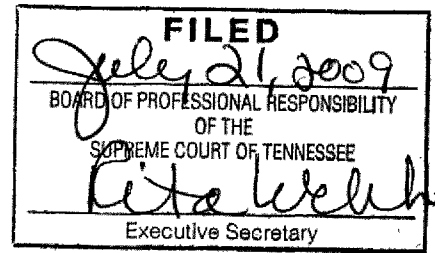


**IN DISCIPLINARY DISTRICT V
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



IN RE:	TERRY R. CLAYTON, BPR #12392 Respondent, an Attorney Licensed To Practice Law in Tennessee (Davidson County)	Docket No. 2008-1768-5-RS File No. 30814-5-JV 30567-5-SG
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JUDGMENT OF HEARING PANEL

This proceeding involves two separate complaints by different people. A Formal Hearing before the appointed and undersigned Hearing Panel of Cathy Carpenter Speers, Larry Gene Hayes, and Robert E. Boston was held on May 19, 2009. At that time, the parties appeared with or through counsel, provided proof and documents in support of their assertions, defenses and positions, and examined and cross-examined those witnesses from whom testimony was presented. At the close of the hearing, and with an agreed schedule established, each party upon invitation submitted proposed findings of fact and conclusions of law. Based thereon, and upon the entire record herein as established at the Formal Hearing, the undersigned deliberated and have made the following unanimous decision and thus Judgment.

FINDINGS OF FACT

1. Respondent, Terry R. Clayton, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee. Respondent's Board of Professional Responsibility number is 12392.

2. On August 1, 2008, the Board filed a Petition for Discipline against Respondent.

3. On August 27, 2008, Respondent filed an Answer.

4. The Petition contains two complaints that allege violations of Rules of Professional Conduct 1.1, 1.3, 1.4, 1.5, 5.1 and 8.4 (a) and (d).

5. On October 18, 2007, a complaint was entered as to Respondent, by a then lawyer, Ramsdale O'DeNeal, Jr., and designated as File No. 30814-5-JV.

6. In August of 2006, Respondent was contacted by a member of a local and purportedly informal Somalian group of citizens in the community, through Ms. Manamina Sufi, a former client of Respondent, who apparently was an informal leader or respected person within the local Somalian community, with a request for representation of Miriam Dirie in a criminal case.

7. Respondent informed Ms. Dirie and the member of the Somalian community that there was an attorney working from and in his office that could handle the criminal matter.

8. Ms. Audrey Armstead, an employee of Respondent, testified that she scheduled the appointment about the criminal matter with O'DeNeal on August 23, 2006. On that date, O'DeNeal met with Ms. Sufi and others to discuss the terms and conditions of his representation. Respondent was not present for any of the consultation. O'DeNeal's involvement is further discussed below.

10. Ms. Dirie's file and matter was at all times directed to O'DeNeal, the attorney with whom Respondent shared space in Respondent's office.

11. Ms. Dirie completed an "intake" form which appeared on the letterhead of Respondent.

9. Respondent's office was paid \$5,000 for this representation.

12. Respondent retained the \$5,000 payment.

13. O'DeNeal was not an employee of Respondent's law firm, but rather, an "associate" or "independent contractor." The arrangement between them was memorialized in a later "Attorney Associate Agreement" executed by Respondent and O'DeNeal.

14. Respondent testified: that he allowed O'DeNeal, a personal acquaintance, to practice law out of his office; that O'DeNeal told Respondent that he had been practicing criminal law in another part of the state; and that Respondent told O'DeNeal that he did not practice criminal law and that he typically referred criminal cases to other lawyers. In an effort to assist O'DeNeal to build a clientele, Respondent agreed to refer all of "his" criminal cases to O'DeNeal once he started to practice law in Davidson County. To do so, Respondent, without then entering into a written agreement, told O'DeNeal that a good time for him to start "renting space" from him in his office would be the first of August, 2006, as he would then be out of town attending the National Bar Association Convention.

