IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE

Fred T. Hanzelik,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 10-0717**
	)	
Board of Professional Responsibility of the Supreme Court of Tennessee,	)	
	)	
Respondent.	)	

MEMORANDUM AND ORDER

This is an appeal pursuant to SCR 9, § 1.3 by a lawyer challenging a 45-day suspension from the practice of law imposed upon him by a Hearing Panel ("Panel") of the Board of Professional Responsibility ("BPR").[1]

The petitioner and the BPR have both filed excellent prehearing briefs, and the matter was argued on the record before the Court on June 13, 2011, and taken under advisement.

The standard under which the Court reviews the decision of the Panel is set forth in SCR 9, § 1.3 as follows:

> . . The court may affirm the decision of the panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the panel's jurisdiction; (3) made upon

[1] The undersigned judge was appointed to preside over this case by Order of the Chief Justice dated January 28, 2011.

> unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record.
>
> In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

Furthermore, in making a determination regarding whether substantial and material evidence supports the Panel's decision, the Court evaluates whether the evidence "furnishes a reasonably sound factual basis for the decision being reviewed." *Threadgill v. Board of Professional Responsibility*, 299 S.W.3d 792, 807 (Tenn. 2009). The Supreme Court has also further explained that:

> Our standard of review on appeal is identical to that of the trial court under Rule 9, section 1.3, and, in consequence, we will reverse a hearing panel only when the panel's "findings, inferences, conclusions, or decisions" fall within any of the five circumstances enumerated in the rule. *Love*, 256 S.W.3d at 653 (quoting Tenn. Sup.Ct. R. 9, § 1.3); *see also* Tenn. Code Ann. § 4-5-322(h) (2005); *City of Memphis v. Civil Serv. Comm'n of Memphis*, 216 S.W.3d 311, 316 (Tenn. 2007). "When none of the first three grounds for reversal are present, . . . the hearing panel should be upheld unless the decision was either arbitrary or capricious, 'characterized by an abuse, or clearly unwarranted exercise, of discretion' or lacking in support by substantial and material evidence." *Hughes*, 259 S.W.3d at 641 (quoting *CF Indus. v. Tenn. Pub. Serv. Comm'n*, 599 S.W.2d 536, 540 (Tenn. 1980)).

Rayburn v. Board of Professional Responsibility, 300 S.W.3d 654, 660 (Tenn. 2009). Furthermore, the reviewing court cannot "substitute its judgment for that of the panel as to the weight of the evidence on questions of fact." *Id.*

The case has undergone a tortured procedural path. The original petition for discipline was filed in May 2005, and then a supplemental petition was filed in December 2006. There were three

separate alleged incidents of misconduct; somehow the allegations were separated and resulted in a hearing held on December 18-19, 2008 on what is called the Epstein and Taylor complaints, then another hearing was held on January 26, 2010 on the Lawsin complaint. The panel then allowed for post-hearing written arguments to be filed, and then finally on June 16, 2010, a 49-page opinion was entered by the Panel with a short amended judgment entered by the Panel on July 28, 2010.

Mr. Hanzelik appealed his 45-day suspension by petition for certiorari filed August 10, 2010, with an amended petition filed August 31, 2010. There was an unsuccessful motion to dismiss filed by the BPR, and then a Scheduling Order entered by the Court resulting in the final hearing on June 13, 2011.

This Court is concerned by the extreme delay in this case with its multiple continuances. The ultimate joinder of the three separate complaints and the bifurcation of the hearings separated 13 months resulted in confusion and a disjointed proceeding. It is pointless to determine who was at fault, but the end result is disciplinary action now far removed from the time it occurred. Certainly this kind of bifurcated proceeding and its attendant delay and confusion should be avoided.

