

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

FILED  
2016 JUN -7 AM 11:53  
BOARD OF PROFESSIONAL  
RESPONSIBILITY  
Kew EXEC. SEC.

**IN RE: CHARLES EDDIE DANIEL  
BPR No. 14016, Respondent,  
an Attorney Licensed to Practice  
Law in Tennessee  
(Knox County)**

**DOCKET NO. 2014-2315-2-AJ**

---

**JUDGMENT OF THE HEARING PANEL**

---

This matter came on for trial to be heard on March 1-2, 2016, before the Hearing Panel consisting of Sara E. Compher-Rice, Panel Chair; Oliver D. Adams, Panel Member; and Kenneth F. Irvine, Panel Member (the "Panel"). Present at the Hearing were Charles Edward Daniel (the "Respondent"); Respondent's counsel, H. Doug Nichol; and Alan D. Johnson, counsel for the Board of Professional Responsibility (the "Board").

At issue was the Petition for Discipline, Docket No. 2014-2315-2-AJ, filed against Respondent on May 2, 2014 (the "Petition").<sup>1</sup>

The Panel heard testimony from the following: (i) on behalf of the Respondent - the Respondent, Tom Overton, Randy Nichols, Deborah Fulton, Ron Attanasio, Sonia Cooper, Steve Sharp, Steve Cook, and Matt Cook; and (ii) on behalf of the Board - Michael Pemberton and Dana Pemberton.

Following the hearing on this matter, the parties submitted Proposed Findings of Fact and

---

<sup>1</sup> Because this case was initiated prior to January 1, 2014, it is governed by the pre-2014 version of Tenn. Sup. Ct R. 9.

Conclusions of Law upon request of the Panel. Thereafter, due to unforeseen circumstances, the Panel required additional time to issue this Judgment. Counsel for both of the parties agreed upon the requested extension.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The following constitute the facts found by the Panel:

1. Respondent is an attorney licensed to practice law in Tennessee since 1991.
2. The Petition against Respondent was filed on May 2, 2014.
3. Respondent filed a Response to the Petition on June 17, 2014.
4. This case involves one (1) complaint against the Respondent.
5. In the summer of 2002, Michael Pemberton (“Mr. Pemberton”) and Respondent formed the general partnership of Daniel Pemberton to conduct the practice of law (the “Partnership”).
6. Immediately prior to the formation of the Partnership, Mr. Pemberton worked for the law Partnership of Lewis, King, Krieg, and Waldrop (“Lewis King”), and Respondent maintained a law office as a solo practitioner.
7. With respect to the cases that Mr. Pemberton was bringing from Lewis King to the Partnership, it was agreed that fees earned from the cases Mr. Pemberton brought from Lewis King would be shared between the Partnership and Lewis King based upon the work performed on the cases while Mr. Pemberton was still with Lewis King and the work performed on the cases after the formation of the Partnership.
8. Conflicting evidence was offered with respect to how fees from the cases that Respondent was bringing to the Partnership from his previous solo practice would be treated. Mr. Pemberton testified that he told Respondent that Respondent should keep fees earned on those

cases for work performed prior to the formation of the Partnership, but that Respondent declined to do so. Respondent testified that Mr. Pemberton agreed that Respondent was entitled to keep the fees earned from cases he brought to the Partnership prior to the formation of the Partnership. Tom Overton, who was working on a case with Respondent at times material, testified that he had discussions with Mr. Pemberton regarding Respondent keeping fees earned on Respondent's cases prior to the formation of the Partnership, and that Mr. Pemberton acknowledged that to be the agreement with Respondent. Mr. Pemberton flatly denied Tom Overton's testimony and stated that he did not discuss Partnership business with anyone who was not a partner. Respondent testified at a deposition taken on August 25, 2004, in his divorce case as follows:

Q: When it was just Mike and you, how did you divide the income?

A: We just split it up even.

Q: So, it was 50/50 from day one?

A: Yes, ma'am, as best I remember, it was.

Q: Okay, before he came and you were a sole practitioner and you had cases that were – you were already working when he came, did you divided the income from those cases or did you retain those cases as separate from the partnership?

A: I divided all but part of one case as best I remember.

Q: Okay. And that case was what?

A: It was Regan v. Phoenix Corporation.

