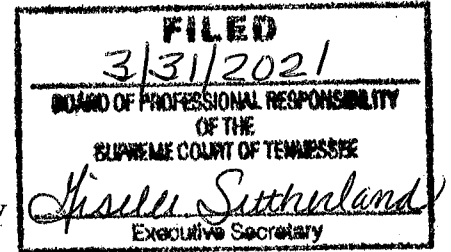


IN DISCIPLINARY DISTRICT II
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: GRACE INGRID GARDINER,
BPR No. 023269, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Knox County)

DOCKET NO. 2017-2789-2-AJ

JUDGMENT OF THE HEARING PANEL

This case came on for final hearing on January 26 and 27, 2021. Pursuant to the Supreme Court Order establishing protocols for hearings, the trial was conducted through Zoom. Participating in the trial were Clint Woodfin, Hearing Panel Chair; John Butler, Hearing Panel Member; Karen Crutchfield, Hearing Panel Member; Chris Field, counsel for Respondent, and Alan D. Johnson, counsel for the Board.

STATEMENT OF THE CASE

This is a disciplinary proceeding against Grace Ingrid Gardiner, an attorney licensed to practice law in Tennessee in 2004. A Petition for Discipline was filed against Ms. Gardiner on November 9, 2017. Ms. Gardiner filed an Answer on January 19, 2018.

Ms. Gardiner was present and testified at the trial and Gwendolyn Kerney, the Chapter 13 Trustee, testified on behalf of the Board by telephone. Greg Clark and Judy Lovely testified on behalf of Ms. Gardiner. Ten (10) Exhibits were introduced.

FINDINGS OF FACT

1. The Respondent, Grace Ingrid Gardiner, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee.

2. This case involves Ms. Gardiner's practice in the Bankruptcy Court for the Eastern District of Tennessee.

3. Ms. Gardiner no longer has an office in Tennessee and maintains two offices in Florida where she concentrates on immigration law. She is not practicing in any Bankruptcy Court.

4. At all times relevant to this case, Ms. Gardiner maintained her practice in Knoxville as well as Florida and divided her time between those locations.

UPRIGHT LAW

5. In addition to representing clients who came to her directly, Ms. Gardiner accepted cases from Law Solutions Chicago LLC d/b/a UpRight Law LLC ("UpRight Law") beginning in May 2014.

6. UpRight Law LLC is an Illinois law firm in Chicago, Illinois, and is registered to do business as a foreign limited liability corporation in Tennessee.

7. UpRight Law advertises nationally, primarily through the Internet, and solicits prospective debtors and local attorneys over the Internet.

8. Clients who retain UpRight Law sign retainer agreements with UpRight Law and fees are paid directly to UpRight Law.

9. UpRight Law engages lawyers in other states, including Tennessee, who are considered non-equity and non-voting partners.

10. UpRight Law's central office in Chicago purportedly provided the following services: client intake (including gathering client financial data), execution of retention agreements, collection of legal fees and client cost advances, case management, creditor contacts, preparation of bankruptcy petitions, calendaring, maintenance of client data and documents, accounting for client fees and cost advances, and disbursement of fees to non-equity, non-voting

partners.

11. Ms. Gardiner entered into two partnership agreements with UpRight Law.

12. In the first agreement, after UpRight conducted the initial intake and referred the case to the local lawyer (Ms. Gardiner), the majority of document preparation was performed by UpRight Law and Ms. Gardiner made court appearances for the client.

13. In the second agreement, after UpRight conducted the initial intake, the case was referred to the local lawyer (Ms. Gardiner) who performed the document preparation and appeared in Court.

14. The retainer agreements for clients that came to Ms. Gardiner through UpRight Law were signed before Ms. Gardiner met with the clients or even knew that she would represent them.

15. UpRight law electronically signed Ms. Gardiner's name to the retainer agreements before she met with or discussed the case with the client.

16. An example of the retainer agreements is Exhibit 2, the retainer agreement in the Hagstrom case which bears Ms. Gardiner's signature that was affixed by UpRight.

17. The retainer agreement includes a disclosure statement required by 11 U. S. C. § 527, that the client signs acknowledging that an attorney has given the client information about the Rules for filing a Bankruptcy Petition.

18. Ms. Gardiner did not know if the individuals who obtained the client's signature, and affixed her signature to the retainer agreements, were lawyers.