The petitioner complains that the Panel's decision rendered far more than the 15 days allowed by SCR 9, § 8.3 is somehow void or entitled to less weight. The decision was entered some 60 days or more after the final written agreements were filed. However, SCR 9, § 1.3 would only entitle petitioner to relief if this violation or "irregularity" resulted in prejudice to the petitioner. *Sneed v. Board of Professional Responsibility*, 301 S.W.3d 603, 613 (Tenn. 2010). The petitioner has not pointed out how the delay in rendering a decision has prejudiced him. He is entitled to no relief as a result of the Panel's failure to comply with the 15-day rule. *See Cammon v. State*, 2007 WL 2409568, at *3 (Tenn. Crim. App. Aug. 23, 2007) (trial judge's failure to render decision within 60

days of hearing as required by statute does not entitle petitioner to relief simply for the Court's non-compliance with set time standards); *Henderson v. State*, 2007 WL 258436, at *5 (Tenn. Crim. App. Jan. 23, 2007) (same).

The BPR's petitions claimed multiple disciplinary violations related to Mr. Hanzelik's representation of three clients.

1. Epstein

This claim is based on Hanzelik's pursuit of an attorney's fee as a claim against Epstein's estate when the fee had already been paid and Hanzelik knew it had been paid.

2. Taylor

Hanzelik represented Taylor in a divorce action. The complaint related to an alleged violation over the fee charged and the work done. The Panel did not sustain this charge, and it will not be addressed further.

3. Lawsin

Hanzelik was hired to represent Dr. Lawsin in a divorce action and in an employment dispute. Hanzelik was paid a total of $8,500.00. The complaints related to failure to communicate, failure to do the work required, failure to inform of required court dates, failure to account, and then finally a failure to cooperate with the BPR's investigation of the complaint.

The Panel rendered a 49-page decision. Relative to the Epstein matter it concluded that:

> The Panel, however, finds that the allegation regarding the claim that Hanzelik filed against the Epstein Estate for an additional $59,653 is an ethical violation. The fact that the claim was filed by Hanzelik's secretary while he was out of town and presumably "unreachable" is no excuse. Upon his return to the office, Hanzelik continued active efforts to receive payment

from the Estate knowing that he had already been paid in full for his services. In essence, Hanzelik tried to get paid twice - $83,000 withheld from the settlement checks and $59,653 through a claim against the Estate. Particularly troublesome is the fact that the claim against the Estate was made after Hanzelik had already withheld funds from settlement checks to cover his fees in full. Compounding the matter, Hanzelik steadfastly refused to supply information to the Estate's attorney - Jerre Mosley - who repeatedly sought documentation from Hanzelik to support the $59,653 claimed for attorney's fees Hanzelik made against the Estate.

Hanzelik's actions with regard to the claim against the Estate are certainly inconsistent with his testimony that his fees were paid in full out of the settlement proceeds. If the claim against the estate had been made in error, Hanzelik should have taken prompt action to withdraw it. At the very least, he should have responded to Attorney Mosley's request regarding documentation to support the claim. Instead, Hanzelik held on to his claim for as long as he could and did not voluntarily withdraw it until just before the Hearing to determine the validity of it - a claim that was undocumented and unsupported.

In its conclusory section, the Panel found the described action to have been done as a "conscious and deliberate action." (Hearing Panel Opinion, p. 47).

As to the Lawsin matter, the Panel found multiple violations:

Rule 1.5(b) - Fees[2]

The Hearing Panel is of the opinion that the total retainer fee of $8,500 to handle the divorce and the unemployment matter was not in and of itself excessive. Unfortunately, for all concerned, it appears that Lawsin derived little, if any, benefit from the $8,500 retainer fees he advanced to Hanzelik to represent him in the two legal matters. Based upon the entire record herein, it is apparent that Hanzelik never communicated the basis or rate of the fee that he intended to charge Lawsin. There was no engagement letter, no fee schedule provided to the client, and nothing other than a demand for payment of an initial retainer fee of $3,500 in April of 2005 followed by a demand in May of 2005 for an additional $5,000 retainer fee, both of which were promptly paid by Lawsin. Based upon the email correspondence in November of 2005, Lawsin was under the impression that the initial $3,500 retainer was for the divorce action and that the $5,000 advance retainer was to cover Hanzelik's fees in filing a legal claim against his former employer

[2] *See* RPC for this subsection rule and subsequent rules.

and possibly Bradley Memorial Hospital. A written engagement letter, setting forth the terms and scope of the representation, and the fees to be charged, should have been provided to the client. The Hearing Panel finds Hanzelik failed to comply with Rule 1.5(b) and his client suffered financial consequences.

