Hendrix and his siblings.

Booker has given conflicting accounts as to why he took possession of the Hendrix recordings. As has been pointed out, some of the family members, clients of Booker according to him, were concerned that Mr. Hendrix had sold some of the collection. Animosity existed between these family members. Booker also stated to the panel in his Pre-Trial Brief that he took possession of the music collection to protect it from the elements and creditors because Mr. Hendrix was considering filing a bankruptcy petition. When confronted with this inconsistency, Booker said he took the collection for both reasons. Booker’s testimony on this point is not credible. Booker claimed in his Hearing Panel Memorandum that he had in his possession a signed and notarized statement from Milton Hendrix giving Booker express authorization for Booker to continue representing Hendrix in the negotiations with Sundazed Records and Songs, Inc. Booker introduced the original document at trial which was not notarized. In a letter dated

October 1, 2015 from Booker to the Board, he attached a copy of what he claimed was a signed, notarized document. By sending the copy to the Hearing Panel and producing the original at trial it is clear that Booker had ample time to correct the mistake he made in claiming that the statement was notarized, but he failed to do so. Booker's testimony about this authorization is not credible.

The proof at the hearing, through the testimony of Booker established that he and Hendrix spoke by phone on September 28, 2015, about Booker continuing to represent the Hendrix heirs in the negotiation of the music collection. On September 28, 2015, Booker sent Hendrix a disturbing letter which included the following:

Specifically, you have acknowledged your receipt of both the **response letter** to the Tennessee Board of Professional Responsibility, as well as the letter invoking the Attorney Representation Agreement, which requires payment of "33-1/3 if it becomes necessary to file suit ... " Accordingly, I have agreed not to file the Declaratory Judgment in Chancery Court on today's date (as I had planned and prepared to based upon the circumstances), due to your telephone call to me and your promise to send further Written Authorization and Confirmation of your commitment to complete cooperation and execution of the above referenced agreements. **FURTHERMORE, YOU HAVE AGREED AND UNDERSTOOD THAT FAILURE TO DELIVER SUCH WRITTEN AUTHORIZATION AND CONFIRMATION BY WEDNESDAY, 30 SEPTEMBER 2015 WILL RESULT IN THE PAYMENT OF 40% ATTORNEYS FEES, THE FILING FEES AND ALL COURT COSTS.**

While I appreciate your telephone call and promise to resume cooperation in this matter, it is important that I uphold my fiduciary responsibilities to all of the Hendrix owners, the purchasers and as an officer of the Court. Again, therefore, if I do not receive the written authorization and confirmation by Wednesday 30 September, 2015 I will be forced to proceed with filing the declaratory judgment action (for final judicial approval and disbursements of the bulk sales agreements with the Chancery Court.)

PLEASE GOVERN YOURSELF ACCORDINGLY!

(bold, underlined, all caps and italics in the original)

Booker admitted at the hearing that he probably would not have filed the lawsuit he was threatening to file against his client because it would not be financially worthwhile. The tone and tenor of Booker's communication with his client was completely inappropriate. It constitutes a threat on the part of Booker and further suggests that Hendrix's failure to execute and return the document to Booker somehow impedes Booker's fiduciary responsibilities to all of his clients involved in this matter. This letter appears to be an effort by Booker to pressure Hendrix into signing the agreement in order to avoid the payment of a larger attorney fee. This too is inappropriate. Booker's testimony that he sent this letter to advise Hendrix of the consequences of not executing the Written Authorization of Continued Representation is not credible. As previously pointed out, it was not until March, 2016, some six (6) months after Hendrix "reauthorized" Booker to represent him, that Hendrix was permitted to retrieve the music collection from Booker.

