

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

FILED  
2015 MAY -4 PM 2:29

BOARD OF PROFESSIONAL  
RESPONSIBILITY

*Reet*

IN RE: DONALD WALTER FISHER,  
BPR#14714, Respondent,  
An Attorney Licensed to  
Practice Law in Tennessee  
(Davidson County)

DOCKET NO: 2014-2372-5-WM

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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This matter came on for hearing on March 24, 2015 before a Hearing Panel (the "Panel") consisting of Matthew Thompson Harris, Gary Roy Wilkinson, and Robert Joseph Mendes, Chair, upon a Petition for Discipline. Upon the evidence and testimony presented, the Panel makes the following Findings of Fact and Conclusions of Law in this matter.

**PRELIMINARY MATTER**

Prior to the beginning on the hearing, counsel for Donald Walter Fisher moved to strike paragraph 63 of the Petition on the grounds that the paragraph improperly made reference to previous private disciplinary history in violation of Rule 9, Section 15.2(a) of the Tennessee Rules of the Supreme Court. The Panel initially took the objection under advisement pending receiving the evidence to be presented at the hearing. Then, in the Board's case-in-chief, the Board introduced Trial Exhibits 10, 11 and 12, which were evidence of prior private disciplinary history. These three exhibits were admitted as evidence.

After deliberating on the motion to strike during a break in the evidence, the Panel granted the motion to strike paragraph 63 of the Petition. The Panel also stated that Trial Exhibits 10, 11 and 12 would be disregarded completely for purposes of deciding whether any Rules of Professional Conduct had been violated, and instead the Panel would only consider Trial Exhibits 10, 11 and 12, if at all, for purposes of determining an appropriate sanction for any rule violation that might be found after the evidence was presented.

### **FINDINGS OF FACT**

1. Mr. Fisher practices law as the Fisher Law Group. Mr. Fisher's office is at the firm's Nashville office. The firm also has an office in Chattanooga and two offices in Memphis. The firm employs one other attorney, Chadwick Stanfill, whose office is also located in Nashville.

2. Mr. Fisher represents plaintiffs in personal injury lawsuits arising from automobile accidents. The firm has approximately 850 such clients at any one time. Approximately 250 of those clients are managed by the Memphis offices. Approximately 5% of those matters result in lawsuits being filed with the remainder being settled without filing suit.

3. An attorney employed by the Fisher Law Group practiced in the Memphis offices between October, 2014 and January, 2015. Prior to that time, there was no lawyer working at the Memphis offices. Since that time, the position remains unfilled. The primary employee of the Fisher Law Group working at the Memphis offices is a legal assistant, Nicole Blaylock.

4. Mr. Fisher meets with approximately 5% of the Memphis clients. He speaks on the telephone with approximately 20% of the Memphis clients. Approximately 80% of Mr. Fisher's clients in Memphis have no contact of any type with an attorney during the entire time of his representation.

5. Mr. Fisher does not routinely review the medical records of the Memphis clients. Rather, the records are reviewed by non-lawyer assistants who provide him with either a written or verbal overview of those records.

6. Non-lawyer assistants conduct settlement negotiations with insurance adjusters. The assistants have Mr. Fisher's authorization to make the initial demand based on a "paradigm" devised by Mr. Fisher. Subsequent offers are responded to and demands are made by the assistants after consultation with Mr. Fisher though sometimes counteroffers go back and forth more quickly than Mr. Fisher knows about.

7. When suit is filed, complaints are prepared by non-lawyer assistants utilizing standardized boilerplate forms. Mr. Fisher reads and approves the complaints after they are prepared. When there is insufficient time for a Memphis complaint to be sent to Mr. Fisher in Nashville for his signature, Mr. Fisher authorizes Ms. Blaylock to sign his name.

8. Approximately 95% of Mr. Fisher's clients are referred to him by chiropractors. For a time, one of Mr. Fisher's Memphis offices was next door to the office of a chiropractor, Dr. Lee Thomas. The offices had a door between them. During this period of time, Dr. Thomas referred 10-12 patients to Mr. Fisher per month.