15. O'DeNeal continued to represent clients from Respondent's office in Davidson County and also in West Tennessee. While working from Respondent's law office and using his office space, he did not make any other payments to Respondent except as related to the \$5,000 payment mentioned above.

16. On November 30, 2006, Respondent and O'DeNeal entered into a written agreement setting forth terms and conditions of their association. This document is the "Attorney Associate Agreement" that ostensibly formalized the agreement already in place between Respondent and O'DeNeal.

17. The Agreement provided that Respondent would receive all fees generated by O'DeNeal, and return to him a set percentage or dollar amount of those fees dependent upon the type of matter. It does not refer to "rent" or "overhead."

18. Their Agreement provides "clients that associate represents by virtue of Firm referral are considered clients of the Firm and not clients of any particular member of the Firm." The Agreement also provided for Respondent and O'DeNeal to have periodic meetings to determine if O'DeNeal would be brought into Respondent's law firm on a more permanent basis.

19. Respondent did not have any further direct communications with O'DeNeal, Ms. Dirie, or anyone else in the Somali community regarding the representation of Ms. Dirie other than at the outset. Neither Ms. Dirie nor Ms. Sufi informed Respondent that there was a problem with O'DeNeal's representation of Ms. Dirie. Respondent was not directly informed that O'DeNeal had apparently abandoned Ms. Dirie as a client.

20. Neither Respondent nor O'DeNeal responded to pretrial motions in the Dirie matter, and failed to attend the trial set for January 22, 2007.

21. The trial was reset for July 23, 2007 and a pre-trial hearing was scheduled for July 19, 2007. Neither Respondent nor O'DeNeal appeared at the pre-trial hearing and the trial. The trial was continued and new counsel was appointed to represent Ms. Dirie.

24. Respondent refunded the \$5,000 fee after this disciplinary petition was filed.

25. Respondent took no action to ensure that Ms. Dirie was receiving competent and diligent representation after directing the representation to O'DeNeal.

26. Even when Respondent became aware that O'DeNeal had apparently abandoned the representation of Ms. Dirie, he took no effective action to ensure—or even seek or suggest—that she receive competent and diligent representation.

27. Respondent and his office staff were aware of unacceptable and inexcusable office habits of O'DeNeal during this period of time relevant to Ms. Dirie's representation. He was in a position easily to end the Attorney Associate Agreement and any other association well before he did so.

28. O'DeNeal was suspended from the practice of law for one (1) year for his failure to represent Ms. Dirie competently and diligently.

29. Respondent was aware of other clients who complained about O'DeNeal's services during the period of time that he was associated with Respondent.

30. Respondent's Agreement with O'DeNeal provided that Respondent would receive the fees generated by O'DeNeal, and return to him a percentage or set amount of those fees. Regardless of how it is subsequently described by Respondent—rent, office expense or whatever, the result and calculation of their financial arrangement remains clear.

31. On or about September 7, 2007, a complaint was entered as to Respondent by Nekia Smith and designated as File No.: 30567-5-SG.

32. Ms. Smith, a paralegal, was a former client of Respondent whom sought his services for a bankruptcy petition. Ms. Smith testified that she had previously utilized Respondent's services to file a Chapter 13 bankruptcy in 2000, and then had converted her case to a Chapter 7 or complete liquidation in 2002.

32. On or about May 17, 2007, Ms. Smith called Respondent's office requesting assistance with filing the bankruptcy petition. Respondent's office staff apparently determined that it should be filed as a Chapter 13 pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) Regulating Debt Relief Agencies, 11 U.S.C.A. §101, esq.

33. After an initial meeting in his office, Ms. Smith believed Respondent to be her attorney. While the level of Respondent's direct actions is not clear, his office staff very clearly was assisting her in pursuit of her legal matter.

34. At this initial meeting, Ms. Smith expressed her concern that her home was at risk of foreclosure as Ms. Smith was significantly behind on her mortgage payments.

