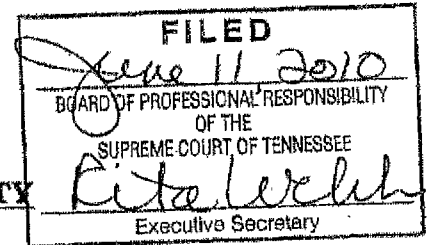


IN DISCIPLINARY DISTRICT II
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: FRED T. HANZELIK
BPR NO. 4773, An
Attorney Licensed in
Tennessee to Practice
Law in Tennessee
(Hamilton County)

DOCKET NO. 2005P-1510-(C) JV
File No. 29366 C-3

OPINION

This matter came on for consideration by the appointed Hearing Panel (Panel). Panel members are John C. Cavett, Jr., Chairman, William E. Godbold, III, and Howard Chris Trew. Before the Panel is the matter of Fred T. Hanzelik (Hanzelik), Respondant. This is a consolidated case consisting of complaints regarding Hanzelik's representation of three clients, Louis Epstein (Epstein), William Taylor (Taylor), and Dr. Loreda M. Lawsin (Lawsin). In addition to the clients' complaints, the Board of Professional Responsibility (Board) claims Hanzelik did not properly cooperate with it during its investigation and prosecution of this matter.

Hearings on the Epstein and Taylor matters were held in 2009. The Board was represented by Sandy Garrett and Hanzelik by John Konvalinka. The Lawsin matter was heard January 26, 2010. The Board was again represented by Sandy Garrett and Hanzelik by Dan Ripper. The parties submitted written final arguments for the Panel's consideration.

EPSTEIN

a) Allegations

With respect to this matter, Hanzelik is charged with violating Rule 1.5 - Fees, Rule 1.15 - Safekeeping Property, Rule 1.16 - Declining and Terminating Representation and Rule 8.4 - Misconduct. The Board alleges, as an aggravating factor, that Hanzelik, who has practiced law in Tennessee since 1976, is an experienced lawyer.

Hanzelik denied all wrongdoing.

b) Facts

This matter concerns (1) the reasonableness of his fees in the amount of \$83,000 charged for representing Epstein in a complicated real estate accounting and partition matter and (2) a \$59,653.22 claim for fees filed in Epstein's estate case following his death.

Epstein was a Chattanooga attorney. In approximately 1969, the last of his parents died. They owned a large number of rental properties - at least 51 - most of which had multiple rental units on them. The properties passed, upon Epstein's mother's death, to Louis Epstein and his siblings.

From 1969 until his death, Epstein exclusively controlled and managed these properties. He collected rents and paid the expenses associated with each. Some were sold. With respect to some, the siblings conveyed their fractional interests to each other. The testimony

from each witness who knew Louis Epstein was that his record keeping was very disorganized and haphazard at best.

At no time during his management of the property did Epstein account to his siblings, who were also his co-owners. On December 19, 2000 they filed suit against Epstein for an accounting as to net income generated by these properties over the years and a partition by sale of the properties according to their fractional interests.

Epstein hired Hanzelik to represent him in the suit. At that time, or during the pendency of the suit, Hanzelik represented Epstein in a number of other matters including, but not necessarily limited to, monitoring the divorce of one of Louis Epstein's brothers, monitoring a separate lawsuit brought against one of Louis Epstein's brothers, representation in a lawsuit brought against Louis Epstein and his son Aaron Epstein and a lawsuit brought against Epstein by a tenant who was apparently placed in a assisted living facility and, while there, had all her property removed and disposed of by Epstein's agents or employees.

Hanzelik's office bookkeeping procedures were somewhat antiquated. For the most part, his office did not use computers. When his office generated an invoice, it was mailed to the client with a copy placed in an accounts receivable folder. When the invoice was paid, the invoice copy was taken from the accounts receivable folder and

destroyed. The invoices for all clients were maintained in the same folder.

According to the lawsuit brought by Epstein's siblings, there were 51 parcels of property involved. Upon being hired, the first thing Hanzelik did was to conduct title searches in the Hamilton County Registers Office as to each parcel. Hanzelik testified that this effort took all or part of three weeks to complete. Next Hanzelik undertook to review Louis Epstein's "records". Apparently these records consisted of documents relating to these properties that were thrown haphazardly into boxes. The documents in the boxes were not segregated by parcel, type of expense, income, or even date. Epstein's office assistant, Rachel Sparks, who had access to these records, testified that these records were maintained in a large number of boxes and that they were completely disorganized. Hanzelik sifted through the contents of the boxes in an effort to create an accounting. It was his client's position that the properties generated no net income over time because the expenses associated with maintaining them equaled or exceeded the income they generated.