9. On January 21, 2013, Charlie Bell was operating a motor vehicle in Memphis when it was struck from the rear by a motor vehicle driven by Domonique

Burnside. Mr. Bell retained the Fisher Law Group to represent him as a result of that accident. Mr. Bell originally represented to the Fisher Law Group that his friend, Hosea Mr. Taylor, was a passenger in his vehicle at the time of the collision.

10. Ramona Watts is the mother of Mr. Taylor. Ms. Watts describes her son as "slow" and bipolar. The evidence indicated that Ms. Watts did not believe that her son was capable of adequately communicating with lawyers or law firm staff about the accident. Mr. Taylor told Ms. Watts that he was injured in the collision between Ms. Burnside and Mr. Bell.

11. On January 22, 2013, Mr. Taylor received a telephone call. After answering the call, Mr. Taylor handed his telephone to Ms. Watts. Ms. Watts then spoke with Ms. Blaylock who had placed the call to Mr. Taylor. Ms. Blaylock told Ms. Watts that the Fisher Law Group was representing Mr. Bell as a result of the collision and asked Ms. Watts if her son had a lawyer, yet. When told that he did not, Ms. Blaylock solicited Mr. Taylor's employment. Ms. Blaylock told Ms. Watts "we have a doctor" who could provide him transportation to the office the following day.

12. Mr. Taylor was picked up the following day and driven to the office of Dr. Thomas who began treating him. The same day, he retained the Fisher Law Group to represent him as a result of the collision.

13. The day after Mr. Taylor's first visit to the office of Dr. Thomas, Ms. Watts accompanied her son there. Following his visit that day with Dr. Thomas, Mr. Taylor and Ms. Watts went next door to the office of the Fisher Law Group and met with Ms. Blaylock. During this meeting, Ms. Blaylock gave Mr. Taylor a \$25 gas card.

14. Mr. Bell eventually stated to the Fisher Law Group that Mr. Taylor was not in his vehicle at the time of the collision, but got in it immediately after the collision, and by making a claim that he was injured in the accident was attempting to perpetrate a fraud.

15. As a result, the Fisher Law Group wrote a letter to Mr. Taylor on October 15, 2013 terminating their representation of him. (Exhibit 2)

16. Despite terminating their representation of him due to the claims made by Mr. Bell, on January 21, 2013, a complaint was filed in the Circuit Court for Shelby County on behalf of Mr. Bell and Mr. Taylor against Ms. Burnside alleging that both Mr. Bell and Mr. Taylor were injured in the collision. (Exhibit 1) The complaint was prepared by Ms. Blaylock, approved by Mr. Fisher and Mr. Fisher's name was signed by Ms. Blaylock. Process was never issued, the complaint was never served on the defendant and Mr. Fisher never moved to withdraw as attorney for the plaintiffs.

17. Mr. Fisher never spoke or met with either Mr. Taylor or Ms. Watts.

18. On January 13, 2013, Willie Wooten was injured in an automobile accident in Memphis. On January 14, 2013, Ms. Blaylock telephoned Mr. Wooten and told him that she was a lawyer and was calling on behalf of the Fisher Law Group for the purpose of soliciting his employment.

19. Thereafter, Mr. Wooten met with Ms. Blaylock at a Memphis office of the Fisher Law Group and retained it to represent him as a result of the accident. Mr. Wooten told Ms. Blaylock that he had received treatment for his injuries at Baptist Minor Medical. Ms. Blaylock told Mr. Wooten that he would have to see "our" doctor. Ms. Blaylock took Mr. Wooten next door to the office of Dr. Thomas who began treating him.

20. Mr. Wooten spoke with Mr. Fisher on the telephone one time. He attempted to call Mr. Fisher several more times and left messages for him to call but he never did. Mr. Fisher never met with Mr. Wooten.

