

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

FILED
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BOARD OF PROFESSIONAL RESPONSIBILITY
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EXECUTIVE

IN RE: **DANNY CAROL GARLAND, II,** **DOCKET NO. 2014-2331-2-WM**
 BPR No. 17992, Respondent,
 An Attorney Licensed to
 Practice Law in Tennessee
 (Knox County)

NOTICE: This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ.
See Tenn. Code Ann. § 27-8-104(a) and 27-8-106

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for hearing on December 11, 2014 before a Hearing Panel consisting of Hugh B. Ward, Cheryl Gilley Rice, and James G. O'Kane, Jr., Chair. The Board of Professional Responsibility (the "Board") was represented by William C. Moody. Mr. Garland was present for the hearing and represented by Christopher Oldham.

FINDINGS OF FACT

Complainant Samantha McKeogh

1. On June 7, 2013, the Board of Professional Responsibility received a request for assistance from Samantha McKeogh alleging ethical misconduct by Mr. Garland concerning his representation of her and her husband, Jason McKeogh, in a step-parent adoption.
2. On February 28, 2013, the Board of Professional Responsibility received a

complaint of disciplinary misconduct by Meredith K. Powell alleging ethical misconduct by Mr. Garland in his representation of her in a divorce.

3. Mr. Garland is an attorney licensed to practice law in Tennessee since 1996.
4. Mr. Garland was retained by Ms. McKeogh in September, 2010, in order to obtain the adoption of her daughter by her husband, Jason McKeogh.
5. On January 20, 2011, Mr. Garland filed a petition for adoption in Knox County Chancery Court seeking the adoption by Jason McKeogh of Sophia Atchley, the daughter of Ms. McKeogh and Scott Atchley.
6. The parties anticipated that Mr. Atchley's personal irresponsibility, and the difficulty of locating him, would make obtaining his consent to the adoption, and execution of necessary documents, difficult and time consuming.
7. On July 7, 2011, Mr. Atchley came to Mr. Garland's office and signed an agreed order consenting to the adoption. Any delay in execution of the agreed order by Mr. Atchley was not the fault of Mr. Garland or the McKeoghs.
8. On July 7, 2011, Mr. Garland's full-time secretary, Jamie Harris, sent an email to Ms. McKeogh informing her that Mr. Atchley had signed the order in Mr. Garland's office that day. (Exhibit 7)
9. Carol Snyder, Mr. Garland's part-time legal assistant, placed the agreed order in Ms. McKeogh's closed divorce file, rather than in her open adoption file, by mistake.
10. Mr. Garland's practice was to review every open case file every 30 to 45 days. Had the executed agreed order been placed in the correct file by Ms. Snyder, Mr. Garland would have been aware that Mr. Atchley had signed it no later than 30 to 45 days after

July 7, 2011.

11. On August 8, 2011, 32 days after being notified that Mr. Atchley had signed the order, Ms. McKeogh sent an email to Ms. Harris asking about a hearing date, providing her new address in Clarksville, TN and requesting a copy of the paper that Mr. Atchley had signed. (Exhibit 10)

12. Five months later, on January 17, 2012, Ms. McKeogh sent an email to Ms. Harris inquiring, "where we are" with regard to the adoption. Ms. McKeogh made reference to the fact that Mr. Atchley had signed the agreed order and informed Ms. Harris that she expected her husband's deployment to Afghanistan in a month or two. (Exhibit 8)

13. Two months later, on or about March 12, 2012, Mr. Garland received a Chancery Court order to prosecute the adoption matter. As a result of receiving that order, an investigation by Mr. Garland caused him to learn that Mr. Atchley had signed the agreed order on July 7, 2011. Prior to that time, Mr. Garland was not aware that Mr. Atchley had signed the agreed order.