. . .

Rule 1.4 - Communication

It is clear that Hanzelik failed to keep his client "reasonably informed" and at times, failed to communicate in any form or fashion with Lawsin. Disciplinary Counsel has established that Hanzelik never advised his client that there were outstanding discovery requests in the divorce case that needed to be answered; Hanzelik never informed Lawsin that his wife's attorney had filed a Motion to Compel; Hanzelik never told his client that his wife filed a Motion for Sanctions in February of 2006; and he failed to timely inform Lawsin that an Order was entered on April 4, 2006 ordering him to appear in court on April 27th. Hanzelik failed to tell his client that the divorce court entered an order on May 8, 2006 finding Lawsin in contempt. The reconstructed fee statement that Hanzelik presented for the first time at the hearing in January 2010 demonstrates a profound lack of communication with his client. Without effective and timely communication with the client, a lawyer is unable to discharge his ethical obligation to keep his client reasonably informed about the status of the legal matters the lawyer has been entrusted to handle. Thus, the Hearing Panel concludes that Hanzelik failed to comply with Rule 1.4.

Rule 1.3 - Diligence and Rule 3.2 - Expediting Litigation

It is the finding of the Hearing Panel that Hanzelik's representation of Lawsin in his divorce was anything but "diligent." Further Hanzelik's lack of diligence resulted in harm to his client, such that Lawsin was held in contempt of court and he was forced to seek representation by other counsel.

Likewise, Hanzelik never prosecuted any claim against Lawsin's former employer or Bradley Memorial Hospital. Presumably, if Lawsin had any claim against his former employer or Bradley Memorial Hospital that would have been subject to Tennessee's one year statute of limitations, any such claim would have become time barred during the time that Lawsin reasonably believed that Hanzelik was pursuing a claim on his behalf. Diligence was needed in the employment dispute. In the November 7, 2005 email, Lawsin stressed the sense of urgency by stating that "the situation with the hospital has gotten out of control. BMH has called a collection agency on me and I'm

almost to the point of declaring bankruptcy. So again, yes I feel let down and abandoned." The Hearing Panel finds that Hanzelik violated Rules 1.3 and 3.2.

. . .

Rule 8.1 - Disciplinary Matters

Of particular concern to the Panel is Hanzelik's dilatory tactics and refusal to provide the accounting of the retainer fees he charged or to document his fee arrangement with Lawsin during the pendency of this disciplinary matter. The Panel is careful to make note that these dilatory tactics occurred prior to Hanzelik being represented by Daniel Ripper, who was retained "late in the game" to represent Hanzelik. (According to the record, Mr. Ripper did not enter a notice of appearance for Hanzelik until October 27, 2009). The record is clear that Hanzelik repeatedly and consistently failed to respond to Disciplinary Counsel's request for information both prior to the filing of the Petition and during the formal discovery process. Disciplinary Counsel made repeated efforts, beginning in July of 2006, requesting the Hanzelik's response to Lawsin's Complaint. From August 25, 2006 through November 9, 2006 Disciplinary Counsel made seven (7) written requests, by letter, to Hanzelik seeking copies of his fee arrangement and the itemized statement for services purportedly performed on behalf of Lawsin. Hanzelik failed to make any response to Disciplinary Counsel with the requested information regarding his fee arrangement and itemized statement for services rendered. To make matters worse, Hanzelik eventually filed a response to one of the Board's formal discovery requests in June of 2008, in which Hanzelik represented that he had attached an accounting to his Response. No such document was attached and, it appears, no such document existed in 2008. Indeed, it was not until the Hearing on January 26, 2010 that Hanzelik first produced a purported fee statement. Based upon the record before this Court, the Hearing Panel cannot determine if Hanzelik "knowingly" made a false statement of material fact when he submitted his discovery response in June of 2008 and gives Hanzelik the benefit of the doubt on that point. It is clear, however, that Hanzelik never responded to the demands for information from the disciplinary authority. Likewise, it is equally clear that Hanzelik failed to produce any documentation explaining his charges, fee structure or application of the retainers. Accordingly, it is the judgment of the Hearing Panel that Hanzelik violated Rule 1.8 because he systematically and knowingly failed to respond to a reasonable and highly relevant demand for information from the Board's disciplinary counsel.