19. Because she did not participate in the client intake and preparation of the retainer agreement, Ms. Gardiner did not know whether or not the client had been provided the information required by 11 U. S. C. § 527.

20. Ms. Gardiner admitted that it was inappropriate to allow UpRight to affix her signature to a retainer agreement when she had not met with the client.

21. As of February 12, 2016, Ms. Gardiner had filed six Chapter 13 cases, four of which were signed “Grace I Gardiner TN/ Grace I Gardiner TN/ UpRight Law LLC” or “Grace I Gardiner/ Grace I Gardiner/ UpRight Law LLC.”

22. Four (4) of the six (6) cases came to Ms. Gardiner through UpRight Law, and the other two came directly to Ms. Gardiner.

23. Someone at UpRight affixed Ms. Gardiner’s signature to retainer agreements before Ms. Gardiner had met with the client.

BANKRUPTCY COURT PROCEEDINGS

24. By letter dated May 1, 2017, Ms. Gardiner reported to the Board that she had been sanctioned by the Bankruptcy Court for the Eastern District of Tennessee at Knoxville. (Exhibit A to Petition for Discipline,).

25. Beginning in May 2016, the Bankruptcy Court entered several orders related to Ms. Gardiner’s representation of her clients and motions were filed by the Chapter 13 Trustee and United States Trustee seeking sanctions against Ms. Gardiner.

26. On May 18, 2016, the Bankruptcy Court ordered Ms. Gardiner to show cause why she should not be sanctioned for submitting to the Court a purported agreed order in the case of Clara Imogene Wright, No. 3:16-bk-3097-SHB bearing the Chapter 13 Trustee’s signature when it was not, in fact, approved for entry by the Chapter 13 Trustee. (Exhibit B to Petition for Discipline, Exhibit 1).

27. On June 9, 2016, the Bankruptcy Court entered an Order requiring Ms. Gardiner to disgorge \$500.00 of the pre-petition fee paid to her in the case of Clara Imogene Wright, No. 3:16-

bk-3097-SHB, and to pay the amount to the Chapter 13 Trustee. (Exhibit C to Petition for Discipline, Exhibit 1)

28. On June 23, 2016, the Bankruptcy Court entered an Order requiring Ms. Gardiner to appear before it on July 13, 2016, to show cause why she should not be sanctioned for failing to comply with the Court's Order entered on June 9, 2016. (Exhibit D to Petition for Discipline, Exhibit 1)

29. On July 13, 2016, the Bankruptcy Court entered an Order requiring Ms. Gardiner to provide to the Court by hand delivery the original documents that were actually signed by the Debtor (Clara Imogene Wright) and that contained her "wet" signature, no later than July 20, 2016. (Exhibit E to Petition for Discipline, Exhibit 1)

30. On July 14, 2016, the Bankruptcy Court entered an Order in the cases of Annette Haynes, No. 3:16-bk-30352-SHB; Clara Imogene Wright, No. 3:16-bk-30917-SHB; Willette Dawn Terrell, No. 3:bk-30918-SHB; Tymira Jame'a Terrell, No. 3:bk-30919-SHB; and, Pamela Jo Hagstrom, No. 3:16-bk-31214-SHB, directing Ms. Gardiner to not file further Bankruptcy cases under Chapter 13 in the Eastern District of Tennessee, Northern Division, until resolution of pending issues scheduled for hearing on October 3, 2016. (Exhibit F to Petition for Discipline, Exhibit 1)

31. On July, 15, 2016, the Bankruptcy Court entered an Order in the cases of Annette Haynes, No. 3:16-bk-30352-SHB; Clara Imogene Wright, No. 3:16-bk-30917-SHB; Willette Dawn Terrell, No. 3:bk-30918-SHB; Tymira Jame'a Terrell, No. 3:bk-30919-SHB; and, Pamela Jo Hagstrom, No. 3:16-bk-31214-SHB, directing Kevin Chern, Jason Allen, and/or the current managing partner of UpRight Law LLC to appear on August 17, 2016, to show cause why they and UpRight Law LLC should not be sanctioned for incompetent representation of their clients

in the Court. (Exhibit G to Petition for Discipline, Exhibit 1)