After weighing the conflicting testimony, the Panel finds (i) that Respondent and Mr. Pemberton agreed that Respondent would retain all fees earned on the case of *Regan v. Pheonix Corporation*, including those fees earned and paid after the formation of the Partnership, but (ii) that Respondent and Mr. Pemberton did not agree that Respondent would retain fees Respondent

earned other cases that Respondent brought to the Partnership and that those fees would be split between Respondent and Mr. Pemberton as partners at the time the fees were received.

9. After the formation of the Partnership, Mr. Pemberton suggested the addition of additional attorneys, who would become partners in the Partnership. In September 2002, James K. Scott joined the partnership as either an employee or partner, but it is clear that he was a partner of in 2003. In December 2002, Dana L. Scott (now known as Dana S. Pemberton) (“Ms. Pemberton”) joined the partnership as either an employee or partner, but it is clear that she was a partner in 2003.

10. The name of the partnership was changed to Pemberton & Scott on March 23, 2010.

11. At all times that he was a partner of the Partnership, Respondent oversaw and managed the Partnership’s operating and trust accounts, receipt of money, accounting for money, making deposits, review and reconciliation of bank statements, day-to-day financial operations, payroll, payment of bills, payment to third-parties, clients and maintaining and reporting on case file expenses.

12. Respondent had QuickBooks on his computer that he used to keep up with the Partnerships’ business.

13. Respondent testified that other partners had access to the QuickBooks program through a known password.

14. Ms. Pemberton testified that she never accessed QuickBooks on Respondent’s computer, and did not know how to operate the program until she took over the bookkeeping function of the Partnership in January 2010.

15. Mr. Pemberton testified that he never accessed QuickBooks on Respondent’s computer.

16. Mr. Pemberton testified that during the course of the Partnership, the partners met approximately four (4) times per year to discuss the financial status of the Partnership.

17. Ms. Pemberton testified that during the course of the Partnership, the partners met approximately four (4) times per year to discuss the financial status of the Partnership.

18. Respondent testified that on or about July 1, 2009, he informed the other three partners that he was withdrawing from the Partnership, and that as of that date, he did not deem himself a partner.

19. Respondent testified that after July 1, 2009, he continued to use his office in the building owned by the Partnership, and continued to use the resources provided by the Partnership.

20. Beginning in January 2010, Ms. Pemberton was to assume the responsibility for overseeing the Partnership's finances that had been managed by Respondent.

21. Respondent testified that he believed QuickBooks was installed on Ms. Pemberton's computer in August 2009, and in his answer to the Petition for Discipline at paragraph 25, he alleges that he began instructing Ms. Pemberton in August 2009 on the QuickBooks program and bank accounts.

22. Ms. Pemberton testified that QuickBooks was installed on her computer sometime in January 2010, and it was not until then that she began working with Respondent learning how to operate QuickBooks.

23. On or about January 21, 2010, Ms. Pemberton assumed the financial oversight of the Partnership's accounts.

24. Thereafter, Ms. Pemberton discovered suspicious transactions entered on the Partnership's books by Respondent.

25. Ms. Pemberton also discovered a series of checks written and signed by Respondent in January 2010.

26. Respondent testified that he had nothing to do with Partnership accounts or banking transactions after January 1, 2010. *See also* Respondent's answer to the Petition for Discipline at paragraph 25.

27. Ms. Pemberton testified that her signature did not begin to appear on Partnership checks until January 21, 2010. **Exhibit D** to **Trial Exhibit 4** supports her testimony.

28. Further investigation by Mr. Pemberton and Ms. Pemberton revealed that beginning in August, 2006, and continuing through June, 2009, Respondent deposited settlement checks into the Partnership's trust account, then wrote a check to the client, and two checks to the Partnership. He would then deposit one of the checks payable to the Partnership into the Partnership's operating account, and deposit the other check payable to the Partnership into his personal account.

29. Ms. Pemberton also found checks written from the Partnership's trust account to clients that were then deposited into Respondent's personal account during this same time period. However, the checks written to individual clients were found to be a very limited number of checks. The proof before the Panel further indicated that no funds were misappropriated from any client.

30. Respondent testified at trial, and in his Answer to the Petition, that exhibits 1-45 of the Petition for Discipline are true and correct copies of checks and settlement sheets he prepared, and the same are admitted into evidence and considered by the Panel.

