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BOARD OF PROFESSIONAL
RESPONSIBILITY

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

IN RE: **ROBERT LAWSON CHEEK, JR.** **DOCKET NO. 2014-2318-2-AJ (22.3)**
BPR No. 15407 **2014-2409-2-AJ**
Attorney Licensed to
Practice Law in Tennessee
(Knox County)

FINAL DECREE

This matter came to be heard on March 30, 2015 before G. Keith Alley, Panel Chair, Karen G. Crutchfield, Panel Member, and, John E. Winters, Panel Member, for final hearing on the Board of Professional Responsibility's (the "Board") July 1, 2014 Petition for Final Discipline (the "July 1 Petition") and the Board's December 19, 2014 Petition for Discipline (the "December 19 Petition"), both of which Petitions had been consolidated by Order of the Hearing Panel entered on January 20, 2015. Alan D. Johnson, Disciplinary Counsel, appeared for the Board. Robert Lawson Cheek, Jr. ("Mr. Cheek"), did not appear.

STATEMENT OF THE CASE

1. On April 30, 2014, the United States District Court for the Eastern District of Tennessee entered a Judgment in a Criminal Case (the "April 30 Judgment") finding Mr. Cheek guilty of one (1) count of mail fraud in violation of 18 U.S.C. § 1341. (Exhibits 2 & 1¹.) As a condition of his guilty plea, Mr. Cheek was ordered to pay \$132,371.43 in restitution to five (5) of his former clients; Connie Williams, Kristina Thiagarajan, Hawa Conteh, Vincent Appleton and Donna Loveday.

¹ The Exhibits referenced herein were introduced at the March 30, 2015 hearing.

2. On May 15, 2014, the Supreme Court of Tennessee entered an Order of Enforcement (the "May 15 Order") disbaring Mr. Cheek as a result of his conduct in relation to Connie Williams and Hawa Conteh. (Exhibit 5). The May 15 Order also ordered Mr. Cheek to pay restitution to Hawa Conteh in the amount of \$16,666.66 and to Connie Williams in the amount of \$31,996.13.

3. As a result of the April 30 Judgment, on May 21, 2014, the Supreme Court of Tennessee entered an Order (the "May 21 Order") suspending Mr. Cheek from the practice of law pending further orders of that Court pursuant to Tennessee Supreme Court Rule 9, Section 22.3². The May 21 Order also referred the matter to the Board for the institution of formal proceedings in which the sole issue to be determined was the extent of the final discipline to be imposed as a result of Mr. Cheek's guilty plea recorded in the April 30 Judgment.

4. The July 1 Petition was filed under docket number 2014-2318-2-AJ (22.3).

5. Mr. Cheek was personally served with the July 1 Petition Final on October 9, 2014.

6. Mr. Cheek did not file an answer or otherwise respond to the July 1 Petition.

7. The December 19 Petition was filed under docket number 2014-2409-2-AJ.

8. Mr. Cheek was personally served with the December 19 Petition on December 24, 2014.

9. Mr. Cheek did not file an answer or otherwise respond to the December 19 Petition.

10. On January 9, 2015, the Board moved the Hearing Panel to consolidate the July 1 and December 19 Petitions for hearing. The Hearing Panel granted the Board's Motion to Consolidate the two Petitions for hearing and set the Final Hearing of both Petitions for March

² This matter was initiated after January 1, 2014; therefore, Tenn. Sup. Ct. R. 9 (2014) is applicable.

30, 2015.

11. On February 5, 2015, the Board filed a Motion for Default Judgment and that the Allegations Contained in the Petition for Discipline be Deemed Admitted in relation to the December 19 Petition. The Hearing Panel granted the Board's Motion for Default Judgment in relation to the December 19 Petition and an Order Granting Motion for Default Judgment was entered on March 2, 2015 (the "March 2 Order of Default").

12. As a result of the March 2 Order of Default, the allegations contained within the December 19 Petition were deemed to be admitted.

13. At the final hearing of this matter on March 30, 2015, the Board moved for Default Judgment against Mr. Cheek in relation to the July 1 Petition. The Hearing Panel granted the Board's Motion for Default Judgment in open court.