32. On July 22, 2016, the Bankruptcy Court entered an Order in the case of Clara Imogene Wright, No. 3:16-bk-30917-SHB, directing Ms. Gardiner to pick up the original documents previously delivered to the Court *in camera* and to deliver copies to the Chapter 13 Trustee. (Exhibit H to Petition for Discipline, Exhibit 1)

33. On July 25, 2016, the Bankruptcy Court entered an Order in the case of Clara Imogene Wright, No. 3:16-bk-30917-SHB, prohibiting Ms. Gardiner from filing documents with the Debtor's electronic signature, and directing that future documents filed in the case that require the Debtor's signature must bear an original signature. (Exhibit I to Petition for Discipline, Exhibit 1)

34. On August 18, 2016, the Bankruptcy Court entered an Order in the cases of Clara Imogene Wright, No. 3:16-bk-30917-SHB; Leah Shannon Shepherd, No. 3:16-bk-31482-SHB; and, Nina Pauline Holman, No. 3:bk-31563-SHB, precluding UpRight Law, LLC and any partner thereof from filing any Chapter 13 case providing for payment of the Presumptive Fee provided by E. D. Tenn. LBR 2016-1(a) and that they may only file cases that provide for payment of the Lodestar Fee provided by E. D. Tenn. LBR 2016-1(b). (Exhibit J to Petition for Discipline, Exhibit 1)

35. On August 12, 2016, the Chapter 13, Trustee filed a motion seeking sanctions against Ms. Gardiner and Law Solutions Chicago LLC d/b/a UpRight Law LLC in the Clara Imogene Wright case. (Exhibit K to Petition for Discipline, Exhibit 1)

36. On December 14, 2016, the United States Trustee filed a motion for order 1) voiding the retainer agreement and purported retainer agreement, 2) enjoining violations of 11 U.S.C. § 526, 3) imposing civil penalty, and 4) imposing sanctions pursuant to 11 U.S.C. § 105

and the Court's inherent authority in the Clara Imogene Wright case. (Exhibit L to Petition for Discipline, Exhibit 1)

37. On January 5, 2017, the Bankruptcy Court entered a Memorandum and Order that, among other things, identified specific issues related to the conduct of Ms. Gardiner and UpRight Law LLC in cases pending in the Bankruptcy Court, and set a scheduling conference for January 11, 2017. (Exhibit M to Petition for Discipline, Exhibit 1)

38. On April 18, 2017, the Chapter 13 Trustee and United States Trustee filed a Joint Motion to compromise the motions seeking sanctions against Ms. Gardiner in the cases of Annette Haynes, No. 3:16-bk-30352-SHB; Clara Imogene Wright, No. 3:16-bk-30917-SHB; and, Pamela Jo Hagstrom, No. 3:16-bk-31214-SHB. (Exhibit N to Petition for Discipline, Exhibit 1)

39. On April 27, 2017, a hearing was conducted before the Bankruptcy Court to approve the compromise of the motions seeking sanctions against Ms. Gardiner in the cases of Annette Haynes, No. 3:16-bk-30352-SHB; Clara Imogene Wright, No. 3:16-bk-30917-SHB; and, Pamela Jo Hagstrom, No. 3:16-bk-31214-SHB. (Exhibit O to Petition for Discipline, Exhibit 1)

40. On April 28, 2017, an Agreed Order Fixing Sanctions Against Grace I. Gardiner was entered by the Bankruptcy Court that resolved the motions filed by the Chapter 13 Trustee and United States Trustee, that, among other things, suspended Ms. Gardiner from practicing in the Bankruptcy Court for the Eastern District of Tennessee for a period of five (5) years. (Exhibit A to Petition for Discipline, Exhibit 1)

UNAUTHORIZED SIGNATURE OF CHAPTER 13 TRUSTEE

41. At the trial of this case, when asked about signing the Chapter 13 Trustee's name to an agreed order, Ms. Gardiner testified that she had been authorized by the Chapter 13 Trustee to sign her name. (Exhibit B to Petition for Discipline, Exhibit 1)

42. In support of her testimony, Ms. Gardiner introduced a letter from the Ms. Kerney, the Chapter 13 Trustee, dated May 5, 2016, in which Ms. Kerney confirmed continuing a meeting of Creditors in that Hagstrom case, No. 16-31214. (Exhibit 9)

43. According to Ms. Gardiner, this letter establishes that Ms. Kerney agreed to let her sign Ms. Kerney's name to an agreed order in the Wright case.

