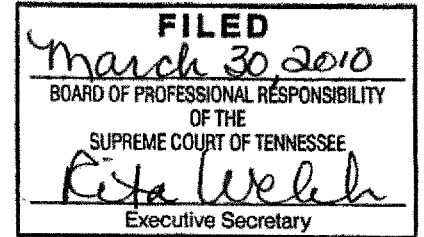


**IN DISCIPLINARY DISTRICT II
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**IN RE: DEBRA FANNIN GRAHAM
BPR #015493, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Anderson County)**

DOCKET NO. 2009-1830-2-SG

JUDGMENT OF HEARING PANEL

This matter came for a hearing on March 19, 2010, before a hearing panel of the Board of Professional Responsibility. The respondent, having been properly served with notice of the hearing at the address she had specified, failed to appear at the hearing.

STATEMENT OF THE CASE

On July 29, 2009, the Board of Professional Responsibility ("the Board") filed a Petition for Discipline against the Respondent. The Respondent failed to file an Answer and the Board filed a Motion for Default. Ms. Graham advised by email that she had not received the petition and the motion for default. On September 15, 2009, the original petition was resent to the Respondent to the email address from which Respondent communicated to the panel. On September 16, 2009, the Board of Professional Responsibility served the Petition for Discipline by regular and certified mail on the Respondent at the address specified by the Respondent. No answer or response was filed by the Respondent. On October 28, 2009, the Hearing Panel filed

an Order granting the Board's Motion for Default and deeming admitted the charge in the Petition for Discipline. The panel was concerned about deciding any matter by default and in the Order gave Respondent an additional fourteen days to file an answer or response and provided that the Order of default would be withdrawn upon filing. No response was filed.

On October 12, 2009, the Board filed a Supplemental Petition for Discipline against the Respondent. The Petition was properly served by regular and certified mail. The Respondent failed to Answer, the Board filed a Motion for Default regarding the Supplemental Petition for Discipline. On January 11, 2010, the Hearing Panel filed an Order granting the Board's Motion for Default and deeming admitted the charges in the Supplemental Petition for Discipline. Again Respondent was given fourteen days within which to respond and prevent the Order from becoming final.

On January 15, 2010, the Board filed and properly served a Second Supplemental Petition for Discipline against the Respondent. When the Respondent failed to Answer, the Board filed a Motion for Default. On February 25, 2010, the Hearing Panel filed an Order granting the Board's Motion for Default and deeming admitted the charges in the Second Supplemental Petition for Discipline. Again, the panel's Order provided fourteen days within which the Respondent could prevent the default from becoming final by filing an answer or response.

FINDINGS OF FACT

Pursuant to the Hearing Panel's Orders filed October 28, 2009, January 11, 2010 and February 15, 2010, the following facts have been deemed admitted.

File No. 31196-2-TH-Complaint of Ray O. and Nancy B. Daugherty

The Daughertys hired the Respondent in approximately January, 2006 paying the Respondent \$1,700 for the Respondent's representation regarding a conservatorship proceeding. The Respondent did not provide the Daughertys with any written fee agreement. The Respondent's billing statement reflects the Respondent "drafted and filed Petition" on February 8, 2006 when in fact the Respondent never filed a Petition for Conservatorship. The Respondent's billing statement reflects "drafted and filed non-suit due to Joe's death on 04/09/2007." The Respondent's billing statement was false since the Respondent never filed a non-suit since a Petition for Conservatorship had never been filed. In early February, 2006 the Daughertys notified the Respondent to cease working on the conservatorship.

The Daughertys filed a complaint against the Respondent with the Board of Professional Responsibility. By letter August 6, 2008, Disciplinary Counsel requested additional information from the Respondent regarding the Daughertys' complaint. By letter dated August 25, 2008, the Respondent advised she would respond to the Board's request by August 29, 2008. The Respondent failed to make any further response to Disciplinary Counsel's letter dated August 6, 2008. On November 5, 2008, Disciplinary Counsel wrote the Respondent and requested additional information. The Respondent failed to respond to Disciplinary Counsel's letter dated November 5, 2008. On March 31, 2009, Disciplinary Counsel requested additional information from the Respondent. The Respondent failed to response to Disciplinary Counsel's letter dated March 31, 2009.

File No. 31082-2-TH-Complaint of John F. Hall

Mr. Hall retained the Respondent on approximately February 20, 2008, regarding a dispute with Kingston and Roane Memorial Gardens. Mr. Hall paid the Respondent \$750 for filing fees and preliminary discovery in addition to entering into a contingency fee agreement with the Respondent for thirty-three percent (33%) of all monies recovered or obtained by settlement or judgment. The Respondent did not contact Mr. Hall again after receiving Mr. Hall's \$750. On February 22, 2008, the Respondent wrote a three (3) sentence letter to Kingston and Roane Memorial Gardens on behalf of Mr. Hall. After the Respondent failed to accept or return Mr. Hall's calls, Mr. Hall requested a refund of his fees from the Respondent. The Respondent failed to refund any of the \$750 paid to her by Mr. Hall. By letter dated March 6, 2008, Mr. Hall discharged the Respondent and requested a refund of the balance of his fee.

