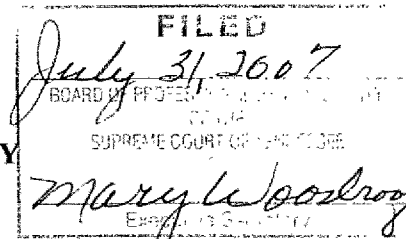


**IN THE DISCIPLINARY DISTRICT V
OF THE BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE**



IN RE:)	
WILLIAM LAWRENCE EMBRY,)	DOCKET NOS. 2003-1380-0-JJ
BPR #010215, An Attorney Licensed to)	and 2003-1410-5-JJ
Practice Law in Tennessee (Out-of-State),)	
Respondent.)	

FINAL DECREE OF HEARING PANEL

The matter presently before this hearing panel of the Board of Professional Responsibility of the Supreme Court of Tennessee is a consolidated disciplinary action against William Lawrence Embry ("Respondent").¹ This hearing panel consists of Barbara D. Holmes, Chairman, William J. Haynes III and Kevin Hunter Sharp (collectively, the "Panel"). For the reasons stated below, the Panel finds the Respondent has violated DR 1-102(A)(4), (5), (6), and (7), DR 3-101(B)², RPC 5.5 (a) and RPC 8.4(c) and (d) and is appropriately suspended from the practice of law for a period of six months and 46 days, with credit for the 46 days of suspension already having occurred.³

Procedural Background

Following the disposition of certain issues by partial summary judgment entered on August 30, 2006, a hearing on the merits of the consolidated petitions was conducted on October 24 and 25, 2006, at which various documentary exhibits were admitted into evidence and the

¹ On June 27, 2003, Disciplinary Counsel for the Board filed a Petition for Discipline against Respondent in Docket No. 2003-1382-0. A second Petition for Discipline was filed on November 26, 2003 in Docket No. 2003-1410-5, and an amended version of this Petition was filed on April 13, 2004. The two actions were consolidated by consent on June 14, 2004.

² The timing of the conduct that is the subject of this disciplinary proceeding overlaps the Tennessee Code of Professional Responsibility, which governed the conduct of attorneys until replaced, effective March 1, 2003, by the Tennessee Rules of Professional Conduct.

³ As explained below, Respondent was summarily suspended from the practice of law by order of the Tennessee Supreme Court for a period of 46 days in December of 2001 and January of 2002.

Panel heard the testimony of the Respondent. At the conclusion of the October, 2006 hearing, counsel for the Respondent and Disciplinary Counsel announced a consensual resolution of the petitions for discipline, with the terms and conditions subject to approval by the Panel and the Board of Professional Responsibility (the "Board"). On November 29, 2006, a proposed conditional guilty plea by the Respondent was submitted to the Panel.

On December 4, 2006, after consideration of the terms and conditions of the proposed conditional guilty plea and the entire record in this matter, the Panel filed recommendations to the Board that the conditional plea be accepted, but that any dismissal of the second petition for discipline be conditioned upon the occurrence of certain actions by the Respondent. The conditional guilty plea was subsequently withdrawn by the Respondent.

A telephonic status conference was conducted on April 3, 2007, at which various deadlines were established and the date and substance of a final hearing set. The matters discussed and agreed upon in the status conference were memorialized in a signed order of the Panel filed on May 9, 2007. Among other provisions, the May 9, 2007 Order required the Respondent to file any motion for recusal of the Panel or any member of the Panel by no later than April 24, 2007.

At the final hearing on May 14, 2007, the Respondent requested an additional 30-day continuance and also filed on that same date a Motion to Have Panel Recuse Itself and for New Hearing (the "Motion for Recusal"). The Panel disposed of both motions with findings made orally and recorded in open hearing.

