

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

IN-RE: GARY M. EISENBERG  
BPR #15417, Respondent An **DOCKET NO. 2003-1368-6-SG**  
Attorney Licensed and  
Admitted to the Practice of  
Law in Tennessee  
(Montgomery County)

---

**JUDGMENT OF THE HEARING COMMITTEE**

---

THIS CAUSE came to be heard on the 1<sup>st</sup> day of September, 2004, by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee, pursuant to Rule 9, Rules of the Supreme Court of Tennessee. The Respondent appeared at the proceeding, pro se. The Board of Professional Responsibility was represented by Disciplinary Counsel Sandy Garrett. The Hearing Committee was composed of Jerome M. Converse of the Robertson County Bar, Chair; Jill B. Nolan of the Montgomery County Bar; and Edward K. Lancaster of the Maury County Bar.

**I. STATEMENT OF THE CASE**

1. A Petition for Discipline was filed on March 24, 2003. In file number 25415-6-sg, Complaint of Peggy Anteau, the Board charges the Respondent with the following: neglecting Ms. Anteau's case to the extent that a Default Judgment was entered against her;

failing to keep Ms. Anteau informed regarding her case; relocating his office without advising Ms. Anteau; and neglecting to take action to set aside the Default. It is alleged that the aforesaid conduct by the Respondent violated the following disciplinary rules of the Code of Professional Responsibility: DR 1-102(A)(1)(5)(6); DR 6-101(A)(3); DR 7-101(A)(1)(4) and DR 7-101(A)(2)(3).

In file number 25638-5-sg, Complaint of Patricia C. Cook, the Board charges the Respondent with the following: failing to keep Ms. Cook informed about her case; misrepresenting to Ms. Cook that he had filed a Petition when in fact, he had not; failing to provide Ms. Cook with a copy of her file when requested; and refusing to provide Ms. Cook with a refund. The Respondent is alleged to have violated the following disciplinary rules of the Code of Professional Responsibility: DR 1-102(A)(1)(4)(5)(6); DR 6-101(A)(3); and DR 7-101(A)(1)(2)(3)(4).

2. Respondent filed his Response to Petition for Discipline on April 14, 2003. On August 27, 2003, Respondent filed an Amended Response to Petition for Discipline.

## II. FINDING OF FACTS

### A. File number 25415-6-sg – Complaint of Peggy Anteau

1. Peggy Anteau testified that she had hired the Respondent on December 19, 2000, to defend her in a civil action in the Rutherford County General Sessions Court. The action was to collect a debt which had been declared in default against her son by Community Bank and Trust. Apparently, Ms. Anteau had co-signed for said note. An invoice from Respondent admitted into evidence (Hearing Exhibit "1") indicates that a \$500.00 retainer was paid by Ms. Anteau to the Respondent on December 9, 2000. Ms. Anteau testified that later, she had paid an

additional \$406.54 to the Respondent.(Hearing Exhibit "14") The total sum paid to the Respondent was \$906.54.

2. The Respondent and Ms. Anteau appeared in the Rutherford County General Sessions Court on at least two occasions, but both times the case was continued.

3. A hearing was scheduled on May 16, 2002. (Hearing Exhibit "12") However, Ms. Anteau was not told of the May 16, 2002 hearing.

4. Neither Ms. Anteau nor the Respondent appeared for the hearing on May 16, 2002, resulting in a Default Judgment being entered against her in the amount of \$8,935.00. (Hearing Exhibit "4")

5. In mid-May, 2002, Ms. Anteau became aware that a Default Judgment had been entered against her. She received a copy of a letter (Hearing Exhibit "2") from counsel for Community Trust Bank to the Rutherford County Register of Deeds, seeking to record the Default Judgment entered against her as a judgment lien.

6. Ms. Anteau testified that upon learning of the Default Judgment, she immediately attempted to call the Respondent. She telephoned him on numerous occasions but he never returned her telephone calls. She left several messages at his office.

7. Finally, Ms. Anteau went to Clarksville to the Respondent's office, whereby she was advised that the Respondent had moved. Ms. Anteau testified that she had never received notice that he had relocated. However, Mr. Eisenberg later testified and submitted Hearing Exhibits "13" and "14", showing that he had sent notice of his relocation to Ms. Anteau.

8. Nevertheless, Ms. Anteau finally spoke with the Respondent in person. She testified that the Respondent told her that he would respond to the Default Judgment, and she understood that he would attempt to have the Default set aside.

