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

BOARD OF PROFESSIONAL
RESPONSIBILITY

WCM
EXEC. SEC.

IN RE: WENDELL KYLE HALL,
BPR# 17749, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Knox County)

DOCKET NO. 2018-2850-2-WM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for hearing on September 20, 2018 before a Hearing Panel consisting of David Alan Draper, Eric Jay Morrison and Joseph Ray Ford, Panel Chair. The Board of Professional Responsibility (the "Board") was represented by William C. Moody. Mr. Hall was present for the hearing.

STATEMENT OF THE CASE

On April 13, 2018, the Board filed a Petition for Discipline against Mr. Hall. On May 15, 2018, Mr. Hall filed his Response to Petition for Discipline.

FINDINGS OF FACT

File No. 54048-2-PS – Complainant – Mitchell Parsley

Mr. Hall represented Mr. Parsley for injuries sustained in an automobile accident. The case was settled for \$65,000.00. On October 28, 2016, Mr. Hall deposited checks from two different insurers totaling \$58,162.53 to his trust account representing the proceeds of the settlement after one of the insurers made a payment directly to Medicare for its subrogation claim. (7-9)¹ On October 27, 2016, Mr. Hall paid Mr. Parsley \$21,666.67 from the settlement. (105) Mr. Parsley was provided a written conditional settlement statement with a full accounting, which included

¹ A Bates-stamped copy of Mr. Hall's trust account bank records was introduced as Exhibit 1.

showing Mr. Hall was retaining \$13,652.44 from the settlement in his trust account with which to settle Washington National's subrogation claim.

Beginning three days after the settlement was deposited, Mr. Hall began making numerous electronic transfers in varying amounts to his personal checking account (ending in 2919). (107) Mr. Hall routinely left his earned fees in the account and withdrew them in increments as needed. He did not have an operating account.

Washington National Insurance Company was Mr. Parsley's Medicare supplemental insurer and had a subrogation claim against the settlement. The exact amount was unknown at the time of the settlement. Mr. Hall did not notify Washington National of the settlement at the time it was received. He retained \$13,652.44 from the settlement in his trust account with which to settle Washington National's subrogation claim. Mr. Hall further testified that once the Parsley case had settled, Mr. Hall had the approach, which he acknowledged was not appropriate, the case was primarily finished; with the negotiations with Washington National would likely be difficult; and that he focused on other day-to-day matters that he considered to be more sensitive. He acknowledged that he should not have done so. On February 28, 2017, the balance in Mr. Hall's trust account was \$225.84. (85)

Mr. Parsley made this complaint against Mr. Hall on October 5, 2017, nearly one year following receipt of the settlement funds. Both Mr. Hall and Mr. Parsley were expecting that there would be some amount of money remaining for distribution to Mr. Parsley after resolution of the subrogation claim. Mr. Hall admits that Mr. Parsley called him a number of occasions during that year in an effort to ascertain the status of the subrogation claim. Mr. Hall admits he returned some of Mr. Parsley's phone calls and had a private meeting at his house with him, but did not return all of Mr. Parsley's phone calls.

Washington National contacted Mr. Hall on a number of occasions during that year in an

effort to ascertain the status of the subrogation claim. Mr. Hall did not respond to any of these efforts to communicate with him. After Mr. Hall was made aware that Mr. Parsley had made this complaint, he wrote to Washington National in an effort to learn the amount of their claim. Although Mr. Hall anticipated the negotiations with Washington National would be difficult because Mr. Parsley had very significant medical expenses that were unrelated to the accident that was subject of the settlement and would likely be difficult to convince Washington National that only approximately \$7,000.00 in medical costs were actually related to Mr. Parsley's accident, Mr. Hall was in fact incorrect and Washington National responded immediately by telling Mr. Hall that it would accept \$1,897.76 in settlement of it's claim.

On December 1, 2017, Mr. Hall deposited \$14,500.00 to his trust account loaned to him by his cousin so that he would have sufficient funds in the account to make a final distribution to Mr. Parsley and Washington National. (27-28) On December 4, 2017, Mr. Hall paid \$11,754.68 to Mr. Parsley. (34) It was not until sometime in 2018 that Mr. Hall paid Washington National.

Mr. Hall concedes that he used the \$13,652.44 he was supposed to be holding in trust for his personal and business expenses. Mr. Hall kept no trust account records other than recording deposits and checks in the checking account register. He did not record the electronic transfers to himself. He did not record a running balance in the register. He did not maintain any sort of client ledgers to document who the money in the account belonged to. He never reconciled his trust account bank statements. He admits that whenever he logged into the account online to make one of the electronic transfers, the balance was plainly displayed, though he did not pay it any attention. He concedes that when he wrote trust account checks, he did not know if there was enough money in the account to cover them.

