

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

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BOARD OF PROFESSIONAL RESPONSIBILITY
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IN RE: PATRICIA DONICE BUTLER
Respondent, BPR No. 22706,
An Attorney Licensed to
Practice Law in Tennessee
(Roane County)

DOCKET NO. 2014-2391-2-KH

NOTICE: This judgment may be appealed pursuant to Section 1.3 of Supreme Court Rule 9 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.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This matter came on for hearing on August 13, 2015, before a Hearing Panel consisting of David Draper, Brian Krumm, and James G. O’Kane, Jr., Chair. The Board of Professional Responsibility (the “Board”) was represented by Krisann Hodges. Respondent, Patricia Donice Butler, did not appear.

FINDINGS OF FACT

Petition for Discipline against Ms. Butler

1. On November 14, 2014, the Board filed a Petition for Discipline against Ms. Butler (“Respondent”), identified by Docket No. 2014-2391-2-KH. The Petition alleged that the Respondent made false and misleading statements about a hearing panel that had just conducted a final hearing in an attorney disciplinary matter involving the Respondent. The statements were published on May 6, 2004 by the *Roane County News*. The Petition alleged violations of RPC 8.2(a) (Judicial and Legal Officials) and RPC 8.4(a)(c)(d) (Misconduct).

2. The Respondent failed to file an Answer to the Petition for Discipline within 30 days and the time for filing the Answer was not extended. Pursuant to Motion on behalf of the Board of Professional Responsibility, an Order for Default Judgment and that the charges in the Petition for Discipline filed November 11, 2014 be deemed admitted was entered May 21, 2015. The Order for Default Judgment was served on Respondent.

3. On April 16, 2015, a Supplemental Petition for Discipline was filed by the Board against the Respondent. The Supplemental Petition arose out of complaints by Shana York (File No. 37612-2-KB), Linda Marcum (File No. 37670c-2-KB), Brian and Amanda Ours (File No. 37682c-2-KB), and Anita Barrow (File No. 37779c-2-KB).

4. The Shana York Complaint alleged failure to timely communicate a settlement offer and other matters that constituted violations of RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.16 (Terminating Representation) and RPC 8.1 (Failure to Respond to Disciplinary Counsel during the investigation).

The Linda Marcum Complaint arose out of a contested divorce case in which Ms. Marcum paid a total of \$1,800.00 in fees and \$130.00 for the filing fee to Respondent. The Supplemental Petition for Discipline alleged that Ms. Butler's conduct violated RPC 1.4 (Communication), RPC 1.16 (Termination of Representation), and RPC 8.1 (Failure to Respond to Disciplinary Counsel during the investigation).

Brian and Amanda Ours allegedly paid Ms. Butler fees totaling \$727.50 and an additional \$60.00 in costs for legal representation in an attempt to obtain a Tennessee hardship driver's license for Mr. Ours after his driver's license was suspended due to a DUI conviction in Illinois. The Supplemental Petition for Discipline alleged a violation of RPC 1.3 (Diligence), RPC 1.4 (Communication), and RPC 8.1 (Disciplinary Matters) because Respondent failed to respond to disciplinary counsel after October 2, 2014.

Complainant Anita Barrow allegedly retained Ms. Butler in September, 2013 to represent her in a custody dispute. She claimed that she paid the Respondent a total of \$4,400.00 in attorney's fees, and was represented by Respondent until Respondent's disciplinary suspension on July 28, 2014. Violations of RPC 1.4 (Communication), 1.16 (Terminating Representation) and RPC 8.1 (Disciplinary Matters) were alleged.

5. The Respondent failed to file an answer to the Supplemental Petition for Discipline within 30 days and the time for filing the Answer in this cause was not extended. Pursuant to the Board's Motion for Default Judgment, an Order for Default Judgment and that charges in the Supplemental Petition for Discipline filed April 16, 2015 be deemed admitted was entered on July 10, 2015. The Order for Default Judgment was served on Respondent.