At the final hearing, the Panel also admitted into evidence additional exhibits offered by Disciplinary Counsel and established deadlines for conclusion of this matter, including: (i) May 29, 2007, as the date for the Respondent to notify the Panel and Disciplinary Counsel of any

additional action taken in connection with the matter pending in the U.S. District Court for the Southern District of Ohio; and (ii) June 29, 2007, as the deadline for filing any proposed findings of fact, conclusions of law, and additional argument. The Panel also established July 16, 2007, as the date of conclusion of this matter, subject to a request by either party for additional argument. No such request was made.

On May 31, 2007, the Respondent filed in this matter a notice of the filing of a *pro se* motion to vacate default judgment filed in the United States District Court for the Southern District of Ohio. On June 29, 2007, the Disciplinary Counsel filed Proposed Findings of Fact, Conclusions of Law, Argument, and Proposed Judgment. The Respondent filed untimely proposed findings and conclusions.⁴

From the entire record in this matter, the Panel makes the following findings of fact and conclusions of law in support of its judgment.

Findings of Fact and Conclusions of Law

On June 27, 2003, Disciplinary Counsel for the Board filed a Petition for Discipline against Respondent in Docket No. 2003-1382-0 (the “First Petition”). A second Petition for Discipline was filed on November 26, 2003 in Docket No. 2003-1410-5, and an amended version of this Petition was filed on April 13, 2004 (the “Second Petition”). The two actions were consolidated by consent on June 14, 2004 (the “Disciplinary Proceeding”).

Respondent was licensed to practice law in Tennessee in 1983, and last practiced law in Tennessee in Shelby County, Tennessee. Since at least 1999, Respondent has lived in a variety of places, including Florida, Cape Verde Islands (Africa), and Colorado.

⁴ The Respondent filed his Proposed Findings of Fact, Conclusions of Law, and Argument on July 27, 2007; nearly a month after the June 29 deadline.

First Petition

The First Petition alleges the Respondent violated former Disciplinary Rule 1-102(A)(1), (5), (6), and (7) and RPC 8.4(a) and (d) by his failure to abide with court orders requiring him to pay child support. Those orders were entered in post-divorce litigation between the Respondent and his ex-wife. In an order filed on August 30, 2006 (the “August 30, 2006 Order”), the Panel granted summary judgment that the Respondent’s willful and continuing failure to abide by court orders constituted misconduct warranting discipline, although the nature and measure of discipline was left open.⁵ Some additional discussion of the facts and circumstances of the Shelby County litigation is appropriate in connection with the issue now before the Panel; namely, the appropriate discipline for the Respondent’s willful and continuing failure to comply with court orders requiring him to pay child support.

The Respondent testified at the October 2006 hearing of this matter that he deposited \$27,000 with his counsel in January of 2000, sufficient to pay some or all of the court-ordered support due at that time. Respondent offered no proof that the any of this amount was actually paid to his ex-wife pursuant to the support orders until the Respondent and his ex-wife entered into a consensual resolution of their dispute in July of 2003. In fact, orders entered by the

⁵ In a rather inartful manner, the Panel ruled that the Respondent had violated Section 31 of Rule 9. This erroneous reference to Rule 9 rather than to the disciplinary rules and rules of professional conduct does not change the outcome. The issue upon which the Panel granted summary judgment was a narrow one. The facts were not disputed and the narrow legal issue was the proper construction of orders of the Shelby County Circuit Court; that is, whether the Respondent willfully failed to abide by court orders by his non-payment of court-ordered child support. The Respondent had the opportunity to offer at hearing any additional evidence he considered relevant with respect to the Shelby County litigation, as the question of the appropriate measure of discipline remained open. No other issues were resolved by summary judgment and Respondent was given full opportunity to address those issues at the hearing on the merits as well.

Shelby County Circuit Court subsequent to January of 2000 indicate that no amounts were paid in reduction of the support obligation until after July of 2003.⁶

On December 10, 2001, during the ongoing litigation between the Respondent and his ex-wife, the Tennessee Supreme Court, at the request of Disciplinary Counsel, entered an Order of Immediate Suspension of Respondent's law license finding that Respondent had, as of that time, willfully refused to comply with court orders entered in a case in which respondent was a party, in violation of Tenn. R. Sup. Ct. 9, Section 31.1. Again at the request of Disciplinary Counsel, on January 15, 2002, the Tennessee Supreme Court entered an order dissolving the prior immediate suspension of the Respondent's law license, without prejudice to the Board to seek reimposition of the immediate suspension conditioned on future developments.⁷ The Respondent served a total of 46 day of suspension.