9. Ms. Anteau never heard from the Respondent thereafter. She testified that he never returned her telephone calls.

10. Finally, Ms. Anteau hired new counsel on June 26, 2002. She paid new counsel a total of \$315.00 (Hearing Exhibit "3").

11. New counsel was successful in having the Default Judgment set aside. On July 8, 2002, an Agreed Order Setting Aside Judgment was entered in the Rutherford County General Sessions Court (Hearing Exhibit "4"). Eventually, an Order of Non-Suit was entered in the action against Ms. Anteau on January 15, 2004. (Hearing Exhibit "4")

12. Mr. Eisenberg testified that when he filed his Response to Petition for Discipline, he did not believe he had received notice of the May 16, 2002 hearing in Ms. Anteau's case. However, he testified that since filing his Response, he discovered that he had received Notice of the said hearing. (Hearing Exhibit "12") He filed an Amended response to Petition for Discipline acknowledging same.

13. Mr. Eisenberg testified that he became aware of the Default Judgment entered against Ms. Anteau at the time she came to his office in mid-May, 2002. On September 9, 2002, the Respondent received a letter from the Board of Professional Responsibility, inquiring into the status of the lien on Ms. Anteau's property and asking the Respondent how he intended to correct the situation. (Hearing Exhibit "9"). On October 24, 2002, the Respondent responded to the Board's previous letter and advised that he was in the process of attempting to get the Default Judgment set aside. (Hearing Exhibit "10")

14. Finally, on March 12, 2003, the Respondent filed a Motion to Set Aside Default Judgment in the Rutherford County General Sessions Court. He was unaware that Ms. Anteau

had retained other counsel and that an Agreed Order Setting Aside the Default Judgment had already been entered on July 8, 2002. (Hearing Exhibit "4").

15. The Respondent testified at trial that from October 24, 2002 until March 12, 2003, he took no action to set aside the Default Judgment other than attempting to contact Plaintiff's counsel on February 14, 2002 and February 25, 2002. Apparently, the Respondent did nothing to set aside the Default Judgment from the time he learned of its existence, mid-May 2002, until March 12, 2003.

16. Respondent admitted that he did not contact Ms. Anteau or review the Court file from mid-May, 2002 to date, and he was completely unaware that the Default Judgment had already been set aside against Ms. Anteau until he spoke with Ms. Anteau's new counsel.

B. File 25638-5-sg – Complaint of Patricia C. Cook

17. Patricia Cook testified that she hired the Respondent to represent her in a custody/visitation matter in October, 2000. (Hearing Exhibit "5"). Ms. Cook paid \$250.00 of what was supposed to have been a \$500.00 retainer.

18. Ms. Cook testified that her situation with her ex-husband became more amicable and she called the Respondent and told him not to proceed with her case at that time. On August 1, 2001, she wrote him a letter regarding same. (Hearing Exhibit "6").

19. Eventually, things between Ms. Cook and her ex-husband soured. She testified that she saw the Respondent again toward the end of 2002 (the Panel believes Ms. Cook is mistaken in her recollection of the year only) and told him to proceed with filing a Petition regarding the custody/visitation dispute. She paid him an additional \$125.00 on two separate occasions, for a total of \$250.00. (Hearing Exhibit "7") In April, 2002, Ms. Cook testified that

she went to Mr. Eisenberg's office and signed "papers". She is unsure what she signed, but she did not believe it was a pleading. She understood that he was to draft the pleadings and file same. He did not ask her for any additional money or filing fee.

20. Mr. Eisenberg testified that Ms. Cook signed a Petition he had prepared but the Petition was not filed. The Respondent testified that he told Ms. Cook she would have to pay the court costs before it could be filed, and that as a rule he doesn't take court costs out of her attorney fees.

21. Ms. Cook's recollection of the conversation was that court costs were discussed, and that Mr. Eisenberg had agreed to pay the court costs from the \$500.00 she had paid him.

22. After the April, 2002 meeting, Ms. Cook testified that she did not hear anything from the Respondent regarding the filing of her Petition. She attempted to contact him on various occasions but was never able to reach him.

23. Ms. Cook testified that when she was finally able to talk with the Respondent, he led her to believe that the Pleadings had been filed and that the "police department" was backed up in service of process. Ms. Cook testified that she then called the "police department" and was advised there were no Summons and pleading to be served. She also contacted the Clerk's office and was advised that no pleadings had been filed.