Mr. Hall practiced for seven years as a sole practitioner after a long career working for law firms. Mr. Hall opened and operated an IOLTA Trust Account as part of working as a sole

practitioner for the last seven years. This Account was the only trust account Mr. Hall ever managed; however, the IOLTA Trust Account had very little activity in it prior to 2016. Mr. Hall concedes he runs his personal checking account in the same manner as he runs his trust account and he has done them both negligently for at least the last seven years.

On October 13, 2016, about two weeks before receipt of the Parsley settlement funds, Mr. Hall deposited \$5,750.00 to his trust account when the balance in the account was only \$13.92. (107) The deposit was a loan from Gary Whitehead, Mr. Hall's cousin. Mr. Hall represented the husband in a divorce. His client sold a truck and Mr. Hall deposited the proceeds in his trust account. Mr. Hall was obligated to deliver the money to the wife's lawyer. However, the funds were no longer in the trust account. He had to borrow the money from his cousin in order to be able to pay the money to the husband's lawyer. On the same day that Mr. Hall deposited his cousin's check, he wrote a check to the husband's attorney, Willard Albert, in the same amount. (111) Mr. Hall deposited Mr. Parsley's settlement money on October 28, 2017. (107) Three days after Mr. Hall deposited the settlement, he used a portion of it to repay his cousin with a check in the amount of \$6,000.00. (111) Also on October 31, 2016, Mr. Hall used the settlement money to repay a loan to Edie Kinney, a personal friend, in the amount of \$3,000.00 and to refund a fee to a client, Roy Settle, in the amount of \$2,500.00. (105) By February 28, 2017, the balance in the trust account was \$225.84. (85) However, until the subrogation claim of Washington National was paid, the balance in Mr. Hall's trust account should never have dropped below \$13,652.44.

Based upon the above, Mr. Hall dealt improperly with the balance of the settlement proceeds in his trust account. His explanation for how those funds were removed from his trust account while credible, nonetheless demonstrated carelessness, incompetence and negligence in the management of his Trust Account. According to Mr. Hall, after depositing the settlement check from the Parsley matter, Mr. Hall did not immediately withdraw the entirety of his fee. Instead,

Mr. Hall withdrew the fee in separate transactions. Mr. Hall testified that this practice of leaving attorney fees in the account and drawing fees incrementally, while simultaneously not keeping an accurate ledger and not paying attention to the account balance led to the withdrawal of funds set aside for subrogation. Mr. Hall explained that he had no background in accounting and readily admitted that his accounting controls for the Trust Account were not in order.

File No. 51595-2-PS – Complainant – Mary Helms

Mr. Hall represented Mrs. Helms and her husband as a result of injuries sustained by her in an automobile accident. On December 22, 2011, Mr. Hall filed a complaint on behalf of Mr. and Mrs. Helms against the responsible party, Pamila Fuson, in the Circuit Court for Knox County. Process was never served on Ms. Fuson. On December 21, 2012, Mr. Hall voluntarily dismissed the complaint pursuant to Tenn. R. Civ. P. 41. Mr. Hall did not consult with Mr. and Mrs. Helms prior to dismissal of the complaint.

Mr. Hall refiled the complaint on December 20, 2013. On February 26, 2015, the defendant filed a motion to dismiss alleging that Mr. Hall failed to comply with Tenn. R. Civ. P. 41.01(1) which required that Ms. Fuson be served with the notice of dismissal and the summons and complaint. Mr. Hall's position in response was that he could not serve Ms. Fuson because he did not know where she was located. Nevertheless, Mr. Hall did not timely advise the Helms of the filing of the motion to dismiss. On July 1, 2016, an order was entered granting the motion to dismiss and dismissing the case with prejudice for failing to comply with the requirements of Tenn. R. Civ. P. 41.01(1). Mr. Hall did not timely advise the Helms that their lawsuit had been dismissed.

On August 2, 2016, Mr. Hall filed a notice of appeal appealing the dismissal to the Court of Appeals. Mr. Hall did not consult with the Helms prior to filing the notice of appeal. Mr. Hall did not timely advise the Helms that he had filed the notice of appeal. During this period, Mr. Hall received correspondence from another attorney representing the Helms which he mistakenly

interpreted to mean that the attorney was taking over the personal injury case and that he was not to contact the Helms. As a result, Mr. Hall did not comply with the requirements of Tenn. R. App. P. 24 by filing a notice that no transcript or statement of the evidence would be filed. On October 4, 2016, an order was entered directing Mr. Hall to comply with Tenn. R. App. P. 24 or else show cause why the appeal should not be dismissed. On October 5, 2016, the defendant filed a motion to dismiss the appeal because of Mr. Hall's failure to comply with Tenn. R. App. P. 24. Mr. Hall did not timely advise the Helms of the entry of the show cause order or the filing of the motion to dismiss. Mr. Hall did not respond to the show cause order or the motion to dismiss or otherwise take action to perfect the record on appeal. On October 31, 2016, an order was entered dismissing the appeal with prejudice. Mr. Hall did not timely advise the Helms of the dismissal of the appeal.