The Respondent's willful and intentional refusal to comply with court orders violates former DR 1-102(A)(1), (5), (6), and (7) and RPC 8.4(a) and (d). Although the Respondent's testimony was less than definitive, it appears that he ultimately satisfied the court-ordered support obligation following a consensual resolution of the litigation with his ex-wife. This compliance with the orders of the Shelby County Circuit Court is a factor that mitigates against any further discipline for this violation alone than the 46 days of suspension of the Respondent's law license that already occurred.

⁶ As stated herein, the Panel did not find the Respondent to be a credible witness. His inability to satisfactorily explain the disposition of the \$27,000 supposedly deposited with his attorney in January of 2000 is only one of the many discrepancies in his testimony. The Respondent's indifference to court orders and matters involving substantial sums of money was obvious to the Panel.

⁷ The dissolution of the suspension was based on an order of the Shelby County Circuit Court entered on December 20, 2001, vacating the January 25, 2000 order that resulted in the summary suspension. Then, the December 20, 2001 order was also revisited and parts of the January 25, 2000 order were effectively reinstated, including the finding that the Respondent had willfully failed to pay court-ordered child support. The convoluted history of the child support litigation between the Respondent and his ex-wife and the resulting orders from the Shelby County Circuit Court is described in more complete detail in the Panel's August 30, 2006 Order.

Section 31 of Rule 9 of the rules of the Supreme Court provides that suspension for failure to comply with a court order shall remain in effect only until such time as the lawyer complies with the subject order. To impose a harsher penalty for a violation of disciplinary rules or rules of professional conduct that is based solely on this non-compliance is incongruous.

Neither the Respondent nor Disciplinary Counsel offered an exact date on which the Respondent complied with the orders of the Shelby County Circuit Court by paying in full the support obligation. The only evidence is that the payment to the Respondent's ex-wife occurred sometime after July 23, 2003.

Had the Disciplinary Counsel not requested that the summary suspension be lifted, the suspension could arguably have remained in place until the Respondent demonstrated payment of the support obligation, which could conceivably have been an additional 18 month or more suspension (from January of 2002 when the summary suspension was lifted until July of 2003 when the Consent Order was entered). The Respondent benefited from the confusion created by the succeeding orders in the post-divorce litigation when the summary suspension of his law license was dissolved even though it appears that he was not in compliance with the ordered support obligations at that time.

Although the Panel could, therefore, impose additional discipline and not be inconsistent with Section 31 of Rule 9, the Panel holds that the discipline for the misconduct proven as alleged in the First Petition is the 46-day suspension already served.⁸

Second Petition

The Second Petition alleged two sets of circumstances as the basis for Respondent's misconduct warranting discipline. One set of circumstances involved litigation pending against

⁸ However, this violation and the facts upon which it is based are properly considered in connection with any other disciplinary proceeding and the Panel expressly reserves the right to do so.

the Respondent in the U.S. District Court for the Southern District of Ohio. The second set of circumstances involved actions by the Respondent while living in Colorado in 2002.

With respect to the pending federal court litigation, the Panel finds as follows. On or about July 15, 1999, Elizabeth G. Reagan (“Reagan”) filed a complaint against the Respondent in the United States District Court for the Southern District of Ohio alleging Respondent’s commission of a fraudulent scheme over a period of ten years to deprive her of a substantial sum of money (the “Reagan Complaint”).