31. Respondent testified, and it was not disputed, that upon the formation of the Partnership, Respondent advanced funds to cover all operating expenses of the Partnership, including salaries for the attorneys and support staff.

32. Respondent believed he was owed money for the funds he advanced to cover operating expenses for the Partnership, especially in the early years of the Partnership.

33. Respondent testified that he was writing the checks that were attached to the Petition in order to reimburse himself the funds he had advanced to the Partnership, and that Mr. Pemberton was aware of what he was doing.

34. Respondent testified that he was owed reimbursement from the funds he advanced, and that this was known to Mr. Pemberton.

35. Respondent testified that he kept a hand written record on a legal pad of amounts he advanced to the Partnership, and amounts he repaid himself.

36. Respondent testified that Mr. Pemberton was aware of this document and that he had shared it with him several times.

37. Respondent testified that he has lost the legal pad and can no longer find it.

38. Mr. Pemberton contends that Respondent was no longer owed any money and that Respondent did not inform him about the transactions in which Respondent deposited the money into his personal account.

39. Mr. Pemberton testified that it was not until Ms. Pemberton took over the financial matters of the Partnership in January 2010, that he learned of these transactions.

40. Mr. Pemberton testified that in 2005-2006, the Partnership received substantial sums from settlements, and that whatever money was owed to Respondent and the other partners, was paid to all of them and that all of the partners were "square" with respect to loans to the Partnership and moneys owed them by the Partnership.

41. **Exhibit 7** includes lists of checks written by the Partnership, and includes check number 1760 written to Respondent on December 5, 2005, in the amount of \$236,574.31, that Mr.

Pemberton testified was the check paid to Respondent for his contributions to the Partnership.

42. Respondent testified that the money paid to him from the settlements in 2005-2006 represented only money owed to Respondent as a result of funds that he personally advanced the Partnership in relation to these cases, and did not represent reimbursement from all funds he advanced prior to this time.

43. **Exhibit 7** also includes check numbers 7135 and 7133 written to Respondent and Mr. Pemberton respectively on January 9, 2006 in the amounts of \$155,646.06.

44. Mr. Pemberton testified that these checks represented amounts owed to him and Respondent for missed draws and/or bonuses.

45. Ms. Pemberton testified that the Partnership received substantial settlements in 2005-2006, and that everyone was asked how much they were owed.

46. Ms. Pemberton further testified that the partners trusted each other to keep up with amounts owed for advances or missed draws, and those amounts were paid to each partner at that time.

47. Respondent testified that he believed it was appropriate to write checks from the trust account payable to the Partnership, and then deposit those checks into his personal account as a means of re-paying amounts he claimed he was owed.

48. Respondent submitted as trial **Exhibit 6** a spread sheet that he testified represented the clients he brought to the Partnership, and the amounts he was owed from fees generated by those clients.

49. Respondent admitted that **Exhibit 6** was prepared after the law Partnership of Pemberton, Pemberton and Scott filed a civil action against him to recover the funds, and that he had not prepared it at the inception of the Partnership.



50. Respondent admitted in response to the Petition for Discipline that he took a total of \$673,211.83 from the Partnership. (Petition for Discipline, paragraph 77; Response to Petition for Discipline, paragraph 43.)

51. All parties admitted that a civil action was initiated by each party relating to the dispute over funds owed to Respondent and to the Partnership. All litigation between the parties as it relates to the transactions at issue in the Petition has been concluded and settled.

52. Further Tom Overton, Randy Nichols, Deborah Fulton, Ron Attanasio, Sonia Cooper, Steve Sharp, Steve Cook, and Matt Cook all testified on behalf of the Respondent and attested to his strong character and good reputation as a lawyer. It is further evident that Respondent was a competent and skilled lawyer.

53. Several character witnesses testified on behalf of Respondent, stating that he is a competent lawyer and honest person. There was also testimony that Respondent performed substantial pro bono services for clients.

54. Respondent's character witnesses admitted that they had little or no knowledge of the facts of this case and the allegations set forth in the Petition.

55. There was no evidence that Respondent deprived any client any funds due, nor any misappropriation of money belonging to any client.