36. Respondent's staff pursuant to what was described at the Hearing as standard operations procedures instructed Ms. Smith to come to the law office to pick up a blank 17 page bankruptcy questionnaire that contained a cover sheet instructing her to bring all of the documents purportedly needed or relevant to the proceeding for which she was being represented. The cover sheet sought from Ms. Smith proof of income for the last 6 months; tax returns for the last three years; mortgage closing documents, copy of all bills; and credit report and proof of having attended consumer counseling class.

37. Ms. Smith dropped off at Respondent's office what was described by Respondent as her partially completed bankruptcy questionnaire on or about May 25, 2007, without making an appointment.

38. Ms. Smith had faxed to Respondent a letter on May 22, 2007, from her employer stating her income for February 2007 and a letter setting forth allegedly what her income was for six (6) months. Respondent's paralegal testified that he called Ms. Smith and told her that these documents did not qualify as "pay advices" and could not be used as verification of her income. On June 4, 2007, Ms. Smith faxed a February "pay advice" and a Notice of Foreclosure dated January 29, 2007, that reflected the description of the property and an early but obviously then inaccurate home foreclosure date of February 28, 2007. Respondent's paralegal testified that he

repeatedly called Ms. Smith requesting her to bring in additional pay advices and tax returns, as they were required by the BAPCPA.

39. Ms. Smith testified she provided Respondent with all of the relevant information she had in her possession. Ms. Smith testified she believed she had provided Respondent with all documents necessary to file a petition for bankruptcy.

40. Respondent's office personnel informed Ms. Smith that they would file the bankruptcy petition.

41. Between May 17, 2007 and July 24, 2007, Ms. Smith testified Respondent would not return her several telephone calls and that he did not otherwise speak to Ms. Smith.

42. Ms. Smith did, however, communicate several times with Respondent's office, providing it again with copies of documentation she had already provided, and providing it with additional correspondence from debt collectors.

43. Ms. Smith testified she continued to express to Respondent's staff concerns about her home being foreclosed, and again received assurances from Respondent's staff that he would file the bankruptcy petition.

44. On July 24, 2007, Respondent's paralegal called Ms. Smith to let her know that her bankruptcy petition "was complete" and that she could come in to sign it so it could be filed. Ms. Smith had not provided any additional information after June 4, 2007, 44 days earlier.

45. Respondent was running for Metro Council during this period of time and while still regularly involved in it did not have full attention to his law practice.

46. Ms. Smith's home was foreclosed upon on July 18, 2007. Respondent failed to file the bankruptcy petition prior to the foreclosure of Ms. Smith's home.

CONCLUSIONS OF LAW AND OPINION

1. Respondent contends in his pre-trial brief to the Hearing Panel that no attorney-client relationship existed between Ms. Smith and himself because Ms. Smith did not execute a written retainer or fee agreement. Respondent relies on the provisions of 11 U.S.C. §528(a)(1) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 which states:

Not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person .. [to] execute a written which such assisted person that explains clearly and conspicuously-

- (A) the services such agency will provide to such assisted person; and
- (B) the fees or charges for such services, and the terms of payment[.]

The Act, according to Respondent's interpretation focused upon 11 U.S.C. §§ 526, 527, and 528, established new and significant restrictions on the activities of debt relief agencies and as such the representation he provided as a lawyer.

2. Respondent also asserts he did not enter into an attorney-client relationship with Ms. Smith for him to prepare a bankruptcy petition prior to her house being foreclosed. Ms. Smith, he posits, failed to meet a condition precedent to establish an attorney-client relationship by fulfilling her duties pursuant to 11 U.S.C.A §521 and Bankruptcy Rule 4002 (b). Rule 1007 required that Ms. Smith sign her Chapter 13 bankruptcy petition before Respondent could file it. Ms. Smith signed her bankruptcy petition after her house was foreclosed on; therefore, as the Panel understands that Respondent sees it, he was unable to file her petition until July 24, 2007, which was after her house was foreclosed upon.