Disciplinary History

Mr. Hall received a private informal admonition on March 23, 2016.

CONCLUSIONS OF LAW

1. Pursuant to Tenn. Sup. Ct. R. 9, § 1, 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.

2. In the Helms matter, by failing to consult with the Helms regarding the decisions to voluntarily dismiss the case and to file an appeal of its dismissal, Mr. Hall violated RPC 1.2(a).

3. By failing to advise the Helms of the voluntary dismissal, the motion to dismiss, the dismissal, the filing of the appeal, the motion to dismiss the appeal and the dismissal of the appeal, Mr. Hall violated RPC 1.4 (Communication).

4. By failing to retain the balance of the settlement proceeds in his trust account pending resolution of the Washington National subrogation claim and the final distribution to Mr. Parsley, and by retaining earned fees in his trust account to be distributed in increments, Mr. Hall violated RPC 1.15(a) (Safekeeping Property and Funds).

5. By failing to promptly notify Washington National of receipt of the funds in which it had an interest, and by failing to promptly deliver to Mr. Parsley and Washington National the amounts they were entitled to receive from the balance of the settlement proceeds, Mr. Parsley violated RPC 1.15(d) (Safekeeping Property and Funds).

6. By converting the balance of the settlement proceeds in his trust account in order to pay personal expenses, Mr. Hall violated RPC 8.4(c) (Misconduct).

7. 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 aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence.

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

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

4.1 FAILURE TO PRESERVE THE CLIENT'S PROPERTY

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4.4 LACK OF DILIGENCE

4.41 Disbarment is generally appropriate when:

- (b) a lawyer knowingly fails to perform services 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

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client.

10. Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

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

11. Pursuant to ABA Standard 9.3, the following mitigating factors are present in this case:

- a. Absence of dishonest or selfish motives.
- b. Timely good faith effort to make restitution or to rectify consequences of misconduct.
- c. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.
- d. Remorse.
- e. Character or reputation.

JUDGMENT

IT IS, THEREFORE, ORDERED by this Disciplinary Committee empaneled by the Tennessee Supreme Court as follows:

1. Respondent, Wendell Kyle Hall, shall be suspended from the practice of Law in Tennessee for a period of TWO (2) YEARS, with all but SIXTY (60) DAYS of said suspension being suspended pending strict compliance by Mr. Hall with the terms of probation set forth in the following paragraph.
2. The Respondent, Wendell Kyle Hall, shall be placed on probation for a period of TWO (2) YEARS, which probation may be revoked and the remainder of the suspension set forth above imposed, should Respondent fail to comply with any of the following terms of his probation:
 - a. Respondent shall pay all the costs of this disciplinary proceeding within Sixty (60) Days of the day of this Order.
 - b. Within Sixty (60) Days of the entry of Judgment, Respondent shall engage the services of a Certified Public Accountant at his cost for the purpose of performing an audit of his existing trust account for the Two (2) Year period prior to the entry date of this Judgment. The results of this audit shall be made available to Disciplinary Counsel.
 - c. Engage a practice monitor for a period of Two (2) Years who shall be selected and approved in accordance with Tenn. Sup. Ct. R. 9, § 12.9(c). Mr. Hall shall provide a list of potential practice monitors for selection by the Board within 45 days of entry of this Judgment.

- d. The practice monitor shall meet with Mr. Hall monthly to supervise Mr. Hall's compliance with trust account rules and accounting procedures and provide a monthly written report to Disciplinary Counsel.
- e. Within Thirty (30) Days of the execution of this Judgment open a new IOLTA Trust Account. Thereafter, any deposit of client's funds shall be made to the new account. Mr. Hall shall utilize his existing trust account solely for the purpose of distributing the funds in the account at the time the new account is opened.
- f. Take Fifteen (15) hours of continuing legal education on law office management and trust accounting procedures.
- g. Provide Disciplinary Counsel with proof of compliance with these conditions.

This the 29 day of October, 2018.

IT IS SO ORDERED.



Joseph Ray Ford, Panel Chair



Eric Jay Morrison, Panel Member



David Alan Draper, Panel Member

NOTICE TO RESPONDENT

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 .

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Wendell Kyle Hall, 7045 Maynardville Pike, Knoxville, TN 37918, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 29th day of October, 2018.

A handwritten signature in cursive script, appearing to read "Rita Webb", written over a horizontal line.

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.