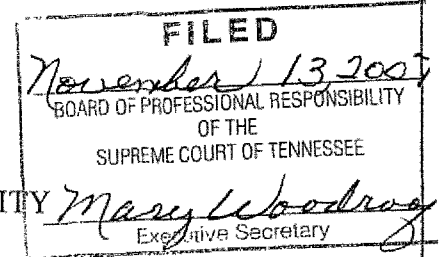


IN DISCIPLINARY DISTRICT II
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: DEBRA FANNIN GRAHAM, DOCKET NO. 2005-1547-2-SG
BPR #15493, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Anderson County)

JUDGMENT OF HEARING PANEL

This cause came on to be heard by the Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee in August 29, 2007, pursuant to Rule 9; Rules of the Supreme Court of Tennessee. This Hearing Panel, Michael A. Hickman, Chairman, Lynn P. Talley, and Charles B. Dungan, Jr. make the following findings of fact and submit its judgment in this cause.

I.

STATEMENT OF THE CASE

This is an attorney disciplinary action concerning the Respondent, Debra Fannin Graham, of Anderson County. On September 22, 2005, the Board of Professional Responsibility filed a Petition for Discipline based on a complaint of Christina Kendall to which the Respondent, through counsel filed an Answer on October 11, 2005. On June 19, 2006, the Board filed a Supplemental Petition for Discipline based on complaints by Teresa James, Benjamin Blankenship, and Rebecca Lynn Moore which was answered on September 5, 2006. On January 9, 2007, the Board filed a second Supplemental Petition for Discipline based on complaints by Kathleen Lambert and Sarita Retherford which was answered March 2, 2007. Thereafter, on April 2, 2007, the Board filed a Third

Supplemental Petition for Discipline based on a complaint by Edward Wasson which was answered May 25, 2007. The hearing on the various Petitions was held August 29, 2007.

II.

The following Findings of Facts and Conclusions of Law are based on the Petition as supplemented, the Answers thereto, the proof introduced at the hearing, the remarks of counsel and the entire record from all of which the Hearing Panel finds and concludes:

A. File No. 2816-2-SG – Complaint of Christina Kendall

1. **Findings of Fact** - On September 17, 2004, Christina Kendall hired the Respondent to represent her in a post divorce action filed by her former husband concerning visitation issues. The Respondent had represented Mrs. Kendall in the original divorce case. A fee of \$1,500.00 was charged and paid on September 27, 2004, against which fee the Respondent billed specific services.

Mediation was conducted on October 26, 2004. All issues were resolved except the entitlement to a dependent tax deduction and overnight visitation in the presence of the father's female roommate. An "advisory opinion" was sought from the then Chancellor which was apparently unfavorable to Mrs. Kendall.

By letter dated December 16, 2004, the Respondent notified Mrs. Kendall of the continuing complaints of the father, enclosing letters from his counsel and asked that she contact her. She also stated that despite messages she had received no return calls from Mrs. Kendall. Mrs. Kendall responded by letter dated January 7, 2005, stating that she had contacted Respondent's office upon her receipt of the December 16, 2004, letter, requested a copy of the mediation agreement and complained that she had not been able to reach the Respondent. The request for a copy of the mediation agreement was renewed by letter dated February 11, 2005. A copy of the mediation agreement was never provided to Mrs. Kendall.

The Respondent's billing records reflect a meeting with the Judge (Chancellor) on November 1, 2004,¹ and completed phone calls to Mrs. Kendall on November 3, 2004, and November 18, 2004 as well as an attempted call on December 6, 2004. Mrs. Kendall denied receiving these calls.

¹ A letter from opposing counsel, Exhibit 2, indicates this conference was November 18, 2004.

The Respondent testified she responded by phone to Mrs. Kendall's letters of January 7, 2005, and February 11, 2005; however the Respondent's billing records reflect no entries after December 16, 2004.

2. **Conclusions of Law** – The Hearing Panel Concludes that the Respondent failed to act with reasonable diligence in violation of R.P.C.1.3 and failed to respond to inquires and requests for information in violation of R.P.C.1.4. The Panel further concludes that the assertions in Respondent's letter of December 16, 2004, of attempts to contact the client were false and in violation of R.P.C.8.4. Finally, the Panel concludes that a \$1,500.00 fee was reasonable; however a \$30.00 refund under the facts of this case was unreasonable and in violation of R.P.C.1.5.