In addition, Respondent says that 11 U.S.C.A §521 requires a written contract between the client and attorney; Ms. Smith never signed a written contract with him; therefore, she never entered into a contractual attorney-client agreement with Respondent.

3. The Hearing Panel carefully has considered Respondent's arguments including that 11 U.S.C. §528(a)(1) requires a finding that no attorney-client relationship existed on this record, but does not find that the scope of that statute leads to Respondent's conclusions. The interpretation provision in 11 U.S.C. §526(d)(2) clearly provides that 11 U.S.C. §§ 526, 527, and 528 shall not be deemed to limit or curtail the authority or ability of a state or subdivision or instrumentality thereof to determine and enforce qualifications for the practice of law under the laws of that state. 11 U.S.C. §526(d)(2). Beyond this provision the Act is silent as to whether it is intended to pre-empt or curtail other state interest in regulating and disciplining attorney's conduct. *In re Attorneys at Law and Debt Relief Agencies*, 332 B.R. 66, 70 (Bk. S. D. Ga. 2006). Further,

Preemption is not to be lightly presumed. Moreover, when Congress legislates in a field traditionally occupied by the states, a preemption review starts with the assumption that the historic police powers of the states were not be preempted unless that was the clear and manifest purpose of Congress. Regulation of the Bar is an historic police power of the States.

White v. Medial Review Consultants, 831 S.W.2d 662, 664 (Mo. Ct. App. 1992).

4. The plain language of the Act also undermines acceptance of Respondent's position. 11 U.S.C. §528 is titled "Requirements for Debt Relief Agencies". Section 526(c) of the same section imposes civil liability for violations of the duties set forth for Debt Relief Agencies. Reading these sections together, it is clear to the Panel that they are designed to place limits on debt relief agencies, not to govern or supersede traditional state and ethical principles that establish the attorney-client relationship, nor to abrogate or supersede the Rules of Professional Conduct in Tennessee.

5. The Tennessee Supreme Court has ultimate authority to govern the behavior of attorneys in the State of Tennessee. See *In re Burson*, 909 S.W.2d, 768, 773 (Tenn. 1995). Analysis of the relationship between an attorney and his client begins with the recognition that

an attorney owes the duty to his or her client to protect all the client's rights and assert all claims to which the client is entitled. See Boston, Bates & Holt v. Tennessee Farmers Mut. Ins. Co., 857 S.W.2d 32, 35 (Tenn. 1993).

6. The attorney/client relationship is based on contract and, in its most basic terms is an agreement involving "the exchange of competent legal services in return for an agreement to pay a reasonable fee." *Starks v. Browning*, 20 S.W.3d 645, 650 (Tenn. Ct. App. 1999).

7. With the exception of contingency fee agreements, there is no requirement under Tennessee law or the Rules of Professional Conduct, that fee agreements or retainer agreements be in writing. See Tenn. Sup. Ct. R. 9, RPC 1.5.

8. The Board of Professional Responsibility has adopted the American Bar Association ("ABA"), Standards for Imposing Lawyer Sanctions (1986, as amended 1992) ("ABA Standards") for disciplinary matters. Dockery v. Board of Prof 1 Responsibility, 937 S.W.2d 863, 866 n.6 (Tenn. 1996). Although not binding on this Panel, the ABA Standards instruct this body to examine the duty violated, the attorney's mental state, the potential or actual injury caused by the attorney's misconduct, and the existence of any aggravating or mitigating factors. ABA Standard 3.0. The standards generally provide that suspension is appropriate when a lawyer knowingly breaches a duty or otherwise engages in misconduct. See ABA Standards 4-7. The standards recommend that suspensions be for a minimum of six months. ABA Standard 2.3.