On or about September 7, 1999, the U.S. District Court entered an order of default against the Respondent and granted Reagan a default judgment in the amount of \$8 million plus interest and punitive damages of \$5 million (the “Reagan Judgment”). The September 7, 1999 Order found Respondent to have violated federal and state theft, mail, and wire fraud statutes, and he was adjudged to have fled from the United States to the Cape Verde Islands in West Africa to avoid prosecution for the fraud perpetrated against Ms. Reagan.

The September 7, 1999 Order of the U.S. District Court further concludes that Ms. Reagan’s evidence was clear and convincing to establish that the Respondent’s fraudulent scheme was sufficiently gross and egregious to warrant the award of punitive damages under Ohio law. Subsequently, the U.S. District Court also entered an order registering the judgment in accordance with 28 U.S.C. § 1963.

The Respondent disputes that he was properly served and afforded due process rights with respect to the Reagan Complaint. Respondent also contends that the money of which Ms. Reagan was deprived was stolen by a Turkish banker from an account into which the Respondent had legitimately and legally wired the money (at the request of Ms. Reagan’s husband, who was

a business partner and business client of Respondent's). Respondent denies that he committed any fraud or theft against Ms. Reagan.

Respondent was generally aware of the Reagan Judgment, but claims to have no knowledge of the specific provisions because he also claims to never have reviewed the judgment. Nevertheless, the Respondent and Ms. Reagan entered into a settlement agreement dated October 29, 1999 (the "Settlement Agreement"), which was further modified by letter agreements dated November 11 1999 and November 18, 1999. Ms. Reagan never rescinded or withdrew any of her allegations contained in her original complaint. Nor does the Settlement Agreement require Ms. Reagan to take any action to modify, set aside, or take any other action with respect to the findings of the U.S. District Court or the Reagan Judgment.

This settlement compromised the amount of the Reagan Judgment and provided for Respondent to retain \$1 million in recovered funds. According to Respondent, this payment was consideration for alleged damage to his reputation and his assistance to Ms. Reagan in recovering the balance of funds allegedly stolen by the Turkish banker.

On or about December 5, 2001, Ms. Reagan, through her counsel of record in the U.S. District Court, entered a partial satisfaction of judgment. This notice refers to the original 1999 default judgment (not to the compromised and settled amount) and affirmatively states that more than \$10 million plus interest remains due and owing to Ms. Reagan by Respondent. The notice of partial satisfaction also refers to amounts collected from the Respondent through garnishments in 2000.

Respondent claims that he was unaware of this notice of partial satisfaction at the time it was filed. Respondent failed to offer any reasonable explanation of his claimed lack of

knowledge given the garnishments in 2000. Certainly, Respondent became aware of the notice when the Second Petition was commenced because the notice was an exhibit to that petition.

Respondent testified that he considers all his obligations to Ms. Reagan under the Settlement Agreement to be fully satisfied, regardless of the statements made in the notice of partial satisfaction of judgment. However, Respondent believes that Ms Reagan continued to claim the full amount of the default judgment for some kind of tax planning purposes.

On September 1, 2005, a certificate of judgment was issued on the September 7, 1999 judgment by the Clerk of the U.S. District Court and filed with the Clerk of the Court of Common Pleas of Hamilton County, Ohio, under provisions of the Ohio Revised Code..

At the October 2006 hearing, Respondent further testified that he had not taken any action to avoid the Reagan Judgment based on ineffective service or due process grounds. Nor had he taken any action to correct or clarify the record of the Reagan Judgment as stated in the notice of partial satisfaction. On May 24, 2007, the Respondent filed in the U.S. District Court for the Southern District of Ohio a *pro se* Motion to Vacate Default Judgment Pursuant to F.R.C.P. 60(b)(4) and Title 28, U.S.C.⁹

The Panel finds from a preponderance of the evidence that the Respondent violated DR 1-102(A)(1), (4), (5), and (6) and RPC 8.4(a), (c) and (d). Failing to correct the record in the Reagan matter in the U.S. District Court constitutes an ongoing misrepresentation to that court and to the public at large.¹⁰ For instance, any creditor of Ms. Reagan would have reason to

⁹ According to the electronic case docket of that matter, the Respondent's *pro se* Motion is still pending. The plaintiff in that matter, Elizabeth Reagan, has opposed the Motion. In reaching its decision, the Panel did not consider either Ms. Reagan's response in opposition filed in the District Court or the April 23, 2007 letter from counsel for Ms. Reagan to Disciplinary Counsel that was admitted into evidence at the May 14, 2007, final hearing over the objection of Respondent's counsel.