No depositions were taken in the case but written discovery requests were made. The parties had a dispute as to the period of accounting, the plaintiffs taking the position that the accounting should begin in 1969 and Epstein taking the position that it should begin no

earlier than 1985. Ultimately Hanzelik prevailed on this issue for his client and the accounting period was ordered to begin in 1985.

The parties attended a mediation presided over by Ferber Tracy. William Horton, the attorney for Louis Epstein's siblings, testified that while the case was not settled in mediation he believed that the ground work for the ultimate settlement was laid there. Early in his representation, Epstein sent Hanzelik a letter authorizing him to settle the case for no more than \$500,000. Ultimately the case was settled for \$400,000. Attorney William Horton testified that he believed the case to be worth more than \$400,000 but that his clients chose to settle for that amount, in part, to bring peace to the family. Louis Epstein's son, Aaron Epstein - a local practicing attorney and former law partner of his father's - testified that the settlement was extremely favorable and that he believed that the potential exposure to Epstein in the case exceeded a million dollars. Hanzelik echoed these sentiments in his testimony.

By the time the case was settled, Epstein was in ill health. Hanzelik testified that he created an invoice that encompassed his billing on all of the matters that he was working on for Epstein and went to Epstein's house to discuss the settlement and his bill. Louis Epstein's office assistant, Rachel Sparks, was present on that occasion although she testified that Hanzelik and Epstein met privately to discuss Hanzelik's bill. Hanzelik testified that they agreed that his fees would be approximately \$83,000.

Aaron Epstein testified that his father often "bargained down" his financial obligations. Everyone who knew Epstein testified that he was a frugal man. According to Hanzelik, his bill for services on these matters exceeded the \$83,000 ultimately agreed upon but that the final attorney fee amount was the product of bargaining resulting in a decrease in the bill.

All the witnesses having personal knowledge of Epstein's reaction to the settlement, including his son, testified that he was extremely pleased. No testimony or other evidence was introduced to show that any member of the Epstein family was unhappy with Hanzelik's fee.

Hanzelik received funds from Epstein in an amount equal to the settlement amount and his attorney's fees. These funds were deposited in Hanzelik's trust account and distributed accordingly.

Evidence was introduced as to the fees generated by William Horton's firm in representing Epstein's siblings. Mr. Horton testified that he did most of the work but was assisted by both an associate in his firm and a paralegal. He testified that his firm billed 223.6 hours in the matter for a total of approximately \$35,000. He also testified that he hired a title examiner to do title research on each of the parcels of property and therefore did not generate attorney's fees for that work as did Hanzelik.

On July 31, 2003 Epstein died. There is no evidence that he was unhappy with Hanzelik's billing and he never made any complaint of any

kind. After his death, this disciplinary complaint was made by Epstein's widow Charlyne Epstein; however, she died soon after making the disciplinary complaint.

Terry Oliver was Hanzelik's secretary/office manager during the pendency of the Louis Epstein matters. She confirmed that the accounts receivable bookkeeping involved billing the client, placing a copy of the bill in an expandable file folder and removing and destroying the invoice once the bill was paid. She testified that there was an old computer system which, although out of use when she arrived, had been used for some bookkeeping purposes. However, it was so old it used a DOSS operating system and despite some effort no one could determine how to access any of the data.

While there, Ms. Oliver used a computer system that kept some financial records in an excel spreadsheet. However, this computer and another one in the office were destroyed, probably by lightening.

Ms. Oliver prepared and filed the claim for attorney's fees against the Epstein estate in the amount of \$59, 653.22. She testified that she received a notice of a pending deadline for filing claims and that at that time, Hanzelik was out of town, and possibly out of the country, and she could not reach him. She did not know that the Epstein fees had been paid. She prepared the claim herself because she was afraid to let the deadline pass. She knew that the claim could be modified or withdrawn at a later date but that it could not be filed if the deadline was missed.

She does not remember how she arrived at the amount of the claim although she believes that she must have been looking at some records or documentation to do so.

Hanzelik did not withdraw the claim upon his return. Attorney Jerre 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 Jerre Mosley asking "when can I expect to be paid".