B. File No. 29035-2-SG – Complaint of Teresa James

1. **Findings of Fact** – On October 5, 2004, the Respondent accepted employment from Teresa James to obtain on behalf of her son Adam James an expungement of a felony burglary conviction. The Respondent had represented Adam James in the original burglary case.

After having difficulty contacting the Respondent Adam James was notified by her that a hearing on the expungement Motion was set May 23, 2005. Mrs. James and Adam James appeared; however the case was not on the docket. The Respondent misrepresented to the James that a mistake had been made by the Clerk who had failed to docket the Motion. In fact, the Motion was not filed until June 3, 2005.

On June 14, 2005, the Respondent notified Adam James by letter that he did not qualify for an expungement and in any event there was no statutory basis for such action. The Respondent recommended that the Motion be withdrawn which was done on July 14, 2005.

Mrs. James requested a partial refund of \$550.00 of the \$750.00 fee paid. The Respondent acknowledged the request but no refund was made.

2. **Conclusions of Law** – The Hearing Panel concludes that by accepting employment to obtain a result, i.e. expungement of a felony record, when there was no legal basis therefore the Respondent violated R.P.C.1.1. The panel further concludes that

in misrepresenting that a Motion had been filed when it had not and in failing to return the fee charged the Respondent violated R.P.C.8.4 and R.P.C.1.5 respectively.

C. File No. 2900-2-SG – Complaint of Benjamin Blankenship

1. **Findings of Fact** – Benjamin Blankenship and Kristen Blankenship (Griffis) were divorced July 22, 2005. Thereafter Benjamin Blankenship became aware that his former wife was pregnant and he might be the father of the child. Benjamin Blankenship retained the Respondent to file a Petition to Establish Parentage and for custody prior to the birth of the child, which Petition was filed September 16, 2005. On October 31, 2005, an Agreed Order was entered declaring Benjamin Blankenship to be the father of the unborn child. A hearing for custody was set for January 19, 2006.

The Respondent became ill and notified Mr. Blankenship that she would be unable to meet the January 19, 2006, date. The Complainant chose to proceed *pro se*, rather than have the hearing continued. The Respondent filed a Motion to withdraw based on these facts, which was granted on January 19, 2006.

The Complainant was unsuccessful at the January 19, 2007, hearing for custody. The child was born on January 30, 2006. On February 9, 2006, the Court ordered mediation on the issues of parenting time and support. An agreement was reached and the original Judgment of Divorce was modified by agreement on April 20, 2006, to reflect the birth of the child and approve a Permanent Parenting Plan and Modified Marital Dissolution Agreement.

2. **Conclusions of Law** – The Hearing Panel concludes that the Respondent's conduct was not in violation of the Rules of Professional Conduct. While the Respondent retained practically the entire fee the panel finds the evidence insufficient to establish a violation of R.P.C.1.16(c)(5).

D. File No. 28177-2-SG-React2 – Complaint of Rebecca Lynn Moore

1. **Findings of Fact** – On January 6, 2004, the Respondent accepted employment for Rebecca Lynn Moore on behalf of her brother Ralph Dewayne Moore, who was incarcerated, to represent Ralph Dewayne Moore concerning the appeal of the

termination of his parental rights to Angel Moore and custody of Dewayne Moore (Junior). A fee of \$5,000.00 was paid by Rebecca Lynn Moore.

The Respondent filed a Rule 11 Application for Permission to Appeal to the Supreme Court of Tennessee on January 12, 2004, which was denied and an Application for Rehearing and/or Reconsideration which was denied May 17, 2004.

The Respondent met with the Complainant on June 10, 2004, July 21, 2004, and August 2, 2004.¹ On each occasion the Respondent advised that she would appeal Angel's case to the United States Supreme Court. On June 14, 2004, the Respondent billed for "Research on Appeal, phone conference with 6th Circuit and Supreme Court" (exhibit 13). The appeal deadline was approximately August 15, 2004. On August 13, 2004, Respondent faxed a letter to the Complainant stating "I'm extremely sorry but evidently there has been some confusion. I have never been retained to appeal this matter any further than to the Tennessee Supreme Court. ...As explained in my letter to Dewayne Moore, my client, I do not believe that I am qualified to take on such an appeal." The letter to Dewayne Moore was dated May 24, 2004, (exhibit 15).² The Hearing Panel finds that the May 24, 2007, letter was falsified.