24. The Respondent admitted that Ms. Cook's Petition was never filed. No Petition prepared on behalf of Ms. Cook was introduced into evidence at the hearing.

25. Ms. Cook testified that she had asked for a refund of her attorney fees, but she received no response. The Respondent testified to same. Ms. Cook further testified that she asked the Respondent for her file but she never received it. The Respondent testified that he

could not remember if Ms. Cook ever asked for her file. The Respondent admitted that he has been unable to locate the complete file.

26. Finally, on July 29, 2002, Ms. Cook wrote Mr. Eisenberg requesting a refund. She received no response, nor did she receive a refund.

### III. CONCLUSIONS OF LAW

The Board contends that the Respondent has violated three separate disciplinary rules, and various subsections within each rule. Specifically, the Board alleges the Respondent violated the following:

**DR 1-102. Misconduct.** --(A) A lawyer shall not:

- (1) Violate a Disciplinary Rule.
- (2) ...
- (3) ...
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (5) Engage in conduct that is prejudicial to the administration of justice.
- (6) Engage in any other conduct that adversely reflects on his fitness to practice law.
- (7) ...

**DR 6-101. Failing to Act Competently.** -- (A) A lawyer shall not:

- (1) ...
- (2) ...
- (3) Neglect a legal matter entrusted to the lawyer.

**DR 7-101. Representing a Client Zealously.** -- (A)(1) A lawyer shall act with reasonable diligence and promptness in representing a client

- (2) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for communication or information.
- (3) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (4) A lawyer shall not intentionally:
  - (a) Fail to seek the lawful objectives of the client through reasonable available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

- (b) Fail to carry out a contract of employment entered into with a client for professional services, but a lawyer may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.
- (c) Prejudice or damage the client during the course of the professional relationship, except as required under DR 7-102(B).

A. File No. 25415-6-sg -Complaint of Peggy Anteau

The Panel finds that the Respondent violated the above Disciplinary Rules in his representation of Peggy Anteau. It is apparent from the testimony that Ms. Anteau hired the Respondent in December, 2000 to defend her in a General Sessions action in Rutherford County brought by Community Bank and Trust. The Respondent appeared with Ms. Anteau in court on two occasions, both of which resulted in continuances. Respondent testified that on January 15, 2002, he spoke with Plaintiff's counsel informally in Court regarding possible settlement of the case. (Hearing Exhibit "11") However, nothing was resolved and the matter was set for hearing on May 14, 2002. (Hearing Exhibit "12")

In the pleadings in this matter, the Respondent initially denied having received the January 16, 2002 letter that notified him of the May 14, 2002 court date. Later, in his Amended Response, he admitted that he had since discovered that he had received said letter. The client, Peggy Anteau, was unaware of the May 14, 2002 court date. Neither she nor the Respondent appeared, resulting in a Default Judgment in the amount of \$8,935.00 being entered against her.

The Panel finds that the Respondent's failure to appear for the court date was simply a mistake that did not involve any intentional misconduct under the aforesaid Disciplinary Rules. However, the failure to rectify and address this mistake violates all of the above referenced Disciplinary Rules.

When Ms. Anteau learned that a Default Judgment had been entered against her, she attempted to contact the Respondent on several occasions. However, he would not accept or



return her phone calls. When she attempted to see the Respondent at his office, she learned that he had moved his office without informing her. When she finally located the Respondent, he advised that he would respond, and she understood that he would have the Default Judgment set aside. Again, the Respondent failed to act and failed to return the client's phone calls regarding same.

The Panel finds that the Respondent learned of the Default Judgment entered against Ms. Anteau shortly after May 16, 2002. His response should have immediately been to file a Motion to Set Aside Judgment in the General Sessions Court. However, he neglected to do so until March 12, 2003. In the interim, unbeknownst to him, Ms. Anteau retained new counsel, and on July 8, 2002, counsel for both parties entered into an Agreed Order Setting Aside Judgment. Incidentally, the case was eventually non-suited by the Plaintiff.