44. The Chapter 13 Trustee, Gwendelyn Kerney testified on behalf of the Board.

45. Ms. Kerney has been the Chapter 13 Trustee since 1993 and oversees a substantial operation.

46. As the Chapter 13 Trustee, Ms. Kerney sets the docket for Meetings of the Creditors and has the authority to grant continuances.

47. Ms. Kerney testified that after a Meeting of the Creditors, the next court appearance is the confirmation hearing before the Bankruptcy Judge.

48. Ms. Kerney testified that not only did she not authorize her name to be signed by Ms. Gardiner, she never authorizes anyone to sign her name to a document.

49. Moreover, Ms. Kerney pointed out the May 5, 2016 letter was merely confirmation that Ms. Kerney was rescheduling a Meeting of the Creditors for a different client, not Ms. Wright.

50. Ms. Kerney testified that she reviewed the recording of the Meeting of the Creditors at which Ms. Gardiner requested a continuance in the Wright Case.

51. Mr. Kerney testified that the hearing Ms. Gardiner wanted to continue was Ms. Wright's confirmation hearing that is set by the Court and she cannot agree to move the hearing date.

52. Confirmation hearings and objections to confirmation, if any, are taken up by the Bankruptcy Judge.

53. According to Ms. Kerney, there were objections to Ms. Wright's confirmation.

54. Ms. Kerney told Ms. Gardiner that she would inform the Court at the confirmation hearing that Ms. Gardiner could not be there, but that she had no authority to enter into an agreed order continuing the hearing date.

WET SIGNATURES AND FORGED SIGNATURE

55. Among the orders issued by the Bankruptcy Judge listed above, were orders that Ms. Gardiner produce original documents of Ms. Gardiner's clients that bear the client's signature, typically termed "wet signatures."

56. Ms. Kerney testified that because the Bankruptcy Court relies on an electronic filing system, the documents filed with the Court Clerk have electronic signatures that appear as "/S/ _____" with the debtor's name typed.

57. Because many of the documents, such as Bankruptcy Petitions and Amendments, require the debtor to attest that the information contained in them is true, the lawyers of the debtors are required to obtain their clients' actual signatures on the original documents before copies of those documents are electronically filed with the Court, and maintain those documents on file in the event issues arise and it is necessary to see the signed document.

58. Among the cases in which the Judge ordered Ms. Gardiner to produce wet signatures was Clara Imogene Wright, No. 3:16-bk-3097-SHB.

59. Because Ms. Gardiner had experienced a turnover in her support staff, she hired Greg Clark, a paralegal with experience in Bankruptcy practice to assist her on a part-time basis.

60. Mr. Clark testified that he was working in Ms. Gardiner's office on a Friday evening when he came across the Wright file and realized that certain documents needed to be electronically filed that night to meet a deadline.

61. Because of the time, late in the evening, he did not call Ms. Gardiner and there was not enough time to get Ms. Wright to sign the documents.

62. The next to last page of Exhibit 5 is a document titled Declaration about an Individual Debtor's Schedules which bears the forged signature of Ms. Wright.

63. Mr. Clark decided that he would sign Ms. Wright's name to the document and file them.

64. Mr. Clark testified that he was aware that the Court had ordered Ms. Gardiner to produce the wet signatures for all of her Chapter 13 clients.

65. It was not until early the following week that Mr. Clark informed Ms. Wright that he had signed Ms. Clark's name to the Declaration about an Individual Debtor's Schedules.

66. Ms. Gardiner testified that she was upset about what he had done.

67. Ms. Gardiner testified that she informed Ms. Wright about what happened, and Ms. Wright told her that she would have given permission for her name to be signed.

68. Several days later, July 20, 2016, the deadline for Ms. Gardiner to submit the original documents with wet signatures to the Court arrived.

69. Ms. Gardiner had previously instructed Karen Martin to gather the wet signatures from the various client files to submit to the Court.

70. Ms. Martin was hired in the middle of July 2016 and had only been working for Ms. Gardiner a few weeks when she gathered the documents.

71. Ms. Martin had clients return to the office to sign copies of documents that had previously been filed.

72. Ms. Gardiner testified that she didn't have time to closely review the documents gathered by Ms. Martin before she submitted them to the Court, but only briefly looked at them.

73. After she had submitted the documents to the Court, Ms. Gardiner informed Ms. Kerney that some of them had been back dated.