21. In 2012, Carl Bowen was injured in an automobile accident in Memphis. He sought treatment at the office of a chiropractor, Dr. Erskine Williams. Dr. Williams referred Mr. Bowen to the Fisher Law Group, which had an office two floors below that of Dr. Williams.

22. After seeing Dr. Williams, Mr. Bowen went to the office of the Fisher Law Group and met with Ms. Blaylock where he retained the Fisher Law Group to represent him. During this meeting, Ms. Blaylock gave Mr. Bowen a \$25 gas card.

23. Mr. Bowen agreed to a settlement of his claim. A disbursement statement was prepared by the Fisher Law Group on a form maintained by it for the purpose of accounting for the distribution of settlements. (Exhibit 9) The distribution statement forms contain a line reading, "Costs, Other Adjustments (admin fee, gas card)."

24. Mr. Fisher never spoke or met with Mr. Bowen.

25. Mr. Fisher received a private reprimand from the Board on March 9, 2001. That private reprimand arose from Mr. Fisher improperly soliciting a client by letter that had been involved in an automobile accident, making misleading communications to a potential client regarding "free" chiropractic care, and making an improper offer to a chiropractor for which Mr. Fisher sought referrals of clients in exchange. (Exhibit 10)

26. Mr. Fisher received a private reprimand from the Board on December 22, 2004 as a result of meeting with prospective clients at the offices of their treating chiropractors. (Exhibit 11)

27. Mr. Fisher received a private reprimand from the Board on July 19, 2012 as the result of commingling funds in his trust account. (Exhibit 12) The findings in these paragraphs 25 to 27, and Exhibits 10, 11 and 12, were only considered after the Panel had concluded that Mr. Fisher had violated multiple Rules of Professional Conduct. Exhibits 10, 11 and 12 were all disregarded by the Panel prior to concluding that he had violated the Rules of Professional Conduct.

### **CONCLUSIONS OF LAW**

28. In the Petition, the Board alleged violations of Rules 1.4, 1.7(a), 5.3, 5.5(a) and 8.4(a) of the Rules of Professional Conduct. In addition, at the hearing in this matter, the Board alleged violations of Rules 1.8 and 7.3. Mr. Fisher did not object to proof related to Rules 1.8 and 7.3. The Panel therefore considers whether Mr. Fisher violated Rules 1.4, 1.7(a), 1.8, 5.3, 5.5(a), 7.3(a) and 8.4(a).

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

30. The preponderance of the evidence establishes that Mr. Fisher has committed the violations of the Rules 1.4, 1.7(a), 1.8(e), 5.3(b), 7.3(a) and 8.4(a) of the Rules of Professional Conduct. The Panel finds that there is not sufficient evidence to establish a violation of Rule 5.5(a) of the Rules of Professional Conduct.

31. Mr. Fisher violated RPC 1.4 (Communication) by having no communication with either Mr. Taylor or Mr. Bowen and only one telephone call with Mr. Wooten. Mr. Fisher and Ms. Blaylock acknowledge that Mr. Fisher has no communication whatsoever with approximately 80% of the clients in his Memphis office, and that these 80% of the clients also have no communication with any other lawyer in the firm. Mr. Fisher and Ms. Blaylock acknowledge that Mr. Fisher only speaks on the telephone to approximately 5% of the clients in his Memphis office. This is consistent with the evidence that Mr. Fisher had no communication at all with Mr. Taylor or Mr. Bowen, and only one phone call with Mr. Wooten. This does not come close to meeting the level of communication required by an attorney under Rule 1.4. Mr. Fisher did not adequately communicate with the three complaining parties here, and Mr. Fisher does not appear to have sufficient practices and procedures in his law firm for communicating properly with clients generally.