The Panel has struggled in reviewing Booker's proposed Findings of Fact and Conclusions of Law because so much of it has nothing to do with the Petition under consideration. In fact, only Paragraphs 23, 24 and 30 of his Procedural History and Paragraphs D, M, and R of his proposed findings make any reference whatsoever to the *Hendrix* matter. Booker's assertion that "the Board NEVER had any witness to testify regarding its false allegations" is incorrect. Booker himself was a witness. His testimony and exhibits provide an ample basis upon which this Panel can impose disciplinary sanctions.

### **CONCLUSIONS OF LAW**

**FILE NO. 42813-6-BG-Complainant Milton T. Hendrix**

The Board has alleged that Booker violated RPC 1.1 (Competence), 1.3 (Diligence), and 1.4 (Communication); 1.5 (Fees), 1.7 (Conflicts of Interest), 1.16 (Declining and Terminating Representation), 4.1(a) (Truthfulness in Statements to Others); 8.1(a) (Bar and Disciplinary Matters), 8.4(a) and (c) (Misconduct). The Hearing Panel finds that the Board has met its burden of proof to establish violations of RPC 1.4 (Communication), 1.7(a) (Conflicts of Interest), 1.16 (Terminating Representation), 8.1(a), and 8.4(a) and (c).

#### **RULE 1.4**

#### **COMMUNICATION**

(a) A lawyer shall:

1. Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these rules;
2. Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
3. Keep the client reasonably informed about the status of the matter;
4. Promptly comply with reasonable requests for information; and
5. Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

Booker testified that he did not correspond with Mr. Hendrix by mail as to the status of the contract negotiations. Had he done so, Mr. Hendrix would have been reasonably informed about the status of the matter. Likewise, Booker failed to keep Mr. Hendrix reasonably informed about the terms and conditions of the Sundazed contract. Mr. Hendrix had no way to know the identity of the party with whom he was to contract, nor did he know the proposed sale price. Clearly, from his testimony, Booker indicated that he did not want Mr. Hendrix to know how to contact the purchaser. For these reasons, the Panel finds that Booker failed to keep Mr. Hendrix reasonably informed about the status of his negotiations and did not comply with reasonable requests from Mr. Hendrix for information about the matter.



## **RULE 1.16 (d)**

### **DECLINING OR TERMINATING REPRESENTATION**

(d) A lawyer who is discharged by a client, or withdraws from representation of a client shall, to the extent reasonably practicable, take steps to protect the client's interest. Depending on the circumstances, protecting the client's interest may include: (1) giving reasonable notice to the client; (2) allowing time for the employment of other counsel; (3) cooperating with any successor counsel engaged by the client; (4) promptly surrendering papers and property to which the client is entitled and any work product prepared by the lawyer for the client and for which the lawyer has been compensated; (5) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse affect on the client with respect to the subject matter of the representation; and (6) promptly refunding any advance payment of fees that have not been earned or expenses that have not been incurred.

Mr. Hendrix notified the Board in his Complaint that he had terminated Booker's representation by sending Booker a letter to that effect. Mr. Hendrix also demanded the return of his property. Booker testified that he received the Complaint from the Board, but his response was not to promptly return Mr. Hendrix's property, but to attack Mr. Hendrix and provide Mr. Hendrix with a redacted copy of the Sundazed contract which concealed the identity of the proposed purchaser and that entity's contact information. When notified that his representation was at an end, Booker sent Mr. Hendrix a letter demanding that Mr. Hendrix execute a written Authorization and Confirmation for Booker to continue representing him. The letter also threatened Hendrix that if he failed to execute the agreement Booker would ask the court to increase his fee. Mr. Hendrix clearly had the right to discharge Booker at any time, with or without cause. *See*, Comment 4 to RPC 1.16. The Hearing Panel finds that Booker's letter of

September 28, 2015 to Mr. Hendrix was an effort to coerce Mr. Hendrix into revoking his termination of Booker.

**RULE 1.7**

**CONFLICT OF INTEREST: CURRENT CLIENTS**

- (a) Except as provided in Paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (1) the representation of one client will be directly adverse to another client; or
  - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibility to another client, a former client, or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under Paragraph (a), a lawyer may represent a client if:
  - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law;
  - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
  - (4) each affected client gives informed consent, confirmed in writing.