¹⁰ To be clear, the Panel is not finding that the Respondent committed fraud in his transactions or dealings with Ms. Reagan. The misconduct in which the Panel finds the Respondent to have been engaged is the ongoing false

believe that she owns a substantial asset in the uncollected judgment against Respondent. Likewise, anyone reviewing the public record would find that the Respondent has an active judgment against him for tens of millions of dollars for fraud.¹¹

Respondent's acceptance of \$1 million from Reagan as recompense for his damaged reputation while doing nothing for 8 years to undo or, at least correct, the default judgment that was the cause of any such damage is inexplicable, particularly since the compromise and settlement with Ms. Reagan was an opportunity to do just that. The only logical inference that can be drawn is that Respondent was willing to take the money and let Ms. Reagan use the judgment for whatever purposes she chooses including, perhaps, improper purposes.¹² At a minimum, this conduct involves dishonesty and misrepresentation.

That the Respondent is willing to take \$1 million to look the other way and let stand for so long a default judgment against him for fraud also adversely reflects on his fitness to practice law and is prejudicial to the administration of justice and to the integrity of the legal profession.

appearance of a judgment against the Respondent for fraud that he disputes but that he has enabled by failing to take any action to undo the default judgment once he settled with Ms. Reagan.

¹¹ Interestingly, if not tellingly, the recitals in the Settlement Agreement do not state that the Respondent disputed effectiveness of service and validity of the Reagan Judgment. Nor do the terms of the Settlement Agreement provide that the Reagan Judgment will be set aside or modified in any way. The Respondent was unable to satisfactorily explain why he was willing to let stand a judgment against him for fraud. This Panel previously declined to give collateral estoppel effect to the findings of fraud for summary judgment purposes. The Panel still declines to give collateral estoppel effect to any findings of fraud with respect to the conduct alleged as the basis for the Reagan Complaint. However, for purposes of this disciplinary proceeding, the Panel does find that the entire Reagan matter from the timing of the Settlement Agreement forward is fraught with a lack of full and complete disclosure, or, to put it another way, fraught with misrepresentations.

¹² The Respondent testified that he understands that Ms. Reagan needs to leave the judgment in place for some kind of tax purposes. The Panel has insufficient information to conclude that Ms. Reagan is using the judgment for any kind of tax fraud or other improper purposes. However, the only inference that can be drawn from Respondent's testimony that the settlement was structured as it was for tax benefits to Ms. Reagan is that the Respondent was willing to take \$1 million to go along with Ms. Reagan's tax plan even if improper. This complicity further reflects adversely on Respondent's honesty and fitness to practice law.

It is certainly a misrepresentation to the court and to the public to take no action to undo a multi-million dollar judgment for fraud that the Respondent claims was entered in error.¹³

The Respondent's failure to take any action to undo the Reagan Judgment "enables the false appearance" that Ms. Reagan has a substantial asset in the fraud judgment and that the Respondent has an outstanding multi-million dollar judgment against him for fraud. That kind of misrepresentation by omission violates RPC 8.4(c), and, therefore, RPC 8.4(a). *See* Board of Professional Responsibility of the Supreme Court of Tennessee, Formal Ethics Op. 2007-F-153 (March 23, 2007)("an attorney in Tennessee may not engage in extensive undisclosed participation in litigation on behalf of a pro se litigant as doing so permits and enables the false appearance of being without substantial professional assistance").