Concerning Dewayne 'Junior' Moore the Respondent failed to appear for a hearing on June 15, 2004, and misadvised the parties that her Motion to Withdraw heard August 24, 2004, had been continued from 9:00 a.m. to 1:00 p.m.³ In fact, it was heard in the morning session of the Court on August 24, 2004.

2. **Conclusions of Law** - The Hearing Panel concludes that the Respondent failed to keep Rebecca Lynn Moore and Dewayne Moore reasonably informed of the status of the matter in violation of R.P.C.1.4. The Hearing Panel further concludes that in misrepresenting the letter of May 24, 2004, to Dewayne Moore concerning the appeal to the United States Supreme Court and in misrepresenting the time of the hearing of her Motion to Withdraw the Respondent violated R.P.C.8.4(a)(c).

E. File No. 29174-2-SG – Complaint of Kathleen Lambert

¹ These meetings are reflected on Respondent's billing record.

² The billing records of the Respondent do not reflect the May 24, 2004 letter.

³ The billing records (exhibit 13) reflect "08/23/04 w court re: 1:00 hearing."

1. **Findings of Fact** – The Respondent accepted a fee of \$1,297.15 from the Complainant to file a complaint objecting to the discharge in bankruptcy of a debtor of Lambert's. The Complaint was not timely filed. When confronted with a Motion to Dismiss the Respondent asserted on oath in her response that she had filed a timely complaint by mail with certification to the Debtor and Debtor's counsel. This Complaint was not received by the clerk, the Debtor or counsel.

The Complaint was dismissed by the Bankruptcy Court January 17, 2006, for failing to timely file and as not being entitled to any of the equitable defenses applicable to the statutes of limitations.¹

The Respondent failed to advise the Complainant promptly of the dismissal.

2. **Conclusions of Law** – The Hearing Panel concludes that the Respondent failed to act with diligence and promptness in the filing of the Complaint Objecting to Discharge in violation of R.P.C.1.3. The Hearing Panel further concludes that the Respondent failed to keep Complainant informed in violation of R.P.C.1.4(a). Finally, the Hearing Panel concludes the Respondent misrepresented that the Complainant's objection had been timely filed by mail in violation of R.P.C.8.4.

F. **File No. 29026-2-SG – Complaint of Sarita Retherford**

1. **Findings of Fact** – The Complainant employed the Respondent on August 2, 2005, to file a Petition to Domesticate a Foreign Divorce Decree, to Modify and for Contempt. A \$1,500.00 fee was paid which the Respondent contends was a non-refundable retainer. There was no written employment contract.

Service was attempted through the Secretary of State, but was returned unserved on September 23, 2005. The Complainant was advised of the failed service by Respondent's secretary and made attempts to contact the Respondent but was unable to reach her.

On November 5, 2005, Ms. Retherford discharged the Respondent and requested

¹ It is the opinion the Court observed "The court finds it highly unlikely that of the three recipients to whom the Plaintiff's attorney contends she mailed the Complaint on April 29, 2005, i.e., the clerk, the Debtors, and the Debtors attorney, not one would receive the Complaint".

a refund of the remaining retainer (exhibit 31). Hearing nothing she sent a second request on December 13, 2005 (exhibit 32).

The Respondent replied on December 16, 2005, that her mother was ill and she would reply "after the first of the year" (exhibit 33). ¹ On January 25, 2006, the Complainant acknowledged receipt of the December 16th letter and again requested a refund (exhibit 34). The Respondent's billing records indicate no activity from September 23, 2005, until December 16, 2005 (exhibit 20).

In her response to Disciplinary counsel the Respondent asserts \$1,312.00 of the fee was earned.

2. **Conclusions of Law** – The Hearing Panel concludes that is failing to follow up on service of the Complaint the Respondent failed to act with reasonable diligence in violation of R.P.C.1.3. Further, the Hearing Panel concludes the Respondent failed to respond to Complainant's inquires in violation of R.P.C.1.4. Finally, The Hearing Panel concludes the retention of all but \$188.00 under the facts of this case violates R.P.C.1.5 and R.P.C.1.16(d)(5).

G. **File No. 29577-2-SG – Complaint of Edward Wasson**

1. **Findings of Fact** – On May 16, 2206, the Complainant retained the Respondent to represent him in an action for divorce. The Complainant paid \$904.50 which included a retainer and filing fee (exhibit 35). There was no written agreement or designation of an hourly charge.

