



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

**IN RE: MICHAEL W. EDWARDS, Respondent Docket No. 2002-1340-6-SG
 BPR #2721, An Attorney Licensed to
 Practice Law in Tennessee
 (Sumner County)**

**FINDINGS AND RECOMMENDATIONS OF THE
HEARING PANEL CONVENED ON OCTOBER 30, 2003**

Having been properly designated by the Board of Professional Responsibility of the State of Tennessee, the Hearing Panel consisting of Chair Patrick A. Flynn, and Members, Charlotte Fleming and Jerome Carter received proof presented by the Board of Professional Responsibility (Board) and the respondent, Michael W. Edwards, on the 30th day of October, 2003.

A Petition was filed by the Board against Mr. Edwards alleging that he had violated the following rules of conduct with regard to the complainants Ms. O'Brien and Mr. Slater: DR 1-102, DR2-110, DR 7-101, DR 7-102

The Board, represented by Ms. Sandy Garrett presented proof through the complainants, O'Brien and Slater, as well as documents admitted into evidence without objection, and the testimony of Mr. Edwards. The respondent presented the testimony of himself, Chancellor Gray, and Asst. D. A. Dent Morris, as well as documents admitted into

evidence without objection. Each party was afforded and utilized the opportunity to cross-examine each of the witnesses.

The Panel, at the adjournment of all the proof by the parties, and agreement by the parties that closing arguments were not necessary, convened to discuss the facts and evidence submitted and has agreed as follows:

Ms. Amy O'Brien

It is the contention of the Board that respondent violated the Rules of Conduct by sending an invoice for services rendered to Ms. O'Brien following the conclusion of her case. The third mailing of that invoice had a threatening note handwritten at the bottom which read as follows: "Amy, this bill is seriously past due! Please don't force us to ask the D.A. to set aside agreement because of your failure to fulfill our agreement!" (Ex. 3) The respondent had been paid \$1500 for representation of Ms. O'Brien in a criminal matter wherein the respondent had been successful in obtaining "Pre-Trial Diversion" for Ms. O'Brien. The respondent and his client had not entered into any written agreement as to the fees to be paid or the responsibilities of the respondent. After the case had been concluded, the respondent decided that the efforts he had put forth were worth more than \$1500 and sent a bill for an additional \$1000. Ms. O'Brien did nothing with regard to that bill, and a subsequent bill followed from the respondent's office. In October, 2001, the bill submitted as Ex. 3 and cited above was mailed to Ms. O'Brien.

Ms. O'Brien testified that the note suggesting that respondent would ask the D.A. to reconsider her pre-trial diversion frightened her. She also sought assistance from her parents and they advised that they would pay the \$1000 if needed to prevent her from

having to re-enter the court system. She also contacted another attorney who advised her that such would not happen. The respondent testified that the note written on the bottom of Ex. 3 was done by his secretary but did not indicate that any discipline had been meted out for the infraction. The secretary was not called to testify. Respondent testified that he was not aware of the note until the action before the Board was brought to his attention.

Of most concern to the Panel is the fact that the respondent, by his testimony, and by questions posed to witnesses, indicated that his complicity in the note should be evaluated not by the content of the note, but by the consequences suffered by Ms. O'Brien. In fact, respondent sent a letter to the Board, Ex. 19, dated January 8, 2002 explaining the note as follows: ". . .this was simply letting Ms. O'Brien know that I was planning on informing the District Attorney, Dent Morris, that any further dealing or correspondence regarding Ms. O'Brien would have to be directly with her because I would not represent her any further in that she had not paid me." (Ex. 19) Respondent's credibility was brought into question by this letter, and his attempts to explain away the notation on Exhibit 3 by laying the blame on his secretary. Whether the secretary wrote the note with or without his approval, it is his responsibility to oversee the actions of his employees. As important is the fact that respondent sought to trivialize Ms. O'Brien's concern, yet the letter to explain his actions to the Board also states: "My office thought that it would be best to give Ms. O'Brien notice and an opportunity to pay her obligation to me prior to me informing the District Attorney of the situation." (Emphasis added) The

Panel concludes from that language that the notation on Ex. 3 was clearly intended to intimidate Ms. O'Brien into paying additional monies to respondent.

Most damning to respondent is his denial to the Board in a letter to Ms. Garrett dated November 12, 2001. (Ex. 17) In responding to the allegations of the note on Ex. 3, respondent states: "With regards to her accusation in the complaint that my office or I threatened her that if she does not pay me I will be forced to talk with the D.A. and get him to rethink his decision, this is in no way close to the truth." Not only was it close to the truth, the proof bears out that it was the truth, making respondent's response to the Board untruthful.

The Panel has determined that the respondent has violated DR 1-102 (A) (1) and (5) as well as DR 7-105 (A) by conveying to Ms. O'Brien a threatening note for the purpose of seeking additional payment for services provided. There was no written employment agreement which set forth the terms between Mr. Edwards and Ms. O'Brien. While the billing after the fact may be a poor business practice, we do not find that, in and of itself, to be a violation of the Code of Professional Responsibility. We do, however, find the notation on the invoice inappropriate and a violation of the Code.

The proof presented is sufficient to the panel to interpret the note and demeanor of the note and respondent to be couched in terms of a threat. A lay person would naturally feel threatened, and using a threat of that type is inappropriate and in violation of the Code of Professional Responsibility.

Recommendation

The Panel recommends that the Board impose on respondent, Michael Edwards:

(1) A requirement to utilize a written employment agreement with all clients, setting forth the fees and/or expenses for representation, as well as a general description of the rights and obligations of both the client and the attorney;

(2) A requirement to attend a minimum of three (3) hours of CLE focused on office management, client relations, and/or billing procedures; and

(3) A public censure for improperly threatening Ms. O'Brien if she failed to pay the invoice submitted to her, a violation of the Code.

