

IN THE CHANCERY COURT OF KNOX COUNTY, TENNESSEE

ENTERED

SEP 01 2015

DANNY C. GARLAND
Petitioner

HOWARD G. HOGAN

1332-587

189106-3 ✓

VS

NO. 2014-2831-3-0117

THE BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE
Respondent

FINDINGS AND CONCLUSIONS

This cause came to be heard on the 21st Day of July, 2015. Jon Kerry Blackwood, Senior Judge, sitting by designation. Upon the writ, of centorari filed by the Petitioner, arguments of counsel of the entire record.

The Petitioner primary practice area is domestic relations. The subject matter of this writ was a stepparent adoption. Samantha McKeough was a former divorce client of the Petitioner. After her divorce, Ms McKeough remarried and her second husband and hired Petitioner to arrange the adoption of her minor child by her second husband. It was anticipated that the former husband and father would be difficult in this adoption proceeding. Nevertheless, the adoption petition was filed in January 2011. The former husband signed consent on July 7, 2011. Petitioner's office notified Ms McKeough of this consent by email. Unfortunately, Petitioner's legal assistant filed the father's consent in the old divorce file and not in the adoption file.

Shortly after reading the email informing her of the consent, Ms McKeough communicated with Petitioner's office. The purpose of the email was to determine what would be the next steps in the proceeding. Ms McKeough sent another email in January, 2012 to Jamie Harris, one of the Petitioner's assistants about the status of the

case. She also informed Ms Harris that her husband was expected to be deployed Afghanistan.

Petitioner's practice was to review all open files every 30-45 days. Because the consent form had been filed in the old divorce file, the Petitioner was not aware that a consent form had been filed.

In March 2012, Petitioner received a notice from Chancery Court to prosecute the adoption proceeding. Petitioner reviewed his files and for the first time, learned that the consent had been filed.

A Pretrial hearing in Chancery Court was conducted on April 24, 2012. The hearing was set for May 1, 2012. Ms McKeough was notified of that date. However, Petitioner determined that an amended complaint needed to be filed in which the father's signature was needed. Consequently, Petitioner drafted an amended petition and forwarded it to the former husband. The amended petition was signed by the former husband and recorded by Petitioner's office in September, 2012. Ms Harris notified Ms McKeough shortly thereafter that the office had recorded the amended complaint. After this email, there were a series of emails between Ms Harris and Ms Keough regarding the status of the case. In January 2013, in response to an email from Ms Harris, it was determined that the amended petition had been mailed to the wrong address for the McKeoughs. The amended Petition was mailed to the correct address and received by the Petitioner's office in January, 2013. More emails were sent to Petitioner's office concerning the case. However, the amended Petition was not filed until March 2, 2013. The final hearing for adoption was conducted on July 29, 2013.

The McKeoughs were allowed to testify by deposition.

The Hearing Panel found that Petitioner had violated RPC 1.3 (Diligence); RPC 1.4 (Communication); RPC 8.4 (a) (Misconduct). The Panel found four aggravating factors to wit: (a) prior disciplinary offenses; (b) pattern of misconduct; (c) multiple offenses; and (d) substandard experience in the practice of law. Mitigating factors were the absence of a dishonest or selfish motive and cooperation in the proceeding.

SCOPE OF REVIEW

Tennessee Supreme Court Rule 903 provides as follows:

The Review shall be on the transcript of the evidence before the Hearing Panel. The Court may affirm decision of the Hearing Panel or remand the case for further proceeding. The Court may revise or modify the decision if the rights of the party filing the petition for review have been prejudiced because of the Hearing Panel's findings, influence, and conclusions or decisions are (a) in violation of constitutional or statutory provisions; (2) in excess of the Hearing Panel's jurisdiction; (3) made upon lawful proceeding; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in light of the entire record. In determining the substantiality of evidence, the Court may take into account whatever in the record fairly detracts from its weight, but, the Court shall not substitute its judgement for that of the Hearing Panel as to the weight of the evidence or questions of fact.