FINDINGS OF FACT

JULY 1 PETITION, DOCKET NO. 2014-2318-2-AJ (22.3)

14. On April 30, 2014, Mr. Cheek pled guilty to one count of mail fraud in violation of 18 U.S.C. § 1341. (Exhibit 2.)

15. The United States District Court for the Eastern District of Tennessee ordered Mr. Cheek to serve a prison term of twelve (12) months and one (1) day as a result of his criminal conviction, and Mr. Cheek was committed to custody on April 30, 2014. (Exhibit 2.) The United States District Court for the Eastern District of Tennessee additionally ordered Mr. Cheek to serve three (3) years of supervised release after he has served his required period of incarceration. Mr. Cheek's supervised release is subject to several conditions, which conditions are more specifically set forth in detail in the April 30 Judgment. (Exhibit 2.)

16. The United States District Court for the Eastern District of Tennessee also ordered Mr. Cheek to pay restitution in the total amount of \$132,371.43 to five (5) of his former clients as victims. (Exhibit 2.) More specifically, the United States District Court for the Eastern District of Tennessee ordered Mr. Cheek to pay Connie Williams \$33,430.34, Kristina Thiagarajan \$47,056.18, Hawa Conteh \$8,334.16, Vincent Appleton \$35,002.50 and Donna Loveday \$8,548.25. (Exhibit 2.)

17. The Supreme Court of Tennessee also ordered Mr. Cheek to pay restitution to Hawa Conteh in the amount of \$16,666.66 and to Connie Williams in the amount of \$31,996.13 on May 15, 2014. (Exhibit 5.)

18. Mr. Cheek settled a case on behalf of his client, Kristina Thiagarajan, in the amount of \$160,000, but paid her only \$68,143.82 and did not account for the remainder of the settlement funds. (Exhibit 4.) Mr. Cheek had a 28% contingent fee agreement with Ms. Thiagarajan and was not entitled to retain \$91,856.18 as his fee. (Exhibit 3.)

19. Mr. Cheek settled a case on behalf of his client, Vincent Appleton, in the amount of \$75,000, but paid him only \$15,000 and did not account for the remainder of the settlement funds. (Exhibit 4.) There was no evidence presented that Mr. Cheek had a written fee agreement that would have entitled him to retain \$60,000 as his fee.

DECEMBER 19 PETITION, DOCKET NO. 2014-2409-2-AJ

20. Donna Loveday retained Mr. Cheek on March 24, 2011, to represent her and her child in an action to recover damages for injuries sustained in a car wreck.

21. Ms. Loveday agreed to accept a settlement offer in October 2011.

22. On November 14, Mr. Cheek sent a letter to Ms. Loveday confirming that the case had settled in the amount of \$25,000.

23. Mr. Cheek distributed \$283 to Ms. Loveday's child, \$7,000 to Ms. Loveday, \$215 to Revenue Recovery Corporation and \$131.87 to himself for expenses that he claimed to have incurred.

24. Mr. Cheek informed Ms. Loveday that the balance of the settlement proceeds of \$17,370.13 would be distributed between Ingenix Subrogation Service ("Ingenix") and himself depending upon the results of his negotiations with Ingenix in regard to its subrogation lien.

25. Mr. Cheek did not pay any sum to Ingenix nor did he satisfy Ingenix's \$8,548.25 subrogation lien as he stated he would. (Exhibit 3.)

CONCLUSIONS OF LAW

26. The admitted acts and omissions of Mr. Cheek constitute unethical conduct in violation of the Tennessee Rules of Professional Conduct 1.3 (diligence), 1.5 (fees), 1.15 (safekeeping property and funds) and 8.4 (a-d) (misconduct).

27. Pursuant to Tenn. S. 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 at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

28. 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.

29. The disciplinary violations alleged in the Petitions for Discipline have been established by a preponderance of the evidence and constitute grounds for discipline.

30. When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the *ABA Standards for Imposing*

Lawyer Sanctions, (“ABA Standards”) pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court.

29. The following ABA Standards apply in this matter:

4.1 Failure to preserve client property

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

4.4 Lack of Diligence

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.6 Lack of Candor

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

5.0 Violations of Duties Owed to the Public

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (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.