(4) Satisfactory completion of an Anger Management Course, the approval of which must first be given by the Board.

The Board has requested that the Panel consider enhancing factors including the respondent's pattern of behavior, multiple offenses, and bad faith in the disciplinary process. The Panel finds such factors are appropriate and justify the punishment recommended and ordered herein.

Mr. James F. Slater

The proof presented at the hearing with regard to Mr. Slater showed that the respondent undertook representation of Mr. Slater, again without a written agreement. Apparently, Mr. Slater was a difficult client and presented roadblocks during the discovery phase of his case, by not complying with discovery requests. The panel agrees that Mr. Slater would be difficult to deal with.

The Board has requested that respondent be found in violation of the Code for verbal threats to Mr. Slater. The Panel finds that Mr. Edwards had an argument with Mr. Slater in which he is alleged to have told his client that he would "kick his ass", but is not convinced that the argument was such as to be a violation of the Code. Mr. Slater was not intimidated by Mr. Edwards, and provoked or at least exacerbated the disagreement.

Accordingly, the Panel finds no violation of the Code in that respect, but does recommend Anger Management classes as a result of what appears to the panel to be a pattern of behavior to clients that requires correction, for the benefit of Mr. Edwards and the public.

That does not conclude the matter with regard to Mr. Slater. The Board further urges that respondent violated DR 1-102, DR 2-110 and DR 7-101. The basis for these alleged violations, focuses on respondent withdrawing as counsel for Mr. Slater only a short while before his divorce case was scheduled for hearing.

At this point, the evidence becomes somewhat confusing. The hearing on *Slater v. Slater* was scheduled and continued on two previous occasions by agreement of counsel. The hearing was scheduled for May 13, 2002. On April 24, 2002, nineteen (19) days prior to the scheduled hearing date, respondent and Mr. Slater appeared for depositions. Negotiations to settle the divorce were undertaken and a proposed agreement was submitted to Mr. Slater and respondent for review and signature. The proof is not convincing for either version of what took place thereafter, but that is not necessary to the Panel's determination. Suffice it to say that respondent and Mr. Slater argued and the threats discussed earlier took place.

For whatever reason, respondent advised Ms. Slater's counsel that he was "... getting out of this case ... because I got tired of being accused of not doing my job." Mr. Edwards did not appear on the following day to represent Mr. Slater in depositions.

Respondent submitted a Motion to be Relieved as Counsel (Exhibit 14) filed with the Sumner County Chancery Court on April 26, 2002, with a certificate of service to Mr. Slater of April 24, 2002, and a notice of hearing for May 3, 2002. Testimony of respondent, Mr. Slater and Chancellor Gray revealed that Mr. Slater was not in attendance at the May 3 hearing on the Motion. Mr. Slater testified that he did not receive the notice until May 5. The Panel accepts the testimony of Mr. Slater to that point.

On May 10, 2002, Mr. Slater filed a pro se Motion to Continue the trial of his hearing that was heard and denied on May 13. The divorce proceedings commenced thereafter and continued for approximately six (6) hours. Mr. Slater was compelled to represent himself, having tried and being unable to retain counsel prior to the hearing.

Subsequent to respondent "getting out" on April 24, Mr. Slater conveyed to his wife that he would agree to the last offer made. That proposal was rejected, and Mr. Slater, as a result of the hearing before the Chancery Court, received a less favorable division of property than the settlement that precipitated the argument between respondent and Mr. Slater.

The Panel finds that respondent withdrew from representation of Mr. Slater without insuring that Mr. Slater would not be prejudiced. It is not the conclusion of the Panel that withdrawal from a case is inappropriate nor that respondent's withdrawal as a general proposition was inappropriate. The Panel does, however, find that the withdrawal in this situation, when settlement was a distinct possibility and only nineteen (19) days prior to trial, placed the client at an unfair disadvantage.

The Panel finds that respondent violated DR 1-102 (A) (1) and (5), as well as DR 2-110 (A) (2). Respondent failed to adequately and properly protect Mr. Slater as a consequence of his withdrawal and Mr. Slater was harmed as a result.

The Panel does, however, find mitigating circumstances. While the responsibility to protect Mr. Slater fell squarely on respondent's shoulders, the failure of counsel for Ms. Slater and the failure of the Chancellor to protect Mr. Slater were also prejudicial to the administration of justice.

Recommendation

The Panel recommends that the Board impose on respondent, Michael Edwards:

(1) A requirement to utilize a written employment agreement with all clients, setting forth the fees and/or expenses for representation, as well as general description of the rights and obligations of both the client and the attorney;

(2) A requirement to attend at a minimum, three (3) hours of CLE focused on the Code of Professional Responsibility;

(3) A public censure for withdrawing from representation without insuring that Mr. Slater's interests were protected.

(4) Satisfactory completion of an Anger Management Course, the approval of which must first be given by the Board.

Judgment

It is, therefore, Ordered by the hearing Panel as follows:

1. Michael Edwards receive a public censure as set forth in the Recommendations above;

2. Michael Edwards is Ordered to prepare and utilize for each client, a written employment agreement as set forth in the Recommendations above;

3. That Michael Edwards is Ordered to attend a minimum of six (6) hours of CLE on the topics set forth in the Recommendations above; and

4. Satisfactory completion of an Anger Management Course, the approval of which must first be given by the Board.

This the 14th day of November, 2003.



Patrick A. Flynn, Chair



Charlotte Fleming, Member



Jerome Converse, Member