The Hearing Panel finds that Booker violated RPC 1.7 (Conflicts of Interest). Booker testified at the hearing that “Mr. Hendrix is only one of four clients.” It appears that all of the clients were siblings and that the other three were upset with Mr. Hendrix because they believed

that he had sold a portion of the music collection without their knowledge and, presumably, without sharing the proceeds with them. Booker's letter of September 9, 2015 which was admitted into evidence as Exhibit 4 demonstrates that Mr. Hendrix' siblings knew that they were entitled to a share of the proceeds of the sale, and, in the words of Booker, Mr. Hendrix "continues his attempt to illegally sell portions of the *corpus* from the Master Recording Purchase Agreement to other private music collectors for his own personal gain." Booker acknowledged his duty to "uphold my fiduciary responsibilities to all the Hendrix owners." The Panel interprets Booker's testimony to be that he did not want to fully inform Mr. Hendrix about the status of the negotiations, including the identity of the purchaser, because he, Booker, was concerned that Mr. Hendrix would attempt to negotiate with the purchaser himself and deprive his siblings of his fair share of the proceeds. If Mr. Hendrix's siblings did not want Mr. Hendrix to be fully informed about the negotiations, the interest of all four clients were at odds and Booker could not fulfill his ethical obligations to all of the clients. Furthermore, once it became clear in Booker's mind that a conflict had arisen between his clients, he had a duty to withdraw from the representation unless he obtained the informed consent of the clients in writing to continue the representation. This record contains no evidence that he obtained the written consent of all of his clients in writing. Nor did Booker testify that he obtained the consent of all of his clients to continue to represent each of them. The only written evidence in the record concerning Booker's continued representation is Booker's letter to Mr. Hendrix threatening to sue him if he didn't authorize Booker's continued representation. To the extent that Mr. Hendrix's siblings may have had a claim against him for selling a portion of the music collection without compensating them, Booker could not represent the interests of Mr. Hendrix's siblings as to their potential claim against him. The assertion of a claim by one client against another client

may not be waived by the clients, *see*, RPC 1.7(b)(3). Even if such a conflict of interest could be waived, this did not occur in this case. There is also no evidence in the record that Booker obtained the written informed consent of the three siblings to waive the conflict they had with Mr. Hendrix.

On April 11, 2018, the Board filed a motion, pursuant to Tennessee Rules of Civil Procedure Rule 15.02 to amend the pleadings to conform to the evidence presented at the trial of the case on April 9, 2018.

Rule 15.02, Tenn. R. Civ. P. provides:

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, **even after judgment; but failure so to amend does not affect the result of the trial of these issues.** Provided, however, amendment after verdict so as to increase the amount sued for in the action shall not be permitted. If evidence is objected to at the trial on the grounds that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence will prejudice that party in maintaining the action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

In this case, it was Booker himself who raised the issue of a conflict of interest among his clients. He testified about the concerns voiced by Mr. Hendrix's siblings over Mr. Hendrix's efforts to enrich himself at their expense by selling some of the music collection without their knowledge or consent. Booker explained that he withheld important information from Mr. Hendrix based upon the concerns held by the siblings as well as the fear Booker had that Mr. Hendrix would go behind his back during the negotiations. The evidence in the record reflects

that Booker may have acted to protect his own financial interest at the expense of Hendrix being kept properly informed about the negotiations. This potential conflict is noted in some of the correspondence which was admitted into evidence. Booker had ample opportunity to address whether a conflict of interest among his clients existed and, furthermore, he had an opportunity to explain what steps, if any, he took to address the conflict and obtain the written consent of each of his clients to allow him to continue to represent them. The Board did not object to Booker's testimony on this point. Clearly, the issue of whether a conflict of interest existed among Booker's clients was tried with the express consent of the parties.