Hearing Panel Opinion, p. 35-36, 38-39, 40-41, 44-46.

As to its decision to impose a 45-day suspension, the Panel found:

> In the Epstein matter, Hanzelik's attempt to be paid through a claim in his client's estate, after having been paid in full, was a conscious and deliberate action. In the matters involving Lawsin, we are simply not talking about an isolated event or a "bad day," but rather a pattern of repeated neglect, lack of communication and lack of diligence on the part of Hanzelik. Hanzelik seriously jeopardized the interests of his client by his lack of communication and lack of diligence in representing the matters which had been entrusted to him and for which he had paid in advance. Hanzelik attempted to blame others for these alleged ethical shortcomings and has not expressed any acceptance of responsibility for them. Further, Hanzelik did not apologize for the legal predicament he placed his client in, nor did he appear to be contrite or remorseful concerning his actions, or lack thereof.

Hearing Panel Opinion, p. 47-48.

A. Petitioner's Challenge to the Epstein Findings

Hanzelik represented Epstein in a complicated real estate matter. The case was settled, and Hanzelik was paid in full $83,000.00. The settlement amount plus the fee was deposited with Hanzelik. He paid out the settlement ($400,000.00) and kept the $83,000.00 agreed upon fee. In 2003, Epstein died. Despite being paid in full, Hanzelik's office manager prepared and filed a claim against the Epstein estate in July 2003 in the amount of $59,653.22. Hanzelik and his office manager, Ms. Oliver, were the only two persons in Mr. Hanzelik's office. Mr. Hanzelik explained, "I am a one-man show, so I have one secretary and one lawyer." The claim was filed by Ms. Oliver in Hanzelik's absence. The Panel found that:

> Hanzelik did not withdraw the claim upon his return. Attorney Jerry Mosely represented Epstein's estate. Upon receiving the claim, he repeatedly asked Hanzelik to provide documentation substantiating it. He never received any. Rather, Hanzelik took affirmative steps to be paid and only withdrew the claim a few days before the hearing on the exception filed by Mosely. His efforts included sending an email to Jerry Mosely asking "when can I expect to be paid."

The Panel found that Hanzelik filed a claim against the Epstein estate which constituted an ethical violation, as it was deemed to constitute an effort to receive payment for services for which Hanzelik knew he had already received full payment. While Hanzelik admits that his office was derelict in the submission of the claim, he takes great issue with the Panel holding that his act "was a conscious and deliberate action" to collect a fee for which he had already been paid.

Mr. Hanzelik's testimony, and that of his office manager, was that the office manager was responsible for filing the claim in Mr. Hanzelik's absence. She was fearful that the window for filing claims would pass, so she filed on July 25, 2003. The estate filed an exception to the claim on August 26, 2003. On October 29, 2003, Hanzelik emailed Mosely and asked, "What do I need to do to get paid?" Mosely emailed back on the same date:

> "I've [Mosely] asked you several times to provide me with your billings so I could discuss them with Charlyne. You filed a claim for $59,000 with no supporting documentation, and Charlyne says she has never seen a bill. Charlyne is also under the impression that you've already been paid. The settlement agreement, which I also asked for and haven't received, was for Louis to pay $400,000 to the siblings plus an additional $9,000 to two others each. It looks like approximately $480,000 was paid to you to cover the settlement and your fee. Charlyne personally paid the $18,000 for the other two siblings. So the question is, what happened to the other $80,000 and how was it applied? If I can get this information with an explanation of how the $80,000 was disbursed, we can see about getting you paid."