6. Following the entry of the Orders for Default Judgment in this cause, a hearing was scheduled for Thursday, August 13, 2015, and notice of hearing was sent to Respondent's last known mailing address and email address. (Exhibit 9). Respondent was notified of the date and location of the hearing, and she was also notified that she was entitled to be represented by counsel, to cross-examine witnesses, and to present evidence in her own behalf. Ms. Butler was also notified that the hearing panel would submit its findings and judgment within 30 days following the hearing. The hearing was convened on August 13, 2015 pursuant to notice. The Board was represented by disciplinary counsel. Ms. Butler did not appear. Disciplinary counsel presented the Board's position with respect to the discipline that should be imposed, and exhibits were filed in support of the Board's position.

Petition for Discipline: File No. 37122-2-KB - Roane County News Publication

7. All allegations in the Petition are deemed to be admitted. In addition thereto, Respondent was served with requests for admissions on February 20, 2015, along with the Petition for Discipline. Respondent failed to respond to the requests for admissions and they are

also deemed admitted.

8. The Board filed a Petition for Discipline against Ms. Butler on May 3, 2012. A final hearing on that case was held on February 10 and 11, 2014. The Hearing Panel issued a Judgment on April 11, 2014 finding that Ms. Butler violated the Rules of Professional Conduct and determined that Ms. Butlers should be suspended for nine months, with 90 days served as an active suspension and the remainder on probation with conditions.

9. Within a month of the Judgment by the Hearing Panel, a news article was published on May 6, 2014 by the *Roane County News* on its website and in its newspaper. (Collective Exhibit 4 and Exhibit 6). The news article was titled “Butler claims hearing board was paid to rule against her.”

10. Ms. Butler was aware that Damon Lawrence, the author of the Roane County News article, was a reporter for the Roane County News when she spoke with him. Mr. Lawrence called her prior to the May 6, 2014 article and informed her that he was calling for follow up to her “situation” after speaking to her lawyer, Chris Caywood.

Ms. Butler made the following statement to Mr. Lawrence by telephone: “I think the whole system is patently unconstitutional when you pay people to rule in your favor, and that’s basically what happened.” Ms. Butler also made the following statement to Mr. Lawrence: “... they should have never even came to the stage of a petition, and then to hold the circus that they held and pay these people an untold amount of money to rule in their favor, I would like to change the entire system if I could.” The quoted language was included in the newspaper article and the article that appeared on the *Roane County News* website.

11. Respondent made the quoted statements to the reporter for the *Roane County News*, with no knowledge or proof that the Hearing Panel members in her disciplinary proceeding had received compensation in exchange for a favorable outcome for the Board.

Respondent's statements were false and without factual basis. The Respondent attacked the integrity of the members of the Hearing Panel and the disciplinary process of the Board of Professional Responsibility by making false and baseless statements that she knew or should have known would be published by a local media outlet.

12. After the entry of the Order for Default Judgment on May 21, 2015, for failure of the Respondent to answer the Petition for Discipline arising out of the *Roane County News* article, the Respondent corresponded by email with disciplinary counsel on May 28, 2015 (Exhibit 7). In that correspondence, she referred to the "fraudulent, dishonest and disgusting treatment of me by the 'board'". She referred to disciplinary counsel staff as "vile disgusting liars." She particularly referenced disciplinary counsel Alan D. Johnson as follows: "You, Mr. Johnson, are particularly evil because you intimated to me in my office the ridiculousness of the action taken against me WRONGFULLY, yet you continue to get paid by the lying people you acknowledged were attacking me for no legitimate reason."

13. Respondent's statements in the May 28, 2015 email of fraudulent and dishonest conduct by or on behalf of the Board in its dealings with her are much like her statements to the *Roane County News* in 2014, and they represent an ongoing refusal to acknowledge the wrongful nature of her conduct

Supplemental Petition for Discipline: File No. 37612-2-KB

14. Respondent failed to timely communicate the settlement offer to Shana York, and she failed to take necessary steps to protect her client's interest when she was suspended from the practice of law on July 28, 2014. Respondent failed to respond to disciplinary counsel during the investigation.

Supplemental Petition for Discipline: File No. 37670c-2-KB

15. Respondent billed Linda Marcum for several phone calls during her representation; however, when Ms. Marcum called Ms. Butler's office, she was never able to speak with Respondent. Respondent was suspended from the practice of law on July 28, 2014, and did not participate in a court-ordered auction or further court appearances to finalize the divorce. Ms. Marcum paid Respondent \$130.00 as a filing fee, but the client later received a bill from the General Sessions Court for costs totaling \$275.50 for the unpaid filing fee. Respondent failed to respond to disciplinary counsel during the investigation.