The Respondent was notified of Ms. Anteau's Complaint to the Board of Professional Responsibility on July 3, 2002 and asked to respond within ten days. The Respondent failed to respond. On July 23, 2002, the Board sent the Respondent a second notice of the Complaint and asked for Respondent's response. Respondent failed to respond again. On August 8, 2002, the Board sent by regular and certified mail a third notice of the Complaint to the Respondent and asked for the Respondent's response. Respondent failed to respond to this August 8, 2002 letter. On August 23, 2002, the Board sent a Notice of Petition for Summary Suspension by regular and certified mail to Respondent requesting Respondent's response. The Respondent's response was received by the Board on October 28, 2002. On September 9, 2002, the Respondent received a letter from the Board, asking Respondent what action, if any, he had taken to assist Ms. Anteau in having the lien set aside. On October 24, 2002, the Respondent wrote the Board advising that he was in the process of preparing a Motion to Set Aside the Default Judgment.

The Respondent's testimony at hearing indicated that from October, 2002 until the date of filing of the Motion to Set Aside Default Judgment in March, 2003, the Respondent took no action on Ms. Anteau's case other than two attempts to contact Plaintiff's counsel by telephone in February of 2003. Respondent also admitted that he did not contact Ms. Anteau to keep her apprised of the situation nor did he review the court file before finally filing the Motion to Set Aside Default Judgment. The Respondent was unaware that the Default Judgment had already been set aside until he learned same from new counsel.

At hearing, the Respondent acknowledged that his conduct was improper. Respondent admitted he told Ms. Anteau "I'd take care of it but I didn't take care of it in a proper manner".

Ms. Anteau testified that she had paid Mr. Eisenberg a total of \$906.54. (Hearing Exhibits "1" and "14") She further testified that she had to hire additional counsel to have the Default Judgment set aside and eventually see that the case against her was dismissed. She incurred the additional sum of \$315.00 for counsel. (Hearing Exhibit "3") The Panel finds that the Respondent should refund all fees Ms. Anteau paid to him in the amount of \$906.54. The fee that Ms. Anteau had to pay to second counsel to rectify the situation is a fee she would have incurred regardless of who represented her in the General Sessions matter, and that fee shall not be refunded.

The Panel agrees with the Board that the Respondent breached ethical duties owed to Ms. Anteau, particularly the duty of diligence and his duty of candor. The Panel further finds that the Respondent intentionally violated his duties and caused injuries to Ms. Anteau.

B. File No. 25638-5-sg- Complaint of Patricia C. Cook

The Board alleges that the Respondent violated the aforesaid Disciplinary Rules in his representation of Patricia Cook. The Panel concurs.

Testimony shows that Ms. Cook hired the Respondent to represent her in a custody/visitation matter in approximately October, 2000. She paid \$250.00 toward a \$500.00 retainer fee quoted by the Respondent. (Hearing Exhibit "5") Shortly thereafter, Ms. Cook and her ex-husband appeared to be on better terms and Ms. Cook testified that she contacted the Respondent and told him not to file anything until he heard further from her. She followed up the phone call with a letter reflecting same. (Hearing Exhibit "6")

Eventually, the relationship between Ms. Cook and her ex-husband became worse, and she contacted the Respondent sometime thereafter and asked that he proceed to file a Petition against her ex-husband in reference to the custody/visitation dispute. She paid him an additional \$125.00 on two separate occasions, so the total amount paid at that point was \$500.00. (Hearing Exhibit "7")

In April, 2002, Ms. Cook testified that she went to Mr. Eisenberg's office for the purpose of signing the pleadings. The Respondent did not have the pleadings prepared but Ms. Cook testified she signed something, although she was unsure what she had signed. She testified that it was not a pleading.

At this time, Respondent advised her that he would get the pleading together and have them served on her former husband. Ms. Cook recalls that the parties discussed the issue of filing fees. According to her recollection, they worked out an arrangement whereby the Respondent was to take the filing fees from the money she had already paid. The Respondent, however, testified that he did not agree to take the filing fees out of the attorney fee, and that as a

rule, he does not engage in such conduct. He testified that he told Ms. Cook that she would have to pay the filing fees.

Ms. Cook testified thereafter she never heard anything from the Respondent. She tried to contact him on numerous occasions and he did not respond. Finally, she spoke with him by telephone and he told her that the "police department" was behind on its service of process. Ms. Cook then contacted the "police department" and found there was no process issued in her case. She further contacted the Clerk's office and found that nothing had been filed. The Respondent admitted that no pleadings had ever been filed in this case. He further admits that it was "possible that I told her the Petition had been filed. I can't remember".

Ms. Cook testified that she asked for a refund of her \$500.00 attorney fee. (Hearing Exhibit "8") She testified she also asked for her file. Respondent also acknowledged that Ms. Cook asked for a refund but he did not refund her fee. The Respondent further testified that he couldn't remember if Ms. Cook ever asked for her file. He further testified that he could not locate the complete file, and the few documents he could find, he forwarded to the Board.