**RULE 8.1(a)**

**BAR ADMISSION AND DISCIPLINARY MATTERS**

An applicant for admission to the Bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: (a) knowingly make a false statement of material fact.

When responding to Mr. Hendrix's Complaint filed with the Board, Booker stated that he took possession of Mr. Hendrix's music collection to protect it from being dissipated. This is consistent with other proof regarding the concerns had by Mr. Hendrix's siblings that he had sold some of the collection without sharing the proceeds with his siblings. Later, in his pretrial brief he stated that he took possession of the music collection to protect it from the elements and Mr. Hendrix's creditors. When confronted at the hearing with this inconsistency, Booker said that he took the music collection for both reasons. The Hearing Panel finds that Booker's testimony on at least one of these points is untrue. Booker is not a credible witness.

Also, Booker's testimony about the supposed notarized statement which authorized him to continue representing Mr. Hendrix is not credible. At the hearing Booker had the original

hand-written statement with him and it was clearly not notarized. Days before the hearing Booker informed this Panel that such statement was notarized. Booker's testimony that he forgot that the statement was not notarized is not credible. Once he learned that the statement was not notarized Booker took no action to correct the mistake. Booker knowingly made a false statement of material fact in connection with this disciplinary matter. Booker violated R.P.C. 8.1(a).

**RULE 18.4(a) and (c)**

**MISCONDUCT**

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation

Booker's statements cited herein were dishonest. The Hearing Panel finds that Booker violated R.P.C. 8.4(c). He also violated RPC 8.4(a).

The Hearing Panel agrees with the Board's conclusion that it did not meet its burden of proof as to the alleged violation of RCP 1.1 (competence) and 1.3 (diligence) in the Hendrix matter, File No. 42813-6-BG. Therefore, no further disciplinary action will be taken as to these matters. The Hearing Panel finds that the Board met its burden of proving that Booker violated Texas of Professional Conduct 1.01 (competent and diligent representation).

**FILE NO. 37811-6-BG- REPORT OF DAVID MALAND**

**FILE NO. 36891-6-BG – INFORMANT – JUDGE RON CLARK**

**FILE NO. 40384-6-SC-COMPLAINANT – E. L. JENKINS**

The Panel now turns its attention to the disciplinary matters which arose as a result of Booker's conduct in the Federal Courts in Texas. The Panel has previously pointed out that Booker violated Texas Rules of Professional Conduct 1.01 (competent and diligent representation), 1.04 (fees), 8.01 (bar admission, reinstatement and disciplinary matters) and 8.04 (3) (Conduct involving dishonesty, fraud, deceit, or misrepresentation).

Booker was permitted to testify at the hearing in this matter about why he failed to go to Texas and defend himself in the disciplinary proceedings before the United States District Courts and the Fifth Circuit Court of Appeals. Booker claims that his life was threatened there, that he was assaulted by opposing counsel during a deposition, which assault was recorded by a court reporter and that he was falsely accused and arrested on the basis of his race. Booker filed an Affidavit in Support of a Motion to Alter or Amend which was denied by this Panel. No other evidence was submitted to substantiate Booker's claims. He did not produce a copy of the deposition transcript which could have confirmed that he was assaulted during a deposition. In his Affidavit, at Paragraph 27, Booker stated that he reported this conduct to the District Judge. No copy of a written complaint was put into evidence at the April 9, 2018 hearing. Booker states in Paragraph 28 of his Affidavit that he reported these threats to the San Augustine County Sheriff and was arrested for his trouble. He failed to introduce a written report of the threat or any court or police records confirming that he was arrested.