56. Based on upon the evidence submitted at trial, the Panel finds that Respondent believed that the Partnership owed Respondent money based on funds he advanced to fund the operation of the Partnership from its inception and for fees he earned on cases he brought to the Partnership. The Panel finds that rather than address the issue of what money, if any, Respondent was owed by the Partnership through formal negotiation or litigation with the other partners, that Respondent instead paid himself directly from cases that were settled through the check writing

scheme described above. The Panel finds that Respondent did not make the other partners of the Partnership aware of what he was doing. The Panel finds that the manner in which Respondent repaid himself money to which he thought he was owed was conducted in a way to conceal his actions from his other partners. The Panel finds that Respondent wrongfully took money from the Partnership.

The following constitute the Panel's conclusions of law:

57. Pursuant to Tenn. Sup. Ct. R. 9, Section 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 that violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline.

58. The Respondent has failed to conduct himself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited within the Petition.

59. The Board has established by a preponderance of the evidence that Respondent has violated the Rules of Professional Conduct ("RPC") Rule 8.4 (b) and (c) which are as follows:

It is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

60. Respondent's actions demonstrate that he purposely and wrongfully deposited funds that belonged to the Partnership into his own account and, although he believed the money was owed to him, the manner in which these funds were deposited clearly show his intention to conceal his actions from other partners in the Partnership.

61. Tenn. Sup. Ct. R. 9, Section 8.4, requires Hearing Panels to consider the American Bar Association's Standards for Imposing Lawyer Sanctions (ABA Standards) in these disciplinary proceedings.

The ABA Standards applicable in this case are as follows:

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.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

When considering the appropriate discipline, the Panel may consider both aggravating and mitigating factors, which justify an increase or reduction in the degree of discipline to be imposed.

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

1. Respondent's dishonest or selfish motive is an aggravating circumstance justifying an increase in discipline to be imposed.
2. Respondent's pattern of misconduct is an aggravating circumstance justifying an increase in discipline to be imposed.
3. Respondent's substantial experience in the practice of law is an aggravating circumstance justifying an increase in discipline to be imposed.

Pursuant to ABA Standard 9.32, the following mitigating factors are present in this case:

1. Respondent's absence of a prior disciplinary record.
2. Respondent's full and free disclosure to disciplinary board and cooperative attitude toward the proceedings.
3. Respondent's good character, reputation, competency as a lawyer, and contribution to the practice of law through pro bono efforts as evidenced through the testimony of Tom Overton, Randy Nichols, Deborah Fulton, Ron Attanasio, Steve Sharp, and Steve Cook.
4. No client was deprived of any money belonging or owed to a client.
5. The delay in the disciplinary proceedings against Respondent. All matters forming the basis of this action occurred prior to 2010, yet the proceedings were not initiated until May 2, 2014.

### **JUDGMENT**

In closing arguments, the parties argued that the Panel should consider the uniformity of punishment in disciplinary actions, and Respondent argued that should he be found to have violated the Rules of Professional conduct, any punishment should be no more than thirty (30) days active suspension imposed on the respondent in *Bd. of Prof'l Responsibility v. Maddux*, 148 S.W.3d 37 (Tenn. 2004). The Board argued that *Lockett v. Bd. of Prof'l Responsibility*, 380 S.W.3d 19 (Tenn. 2012), is a better comparison.

Unlike the *Lockett* matter, there is no evidence in the record that Respondent pled guilty to a crime. Further, although the Panel finds that Respondent intended to permanently deprive his partners of the funds that he misappropriated from the Partnership, he did so based upon his sincere belief that these funds were owed to him from the Partnership. Based upon the above aggravating and mitigating factors, the Panel finds the appropriate discipline in this case is suspension from

the practice of law for a period of three (3) years, to be served on probation pursuant to Tenn. Sup. Ct. R. 9, § 12.8 and ABA Standards for Imposing Lawyer Sanctions 2.7. Because all financial matters in dispute have been settled as a result of civil litigation, no restitution is ordered as a condition of probation. Costs associated with this action are hereby assessed to the Respondent.

IT IS SO ORDERED,

/s/Sara E. Compher-Rice

Sara E. Compher-Rice., Panel Chair

/s/Kenneth F. Irvine

Kenneth F. Irvine, Panel Member

/s/Oliver D. Adams

Oliver D. Adams, Panel Member

**NOTICE TO RESPONDENT**

**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.**