After Mr. Hall filed a complaint with the Board against the Respondent, Disciplinary Counsel requested information from the Respondent by letters dated July 17, 2008; August 11, 2008; November 3, 2008 and March 31, 2009. The Respondent failed to respond to Disciplinary Counsel's repeated requests for information regarding Mr. Hall's complaint.

File No. 30628c-2-SG-Complaint of William and Sharon Szary and Todd Davidson

The Szarys and Mr. Davidson retained the Respondent to represent Todd Davidson regarding a custody case. The Szarys and Mr. Davidson state they paid the Respondent \$2,000.00 for her representation. The Respondent filed a notice of appearance of counsel for Todd Davidson on approximately February 8, 2007. The Respondent failed to keep Mr. Davidson informed about the case. The Szarys and Mr. Davidson learned from the clerk for the Court of Appeals and not the Respondent that the appeal had been dismissed due to the Respondent's failure to timely file a brief.

The Respondent's billing statement for Mr. Davidson reflects telephone calls which never occurred. Additionally, the Respondent charged the Szarys and Mr. Davidson for drafting a Petition for Modification and Contempt without discussing the matter with them or obtaining their approval. The Szarys and Mr. Davidson filed a complaint against the Respondent with the Board. By letter dated May 14, 2008, the Respondent misrepresented to the Board of Professional Responsibility information regarding her billing for Mr. Davidson's case.

File No. 31307-2-TH-Complaint of Sandy Sherwood, Clerk and Master

On approximately June 6, 2008, the Respondent drafted check number 1244 in the amount of \$310.00 payable to the Anderson County Clerk and Master for probate fee. The Respondent wrote check number 1250 dated June 10, 2008 in the amount of \$279.00 payable to the Anderson County Clerk and Master for filing fee and service. The Respondent's two checks numbered 1250 and 1244 payable to the Anderson County Clerk and Master for filing and probate fees were returned for insufficient funds. The Anderson County Clerk and Master, Sandy Sherwood filed a complaint against the Respondent with the Board regarding these returned checks. By letters dated February 12, 2009, March 3, 2009, Disciplinary Counsel asked the Respondent to address whether clients had paid funds to the Respondent for the fees the Respondent had attempted to pay by these two checks with insufficient funds. The Respondent failed to respond to Disciplinary Counsel's letters dated February 12, 2009 and March 3, 2009.

File No. 32273c-2-KS-Complaint of Karen Bridges

Karen Bridges retained the Respondent to file a lawsuit against Justin Lowe. The Respondent filed but then non-suited Ms. Bridges' case on August 17, 2007, without Ms. Bridges' knowledge or permission. After the non-suit of her case, the Respondent requested and Ms. Bridges paid the Respondent a \$750.00 deposition fee on approximately April 28, 2008, and a \$65.00 filing fee on approximately May 6, 2008. The Respondent misrepresented to Ms. Bridges that her lawsuit was not dismissed but was "on hold." Ms. Bridges requested but never received from the Respondent a refund of her fees paid to the Respondent.

File No. 32495c-2-KS-Complaint of Teresa Campbell

On December 22, 2008, Teresa Campbell retained the Respondent to represent her in her divorce. Evelyn Cason paid the Respondent \$1,000.00 for the Respondent's representation of Ms. Campbell. The Respondent assured Ms. Campbell that she would file her complaint for divorce and request for a restraining order on December 23, 2008. The Respondent's staff misrepresented to Ms. Campbell that the Respondent had filed her divorce, when in fact, the Respondent failed to do so. The Respondent failed to accept or return Ms. Campbell's telephone calls and failed to respond to Ms. Campbell's request for information about her case. Ms. Campbell and Evelyn Cason requested the return of Ms. Campbell's file and refund of the \$1,000.00 paid to the Respondent. The Respondent returned Ms. Campbell's file but made no refund of \$1,000.00.

File No. 32542-2-KS-Complaint of Jacqueline Leonard

Jacqueline Leonard retained the Respondent on approximately September 18, 2008 regarding a grandparent visitation case. Ms. Leonard paid the Respondent \$874.50 for the Respondent's representation. The Respondent failed to file a Petition and failed to take any action on behalf of Ms. Leonard. The Respondent failed to respond to Ms. Leonard's telephone calls and inquiries about her case.

ANALYSIS

The panel has been careful to insist on giving the Respondent every opportunity to be heard. The panel is confident that every appropriate action has been taken to notify the Respondent of the status of the proceedings. Respondent was properly notified of the hearing. In each default order, the panel gave the Respondent the opportunity to correct the default but the Respondent never filed a response. Because the facts alleged in the petitions were deemed admitted, the panel met on March 19, 2010, to hear from the parties on the issue of what discipline should be imposed. No alternative to disbarment has been suggested and no mitigating factors have been argued as Respondent did not attend to state her position or otherwise file a responsive pleading in this matter.