It should be noted that Booker made a similar argument in the Texas Court when responding to a Show Cause Order. Booker claimed that he was unfairly treated during the hearing on his motion to withdraw and his request for an award of attorney fees in *Estate of Ennis Jenkins, et al., v. City of San Augustine, et al.*, Civil Action No. 9:12-CV-043-RC. The Court there found that Booker had provided no factual support or details in support of his claim

that he was “mocked and harassed because he is an out of state, African American attorney”. (See, Exhibit C to Board’s Motion for Partial Summary Judgment, Report and Recommendation entered on August 8, 2014 in the matter of *Robert L. Booker*, Case No. 6:14-MC-8-KNM, pp. 6 and 7.)

Booker’s alleged fear for his safety in Texas did not prevent him from appearing at the hearing in the Texas District Court on his Motion to Withdraw and Request Attorney Fees.

The disciplinary proceedings in Texas were reviewed a number of times. After the Magistrate’s First Report and Recommendation was filed and approved by the District Court, Booker appealed to the Fifth Circuit Court of Appeals. In that appeal, he claimed that he was deprived of due process. The Fifth Circuit Court of Appeals elected to address this issue even though it was raised for the first time on appeal.

Even assuming Booker did not waive his objections, these arguments lack merit. His actions in an independent Civil Rights case spawned his referral for discipline, which led to a unanimous vote to hold further disciplinary proceedings by the Judges of the Eastern District. Further proceedings were overseen by Chief Judge Davis, who was not involved in the Civil Rights case which led to Booker’s referral for disciplinary proceedings.

Additionally, Booker received two layers of review before the District Court, as his case was first referred to a Magistrate Judge for a report and recommendation. Before issuing the report and recommendation, the Magistrate Judge issued a Show Cause Order notifying Booker, in detail, of the allegations against him. The Order gave Booker an opportunity to show cause why he should not be suspended or disbarred for the conduct described, and to request a hearing. Booker filed a response to the Show Cause Order, disputing only some of the allegations against him. When the Magistrate Judge set a hearing to resolve the remaining questions concerning Booker’s conduct, Booker responded with a “Notice of Waiver of Hearing” summarizing his arguments again and contending, “Nor is there any further useful information to be gained.” The Magistrate Judge therefore cancelled the hearing and issued an Order noting that she would prepare a Report and Recommendation based on the documents before the Court. When



she did so, Booker objected to the Report and Recommendation. The District Court reviewed the record *de novo*, found Booker's objections meritless, adopted the report and recommendation and suspended Booker from practicing in the Eastern District for three (3) years.

We conclude that Booker received adequate due process throughout these proceedings. *See, In Re: Booker*, 611 Fed. App. 834, 836 – 837 (2015).

The Fifth Circuit Court of Appeals agreed with Booker's argument that the lower court had not expressly found that he acted in bad faith under the clear and convincing evidentiary standard. Upon remand, however, the Magistrate Judge did find by clear and convincing evidence that Booker acted in bad faith. This ruling was adopted by the District Court and affirmed by the Fifth Circuit Court of Appeals.

This Panel finds that Booker failed to present sufficient evidence to establish that he was unable to appear in the Courts in Texas. Booker received adequate review of the Court's action. The arguments that he attempts to raise now to excuse his conduct were considered and denied by the Texas Courts.

### **SANCTIONS TO BE IMPOSED**

To hold a license to practice law in Tennessee is a privilege. Every person holding such license must conduct himself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege of practicing law. Any act or omission by an attorney which violates the Rules of Professional Conduct ("R.P.C.") of the State of Tennessee shall constitute misconduct and be grounds for discipline. *See, Tenn. S. Ct. R. 9 §1*. Violations of the Rules of Professional Conduct must be shown by a preponderance of the evidence *Tenn. S. Ct. R. 9 §15.2(h)*. The Hearing Panel adopts the Board's position, and the same is borne out by the evidence, that with respect to the Hendrix Complaint, File No. 42831-6-BG, the Board met

its burden of proving that Booker violated R.P.C. 1.4 (Communication), 1.7(a) (Conflicts of Interest), 1.16 (Terminating Representation) and 8.4(a) and (c).