Then later in the day Hanzelik emailed Mosely back stating that his bookkeeper was "embarrassed" and that the fee had been paid. On October 31, 2003, six days prior to the court hearing, Hanzelik withdrew the claim.

The Panel heard the testimony of Ms. Oliver and Hanzelik and was able to judge their credibility.[3] The Panel implicitly concluded that it was not possible for Hanzelik to have "forgotten" that he had been paid the $83,000.00, nor was it possible - given the working relationship with Ms. Oliver and the filing of the exception - for him to not know that the claim had been filed. In addition, he had received inquiry from the lawyer for the estate. The amount of the claim $59,653.22 was inexplicable, as was Hanzelik's inaction until confronted with both the exception filed by the estate and finally by direct written confrontation from counsel for the estate just prior to the court date.

The Panel is allowed to make reasonable deductions from the proof, and this Court must adhere to the rule that the determination of intent is peculiarly within the providence of the fact finder. The Panel having found that Hanzelik took a "conscious and deliberate action," the Court, after reviewing the evidence, cannot say that the finding is unsupported by the evidence. This Court cannot substitute its judgment for that of the Panel as to the weight of the evidence.

On this record, the Court SUSTAINS the findings of the Panel as to the Epstein claim.

B. Petitioner's Challenge to the Lawsin Findings

1. Admissibility of the Lawsin deposition :

As a preliminary matter, the petitioner strongly argues that the Panel erred by allowing the complainant Dr. Lawsin to testify by deposition. Lawsin had moved to Florida. The BPR moved the Panel to allow Lawsin to testify by telephone. The Panel declined the motion on December 5,

---

[3] Hanzelik's testimony regarding the Epstein billing is found at the transcript of the December 18-19, 2008 hearing at pages 26-104; 217-270; 581-588; and 609-622. Ms. Oliver's testimony is at 352-426.

2008, but stated that it recommended that his deposition be taken; however, by subsequent order it indicated that Dr. Lawsin should attend.

The BPR then moved again to take Lawsin's deposition by videotaped recording. Hanzelik opposed the BPR's motion, but the hearing in the Lawsin matter was continued until October 20, 2009. The BPR renewed its motion to take Lawsin's deposition by videotaped recording. Hanzelik filed no objection. On September 29, 2009, the Panel granted the motion. On October 5, 2009, the BPR served notice on Hanzelik of the video-conference deposition to take place on October 12, 2009. Hanzelik did not participate in the Lawsin deposition, but on the same date (October 12, 2009), he filed a motion for a Protective Order and to quash a subpoena.[4] That motion stated that he had received an untimely notice of the deposition and that no location was identified. The motion does admit that Hanzelik received on October 9, 2009, "some purported instructions" regarding the location of the video conferencing. The Lawsin deposition was taken without Hanzelik's participation on October 12, 2009. It is only 16 pages long.

On October 20, 2009, the Panel ruled on the motion for a Protective Order and to quash as follows:

> The matter before the Panel concerns the deposition of one of the Complainants, Dr. Laredo Lawsin. The Board requested and received permission to take the video deposition of Dr. Lawsin for proof. The Panel requested the Parties to schedule this deposition with the understanding that the final hearing in this matter not be delayed again. Despite this admonition, the deposition was scheduled but the Respondent did not participate due to a scheduling conflict. Upon consideration of the matter, it is ORDERED that:
>
> 1. The hearing date of October 20, 2009 shall be cancelled *only*

[4] Counsel explained to the court at oral argument that the video-conference deposition allowed for Lawsin to be in Florida, BPR's counsel to be in Nashville, and Hanzelik to be in Chattanooga, all video and audio connected.

upon the following conditions: (a) that the Parties to a new final hearing date such that this matter will be heard before the end of 2009, (b) that the Parties schedule a further deposition of Dr. Lawsin by the Respondent for cross-examination purposes only if he so desires; (c) that the Respondent be responsible for arranging both dates with the Board and Panel, and (d) that the rescheduling of the deposition and final hearing be accomplished within ten (10) calendar days of the date of this Order. If these conditions are not met, the case will be set for final hearing with the understanding that Dr. Lawsin will appear by video deposition already taken and no further deposition of Dr. Lawsin being allowed by the Respondent.