9. In determining the nature of the ethical duty violated, the standards assume that the most important ethical duties are those obligations which a lawyer owes to clients. Discipline is public in nature; however, "... in cases of minor misconduct, when there is little or no injury to

a client, the public, the legal system, or the profession, when there is little likelihood of repetition by the lawyer, private discipline should be imposed.” See ABA Standard 1.2.

10. With regard to the relationship between Respondent and Ms. Smith, the attorney-client relationship existed after the initial meeting in which Ms. Smith provided documents to Respondent, requested that a bankruptcy petition be filed, and Respondent through his office agreed to do so. Respondent’s office accepted the documents and acknowledged the beginning of the attorney- client relationship by assuring Ms. Smith that her matter would be taken care of. Indeed, many actions were taken and legal advice provided for many weeks.

11. At the Hearing of this matter, Ms. Smith’s testimony, Respondent’s testimony and the testimony of Respondent’s employees conflicted in some respects. However, the Hearing Panel does not find many of those to be in material ways, and none in ways that alter the fundamental issues. Ms. Smith’s testimony was credible with regard to the beginning of the attorney-client relationship and the communications between Ms. Smith and Respondent’s office prior to the filing of the bankruptcy petition. As pointed out by Petitioner, Respondent, until his pre-trial brief, never disputed that an attorney-client relationship existed between him and Ms. Smith.

12. Rule of Professional Conduct 1.1 requires that an attorney “provide competent representation to a client. Rule 1.1 further states that competent representation “requires legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”

13. Respondent’s failure to respond timely to file Ms. Smith’s bankruptcy petition and failure to provide any representation whatsoever to Ms. Dirie after his office received and retained payment for her representation violated the “thoroughness and preparation” requirements of Rule 1.1.

14. Rule 1.3 of the Tennessee Rules of Professional Conduct requires that a lawyer “act with reasonable diligence and promptness when representing a client.”

15. Again, Respondent’s failure to respond more timely to prepare and file Ms. Smith’s bankruptcy petition, or end the relationship with her, and failure to provide any representation or supervision thereof whatsoever to Ms. Dirie after having retained payment for her representation violated Rule 1.3. The actions of O’DeNeal are deplorable. They do not in the opinion of this Panel relieve Respondent of his own responsibilities that flow from his choice to undertake his relationship with him that directly implicates the Rules of Professional Conduct.

16. Rule 1.4 of the Tennessee Rules of Professional Conduct requires that a lawyer “keep a client reasonably informed about the status of a matter and comply with reasonable requests for information within a reasonable time” and “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

17. Respondent failed to meet this duty by adequately communicating with Ms. Smith regarding the status and filing of her bankruptcy petition.

18. Rule 1.5 of the Tennessee Rules of Professional Conduct requires that a “lawyer’s fee and charges for expenses shall be reasonable.” Rule 1.5(e) further provides:

A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the division is in proportion to the services performed by each lawyer or, by written consent of the client, each lawyer assumes joint responsibility for the representation; and
- (2) the client is advised of and does not object to the participation of all lawyers involved; and
- (3) the total fee is reasonable.

19. Respondent violated Rule 1.5 by accepting payment made to represent Ms. Dirie and providing no representation to her whatsoever. Characterizations of the formula based fee splitting that is involved herein as rent or overhead does not remove it from Rule 1.5 and such is

also directly opposite to the language used in the Attorney Associate Agreement. Respondent entered into a fee arrangement with O'DeNeal in which O'DeNeal, even though presented by Respondent as not a member of Respondent's firm, split fees with Respondent in violation of Rule 1.5(e).

20. Rule 5.1 of the Tennessee Rules of Professional Conduct provides that

(a) A partner in a law firm and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer:

(i) is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, has direct supervisory authority over the other lawyer, is serving as co-counsel with the other lawyer in the matter, or is sharing fees from the matter with the other lawyer; and

(ii) knows of the conduct at the time when its consequences can be avoided or mitigated, but fails to take reasonable remedial action.