The Panel finds that the aforesaid conduct of the Respondent violates the Disciplinary Rules alleged by the Board in this matter. The Respondent was retained to represent Ms. Cook in a custody/visitation matter. He did nothing to represent her interest in this cause. The Panel finds Ms. Cook to be a credible witness and finds that the Respondent misrepresented to Ms. Cook that her Petition had been filed when in fact it had not. The Respondent was untruthful with Ms. Cook when she inquired as to the status of her Petition, blaming the matter on the "police department" and its backlog of service of process. Particularly disturbing is the Respondent's failure to refund Ms. Cook her attorney fees upon her request. No proof was presented at hearing that the Respondent had done anything to earn any of the \$500.00 fee. No

documents were produced which would reflect that the Respondent spent any time whatsoever on her case. Furthermore, no documents were admitted into evidence that would show that any pleadings were ever prepared by the Respondent.

The Board finds that as a result of the violation of the aforesaid Disciplinary Rules, the Respondent caused harm to Ms. Cook. Specifically, Ms. Cook paid \$500.00 to the Respondent and received no representation as a result thereof. Furthermore, Ms. Cook has not received her file in order to hire additional counsel.

#### IV. AGGRAVATING AND MITIGATING CIRCUMSTANCES

##### A. Aggravating Circumstances

The Board finds that the Respondent's prior disciplinary sanctions to be an aggravating circumstance.

On May 8, 2001, the Respondent received an informal admonition from the Board of Professional Responsibility for allowing a Default Judgment to be entered against his client and allowing the ten-day appeal period to expire before attempting to take action thereon. Furthermore, Respondent was admonished for failing to act further to rectify the situation, and for failing to respond to Disciplinary Counsel's request for information during the investigation of the Complaint.

On April 24, 2002, in File Number 24297-6-sg and File Number 24003-6-sg, the Respondent received a public censure for neglect and failure to communicate with his clients.

On October 31, 2002, the Respondent received an additional public censure in File Number 24968-6-sg. The Respondent was found to have neglected his client's case; failed to

communicate with his client; and Respondent was alleged to have made misleading statements to the Board and his client.

The Panel finds that the Respondent's prior disciplinary sanctions set forth above are similar in nature to the conduct that occurred regarding Ms. Andeau and Ms. Cook. The Panel finds that the Respondent's conduct in these cases appears to be a continuous pattern of neglect and misconduct of Respondent.

Furthermore, the Panel finds the multiple offenses to be an additional aggravating circumstance.

#### B. Mitigating Circumstances

At the hearing in this cause, the Respondent submitted that the Board should consider that at the time of the conduct, he was involved in his own divorce. However, the Respondent failed to provide any details as to how his own divorce affected his representation of his clients in this matter. The Panel does not find this to be a mitigating circumstance.

The Respondent further submitted that he was being treated for depression for about a year during the time of Ms. Cook's and Ms. Andeau's cases. He stated he is no longer being treated for depression. The Respondent failed to produce any documentation verifying same. The Respondent failed to introduce testimony or proof as to how his depression affected his ability to adequately represent Ms. Andeau and Ms. Cook. The Panel does not find the brief statement by the Respondent regarding his depression to be a mitigating circumstance.

V. JUDGMENT


IT IS THEREFORE ORDERED by the Hearing Committee as follows:

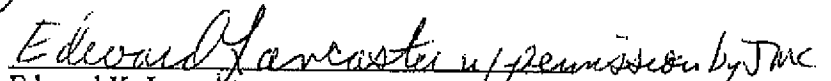
1. That Respondent, Gary Eisenberg, be suspended from the practice of law for a period of one (1) year.

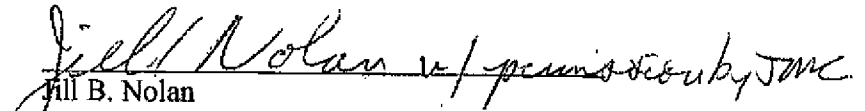
2. That Respondent be ordered to make restitution to Ms. Peggy Anteau in the amount of \$906.54.

3. That the Respondent, Gary Eisenberg, be required to make restitution to Ms. Patricia Cook in the amount of \$500.00.

This the 3 day of September, 2004.

  
Jerome M. Converse

  
Edward K. Lancaster

  
Jill B. Nolan