ANALYSIS

The Panel found that Petitioner did not exercise diligence by failing to proceed with the adoption after July 7, 2011, when the former husband executed the consent

form. The Panel also found a lack of diligence by Petitioner's failure to proceed after the signing of the amended petition on September 20, 2012. Finally, the Court found that Petitioner failed to reasonably communicate with Ms McKeough.

Petitioner argues that the Panel used a "strict liability" standard in judging his conduct. Thus, the actions of the Panel were arbitrary, capricious and unsupported by the evidence. The thrust of this argument rests with the fact that the misfilings were the result of his office staff. Upon discovery, Petitioner took immediate steps to correct the mistakes. The misfilings by and of themselves do not constitute misconduct. However, this argument overlooks the fact that had Petitioner not received the notice to prosecute this action, the error would not have been discovered. The error and delay would have been extended had not the notice been received by the Petitioner. Additionally, Petitioner's arguments do not account for the fact that Ms Harris notified Ms McKeough in July, that the consent form had been filed. She was aware that the action was ready to proceed. Despite this knowledge and the frequent emails from Ms McKoeough regarding this case, she took no action to bring this matter to Petitioner's attention.

It is true that his staff mailed the amended petition to the wrong address. This surely was not his fault. However, Petitioner received the amended Petition in January but did not file the Petition until March.

Finally, Petitioner explains his lack of communication on his client's failure to contact him. However, she did attempt to contact him; but, was told by Ms Harris not to contact Petitioner; but, to direct inquiries to her. The record is replete with numerous emails from Ms McKeough to Ms Harris about the status of the case. There is no plausible explanation why Ms Harris failed to direct those inquiries to the Petitioner.

Petitioner's office policy and his supervision enabled the lack of communication and delay in this case.

Consequently, the findings are supported by the record and are neither arbitrary nor capricious.

Finally, the Court of Appeals finds that the imposition of a reprimand was not arbitrary and capricious. The ABA standards provide factors to be considered before imposing sanctions. These factors are as follows:

- (a) duty violated;
- (b) the lawyer's mental state;
- (c) the potential of actual injury and
- (d) the existence of aggravating or mitigating factors.

The Hearing Panel found a lack of diligence on the part of the Petitioner and a lack of communication. Aggravating factors were prior offenses and a pattern of misconduct and substantial experience in the Practice of Law.

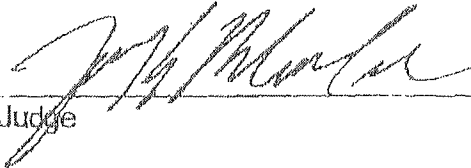
Mitigating factors were an absence of a dishonest motive and cooperative attitude toward the proceeding pursuant to ABA Standards. A reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to a client.

While Petitioner argues that the adoption was granted and finalized, he overlooks the potential injury that could have occurred if the stepfather had been deployed Overseas. He further ignores the length of delay in filing the petition for adoption when all documents were in his possession to resolve the case. While this court may appreciate the hazards of a domestic practice, the discipline imposed and was not

arbitrary or capricious.

Consequently, the findings of the Hearing Panel are affirmed. Entered this the

1st day of Sept, 2015.



Judge

CERTIFICATE OF SERVICE

I, hereby, certify that I have marked a true and exact _____ Mr. Dennis B.

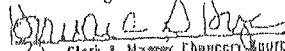
Francis, attorney for Petitioner, 625 S. Gay Street, Suite 625, Knoxville, TN 37 02 and

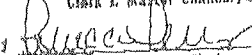
William Moody, 10 Cadillac Drive, Suite 220, Brentwood, TN 37027.

Clerk

CERTIFICATE

Howard E. Hogan hereby certifies that I have mailed a true and accurate copy of the foregoing in duplicate to all parties or their attorney of record who have not approved same, by placing same in the U.S. Mail, postage prepaid this 8th day of Sept, 2015.

A.T.D.
A.T.D.


Clerk of Major Chancery Court
By 

Deputy Clerk