21. Respondent violated Rule 5.1 by failing to take remedial action with regard to O'DeNeal in the representation of Ms. Dirie after learning of his conduct and probable consequences. While O'DeNeal certainly caused the later problems, Respondent has a clear duty to have taken at least minimal steps consistent with Rule 5.1.

22. Respondent's actions also violated section 8.4(a) and (d). RPC 8.4(a) provides that it is professional misconduct of 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;

Respondent's actions violated RPC 1.1, 1.3, 1.4, 1.5, and 5.1, and thus, constitute misconduct under 8.4(a).

23. Rule 8.4(d) provides that it is professional misconduct for a lawyer to “engage in conduct that is prejudicial to the administration of justice.”

24. Respondent’s failure adequately to address the issues involved with either of the Complainants constitutes a violation of 8.4(d).

JUDGMENT

1. Section 4.42 of the ABA Standards states:

Suspension is generally appropriate if:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

2. The Hearing Panel finds from all the evidence that Ms. Dirie and Ms. Smith were clients and, as set forth later, that such is consistent with repeated prior acts and thus what is deemed a pattern. Respondent knowingly failed to provide a minimal level of adequate services for both Ms. Dirie and Ms. Smith to their actual or potential inquiries. This standard is applicable in this matter.

3. Section 4.12 of the ABA Standards states:

Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4. Respondent improperly agreed to and did split fees with O’DeNeal and failed to provide any services despite the payment of a fee related to Ms. Dirie. This standard is applicable in this matter.

5. Section 8.12 of the ABA Standards states:

Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause

injury or potential injury to a client, the public, the legal system, or the profession.

Based upon the evidence presented, this standard is applicable in this matter.

6. On January 13, 1995, Respondent received an Informal Admonition from the Board of Professional Responsibility for failing reasonably to communicate with a client and delaying her matter unnecessarily.

8. On July 26, 2007, Respondent was publicly censured by the Board of Professional Responsibility for neglect of two clients and failure to communicate with those two clients.

7. On September 24, 2007, Respondent received a Private Informal Admonition from the Board of Professional Responsibility for failing promptly to move a client's case forward and failing to keep the client informed of the status of her case.

9. Because Respondent has been previously—and repeatedly—disciplined, receiving a private informal admonition on January 13, 1995 and September 24, 2007, respectively, and a public censure on July 26, 2007, and because those instances of prior discipline are, in the Panel's view, factually and behaviorally similar to the conduct addressed in the pending matter, Standard 8.12 is applicable.

10. Suspension is an appropriate discipline for the actions of Respondent.

11. Several cases, similar to Respondent's, support the imposition of suspension. On July 10, 2005, David D. James, Jr. was suspended for one (1) year for neglecting his client's bankruptcy case and failing to file an appropriate Motion to Reopen. On April 27, 2000, Cynthia N. Asbury was suspended by the Supreme Court of Tennessee for thirty (30) days for neglect including failing to appear in court on three occasions which lead to a judgment being obtained against her client. On January 6, 1992, Fernando J. Ramos was suspended by the Supreme Court of Tennessee for neglecting his clients' bankruptcy matters.

12. Section 9.2 of the ABA Standards sets forth several factors that may act to effect the level of discipline imposed.

13. Respondent has substantial experience in the practice of law, having been licensed to practice law since 1987. He is intelligent, personable, and clearly knowledgeable.

14. In deciding an appropriate sanction when an attorney is found to have breached the Rules the Panel is required to review all of the circumstances of the particular case and also, for the sake of uniformity, sanctions imposed in other cases presenting similar circumstances. Board of Prof'l Responsibility v. Maddux, 148 S.W. 3d 37, 40 (2004). The Supreme Court in Maddux added that guidance exists from the American Bar Association's Standards for Imposing Lawyer Sanctions, which have been adopted by the Board for disciplinary matters. See id.