2. The Respondent's Motion for Protective Order and to Quash Subpoena is denied. The video deposition taken by the Board will be allowed into evidence subject to any evidentiary or similar objections by the Respondent.
3. If the Respondent objects to any portion(s) of the video deposition, he shall file a Motion in Limine at least thirty (30) days prior to the final hearing so that Panel can rule on them prior to the final hearing.
4. If the Respondent desires to take the deposition of Dr. Lawsin, it will be at his expense.

Mr. Hanzelik took no action to depose Dr. Lawsin and filed no motion in limine objecting to any portion of Dr. Lawsin's deposition. The October 20, 2009 hearing in the Lawsin matter was continued to January 26, 2010, so he certainly had the opportunity.

Hanzelik's objection to the deposition is two-fold. First, he objects to the fact that the Panel at first refused to allow testimony by telephone or even deposition, but then it "reversed course" and allowed the deposition.

Second, he contends that he did not receive the proper seven-day notice required by Tenn. R. Civ. P. 30.02 (he only received six days by Tenn. R. Civ. P. 6.01 calculation), and he was belatedly notified of the location for his participation.

It does appear that the BPR set the deposition one day early from the seven days required as calculated by Tenn. R. Civ. P. 6.01. On the other hand, Mr. Hanzelik waited until the day of the deposition to file his objection. "All irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice." *Id.* at 32.04(1). *See generally, Roy v. Board of Medical Examiners,* 310 S.W.3d 360, 364-66 (Tenn. Ct. App. 2009).

The record brought to the attention of the Court indicates no objection to the notice until the motion filed the day of the deposition.

The petitioner makes much of the fact that the Panel "reversed" itself in ordering the deposition taken. He cites no authority for his position. An administrative body, just like a trial court, can change interlocutory orders. The testimony of an out-of-state witness by deposition is a common occurrence in Tennessee trial courts and administrative proceedings. Tenn. R. Civ. P. 32.01(3) and TRE 804(a)(6).

On the record before it, the Court finds no abuse of discretion by the Panel's Order of October 20, 2009 and its allowance for the use of the deposition. Hanzelik was given an opportunity for his own deposition of Lawsin, and he declined. Hanzelik's failure to avail himself of the opportunity to take Lawsin's deposition was commented upon by the Chairperson of the Panel in denying Hanzelik's renewed oral motion to exclude the deposition on the day of the hearing. *See* Hearing Transcript, January 26, 2010, p. 13.

2. The Merits of Lawsin's Complaint:

The findings of the Panel have been set out previously. (*Supra* at 4-8.) Mr. Hanzelik now argues that the Panel's decision should be reversed as to their findings regarding the issues of

communication, diligence, accounting and cooperation with the investigation.

Mr. Hanzelik argues that the record does not support a finding that he failed to properly communicate the basis for the fee to his client. He argues that his own testimony is "quite clear" that Lawsin understood the fee agreement. As to the failure to communicate, Mr. Hanzelik contends that it is the fault of Lawsin who "moved a lot" and was difficult to contact. The Panel heard the proof and made a determination as to the version of the reported conversations regarding the fee.[5]

Hanzelik takes issue with the Panel's finding of a lack of diligence. Mr. Hanzelik blamed his recalcitrance in the Lawsin's divorce case on his unwillingness to provide his adversary answers in discovery because Lawsin had provided Hanzelik "untruthful" information. None of this, however, excuses the failure to appear in court or to inform his client of the adverse action - including contempt - that had been taken against him. The Panel was aware of the communication problems, but petitioner significantly overstated the facts in placing the majority of the fault on his client.