32. Mr. Fisher violated RPC 1.7(a) (Conflict of Interest: Current Clients) by filing suit on behalf of both Mr. Bell and Mr. Taylor despite their adverse interests. Mr. Fisher and Ms. Blaylock acknowledge that, prior to Mr. Fisher's office filing a lawsuit on behalf of both Mr. Taylor and Mr. Bell, they were aware of a conflict of interest between the two. Specifically, they were aware that Mr. Bell asserted that Mr. Taylor was lying about his involvement in the vehicle accident in question. Mr. Fisher and Ms. Blaylock state that the conflict was severe enough that they were concerned that Mr. Taylor was attempting insurance fraud and therefore Mr. Fisher was forced to withdraw as counsel. Clearly, there was a conflict of interest that violated Rule 1.7(a) in filing a lawsuit on behalf of both Mr. Taylor and Mr. Bell.



33. Mr. Fisher asserts that, because his office was having a hard time confirming that Mr. Taylor had actual notice that Mr. Fisher had terminated the attorney-client relationship, he had no choice but to file suit to protect Mr. Taylor's interests. The Panel finds this explanation unsatisfactory. There is a clearly acknowledged conflict of interest. The only question raised by Mr. Fisher is whether the conflict was excused due to the difficulty in communicating with Mr. Taylor. However, where Mr. Fisher seeks to blame Mr. Taylor and his mother for the communication issues, the Panel believes that Mr. Fisher's systematic failure to establish and maintain communication with his clients is the cause of any communications issues with Mr. Taylor. Regardless, no matter where the fault lies for the communications issues with Mr. Taylor, Mr. Fisher's own testimony establishes that he filed a lawsuit for one client knowing that another client in the same matter thought the first client was lying about the facts of the case. This is a conflict that violates Rule 1.7(a).

34. Mr. Fisher violated RPC 1.8(e) (Conflict of Interest: Current Clients: Specific Rules) by providing financial assistance to Mr. Taylor and Mr. Bowen in the form of gas cards. There was credible evidence that gas cards were provided to Mr. Taylor and Mr. Bowen. Ms. Blaylock testified to the contrary. The Panel concludes that Ms. Blaylock was not credible on this issue. Among other reasons, Ms. Blaylock's testimony contradicted Mr. Fisher's testimony in key areas. For example, while Mr. Fisher acknowledged that he does not review all offers of settlement before they are made by his non-lawyer staff members, Ms. Blaylock testified that he did in fact review all offers of settlement prior to them being made. From this and other similar contradictions, it appears that Ms. Blaylock's testimony downplayed the inappropriate

flaws in Mr. Fisher's law practice. This is one of the reasons why the Panel chooses to credit the evidence that Mr. Fisher provided financial assistance to these two clients. Moreover, neither of the two exceptions in Rule 1.8(e) that would allow providing financial assistance are applicable here.

35. Mr. Fisher violated RPC 5.3(b) (Responsibilities Regarding Nonlawyer Assistants). Rule 5.3(b) requires that a lawyer "...shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer." Mr. Fisher has allowed hundreds of clients to have no contact with an attorney during the entire time of their representation, and he did not make reasonable efforts to ensure that his non-lawyer staff's conduct was compatible with his professional obligations. He allowed his non-lawyer assistants to be primarily responsible for maintaining and interpreting medical records. He allowed his non-lawyer staff to make offers and negotiate settlements without the involvement of any licensed attorney. He allowed his non-lawyer staff to conduct the majority of client solicitation and communication without the involvement of any licensed attorney. All of these circumstances demonstrate that Mr. Fisher inadequately supervised his non-lawyer assistants in violation of RPC 5.3.

36. Although it is a very close call, the Panel finds that Mr. Fisher did not violate RPC 5.5(a) (Unauthorized Practice of Law). The Board argues that, by allowing non-lawyer assistants to sign complaints filed with courts, Mr. Fisher assisted in the unauthorized practice of law. The Board also argues that Mr. Fisher essentially allowed his non-lawyer staff to represent his clients, and that this violated Rule 5.5(a) by assisting another in the unauthorized practice of law. The Panel has no question that

Mr. Fisher's practices did not satisfy the Rules of Professional Conduct. However, the Panel does not believe that the Board has provided enough evidence to demonstrate that Mr. Fisher's staff was practicing law. Rather, the Panel finds that the evidence demonstrates that many of Mr. Fisher's clients simply did not have the benefit of counsel at all. It appears that the practice was set up to be more of an assembly line than a law practice. In this way, the Panel cannot find that Mr. Fisher assisted his staff in the unauthorized practice of law. This finding should not be viewed a positive commentary on Mr. Fisher's practice management.