14. Upon learning that Mr. Atchley had signed the agreed order, Mr. Garland caused a pre-meeting to be set for April 24, 2012 in order to discuss the adoption with the Chancellor. Pursuant to the custom of the Chancery Court, such a pre-meeting was necessary before the final hearing on the adoption could be heard. A hearing was also set for May 1, 2012.

15. Ms. McKeogh was notified of the May 1, 2012 court date.

16. As a result of the April 24, 2012 pre-meeting, Mr. Garland determined that it would be necessary to obtain the notarized signature of Mr. Atchley to an amended

petition for adoption and Ms. McKeogh was notified that the May 1, 2012 court date was cancelled.

17. On September 12, 2012, Mr. Garland's office received the amended petition for adoption signed by Mr. Atchley. Ms. Harris sent an email to Ms. McKeogh on that date informing her of this fact. (Exhibit 11) Ms. McKeogh replied to Ms. Harris the same day, asking, "So where do we go from here?" She also informed Ms. Harris that she anticipated that her husband, an active member of the U.S. Army, would be deployed once the new year begins. (Exhibit 9)

18. Any delay in execution of the amended petition for adoption by Mr. Atchley was not the fault of Mr. Garland or the McKeoghs.

19. On September 20, 2012, Ms. Harris informed Ms. McKeogh that a meeting between Mr. Garland and the judge in chambers wouldn't occur "until MAYBE next week."

20. Twelve days later, Ms. McKeogh emailed Ms. Harris, inquiring about the status of the meeting in chambers and a court date. (Exhibit 11: October 2, 2012 email)

21. On November 20, 2012, Ms. McKeogh emailed Ms. Harris again inquiring about a court date. (Exhibit 12)

22. On January 14, 2013, Ms. McKeogh emailed Ms. Harris, stating, "I've been trying to contact you for several months and have had no response." (Exhibit 13)

23. Ms. Harris replied by email on January 18, 2013, stating, "I want to start by apologizing for the lack of communication. That will be fixed." Ms. Harris disputed Ms.

McKeogh's testimony that there was no response to the October and November, 2012 emails. The preponderance of the evidence, including Ms. Harris' January 18, 2013 email (Exhibit 13), is that there was no response to these emails.

24. In her January 18, 2013 email, Ms. Harris stated, "I believe the last activity was sending you the amended papers for you and your husband to sign." Mr. Garland's office had previously mailed the amended petition to the McKeoghs for them to sign; however, it had been mailed to an old address in South Carolina, rather than the Clarksville, Tennessee address provided in the August 8, 2011 email from Ms. McKeogh. (Exhibit 10) Ms. McKeogh requested the amended petition on January 21, 2013, having not previously received it. Shortly thereafter, it was sent to the McKeoghs for their signature and returned to Mr. Garland's office. It was received in Mr. Garland's office in January, 2013.

25. There were more emails between Ms. McKeogh and Ms. Harris in February and early March, 2013 about getting a court date. (Exhibit 14)

26. The amended petition for adoption was not filed until March 23, 2013.

27. A final hearing was held granting the petition for adoption on July 19, 2013.

28. Samantha and Jason McKeogh are residents of Ft. Campbell, Kentucky, a distance greater than 100 miles from Knoxville, Tennessee. They testified via deposition.

29. Ms. McKeogh frequently telephoned Mr. Garland's office about the adoption. Mr. Garland and Ms. McKeogh spoke by phone about the adoption. Ms. Keogh testified that she focused all of her efforts on trying to reach Jamie Harris after one phone call when Carol Snyder put her on hold, then said, "Danny says you need to ask Jamie." The date of this phone call is unknown. Ms. Harris received many phone calls from Ms. McKeogh and

spoke with her on the telephone a number of times concerning the status of the adoption.

30. Ms. McKeogh frequently emailed Ms. Harris regarding the status of the adoption. She did not always receive a response to her emails.

31. Ms. McKeogh frequently telephoned Mr. Garland's office and would leave messages, but did not always receive a return call.