The other set of circumstances alleged in the Second Petition further demonstrates the Respondent's inattention to the full disclosure necessary to protect the public and the legal system. On September 17, 2003, after investigating two complaints about Respondent, the Colorado Supreme Court's Unauthorized Practice of Law (UPL) Committee entered an agreement and filed an Agreed Order concluding that Respondent engaged in the unauthorized practice of law in Colorado in 2002, and requiring that he refrain from any further actions constituting the unauthorized practice of law in Colorado.

¹³ Why Respondent would want to leave the judgment unchecked is beyond the comprehension of this Panel. Nor did the Respondent offer any explanation. Respondent testified that he considered the Reagan matter resolved by the Settlement Agreement and the \$1 million payment he received, but gave no explanation for not taking affirmative action to set aside, modify, or otherwise undo the default judgment for fraud. There is simply no reasonable explanation for his failure to do so. Either the Respondent deliberately did nothing because he had received the \$1 million, which is a serious indictment of his moral character. Or, the Respondent did not appreciate the implications to his career and law license from the fraud judgment. That does not appear to be the case because the Respondent valued the damage to his character at the substantial sum of \$1 million. But, even giving the Respondent the benefit of the doubt, if he did not realize that letting the fraud judgment go unchecked could cause issues for him professionally, then the Respondent is probably not competent to practice law. *See e.g.* TENNESSEE CODE OF PROFESSIONAL RESPONSIBILITY DR 6-101 and TENNESSEE RULES OF PROFESSIONAL CONDUCT Rule 1.1 and Rule 1.3.

In the Agreed Order, Respondent stipulated that his letterhead (which referred to Respondent as “attorney at law”) stated that he was licensed in Tennessee and did not state that he was licensed in Colorado. The Agreed Order further stipulated that the Respondent had a good faith belief that he was not engaging in the unauthorized practice of law at the time based on applicable Colorado case law.

From the stipulations in the Agreed Order, it is clear (and certainly demonstrated by a preponderance of the evidence) that the Respondent violated DR 3-101(B) and RPC 5.5(a), which both generally provide that a lawyer shall not engage in the unauthorized practice of law in another jurisdiction.¹⁴ By these violations, the Respondent also violated DR 1-102(A)(1) and RPC 8.4(a).

This Panel further finds by a preponderance of the evidence that the Respondent’s failure to adequately disclose on his letterhead that he was licensed **only** in Tennessee also violates DR 1-102(A)(4), (5), and (6) and EC 8.4(c) because such failure at least enabled the false appearance that he was licensed to practice in Colorado. The simple act of adding to his letterhead, the word “only” after the statement “licensed in Tennessee” or stating “not licensed in Colorado” would most likely have avoided any confusion that was created by the Respondent’s conduct in providing legal advice to Colorado residents while he was living there.

That it did not occur to Respondent to make this additional simple disclosure reflects adversely on his fitness to practice law. As importantly, Respondent’s failure to do so caused at least confusion, if not worse, for the public and, therefore, reflects poorly on the legal profession as well.

¹⁴ The conduct complained of in Colorado occurred around April and May of 2002, when the Tennessee Code of Professional Responsibility was in place. The disposition of the Colorado complaints occurred in September of 2003, after the Tennessee Rules of Professional Conduct became effective.

Finally, the Reagan circumstances and the Colorado circumstances, when considered together, demonstrate a pattern by the Respondent of lack of regard for accuracy and disclosure. As noted by the American Bar Association, “[t]he most fundamental duty which a lawyer owes the public is the duty to maintain the standards of personal integrity upon which the community relies.” ABA Center for Professional Responsibility, STANDARDS FOR IMPOSING LAWYER SANCTIONS § 5.0 (1991 ed.).¹⁵