Supplemental Petition for Discipline: File No. 37682c-2-KB

16. Brian and Amanda Ours hired Respondent to obtain a Tennessee hardship driver's license for Mr. Ours after his driver's license was suspended due to a DUI conviction in Illinois. Respondent also was paid a fee to clear the hold that Illinois had placed on Mr. Ours' driver's license. Respondent had represented Mr. Ours in the past, knew his criminal history, and had assured Mr. and Mrs. Ours that she could obtain a hardship license for him within ten days for a fee of \$300.00. Respondent was unable to obtain a hardship license for Mr. Ours. Ms. Butler responded to the complaint by stating that she could not accomplish Mr. Ours' objective of obtaining a driver's license based upon his criminal history. An application to the State of Illinois and/or the State of Indiana to clear the hold on Mr. Ours' driver's license was returned by the Respondent to Mr. and Mrs. Ours, because the Respondent stated that it was too complicated to complete. Respondent failed to communicate with her clients after December, 2013. Respondent was paid a total of \$787.50 in fees by Mr. and Mrs. Ours. Respondent failed to respond to disciplinary counsel after October 2, 2014.

Supplemental Petition for Discipline: File No. 37779c-2-KB

17. Prior to her suspension from the practice of law, Respondent filed a notice of hearing in Anita Barrow's custody dispute, setting the case for hearing on September 11, 2014. Thereafter, Respondent failed to communicate with Ms. Barrow, failed to properly withdraw from the representation, and failed to return any unearned fees or the client file to Ms. Barrow. Ms. Barrow had paid a total of \$4,400.00 in attorney's fees to Ms. Butler for representation that began in September, 2013. Respondent failed to respond to disciplinary counsel during the investigation of the complaint against her.

Previous Discipline

18. On August 21, 2009, Respondent was disciplined with a private informal admonition for violation of RPC 1.4 (Communication).

19. On January 20, 2010, Respondent was issued a private reprimand for violation of RPC 1.3 (Diligence) and RPC 1.16(d) (Terminating Representation).

20. On July 28, 2014, Respondent was suspended by Order of the Supreme Court of Tennessee for nine months, with 90 days served as an active suspension and the remainder on probation with conditions for violations of RPC 1.1 (Competence), RPC 1.2 (Scope of Representation), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.16 (Declining and Terminating Representation), RPC 3.2 (Expediting Litigation), RPC 3.3 (Candor to the Tribunal), and RPC 8.4 (Misconduct).

21. On March 13, 2015, Respondent was temporarily suspended by the Supreme Court of Tennessee pursuant to Tenn. Sup. Ct. R. 9, § 12.3 (2014) for failing to respond to the Board of Professional Responsibility concerning the complaint for misconduct set for the in the Petition for Discipline, File No. 37122-2-KB. Respondent has taken no action to dissolve the

temporary suspension.

CONCLUSIONS OF LAW

Pursuant to Tenn. Sup. Ct. R. 9, § 3, 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.

Petition for Discipline Against Ms. Butler

1. Respondent violated RPC 8.2(a)(2) by making statements that Respondent knew were false or were made with reckless disregard as to the truth or falsity concerning the integrity of the adjudicatory officers who presided over Ms. Butler's disciplinary proceeding and who entered a Judgment on April 11, 2014 adverse to her. Respondent violated RPC 8.4(a), (c), (d), by engaging in conduct that involved dishonesty and misrepresentation, and was prejudicial to the administration of justice in violation of the Rules of Professional Conduct.

Supplemental Petition for Discipline Against Ms. Butler

File No. 37612-2-KB – Complainant – Shana York

2. Respondent violated RPC 1.3 (Diligence) and RPC 1.4 (Communication). Respondent failed to take necessary steps to protect her client's interest in violation of RPC 1.16 (Terminating Representation). Respondent failed to respond to disciplinary counsel during the investigation of the complaint in violation of RPC 8.1 (Disciplinary Matters).