The employment case was not filed, says Hanzelik, because there was no merit to it. The Panel did not, as asserted by petitioner, hold that the suit should have been filed. The Panel found that the claim should have been investigated and then the client accurately informed as to progress on the case. Lawsin wanted "attention" to be paid to his case.

The objection to the accounting is confusing to the Court. On the one hand, the accounting issue could relate to a discovery response in the disciplinary case in which petitioner said an accounting was attached. It was not attached, and that particular accounting was never produced,

---

[5] Mr. Hanzelik's testimony is at pages 38-146 of the January 26, 2010 Hearing Transcript.

nor was its absence satisfactorily explained. Additionally, Dr. Lawsin testified that he had requested an accounting from the petitioner and was never provided an accounting or a refund. In either case, the accounting was not timely produced.

Last, Mr. Hanzelik says he did cooperate with the investigation by the BPR. The Court agrees with the Panel's findings that petitioner repeatedly failed to respond to Disciplinary Counsel's request for information. Hanzelik testified that he talked to Disciplinary Counsel on the phone, but there was no satisfactory explanation of why the requests in multiple letters were not answered.

The Panel heard the witnesses, and it examined the documents and court file. The decision of the Panel as to the Lawsin matter is supported by material evidence and is AFFIRMED.

C. Petitioner's Challenge to Imposed Discipline

Petitioner contends that his 45-day suspension is excessive. He attaches five different press releases from the BPR to support his argument that only a public censure is warranted.

The Court cannot consider these press releases which were attached to petitioner's brief for two reasons:

1. This matter is reviewed on the record below. SCR 9, § 1.3. These releases were not placed into evidence before the Panel; and

2. An attached press release would not be admissible under the Tennessee Rules of Evidence.

The Court has, however, considered the ABA Standards for Imposing Lawyer Sanctions. *Board of Professional Responsibility v. Maddux*, 148 S.W.3d 37, 40-42 (Tenn. 2004); SCR 9, § 8.4. The Court is of the opinion that the following two provisions of the ABA Standards are relevant:

4.42 Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

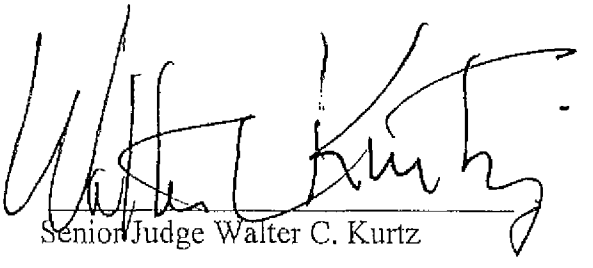
6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

The Court finds that the 45-day suspension imposed by the Panel was reasonable, was within its discretion, and was consistent with the ABA Standards. The combination of the untoward conduct in the Epstein matter and the dereliction in the Lawsin matter well supports the Panel's imposition of a 45-day suspension.[6]

D. CONCLUSION

The Panel decision is AFFIRMED in all of its particulars. SCR 9, § 1.3.

This the 29th day of June, 2011,



Senior Judge Walter C. Kurtz

[6] Petitioner's brief does not address possible mitigating circumstances. The brief addresses only comparable sanctions shown through the inadmissible press release. The Court therefore has not addressed the weighing of aggravating and mitigating circumstances. *Maddux*, 288 S.W.3d at 349.

cc:
Daniel J. Ripper
1110 Market Street, Suite 500
P.O. Box 151
Chattanooga, Tennessee 37401-0151
via facsimile: 423-265-9903

Sandy Garrett, Disciplinary Counsel
Tennessee Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, Tennessee 37027
via facsimile: 615-367-2480

The undersigned hereby certifies that a copy of this order has been mailed to all parties or their counsel in this case

This 5 day of July, 2011
S. LEE AKERS, C & M

By mm 2V, DC & M