37. Mr. Fisher violated RPC 7.3(a) (Solicitation of Potential Clients) which prohibits solicitation of potential clients by telephone. This rule was not mentioned in the Board's complaint against Mr. Fisher. However, at the hearing in this matter, the Board repeatedly asserted that Mr. Fisher had violated the Rules of Professional Conduct in connection with these phone solicitations. Mr. Fisher did not object to the presentation of proof regarding this allegation. The proof demonstrated that Mr. Fisher violated RPC 7.3(a). Two independent witnesses, Ms. Watts and Mr. Wooten, both provided evidence describing nearly identical phone solicitations. On the other hand, Ms. Blaylock testified that the solicitations did not happen. The Panel finds that Ms. Blaylock's employment with Mr. Fisher creates a question about her credibility on this issue. After weighing the testimony, the Panel chooses to credit the testimony of Ms. Watts and Mr. Wooten that the improper telephone solicitations did happen.

38. Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a) (Misconduct) in that Mr. Fisher violated the Rules of Professional Conduct, and knowingly assisted or induced another to do so.

39. The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has carried its burden and proven the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence (with the exception of RPC 5.5(a), which the Panel finds was not violated).

40. Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

41. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

4.42 Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.

42. Pursuant to ABA Standard 9.22, aggravating factors are present in this case:

- a. Mr. Fisher's prior disciplinary history is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.
- b. Mr. Fisher has shown a selfish motive, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

- c. Mr. Fisher has shown a pattern of misconduct, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.
- d. Mr. Fisher has committed multiple offenses, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.
- e. The vulnerability of Mr. Fisher's clients is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.
- f. Mr. Fisher has substantial experience in the practice of law, having been licensed in Tennessee since 1991, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

42. Based upon the evidence and admissions in this matter, the appropriate discipline is suspension from the practice of law for one (1) year as follows: (a) for the first ninety (90) days, Mr. Fisher shall be fully suspended from the practice of law; and (b) after the first ninety (90) days, the remaining portion of the one (1) year suspension period shall deferred pending the successful completion of probation subject to the terms described in the Judgment below.

### JUDGMENT

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Panel hereby finds that Mr. Fisher should be suspended from the practice of law for one (1) year as follows: (a) for the first ninety (90) days, Mr. Fisher shall be fully suspended from the practice of law; and (b) after the first ninety (90) days, the remaining portion of the one (1) year suspension period shall deferred pending the successful completion of probation subject to the following terms: (i) Mr. Fisher shall not violate any of the Tennessee Rules of Professional Conduct; and (ii) Mr. Fisher shall fully cooperate with a Practice Monitor to be appointed to ensure that his

law practice fully corrects the shortcomings which led to the violations described in these Findings of Fact and Conclusions of Law. The Practice Monitor's duties and responsibilities shall include monitoring Mr. Fisher's practice, and guiding Mr. Fisher regarding his practice, in connection with his communication practices with his clients, training and supervision of his firm's employees, client intake practices, practices in connection with soliciting clients, practices for tracking and monitoring client communications, and practices regarding participating in settlement communications.

IT IS SO ORDERED.



Robert Joseph Mendes, Panel Chair

 BY PERMISSION RJM

Matthew Thompson Harris, Panel Member

 BY PERMISSION RJM

Gary Roy Wilkinson, Panel Member

**NOTICE: THIS JUDGMENT MAY BE APPEALED PURSUANT TO  
TENN. SUP. CT. R. 9, § 33 BY FILING A PETITION FOR REVIEW.**