File No. 37670c-2-KB – Complainant – Linda Marcum

3. Respondent violated RPC 1.4 (Communication) and RPC 1.16 (Terminating

Representation). Respondent also failed to respond to disciplinary counsel during the investigation in violation of RPC 8.1 (Disciplinary Matters). In addition thereto, Respondent should pay restitution to Ms. Marcum in the amount of the \$130.00 filing fee that Ms. Marcum paid to Respondent, but which was never paid to the court.

File No. 37682c-2-KB – Complainants – Brian and Amanda Ours

4. Respondent failed to timely pursue the case on behalf of Mr. Ours to obtain a Tennessee hardship driver's license and clear a hold that State of Illinois had placed on Mr. Ours' driver's license. Respondent failed to communicate with Mr. and Mrs. Ours after December 13, 2013 and failed to respond to disciplinary counsel after October 2, 2014. Respondent violated RPC 1.3 (Diligence), RPC 1.4 (Communication), and RPC 8.1 (Disciplinary Matters). Respondent should pay restitution to Mr. Ours in the amount of \$787.50 to reimburse Mr. Ours for the fees and cost for an application fee that were paid to Respondent.

File No. 37779c-2-KB – Complainant – Anita Barrow

5. Respondent violated RPC 1.4 (Communication) and RPC 1.16 (Terminating Representation). Respondent also failed to respond to disciplinary counsel during the investigation of the complaint in violation of RPC 8.1 (Disciplinary Matters). Respondent should pay restitution to Anita Barrow in the amount of \$4,400.00 for the attorney fees paid to Respondent for the representation in the custody dispute.

6. Once disciplinary violations have been established, the Hearing Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

7. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

4.4 LACK OF DILIGENCE

4.42 Suspension is generally appropriate when:

(b) A lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

5.0 VIOLATIONS OF DUTIES OWED TO THE PUBLIC

5.11 Disbarment is generally appropriate when:

(b) A lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

8.0 PRIOR DISCIPLINE ORDERS

8.1 Disbarment is generally appropriate when a lawyer:

(b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

8. Pursuant to ABA Standard 9.22, aggravating factors are present in this case:

- a. Prior disciplinary offenses.
- b. Dishonest or selfish motive.
- c. A pattern of misconduct.
- d. Multiple offenses.
- g. Refusal to acknowledge wrongful nature of conduct. (Evidenced in part by the statements made by Respondent in her May 28, 2015 email (Exhibit 7).
- i. Substantial experience in the practice of law.

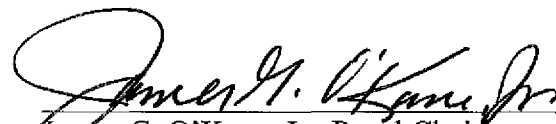
9. Pursuant to ABA Standard 9.32, mitigating factors are present in this case:
 - c. Personal or emotional problems.
10. The aggravating factors substantially outweigh the mitigating factor.
11. Based upon the evidence and the record as a whole, the Hearing Panel finds that disbarment is the appropriate discipline.

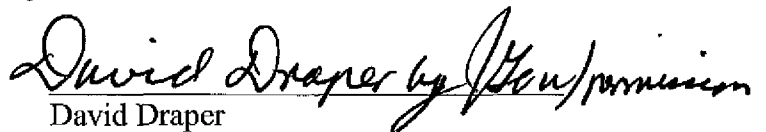
JUDGMENT

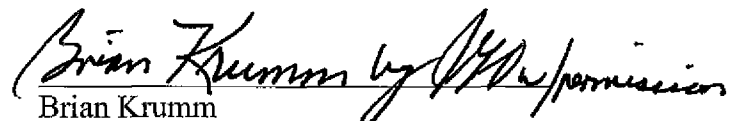
Based upon the Findings of Fact, and Conclusions of Law, including consider of the ABA Standards set forth above, the Hearing Panel finds that Patricia Donice Butler should be disbarred from the practice of law in the State of Tennessee. The Hearing Panel further finds that the Respondent should pay restitution to the following individuals: (1) Linda Marcum in the amount of \$130.00; (2) Brian Ours in the amount of \$787.50; and (3) Anita Barrow in the amount of \$4,400.00.

IT IS SO ORDERED.

This 26th day of August, 2015.


James G. O'Kane, Jr., Panel Chair


David Draper


Brian Krumm