

IN DISCIPLINARY DISTRICT 0
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

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BOARD OF PROFESSIONAL
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IN RE: **JIMMY VALLEJO DELGADO**
Respondent, BPR No. 22373
An Attorney Licensed
to Practice Law in Tennessee
(New Braunfels, Texas)

DOCKET NO. 2012-2126-0-KH

JUDGMENT OF THE HEARING PANEL

This matter came to be heard on the 3rd day of April, 2013 for final hearing on the Board's Petition for Discipline before John F. Floyd, Panel Chair; John B. Enkema, Panel Member; and Janelle A. Simmons, Panel Member. Krisann Hodges, Deputy Chief Disciplinary Counsel, appeared for the Board. Mr. Degado did not make an appearance despite having notice.

STATEMENT OF THE CASE

This is a disciplinary proceeding against the Respondent, Jimmy Vallejo Delgado, an attorney licensed to practice law in Tennessee. The Respondent was licensed to practice in 2002.

A Petition for Discipline, Docket No. 2012-2126-0-KH, was filed on June 1, 2012. The Petition was sent via certified mail to Respondent's office address of 267 N. Lone Star Avenue, New Braunfels, Texas, 78130, and Respondent's home address of 2727 Treble Creek, Apt 1036, San Antonio, Texas, 78258, both addresses as registered with the Board. The certified mail was returned to the Board from the home address as "Not deliverable as addressed, unable to forward" on July 2, 2012.

The Board filed a Motion for Default Judgment relative to the Petition for Discipline on

October 13, 2012. On December 7, 2012, the Hearing Panel granted the Board's Motion for Default. As a result of the Order of Default, the allegations contained within the petition are deemed admitted.

On January 7, 2013, Respondent contacted the Executive Secretary, Rita Webb, via email, requesting "how would I reopen the matter or appeal?" (Collective Exhibit 1) On January 7, 2013, Disciplinary Counsel responded to Mr. Delgado's e-mail by advising him that he should file a response. (Collective Exhibit 1) On January 8, 2013, Ms. Webb responded to Mr. Delgado's email by attaching a copy of the Petition for Discipline, Motion for Default Judgment, Appointment of Hearing Panel, Notice of Appointment of Hearing Panel, Order of Default Judgment and Notice of Hearing. (Collective Exhibit 1) The Board has received no response.

STATEMENT OF THE FACTS

Since all of the allegations in the Petition for Discipline are deemed admitted, this Panel finds that the following facts have been established.

The Board opened an investigation of alleged ethical misconduct following receipt of a referral from Jenny K. Mittleman, Deputy General Counsel for the State Bar of Georgia. (Exhibit 2) A copy of the complaint was mailed to Mr. Delgado; however, he failed to respond. (Exhibit 3) The Board sent a Notice of Temporary Suspension to Mr. Delgado on December 9, 2011 via certified mail to 267 N. Lone Star Ave., New Braunfels, TX 78130. Mr. Delgado signed the certified mail return receipt ("green card") on December 12, 2011 evidencing receipt of the complaint of disciplinary misconduct. (Exhibit 4) The Board sent a copy of the Petition for Discipline to the same address.

After a full investigation, an Investigative Panel of the Georgia State Disciplinary Board found probable cause to believe that Mr. Delgado violated Georgia Rules of Professional Conduct 1.2(a), 1.15(I), 1.15(II), 5.5, 8.4, and 9.4. (Exhibit 5) This conclusion was based on the following facts.

Mr. Delgado is licensed to practice law in Tennessee and Texas. The Investigative Panel determined that although not licensed in Georgia, Mr. Delgado is a "Domestic Lawyer" in Georgia. Mr. Delgado agreed to represent Mr. Branlio Reinoso Garcia (hereinafter "Garcia") and Ms. Edith Hernandez Reinoso (hereinafter "Edith") after their 3-yr old son was killed in Atlanta, Georgia. Garcia resides in Atlanta and Edith resides in Mexico.

Mr. Delgado never informed Garcia that he was not licensed to practice law in Georgia. He did not meet with his clients personally, and he settled the wrongful death case without his clients' knowledge or consent. Also, he falsified the wrongful death release and affidavit. Mr. Delgado did not notify his clients when he received the settlement check for \$190,000 in August of 2008. Instead, he commingled the settlement proceeds with his own funds and converted them to his own use.

Mr. Delgado sent Garcia periodic payments of approximately \$24,000, but characterized the payments as "advances". Mr. Delgado only informed his clients that he had settled the case over a year later, after repeated requests for information. In November of 2009, the Respondent sent Garcia an additional \$34,587.01, after deducting litigation expenses that he did not incur. (Exhibit 7) He did not pay Edith her share of the settlement proceeds (\$34,587.00) until December of 2010, after the matter had been brought to the attention of the State Bar of Georgia in June 2010. (Exhibit 8)

The Investigative Panel of the State Disciplinary Board directed the Office of the General Counsel, State Bar of Georgia to issue a Notice of discipline for disbarment against the Respondent. The Georgia Supreme Court, however, concluded that because the Respondent was not a member of the Georgia Bar, it did not have the authority to disbar him. (Exhibit 6)

Mr. Delgado has a prior disciplinary history. On September 2, 2011, the Tennessee Supreme Court suspended Mr. Delgado for a total of five (5) years, consisting of two (2) years active suspension and three (3) years on probation. The sanction arose from reciprocal discipline imposed by the State Bar of Texas for misconduct that is substantially similar to the alleged misconduct in this case. Specifically, Mr. Delgado was suspended for failing to hold settlement funds in trust, failing to promptly deliver settlement funds to his clients and to interested third parties, and failing to keep his clients reasonably informed about the status of their matter. (Exhibit 9)

CONCLUSIONS OF LAW

1. As noted above, Respondent has failed to answer the Board's Petition for Discipline. The Hearing Panel has already entered an Order of Default and, therefore, pursuant to Tenn. S. Ct. R. 9, Section 8.2 the charges are deemed admitted.