This kind of misrepresentation is not condoned in Tennessee. *See* TENNESSEE CODE OF PROFESSIONAL RESPONSIBILITY EC 1-5 (“Lawyers should ... refrain from all illegal and morally reprehensible conduct...”) and TENNESSEE RULES OF PROFESSIONAL CONDUCT Rule 8.4(c) cmt. (“Paragraph (c) prohibits lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Such conduct reflects adversely on the lawyer’s fitness to practice law.”) *See also* Board of Professional Responsibility of the Supreme Court of Tennessee, Formal Ethics Op. 2007-F-153 (March 23, 2007); *Cohn v. Board of Professional Responsibility*, 151 S.W.3d 473 (Tenn. 2004)(bankruptcy attorney’s use of deceitful practice to collect post-confirmation attorneys fees warranted suspension); and *Con-Tech, Inc. v. Sparks*, 798 S.W.2d 250 (Tenn. App. 1990)(failure to disclose that foreign judgment upon which attachment was based was on appeal violated Rule 11 and was sanctionable). Because the Panel finds that the Respondent has engaged in professional misconduct, disciplinary sanctions are warranted. *See* STANDARDS FOR IMPOSING LAWYER SANCTIONS, §§ 2.1 *et. seq.*

As noted above, the Panel finds that the specific sanction for the Respondent’s failure to abide by court orders, which violates DR 1-102(A)(1), (5), (6), and (7) and RPC 8.4(a) and (d), is the 46-day suspension already imposed and completed. However, even though the Panel

¹⁵ Tennessee has adopted the Standards for Imposing Lawyer Sanctions promulgated by the American Bar Association. *Board of Professional Responsibility v. Maddox*, 148 S.W.3d 37, 40 (Tenn. 2004).

declines to impose additional sanction for this violation. the occurrence of the misconduct is an aggravating factor in consideration of appropriate disciplinary sanctions for the other misconduct in which the Respondent has engaged. See STANDARDS FOR IMPOSING LAWYER SANCTIONS, §9.2 (aggravating factors include, among other things: prior disciplinary offenses, dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, and substantial experience in the practice of law).¹⁶

Many of the other aggravating circumstances articulated in the ABA standards are present here as well. The Respondent is an experienced lawyer, with, according to his own testimony, substantial financial experience. Yet, he would have this Panel believe that he is a financial ingénue, unconcerned about a multi-million dollar judgment. His inability to satisfactorily explain the circumstances alleged in this proceeding involving various sums of money is a factor warranting aggravation of the discipline.

Another aggravating circumstance in this matter is the Respondent's lack of credibility. The Panel did not find the Respondent to be a credible witness, either in his demeanor or the substance of his responses.

Based on all of these circumstances, the Panel finds that a suspension of an additional six (6) months is warranted and appropriate. See STANDARDS FOR IMPOSING LAWYER SANCTIONS § 2.3 (suspension should generally be for a period of time equal to or greater than six months) and § 6.12 (suspension generally appropriate when a lawyer knows that false statement or documents are being submitted to the court or that material information is improperly withheld and takes no remedial action and causes an adverse or potentially adverse effect on the legal proceeding).

¹⁶ Included in the aggravating factors is bad faith obstruction of the disciplinary proceeding by failing to comply with rules or orders of the disciplinary agency. Although the Panel does not consider the Respondent's conduct in this proceeding to rise to the level of aggravation contemplated by the Standards, it does note that the Respondent exhibited at least a lack of regard for orders and rules in missing more than one deadline.

The Panel does not find any compelling mitigating circumstances that would warrant a downward departure in the period of suspension.¹⁷

Motion for Recusal

An additional matter requires further attention by this Panel. At the May 14, 2007, final hearing, the Panel was presented with the Respondent's Motion for Recusal, which was denied both on the merits and because it was untimely. The May 9, 2007 Order of the Panel required the Respondent to file any motion for recusal of the Panel or any member of the Panel by no later than April 24, 2007, so that the Panel could consider and dispose of any such motion prior to the final hearing. The Respondent did not file a motion by the April 24 deadline, and, instead, waited until the commencement of the final hearing on May 14, 2007, to present the Panel with his Motion for Recusal.

The substantive reasons for denial of the Motion for Recusal were stated orally and recorded in open hearing. Disciplinary Counsel is directed to obtain a transcript of that portion of the May 14, 2007 proceeding, and prepare a written order for entry by the Panel denying the Motion for Recusal with the transcript attached.