32. Mr. McKeogh attempted to call Mr. Garland's office a number of occasions in an effort to determine the status of the adoption. On one occasion, he spoke with Mr. Garland. On the other occasions, he did not get an answer when he called.

Complainant Meredith Powell

33. Mr. Garland represented Meredith Powell in a divorce. Ms. Powell's husband was represented by Charles Child.

34. The final hearing in the divorce was held March 1, 2012.

35. It is Mr. Child's recollection that Mr. Garland was responsible for preparing the judgment. It is Ms. Powell's recollection that Mr. Garland was responsible for preparing the judgment. It is Mr. Garland's recollection that, though at the conclusion of the hearing he was to prepare the judgment, after a discussion with Mr. Child in the hallway, it was Mr. Child's responsibility to prepare the judgment.

36. On April 23, 2012, Mr. Child wrote a letter to Mr. Garland in which he expressed his understanding that it was Mr. Garland's responsibility to prepare the judgment. Since Mr. Garland had not done so, Mr. Child submitted a proposed judgment to Mr. Garland for his consideration (Exhibit 1). Mr. Child testified that it would not be unusual in the local bar for this length of time to pass before the order was drafted from a trial.

37. On April 24, 2012, Mr. Child wrote another letter to Mr. Garland again submitting the proposed judgment he had prepared for consideration by Mr. Garland. (Exhibit 2)

38. Mr. Garland did not approve and sign the proposed judgment sent him by Mr. Child. On May 21, 2012, Mr. Child submitted a judgment to the court for its consideration and provided Mr. Child with a copy. The judgment included the notation "**Notice of Entry Requested.**" (Exhibit 3)

39. Several days later, within the time allowed by Local Rule, Mr. Garland prepared and submitted an alternative to the judgment prepared by Mr. Child. The judgment included the notation "**NOTICE OF ENTRY REQUESTED.**" (Exhibit 17)

40. The court entered the judgment submitted by Mr. Child on May 24, 2012.

41. The clerk's office, due to no fault on the part of Mr. Garland, maintained an incorrect mailing address for Mr. Garland. After the court entered the judgment submitted by Mr. Child, it mailed a service copy of the judgment to the incorrect mailing address and it was not received by Mr. Garland. (Joint Stipulations 1 and 2)

42. At the time of the divorce hearing, Mr. Powell was included as a beneficiary on Ms. Powell's health insurance policy obtained through her employment. At the child support hearing, Mrs. Powell was granted a credit for the entire amount of the insurance premium she was paying against her child support obligation.

43. After the divorce hearing, but prior to entry of the judgment, Ms. Powell attempted to have Mr. Powell removed from her insurance policy but was unable to do so without being able to provide the human resources department at her employer with a written judgment. She did not communicate this information to Mr. Garland. Mr. Garland's office

communicated with Ms. Powell after the late April, 2012 child support hearing. Ms. Powell made no attempt to contact Mr. Garland's office between the child support hearing and July 27, 2012.

44. On July 27, 2012, Ms. Powell contacted the clerk's office and determined that a judgment had been previously entered. As a result, Mr. Garland learned that the judgment had been entered.

45. At no time after submission of the proposed judgments did Mr. Garland make any attempt to determine whether or not either of them had been entered by the court. However, he testified that it would not be unusual for a Judge to wait thirty to sixty days before scheduling a hearing on a Rule 58 dispute to give time for the parties to resolve the matter between themselves. Additionally, the Order had been mailed to the wrong address, and Mr. Garland reasonably believed that had the Order been entered, the Court would have mailed him a copy pursuant to Rule 58 and local practice.

46. There was no evidence that Ms. Powell sustained a monetary loss.

47. On January 30, 2013, Mr. Garland was issued a Private Reprimand by the Board of Professional Responsibility for a violation of RPC 1.3 (Diligence) that resulted in harm to his client in one matter, and violation of RPC 1.3 (Diligence) and RPC 1.4 (Communication) that resulted in potential harm to his client in a second matter.

