

IN DISCIPLINARY DISTRICT IX
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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EXEC. SEC.

IN RE: LEWIS K. GARRISON,
 BPR #8311, Respondent,
 An Attorney Licensed to
 Practice Law in Tennessee
 (Shelby County)

DOCKET NO. 2017-2730-9-WM

JUDGMENT OF THE HEARING PANEL

This cause came for trial before this Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee on December 6, 2018 in the Supreme Court Courtroom, Shelby County Courthouse, 140 Adams Avenue, Memphis, Tennessee. This cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court. This Hearing Panel, Charles F. Morrow (Chair), Thomas P. Cassidy, Jr., and Kamilah E. Turner, after considering the entire file in this matter, testimonies of the witnesses, exhibits, and arguments presented to this Panel, and after thorough deliberations, makes the following Findings of Fact, Conclusions of Law, and renders its Judgment in this cause.

I. BACKGROUND

Respondent, Lewis K. Garrison, Sr. ("Respondent"), received his license to practice law in Tennessee in 1961, with Board of Professional Responsibility Number 8311. A Petition for Discipline was filed against Mr. Garrison on June 20, 2017. Mr. Garrison filed his Answer on July 20, 2017. Both parties filed motions for summary judgment, and the Panel denied the motions.

II. FINDINGS OF FACT

File No. 45643c-9-SC-Complainant-Lakina Bouie

1. On June 9, 2015, Mr. Garrison was retained by Lakina Bouie for injuries she sustained in a rear-end automobile accident.
2. During the initial consultation with Mr. Garrison, Ms. Bouie informed Mr. Garrison she had incurred approximately \$15,000 in medical expenses as a result of the automobile accident.
3. Mr. Garrison contacted the offending party, Danny Buford, and Mr. Buford advised Mr. Garrison that his insurance company was Progressive Insurance Company (“Progressive”) and that his insurance coverage limit was \$25,000.
4. Mr. Buford also informed Mr. Garrison that he was unemployed, the vehicle he was driving was owned by Mr. Buford’s mother, and that his mother was on social security.
5. Mr. Garrison then contacted Progressive, and the Progressive adjuster with whom Mr. Garrison spoke informed Mr. Garrison that liability would not be contested.
6. Progressive confirmed in writing that the amount of insurance coverage for the accident was \$25,000. See, Exhibit 14 of Hearing.
7. Shortly after his retention, Mr. Garrison provided funds to Ms. Bouie on two separate occasions for rental cars.
8. Later on in the representation, Mr. Garrison provided Ms. Bouie additional funds so that Ms. Bouie could pay her rent.

9. All of the funds provided to Ms. Bouie prior to resolution of the matter were drawn from Mr. Garrison's operating account.
10. In January 2016, the parties agreed to settle the matter, and Ms. Bouie agreed to accept \$25,000 in settlement of her claims against Mr. Buford.
11. Mr. Garrison met with Ms. Bouie to review the release and to obtain her signature.
12. During this meeting, Mr. Garrison provided Ms. Bouie with a "settlement statement" he had prepared and which reflected the monies he had previously provided to her, a total of \$2,385.
13. Ms. Bouie signed the release, acknowledged the deductions for the monies advanced and accepted her share of the settlement.
14. No lawsuit concerning the automobile accident was filed; however, Mr. Garrison prepared a draft of a complaint against the offending driver and the *ad damnum* stated \$250,000.
15. Mr. Garrison has been previously sanctioned by the Board of Professional Responsibility for providing financial assistance to his clients.

III. CONCLUSIONS OF LAW

16. Attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility and the Hearing Panel. Tenn. Sup. Ct. R. 9, § 1.
17. "The license to practice law in this State is a continuing proclamation by the Supreme Court of the State of Tennessee (hereinafter the "Court") that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court." Tenn. Ct. R. 9, § 1.

18. The Rules of Professional Conduct are rules of reason; however, failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. Tenn. Ct. R. 8, Preamble and Scope, ¶¶ 15, 20.
19. “Acts or omissions by an attorney..., which violate the Rules of Professional Conduct of the State of Tennessee, shall constitute misconduct and shall be grounds for discipline....” Tenn. Ct. R. 9, § 11.1.
20. Once a disciplinary proceeding has been instigated, Tennessee Supreme Court Rule 9, § 15.2(h) states that Disciplinary Counsel must prove the formal charges of misconduct by a preponderance of the evidence.
21. The Board alleged in its Petition that Mr. Garrison’s acts and omissions violated Rule 1.8(e) and Rule 8.4(a) of the Rules of Professional Conduct.
22. Rule 1.8(e) states:

Rule 1.8(e)

CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
- (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
 - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

23. Rule 8.4 states:

Rule 8.4(a)

MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another....

24. The Board has established by a preponderance of the evidence that Mr. Garrison provided financial assistance to his client, Ms. Bouie, in connection with contemplated litigation by providing deposits on Ms. Bouie's rental cars and by providing her funds to pay her rent, all of which occurred prior to Ms. Bouie's agreement to accept the settlement offer made by Progressive.
25. Comment [10] of RPC 1.8(e) states that lawyers may not subsidize lawsuits...brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses.
26. The "settlement statement" Mr. Garrison prepared and presented to Ms. Bouie deducted the monies Mr. Garrison previously advanced to Ms. Bouie from her share of the proceeds of the settlement—a loan.
27. Therefore, the monies Mr. Garrison provided to Ms. Bouie prior to her agreement to accept the \$25,000 offer to settle the matter were "financial assistance to a client in connection with ...contemplated litigation" and constituted a violation of RPC 1.8(e).
28. By violating RPC 1.8(e), Mr. Garrison likewise violated RPC 8.4(a).
29. "In determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions." Tenn. S. Ct. R. 9, § 15.4(a).
30. Mr. Garrison has committed similar violations of Rule 1.8(e) in the past, an "aggravating factor" as defined by ABA Standard 9.22; however, the Panel notes that the most recent violation occurred more than fifteen (15) years ago.
31. Also, Mr. Garrison provided full and free disclosure to the Board's inquiries concerning this matter and exhibited a cooperative attitude towards these

proceedings, a mitigating factor considered by this Panel. *See*, ABA Standard 9.32(e).

32. For all of these reasons, the Panel is of the opinion that the Board has established by a preponderance of the evidence that Mr. Garrison violated Rule 1.8(e) and Rule 8.4(a) and that Mr. Garrison shall receive a public censure concerning these violations.

IT IS SO ORDERED.

THIS JUDGMENT MAY BE APPEALED PURSUANT TO § 1.3 OF RULE 9 OF THE TENNESSEE SUPREME COURT RULES BY FILING A PETITION FOR WRIT OF CERTIORI, WHICH PETITION SHALL BE MADE UNDER OATH OR AFFIRMATION AND SHALL STATE THAT IT IS THE FIRST APPLICATION FOR THE WRIT.

ENTERED on this 10th day of January, 2019.

/s/ Charles F. Morrow

Charles F. Morrow (Chair)

/s/ Kamilah Turner

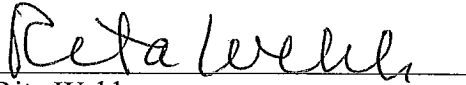
Kamilah Turner

/s/ Tom Cassidy

Tom Cassidy

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Lewis K. Garrison, 145 Court Avenue, Suite 402, Memphis, TN 38103, and to his counsel, Leo Bearman, Jr., 165 Madison Avenue, Suite 2000, Memphis, TN 38103, via U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 14th day of January, 2019.


Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.