Conclusion

Based upon the foregoing and in accordance with ABA standards adopted for disciplinary proceedings in Tennessee, the Panel finds by a preponderance of the evidence that:

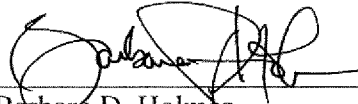
(i) in connection with the allegations stated in the First Petition, the Respondent engaged in misconduct that violates DR 1-102(A)(1), (5), (6), and (7) and RPC 8.4(a) and (d), which is sanctionable by suspension for a period of 46 days with credit for the 46-day suspension previously concluded in January of 2002; and

¹⁷ To be clear, the suspension imposed is six months in addition to the 46-day suspension that occurred from December 2001 through January 2002.

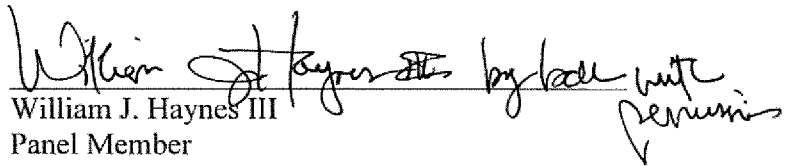
(ii) in connection with the allegations stated in the Second Petition, the Respondent engaged in misconduct that violates DR 1-102(A)(1), (4), (5), and (6), DR 3-101(B), RPC 5.5(a), and RPC 8.4(a), (c) and (d), which is sanctionable by an additional suspension of six (6) months.

Disciplinary Counsel is directed to prepare an order reflecting the decision of the Panel and the sanctions provided for herein. Disciplinary Counsel is further directed to prepare a separate order denying the Respondent's Motion to Have Panel Recuse Itself and for New Hearing with a copy of the transcript of the Panel's findings and conclusions made orally and recorded at the May 14, 2007, final hearing attached.

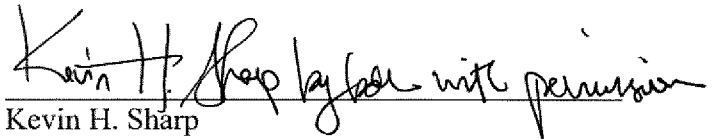
IT IS SO DECREED this 31st day of July 31, 2007.



Barbara D. Holmes
Panel Chair

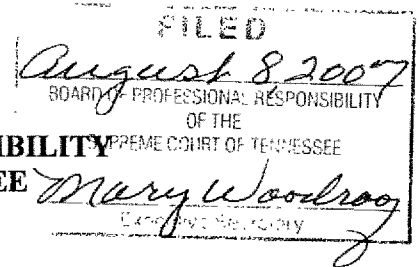


William J. Haynes III
Panel Member



Kevin H. Sharp
Panel Member

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



IN RE:
WILLIAM LAWRENCE EMBRY,
BPR #010215, An Attorney Licensed to
Practice Law in Tennessee (Out-of-State),
Respondent.

)
)
)
)
)

DOCKET NOS. 2003-1380-0-JJ
and 2003-1410-5-JJ

FINAL JUDGMENT OF HEARING PANEL

For the reasons set forth in the Final Decree of Hearing Panel, the Hearing Panel finds the Respondent has violated DR 1-102(A)(4), (5), (6), and (7), DR 3-101(B), RPC 5.5 (a) and RPC 8.4(c) and (d) and is appropriately suspended from the practice of law for a period of six months and 46 days, with credit for the 46 days of suspension already having occurred.

IT IS, THEREFORE, THE JUDGMENT OF THIS HEARING PANEL that Respondent shall be and is hereby suspended from the practice of law for a period of six months and 46 days, with credit for the 46 days of suspension already having occurred.

IT IS SO ORDERED AND ADJUDGED this 8th day of August, 2007.

Barbara D. Holmes
Panel Chair

William J. Haynes III
Panel Member

Kevin H. Sharp
Panel Member