74. At the time Ms. Gardiner submitted the documents to the Court, she was aware that the documents included the forged signatures of Ms. Wright and the back dated signatures.

75. At a subsequent hearing, after the documents had been submitted to the Court, Ms. Gardiner informed the Court, while standing at the podium, that some of the documents she had submitted had been back dated.

76. Ms. Gardiner did not inform the Court that documents submitted pursuant to the Court's orders included the forged signature of Ms. Wright.

77. As previously noted, on January 5, 2017, the Bankruptcy Judge issued a Memorandum and Order that addressed several issues involving UpRight Law and Ms. Gardiner. (Exhibit M to Petition for Discipline, Exhibit 1)

78. The Judge determined that an evidentiary hearing would be necessary to resolve many of the issues.

79. Among those issues was whether Ms. Gardiner and UpRight Law violated Rule 9011 based upon improprieties found by the Judge in her review of the original documents with the wet signatures of Ms. Gardiner's clients that Ms. Gardiner had submitted to the Court.

80. The Judge noted that the list of improprieties she outlined were not inclusive but identified to give Ms. Gardiner notice of the areas that needed to be considered at the evidentiary hearing.

81. Among the improprieties identified by the Judge were back dated wet signatures on many documents. (Exhibit M to Petition for Discipline, Exhibit 1, pp. 13-21)

82. Ms. Kerney testified that the improprieties identified by the Judge were based on

the original documents submitted by Ms. Gardiner.

83. In addition, Ms. Kerney testified that an original document that contains the wet signature should not have the docket number and date of court filing on it, because the original document is required to be signed before the electronic copy is filed with the Court.

84. The Bankruptcy judge noted several documents that included the client's signature also contained or the Court's CM/EFC header/legend, indicated that the document had been filed before it was signed. (Exhibit M to Petition for Discipline, Exhibit 1, p. 14, fn. 11)

85. Some documents the Court ordered to be produced had not been produced.

86. Exhibits 5, 17, 23, and 24 consist of documents that were backdated in the Wright, Haynes and Hagstrom cases which were included in the documents submitted to the Court.

87. Ms. Kerney testified that Gardiner's representation of her clients was disruptive to the administration of justice as evidenced by the numerous orders issued, and hearings conducted on, her clients' cases.

88. Ms. Gardiner admitted at trial that she knowingly submitted documents to the Court that were back dated, and in the case of Ms. Wright, forged.

CONCLUSIONS OF LAW

Introduction

The jurisdiction and authority of this Panel is derived from Tenn. Sup. Ct. R. 9, and the specific provisions prescribed therein. Attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts. (Tenn. Sup. Ct. R. 9, § 8). 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. (Tenn. Sup. Ct. R. 9, § 1). Acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. (Tenn. Sup. Ct. R. 9, § 11).

Violations of the Rules of Professional Conduct

The Hearing Panel finds that the Board has met its burden of proof establishing that Ms. Gardiner violated Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 3.3 (candor toward the tribunal), 5.3 (responsibilities regarding nonlawyer assistants) and 8.4(misconduct). Specific findings on the individual complaints are set forth below.

In the case of *In Re Morton*, 2015 WL 5731859 (Bankruptcy Court, E. D. Tennessee) Judge Bauknight issued a Memorandum Opinion in which she sanctioned two lawyers for conduct that included failure to obtain signatures of their clients before filing documents electronically. On the issue of unsigned documents, Judge Bauknight explained in detail the importance of obtaining original signatures from clients before filing the documents with the Court:

B. Unsigned Documents

Of significant concern is the failure of Mr. Price and Mr. Tindell to obtain Debtors' signatures on their bankruptcy documents before they were filed with the Court, as is very clearly required under numerous provisions of the Bankruptcy Code, local rules, and ECF Administrative Procedures. All bankruptcy petitions, statements, schedules, and amendments are required under Rule 1008 of the Federal Rules of Bankruptcy Procedure to be verified or contain an unsworn declaration by debtors. The documents expressly state that they are signed under penalty of perjury. "The purpose of a debtor's signature on a petition is to verify that the facts contained in the petition are correct." *Briggs v. LaBarge (In re Phillips)*, 317 B.R. 518, 523 (B.A.P. 8th Cir.2004). Additionally, "the evidentiary support for the information in a petition comes from the debtor's signing of the petition under penalty of perjury. When documents requiring the debtor's original signature are not signed by the

debtor, the evidentiary basis for the information in those documents no longer exists.” *In re Veluz*, No. 14-20101(DHS), 2015 WL 161002, at *4, 2015 Bankr.LEXIS 102, at *12 (Bankr.D.N.J. Jan. 9, 2015) (internal citations omitted). *In Re Morton*, p. 10.