In deciding to up hold a six month suspension, the Tennessee Supreme Court has stated that Section 4.12 of the Standards provides that "[s]uspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client." and further provides at Section 8.2 that "[s]uspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that caused injury or potential injury to a client, the public, the legal system, or the profession." Board of Prof'l Responsibility v. Allison, W2008-00338-SC-R3-CV, filed May 14, 2009, p. 12.

15. Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. See ABA Standard 4.43. Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes little or no actual or potential injury to a client. See ABA Standard 4.44.

16. Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and cause little or no actual or potential injury to a client. See ABA Standard 4.54. There is no proof in the record that Respondent handled a legal matter that he was not competent to represent the client.

17. Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential harm. See ABA Standard 4.5. Admonition is generally appropriate when a lawyer engages in any other conduct which reflects adversely on the lawyer's fitness to practice law. See ABA Standard 5.14.

18. Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no actual or potential injury to a party, or cause little or no actual or potential interference with the outcome of the legal proceeding. See ABA Standard 6.34.

19. Based on the proof introduced at the Hearing, the above-stated findings of fact and conclusions of law, and the record as a whole, and considering the standards for discipline decisions, the Hearing Panel finds Respondent should be suspended for seven (7) months. Respondent should actively serve one month thereof and the remaining six (6) months should be served on probation.

The Panel further submits and so finds that the following terms of probation are appropriate:

- A. During the probation period Respondent shall attend three (3) hours of Continuing Legal Education on the topic of legal ethics and three (3) hours of law

office management. These hours shall be over and above the hours normally required by the Commission on Continuing Legal Education.

B. Respondent shall employ, at his own expense, a Law Practice Monitor, approved by Disciplinary Counsel. No later than the end of the first month of the probation period, the Law Practice Monitor will meet with Respondent to discuss good office management practices and make suggestions on improving Respondent's management of his law practice.

C. The Law Practice Monitor shall also meet at least monthly with Respondent during this suspension and probation to review Respondent's open files to ensure (1) that Respondent is meeting all deadlines in each case and (2) communicating candidly and timely with each of his clients. The Law Practice Monitor shall provide monthly reports to Disciplinary Counsel detailing Respondent's compliance with these conditions. The Law Practice Monitor may determine if more frequent meetings or reports are appropriate and if so each will be a term of this probation.

D. Failure to meet any of the above listed conditions or upon report to Disciplinary Counsel from the Law Practice Monitor that Respondent has failed to meet all deadlines in his cases or communicate candidly and timely with each of his clients will result in the revocation of Respondent's probation. Upon revocation of his probation, Respondent will be required to serve the entirety of the suspension beginning (10) days from the date of revocation.

20. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. The Panel finds that Respondent did

not have any dishonest or selfish motive for the Rule violations established by the proof at the Formal Hearing. Respondent made good faith if not timely effort to make restitution or rectify at least some of the consequences of the violations. Respondent made full and free disclosure to disciplinary counsel and the Board and had a cooperative attitude toward the proceedings and at the Formal Hearing, including representation by prepared and competent counsel. The Panel's unanimous decision is not intended to cast doubt or criticism on Respondent's overall character, ability or competence, nor does it; it is reflective of the Panel's unanimous view that Respondent's decisions relevant to these two complaints, and the manner in which he has chosen to operate his law practice, are not in compliance with nor do they meet the requirements of stated Rules. This view is especially impacted by the prior disciplinary proceedings that were introduced into the record, and what clearly appears to be repeated instances of relatively easily preventable conduct that violates the Rules. Absent the findings set out in this paragraph, which the Panel has considered as mitigating circumstances, the recommended length of suspension or the amount thereof not served on probation justifiably would have been longer.

So ORDERED on July 20, 2009

*Cathy C. Spers by RRB w/ express
direction*

*Larry G. Hager by RRB w/ express
direction*

Robert J. Smith

Certificate of Service

I certify that a copy of the foregoing Judgment has been mailed to the Board by email and regular mail, on this the 20th day of July, 2009.


Panel Chair