Based upon the orders of default, the panel finds that Respondent has violated Rules 1.3, 1.4, 1.5, 1.15, 1.16, 8.1 and 8.4 of the Tennessee Rules of Professional Conduct.

The panel finds a pattern of neglect and misrepresentation. Section 8.4 of Rule 9, Rules of the Supreme Court, provides, "In determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions." The applicable ABA Standards are as follows:

A. Lack of Discipline

4.41 Disbarment is generally appropriate when:

(b) a lawyer knowingly fails to perform service for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

B. Lack of Candor

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

C. Failure to Maintain Personal Integrity

5.11 Disbarment is generally appropriate when:

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Each of these provisions applies. In this case, the panel finds that facts of the complaints set forth a pattern of accepting fees but failing to perform services, and then failing to refund fees. The panel also finds a pattern of either failing to respond or of responding dishonestly to complaints and inquiries by clients. Particularly troubling is the reliance on billing records to justify work not performed. The Respondent offers no proof and no explanation to counter these allegations, and the panel can reach no other conclusion than that Respondent's actions are a violation of the American Bar Association Standard's calling for disbarment.

Additionally, the panel finds several aggravating circumstances any one of which would justify disbarment. ABA Standard 9.1 states that after misconduct has been established, aggravating circumstances may be considered in determining the sanction of discipline to be imposed against the Respondent. The following aggravating circumstances justify an increase in the discipline to be imposed against the Respondent.

1. The Respondent's prior discipline for neglect, failure to adequately communicate and misrepresentations: a Public Censure on July 18, 2003; a seventy-five (75) day suspension on August 25, 2003; and a six (6) months suspension; one (1) year probation and restitution totaling \$5,017.15 on July 8, 2009. The panel places great weight on the fact that prior discipline has not deterred misconduct.

2. The Respondent's dishonest or selfish motive. The panel finds that this aggravating circumstance applies to a certain extent but places little weight on it because sparse proof appears in the record regarding the motive for misconduct;

3. The Respondent's pattern of misconduct. This factor weighs heavily against the Respondent;

4. The Respondent's multiple offenses;

5. The Respondent's bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the Board's requests for information; and

6. The Respondent's substantial experience in the practice of law having been licensed in Tennessee since 1992.

No mitigating factors were argued or submitted by the Respondent, and the panel finds no mitigating factors in the record.

The panel has examined the facts of other cases in which disbarment has occurred and has determined that proportionality calls for disbarment in this case. The Tennessee Supreme Court has disbarred attorneys for accepting fees, neglecting client matters and misrepresenting the status of cases to clients and the Board of Professional Responsibility. For example, attorney Joel Whinton was disbarred by the Supreme Court based upon his neglect, failure to communicate and misrepresentations to clients, creditors of clients and the Board of Professional Responsibility. In In Re: Mark Lee Pittman, the Tennessee Supreme Court disbarred Mr. Pittman for his pattern of neglect, knowing failure to return unearned fees, knowing deceit of clients and false statements to the Board of Professional Responsibility. Similarly, In Re: Almore A. Thompson, the Tennessee Supreme Court disbarred Mr. Thompson for failing to fully comply with conditions placed on Mr. Thompson's reinstatement to the practice of law, neglecting client cases, misrepresenting facts to a client, failing to keep clients informed and failure to appear in court. Lastly, In Re: James Lynn Price, the Tennessee Supreme Court disbarred Mr. Price for neglect, failure to adequately communicate with clients and failure to refund unearned fees. The Price Hearing Panel found in aggravation that Mr. Price had been disciplined for similar misconduct in the past. Although the facts of the individual cases vary, as does the severity of the conduct, misconduct of the type shown in this case calls for disbarment in the same fashion as in the cited cases. While the panel places most significance on the individual facts of this case and their application to the standards governing attorneys, disbarment has been the remedy in other cases involving some of the same general types of misconduct.

The panel has considered all less severe forms of discipline and finds that they would be insufficient.

JUDGMENT

Based upon the admitted facts, the applicable ABA Standards, disciplinary decisions and existing aggravating circumstances, it is the recommendation of the Hearing Panel that Respondent should be disbarred and should be ordered to pay restitution of all unearned fees to the clients in each of the complaints.

This 30th day of March, 2010.

RITCHIE, DILLARD & DAVIES, P.C.



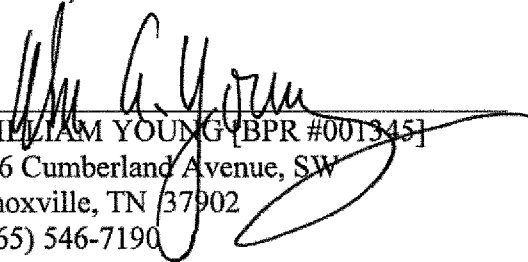
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