7.0 Violation of Duties Owed to the Profession

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Aggravating Factors

30. Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

- (b) dishonest or selfish motive;
- (c) a pattern of misconduct (the admitted facts establish a pattern of misconduct);
- (d) multiple offenses (the admitted facts establish multiple offenses);
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (the admitted facts establish the Respondent failed to respond to the Board);
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law (Mr. Cheek was licensed to practice in 1992).

31. The Hearing Panel concludes that Mr. Cheek should not profit from his wrong doing, and he should be required to disgorge any fee he would otherwise have been entitled to recover from the settlement funds of his client victims.³

³ Because the Supreme Court of Tennessee has previously ordered Mr. Cheek to pay restitution to Hava Conteh and Connie Williams, the Hearing Panel does not order restitution for those client victims in this case. The Hearing Panel does, however, order Mr. Cheek to pay restitution to Donna Loveday, Kristina Thiagarajan and Vincent Appleton in the full amount of the respective remainders of their settlement funds.

JUDGMENT

Based on these findings of fact and conclusions of law, it is the judgment of the Hearing Panel that Mr. Cheek shall be disbarred pursuant to Tenn. Sup. Ct. R. 9, § 12.1. Further, the Hearing Panel finds that Mr. Cheek must pay restitution, pursuant to Tenn. Sup. Ct. R. 9, § 12.7, to the following individuals as set forth below:

- A) To Donna Loveday in the amount of \$17,370.13. Ms. Loveday's case was settled for the amount of \$25,000. Mr. Cheek disbursed a total of \$7,283 to Ms. Loveday and her son. Mr. Cheek paid a subrogation claim in the amount of \$215 and reimbursed himself a claimed expense in the amount of \$131.87 which the Hearing Panel, without receiving proof to the contrary, finds uncontested and reasonable. The total amount appropriately paid out by Mr. Cheek from the Loveday settlement funds was therefore \$7,629.87. The Hearing Panel therefore orders Mr. Cheek to pay restitution to Ms. Loveday in the amount of \$17,370.13. This sum includes the \$8,548.25 that Mr. Cheek was ordered to repay Ms. Loveday in the April 30 Judgment.
- B) To Kristina Thiagarajan in the amount of \$91,856.18. Ms. Thiagarajan's case was settled for the amount of \$160,000. Mr. Cheek disbursed a total of \$68,143.82 to Ms. Thiagarajan. The Hearing Panel therefore orders Mr. Cheek to pay restitution to Ms. Thiagarajan in the amount of \$91,856.18. This sum includes the \$47,056.18 that Mr. Cheek was ordered to repay Ms. Thiagarajan in the April 30 Judgment.
- C) Vincent Appleton in the amount of \$60,000. Mr. Appleton's case was settled for the amount of \$75,000. Mr. Cheek disbursed a total of \$15,000 to Mr. Appleton. The Hearing Panel therefore orders Mr. Cheek to pay restitution to Mr. Appleton in the amount of \$60,000. This sum includes the \$35,002.50 that Mr. Cheek was ordered to

repay Mr. Appleton in the April 30 Judgment.

The Following shall be conditions precedent to reinstatement:

- A) Payment of restitution as set forth above and compliance with all conditions imposed on Mr. Cheek by the United States District Court for the Eastern District of Tennessee in the April 30 Judgment in Case No. 3:13-CR-00158-01.
- B) Mr. Cheek must confer with the Tennessee Lawyer Assistance Program ("TLAP") for a consultation and shall comply with any recommendations of TLAP.

In the event restitution is made by the Tennessee Lawyers' Fund for Protection of Clients ("TLFCP") to Donna Loveday, Kristina Thiagarajan and/or Vincent Appleton, Mr. Cheek shall reimburse TLFCP the full amount TLFCP paid to his client(s)/victim(s) up to the full sum of the restitution ordered to each client that appears hereinabove.

IT IS SO ORDERED,



G. Keith Alley, Panel Chair



Karen G. Crutchfield, Panel Member



John E. Winters, Panel Member

NOTICE: This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 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.