2. Pursuant to Tenn. Sup. Ct. R. 8, Rule of Professional Conduct 8.5 ("RPC 8.5"), this Panel finds that the Georgia disciplinary rules apply to this matter.

3. Although not licensed in Georgia, Mr. Delgado's conduct, and the predominant effect of his conduct, occurred in Georgia. The cause of action, the child's death, occurred in Atlanta, Georgia. Mr. Garcia resided in Atlanta, Georgia. Mr. Delgado accepted the referral for this case from the Mexican Consulate in Atlanta, Georgia.

4. This Panel adopts the conclusions of the Investigative Panel for the State Bar of Georgia finding by a preponderance of the evidence that the following Georgia Rules of Professional Conduct have been violated: 1.2(a), Scope of Representation; 1.15(I), Safekeeping Property; 1.15(II), Safekeeping Property; 5.5, Unauthorized Practice of Law, Multijurisdictional Practice of Law; 8.4, Misconduct; and 9.4, Jurisdiction and Reciprocal Discipline.

5. Further, this Panel finds that Mr. Delgado violated Tennessee RPC 8.1(b), Bar Admission and Disciplinary Matters for his failure to respond to the complaint of disciplinary misconduct.

6. In summary, Mr. Delgado did not obtain the consent of his clients prior to accepting a settlement. After receiving and accepting the settlement of \$190,000, Mr. Delgado failed to inform his clients of the settlement.

7. He failed to keep his clients reasonably informed about the status of their case and the disbursement of funds.

8. Mr. Delgado failed to promptly remit the settlement funds to his clients. Instead, he mischaracterized small payments as "advances" without explaining to Mr. Garcia that he was making withdrawals from the settlement funds.

9. Further, Mr. Delgado never explained to his clients why he kept approximately \$76,000 in fees and deducted other expenses from the settlement total. It appears that Mr. Delgado failed to properly account for approximately \$96,826.00 of the settlement funds and that he converted these funds for his personal benefit and use.

10. Pursuant to Tenn. Sup. Ct. R. 9, §8.4, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, ("ABA Standards"). The following ABA Standards apply:

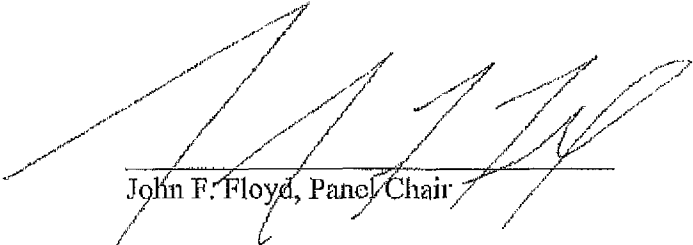
- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.41 Disbarment is generally appropriate when:
(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client;
- 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.
- 5.11 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.
- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession 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.
- 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 acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
11. Pursuant to ABA Standard 9.22, a number of aggravating factors are present in this case and are listed below.
- a) a pattern of misconduct;
 - b) failure to acknowledge the wrongful nature of his conduct;
 - c) prior disciplinary history;

- d) multiple offenses;
- e) substantial experience in the practice of law; and
- f) dishonest or selfish motive; and
- g) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

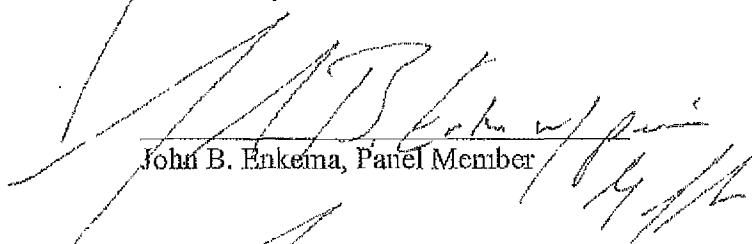
JUDGMENT

Based on these findings of fact and conclusions of law, it is the judgment of the Panel that Mr. Delgado shall be disbarred pursuant to Tenn. Sup. Ct. R. 9, § 4.1. Further, the Panel finds that Mr. Delgado must pay restitution, pursuant to Tenn. Sup. Ct. R. 9, § 4.7, to Mr. Braulio Reinoso Garcia and Edith Hernandez Reinoso in the amount of \$96,826.99. Payment of restitution shall be a condition precedent to reinstatement.

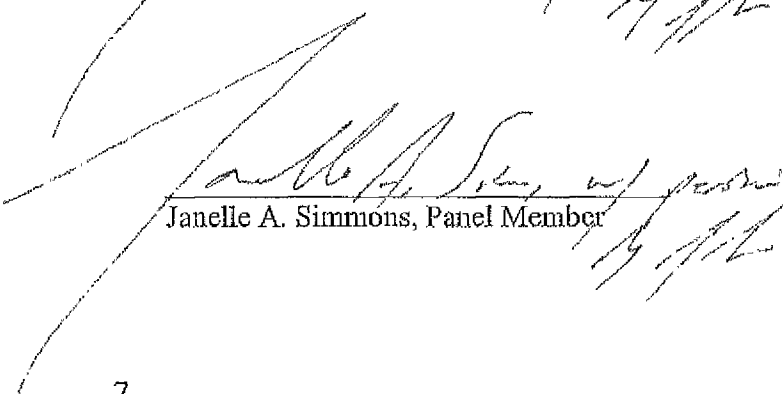
IT IS SO ORDERED.



John F. Floyd, Panel Chair



John B. Enkema, Panel Member



Janelle A. Simmons, Panel Member