48. On June 13, 2007, Mr. Garland was issued an Informal Admonition by the Board of Professional Responsibility for violating RPC 1.3 (Diligence).

CONCLUSIONS OF LAW

1. 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.

Complainant Samantha Mc Keogh

2. By failing to timely proceed with the petition for adoption after execution of the agreed order by Mr. Atchley on July 7, 2011, which led to a significant delay in the resolution of the adoption, Mr. Garland failed to act with reasonable diligence in the representation of his clients.

3. By failing to timely proceed with the petition for adoption after execution of the amended petition for adoption by Mr. Atchley on September 20, 2012, which led to a significant delay in the resolution of the adoption, Mr. Garland failed to act with reasonable diligence in the representation of his clients.

4. Mr. Garland is responsible for a failure to reasonably communicate with Ms. McK-
eogh regarding the status of the adoption.

Complainant Meredith Powell

5. Mr. Garland did not violate RPC 1.3 (Diligence) by failing to prepare a proposed judgment following the March 1, 2012 hearing of Meredith Powell's divorce case.

6. Mr. Garland did not violate RPC 1.3 (Diligence) by failing to determine that the court had entered a judgment in Meredith Powell's case prior to July 27, 2012.

7. Mr. Garland did not violate RPC 1.4 (Communicate) by failing to reasonably communicate with his client, Meredith Powell.

Complainant Samantha Mc Keogh

8. Regarding the McKeogh Complaint only, the preponderance of the evidence establishes that Mr. Garland has committed the following violations of the Rules of Professional Conduct.

- a. Mr. Garland violated RPC 1.3 (Diligence).
- b. Mr. Garland violated RPC 1.4 (Communication).
- c. It is a violation of RPC 8.4(a) (Misconduct) to violate the Rules of Professional Conduct as found by the Hearing Panel.

9. 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 violations of the Rules of Professional Conduct described herein by a preponderance of the evidence.

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

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

4.43 LACK OF DILIGENCE

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.

The preponderance of the evidence establishes that the disciplinary violations described herein, which resulted in significant delays in the resolution of the McKeogh adoption, caused potential injury to the client.

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

- a. Prior disciplinary offenses.
- b. A pattern of misconduct.
- c. Multiple offenses.
- d. Substantial experience in the practice of law.

13. Pursuant to ABA Standard 9.32, mitigating factors are present in this case:

- a. Absence of a dishonest or selfish motive.
- b. Cooperative attitude toward proceedings.

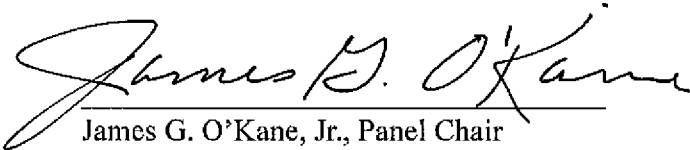
14. The aggravating factors outweigh the mitigating factor.

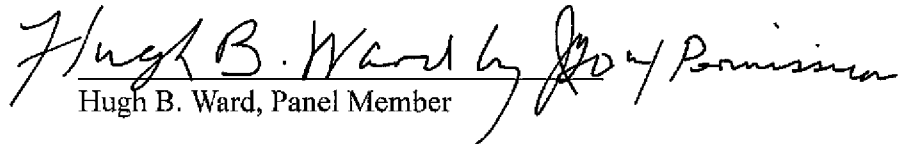
15. Based upon the evidence and record in this matter, the Panel finds that public censure is the appropriate discipline.

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law, including consideration of the ABA Standards set forth above, the Hearing Panel hereby finds that Mr. Garland should be publicly censured.

IT IS SO ORDERED.


James G. O'Kane, Jr., Panel Chair


Hugh B. Ward, Panel Member


Cheryl Gilley Rice, Panel Member