Judge Bauknight devoted approximately three pages to her Memorandum opinion on the issue of unsigned documents and addressed the argument made by the lawyers that the clients had given them permission to file the documents without meeting the lawyers at their firm and signing the documents personally.

The importance of debtors actually reviewing petitions, schedules, lists, and any amendments cannot be minimized, for both practical and policy reasons. Practically speaking, as the late Judge Alexander Paskay stated, “[i]t takes no elaborate discussion to point out the obvious that no one can grant authority to verify under oath the truthfulness of statements contained in the documents and to verify facts that they are true when the veracity of these facts are unique and only within the ken of the declarant.” *In re Harrison*, 158 B.R. 246, 248 (Bankr.M.D.Fla.1993). That is, logically speaking, a debtor’s attorney simply cannot file a document with the statement that his client has affirmed the truth of the matters asserted in the pleading without the client actually having reviewed the document. *Wenk*, 296 B.R. at 727 (“Logic dictates that only the debtor can state under oath that the information provided in his or her petition is true and correct.”). Merely providing the client a copy after or concurrent with the document’s filing does not suffice.

At bottom, the Court’s primary concern is more fundamental. The Bankruptcy Code and the integrity of the Bankruptcy Court relies on debtors providing honest and accurate information regarding their financial affairs before they can reap the substantial benefits of a discharge. As discussed above, the law is quite clear that debtors, not their attorneys alone, must review the petition, schedules, lists, and all amendments and verify that the information is accurate. The Court in turn relies on these verifications when denying a dishonest debtor’s discharge or forwarding a criminal referral for perjury to the U.S. Attorney for prosecution.

Id. at pp. 11-12

In conclusion, Judge Bauknight held:

Simply, there is no justifiable reason for their failure to obtain Debtors’ signatures on their bankruptcy petition, statements, schedules, and amendments before filing them. ... The Court finds that the filing of the Voluntary Petition, Debtors’ statements and schedules, and the amendments thereto by counsel without first obtaining Debtors’ signatures constitutes a forgery of those documents by counsel. Their actions in doing so were inexcusable and are sanctionable violations of the ECF Administrative Procedures as well as Rule 9011(b)(3).

Id. at pp. 12-13

89. The Hearing Panel finds that Ms. Gardiner violated Rules of Professional Conduct 1.1 (competence) when she allowed her name to be affixed to retainer agreements that included the section 527 disclosure requirements when she was not present and did not know if the requirements of section 527 had been met.

90. The Hearing Panel finds that Ms. Gardiner violated Rules of Professional Conduct 1.1 (competence) and 3.3 (candor toward the tribunal) when she presented to the Court a purported agreed order bearing the signature of the Chapter 13 Trustee, Ms. Kerney.

91. The Hearing Panel finds that Ms. Gardiner violated Rules of Professional Conduct 5.3 (responsibilities regarding nonlawyer assistants) when she delegated to Ms. Martin the task of gathering the wet signatures and failed to take reasonable measures to ensure that Ms. Martin complied with the Ms. Gardiner's professional obligations.

92. The Hearing Panel finds that Ms. Gardiner violated Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 3.3 (candor toward the tribunal), when she presented the Court numerous documents that had been signed after they were filed in violation of 11 U. S. C. § 9011.

93. The Hearing Panel finds that Ms. Gardiner violated Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 3.3 (candor toward the tribunal), when she presented the Court a document bearing the forged signature of Ms. Wright in violation of 11 U. S. C. 9011.

94. The Hearing Panel finds that by violating the Rules of Professional conduct identified above, Ms. Gardiner violated Rules of Professional Conduct 8.4 (a).

When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, ("ABA Standards") pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court.

The following ABA Standards apply in this matter:

- 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
 - (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
- 4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.
- 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.
- 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.

When considering the appropriate discipline, the Hearing Panel may consider aggravating factors which justify an increase in the degree of discipline to be imposed.

Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

- a pattern of misconduct;
- multiple offenses;
- vulnerability of the clients; and
- substantial experience in the practice of law having been licensed in Tennessee in 2004, and
- lack of candor with a Court.

When considering the appropriate discipline, the Hearing Panel may consider mitigating factors which can create a decrease in the degree of discipline to be imposed.

Pursuant to ABA Standard 9.23, the following mitigating factors are present in this case:

1. During the time of Ms. Gardiner's alleged misconduct, she regularly traveled from the United States to Trinidad to visit her ailing mother. *See* ABA Standards for Imposing Lawyer Sanctions § 9.32(c).

2. During the same time, Ms. Gardiner experienced a significant employee turnover in relation to her bankruptcy practice in Tennessee. *See* ABA Standards for Imposing Lawyer Sanctions § 9.32(c).

3. Ms. Gardiner made a full and free disclosure both to the District Court and the disciplinary Board and has been cooperative throughout the disciplinary processes that took place in the District Court and before the Board. *See* ABA Standards for Imposing Lawyer Sanctions § 9.32(e).

4. Importantly, Ms. Gardiner has exemplified good character and reputation during her career as an attorney. *See* ABA Standards for Imposing Lawyer Sanctions § 9.32(g).

5. Ms. Gardiner has already been disciplined by the Bankruptcy Court for the Eastern District of Tennessee for the events that are the subject matter of these proceedings.

6. Ms. Gardiner has only had a single instance of discipline in her approximately 23 years of practice, an informal private reprimand that occurred many years ago. *See* ABA Standards for Imposing Lawyer Sanctions §§ 9.32(a) & (m).

7. Ms. Gardiner did not act intentionally by submitting the document signed by Mr. Clark. She believed the signature had been ratified by Ms. Wright when she disclosed the issue to Ms. Wright, and Ms. Wright explained that she had no issue with Mr. Clark signing her name and would have given Mr. Clark permission to sign the amendment on her behalf.

8. Upon learning of Mr. Clark's actions, Ms. Gardiner immediately contacted Ms. Wright. Ms. Wright informed Ms. Gardiner that she had no issues with Mr. Clark signing her name, thus ratifying the signature.

9. Upon learning that Ms. Martin had backdated documents, Ms. Gardiner informed the Trustee and her office, admitted to the subject conduct before the Court, willingly submitted to a deposition by the Trustee, and self-reported to the Board of Professional Responsibility.

10. There was not sufficient proof of any permanent harm to any specific client.

CONCLUSION

The Hearing Panel finds, based upon the numerous violations of the Rules of Professional Conduct, the disruption those violations caused the Bankruptcy Court, and, specifically, Ms. Gardiner's submission of a forged document and documents with backdated signatures, she should be;

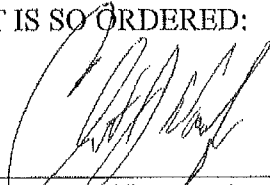
(1) suspended from the practice of law for three (3) years, with four (4) months being active suspension, and the remainder of the suspension being deferred pending compliance with the remainder of this Order;

(2) have a practice monitor for the deferred period of the suspension regarding bankruptcy practice if Ms. Gardiner practices in any bankruptcy court; and

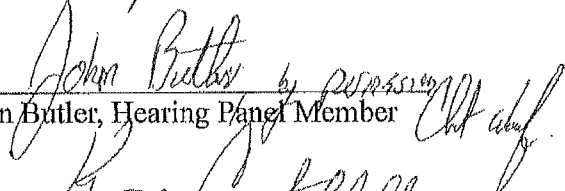
(3) complete at least three hours of continuing legal education in 2021 regarding the rules and practice for Federal Courts and Federal Administrative Courts, including how documents are filed and prepared.

Costs will be assessed pursuant to Tenn. Sup. Ct. R. 9, § 31.3.

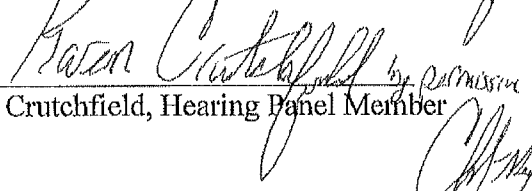
IT IS SO ORDERED:



Clint Woodfin, Hearing Panel Chair



John Butler, Hearing Panel Member



Karen Crutchfield, Hearing Panel Member

NOTICE TO RESPONDENT

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33.