Booker also violated Texas Rules of Professional Conduct 1.01 (Competent and Diligent Representation), 1.04 (Fees), 8.01 (Bar Admission, Reinstatement and Disciplinary Matters) and 8.04(3) (Conduct involving Dishonesty, Fraud, Deceit, or Misrepresentation) in Files No. 37811-6-BG, 36891-6-BG, and 40384-6-SC.

This Panel is obligated to determine the discipline which is appropriate once disciplinary violations are established by a preponderance of the evidence. This Panel must apply the ABA standards for imposing lawyer sanctions, (“ABA standards”) pursuant to §15.4, R. 9 of the Rules of the Supreme Court.

The following ABA Standards apply in this matter:

4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict and causes injury or potential injury to a client.

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client.

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information and causes injury or potential injury to the client.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.

The following aggravating factors are present in this case pursuant to ABA Standard 9.22:

1. Booker’s dishonest and selfish motive is an aggravating circumstance justifying an increase in discipline to be imposed.

2. Booker's multiple offenses are an aggravating circumstance justifying an increase in discipline to be imposed.
3. Booker's pattern of misconduct is an aggravating circumstance justifying an increase in discipline to be imposed.
4. Booker's substantial experience in the practice of law, having been licensed since 1995, is an aggravating circumstance justifying an increase in the discipline to be imposed.
5. Booker's prior disciplinary offenses as set forth in the orders from the Texas Courts are an aggravating circumstance justifying an increase in the discipline to be imposed.

Booker presented no evidence of mitigating circumstances in this case.

The Hearing panel also notes that Booker was dishonest and deceitful with the Panel during this disciplinary proceeding. He took no responsibility for his actions and expressed little remorse.

### **CONCLUSION**

Based upon the applicable ABA Standards and having considered the aggravating factors, the Hearing Panel finds that Booker should be suspended from the practice of law for three (3) years and, as a condition of reinstatement, he must make restitution to E.L. Jenkins in the amount of \$136,275.00.

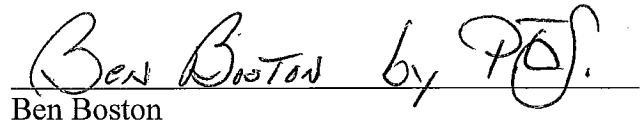
The Orders previously entered by the Texas Court support the payment of restitution. The Texas Courts found that Booker had entered into a fee agreement which called for a flat fee of \$25,000.00 and the recovery of out-of-pocket expenses for expert witness fees and travel in the amount of \$12,500.00. The Magistrate Judge found that Booker had collected a total of \$173,775.00 from his client, E.L. Jenkins. (*See*, Exhibit C to Motion for Partial Summary

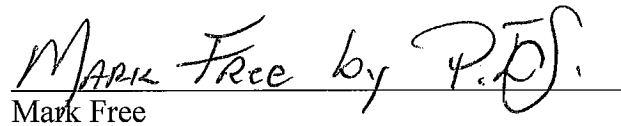
Judgment, p. 11). According to Booker's own invoices which he filed in support of his request for fees it appears that the combined costs of travel expenses was \$38,064.71. Because Booker should have been limited to collecting a flat fee of \$25,000.00 and costs of approximately \$12,500.00, the Panel finds that Booker was paid \$136,275.00 in excess of what he was entitled to. This amount must be repaid to Mr. Jenkins as a condition to Booker's reinstatement to practice law in Tennessee.

It is so ordered this 27<sup>th</sup> day of August 2018.

FOR THE HEARING PANEL

  
Edward Schell, Chair

  
Ben Boston

  
Mark Free

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to Respondent, Robert Louis Booker, PO Box 255, Clarksville, TN 37041-0255, and hand-delivered to Alan D. Johnson, Disciplinary Counsel, on this the 29th day of August, 2018.



\_\_\_\_\_  
Rita Webb  
Executive Secretary

**NOTICE**

**This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.**