The terms of a Marital Dissolution Agreement apparently negotiated by the parties with the assistance of their pastor was furnished to Respondent with certain changes requested by the Complainant (exhibit 40). On June 5, 2006, the Respondent prepared a proposed Marital Dissolution Agreement and Final Decree which were mailed to the Complainant's wife and rejected by her on June 9, 2006 (exhibit 38). On June 14, 2006, the Complainant discharged the Respondent and requested a refund of the "balance of the fee" (exhibit 41). The Respondent returned \$400.00 of the fee. On July 26, 2006, the Complainant wrote the Respondent requesting an itemized statement (exhibit 36). No itemized statement was furnished.

¹ The letter is signed "Debra/js," js are the typist initials.

2. **Conclusions of Law** – The Hearing Panel concludes the Respondent conduct was not in violation of the Rules of Professional Conduct. While the Respondent returned \$400.00 of a \$904.50 payment by the Complainant which included filing fees the Panel finds the evidence insufficient to establish a violation of R.P.C.1.6.

H. Aggravating Circumstances

The Hearing Panel finds that the Respondent has substantial experience in the practice of law since 1992.

The Hearing Panel finds that the Respondent has received prior discipline as follows: a public censure on July 18, 2003; a seventy- five (75) day suspension on July 25, 2003, and a public censure on August 5, 2005.

With regard to the complaint here under consideration the Hearing Panel finds that the Respondent is guilty of multiple offenses which are similar of not identical to the conduct for which the Respondent has received discipline in the past. Further and particularly serious the Hearing Panel finds that the Respondent has made false and deceptive statements to her clients and in the case of the Lambert complaint to the Court.

WHEREFORE based on the foregoing and pursuant to Section 8.4 of Rule 9 of the Supreme Court requiring the consideration of the ABA standards for Imposing Lawyer Sanctions this Hearing Panel does hereby recommend to the Supreme Court of Tennessee the following disciplinary actions:

1. Respondent, Debra Fannin Graham, shall receive a six (6) month suspension effective immediately upon the entry of the Order from the Supreme Court of Tennessee and passage of all applicable appeal time periods.

2. Respondent shall be on probation for a period of one (1) year, to be served concurrently with the proposed six (6) month suspension, conditioned upon the absence of any finding by a Court, Board of Professional Responsibility, or Hearing Panel during said probation period that the Respondent has, subsequent to the entry of an Order from the Tennessee Supreme Court in this matter, violated a disciplinary rule of the Code of Professional Responsibility. If the Respondent fails to comply with the dictates set forth herein during the probationary period in question then Respondent's probation shall be immediately revoked and Respondent's suspension from the practice of law will be for

the entire one (1) year period from the date of a finding by a Court, The Board of Professional Responsibility, or any Hearing Panel of said violation.

3. Except where automatic suspension for failure to comply with a condition described herein is otherwise provided for herein, Disciplinary Counsel shall apply to the Supreme Court of Tennessee for another suspension of the Respondent's license to practice law if there is any breach or failure by Respondent to comply with the conditions set forth herein or, if other circumstances warrant, the Respondent's license shall be immediately suspended.

4. During the period of probation as set out herein the Respondent will submit to monitoring on a weekly basis by a member of the bar designated by the Board of Professional Responsibility and will comply with any requirement imposed by said monitor. The monitor will report monthly to the Board of Professional Responsibility.

5. The Respondent will complete nine (9) hours of ethics and professionalism education approved by the Board of Professional Responsibility and provide proof of completion to the Board of Professional Responsibility prior to the resumption of the practice of law.

6. The Respondent will make restitution as follows:

- a. One thousand four hundred seventy dollars (\$1,470.00) to Christina Kendall;
 - b. Seven hundred fifty dollars cents (\$750.00) to Teresa James;
 - c. One thousand two hundred ninety seven dollars and fifteen cents (\$1,297.15) to Kathleen Lambert;
 - d. One thousand five hundred (\$1,500.00) to Sarita Retherford;
7. All costs of these proceedings shall be paid by the Respondent.

ENTER this _____ day of November, 2007.



MICHAEL A. HICKMAN, BPR #006037
Chairman

Lynn P. Talley by permission mdt 11-2-07
LYNN P. TALLEY, BPR #014501
Member

Charles Dungan
CHARLES DUNGAN, BPR #000860
Member