Ms. Oliver recalled that the boxes containing Epstein's real estate records took up a "good portion" of the conference room and that they, along with some of Hanzelik's records which were contained in boxes, were taken from the office by an employee of Epstein.

c) Analysis

1. The Board alleges that Hanzelik violated the following rule.

Rule 1.5. Fees

(a) A lawyer's fee and charges for expenses shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent;

(9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and

(10) whether the fee agreement is in writing.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing, signed by the client, and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of litigation, settlement, trial, or appeal; other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and whether there was a recovery, and

showing the remittance, if any, to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or the award of custodial rights, or upon the amount of alimony or support, or the value of a property division or settlement, unless the matter relates solely to the collection of arrearages in alimony or child support or the enforcement of an order dividing the marital estate and the fee arrangement is disclosed to the court; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or, by written consent of the client, each lawyer assumes joint responsibility for the representation; and

(2) the client is advised of and does not object to the participation of all the lawyers involved; and

(3) the total fee is reasonable.

The Panel finds that the allegation by the Board that Hanzelik's fees in the real estate accounting and partition matter were excessive has not established by a preponderance of the evidence. Although his fees were greater than those charged by his adversary, comparing two attorneys work in a litigation matter is not of much use in establishing "reasonableness". As Epstein attorney, Hanzelik had the duty to recreate an accounting for fifty one (51) parcels of rental property. His adversary

did not. In addition to trying to make sense of Epsteins' poorly kept records, Hanzelik did three weeks of title work in the Register's office which his adversary did not.

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 the settlement checks to cover his fees in full. Compounding the matter, Hanzelik steadfastly refused to supply information to the Estate's attorney - Jerry 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.

The Board alleges that Hanzelik violated the following rule.

Rule 1.15. Safekeeping Property and Funds

(a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds.

(b) Funds belonging to clients or third persons shall be deposited in a separate account maintained in an FDIC member depository institution having a deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the overdraft notification program as required by Supreme Court Rule 9, Section 29.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose.

(1) Except as provided by subparagraph (b)(2), interest earned on accounts in which the funds of clients or third persons are deposited, less any deduction for financial institution service charges or fees (other than overdraft charges) and intangible taxes collected with respect to the deposited funds, shall belong to the clients or third persons whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.

(2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected

to be held for a short period of time such that the funds cannot earn income for the benefit of the client or third persons in excess of the costs incurred to secure such income in one or more pooled accounts known as an "Interest On Lawyers' Trust Account" ("IOLTA"), in accordance with the requirements of Supreme Court Rule 43. A lawyer shall not deposit funds in any account for the purpose of complying with this sub-section unless the account participates in the IOLTA program under Rule 43.

(3) The determination of whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) rests in the sound discretion of the lawyer. No charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in making such a determination.

(c) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such funds or other property. If a dispute arises between the client and a third person with respect to their respective interests in the funds or property held by the lawyer, the portion in dispute shall be kept separate and safeguarded by the lawyer until the dispute is resolved.

(d) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests.

The Panel finds that the Board has failed to establish a violation of this rule.

2. The Board alleges Hanzelik violated the following rule

Rule 1.16. Declining and Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of the client if:

(1) the representation will result in a violation of the Rules of Professional Conduct or other law; or

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from the representation of a client if the withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) the client has used the lawyer's services to perpetrate a crime or fraud;

(3) a client insists upon pursuing an objective or taking action that the lawyer considers repugnant or imprudent;

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unanticipated and substantial financial burden on the lawyer or has been rendered unreasonably difficult by the client;

(6) other good cause for withdrawal exists; or

(7) after consultation with the lawyer, the client consents in writing to the withdrawal of the lawyer.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of the representation of a client, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including:

(1) giving reasonable notice to the client so as to allow time for the employment of other counsel;

(2) promptly surrendering papers and property of the client and any work product prepared by the lawyer for the client and for which the lawyer has been compensated;

(3) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse affect on the client with respect to the subject matter of the representation;

(4) promptly refunding to the client any advance payment for expenses that have not been incurred by the lawyer; and

(5) promptly refunding any advance payment for fees that have not been earned.

The Panel finds that the Board has failed to establish a violation of this rule.

TAYLOR

a) Allegations

In this matter, Hanzelik represented Taylor in his divorce. The Board alleges that Hanzelik violated Rule 1.1 - Competence, Rule 1.2 - Scope of Representation and the Allocation of Authority Between Lawyer and Client, Rule 1.3 - Diligence, Rule 1.4 - Communication, Rule 1.5 - Fees, Rule 1.16 - Declining and Terminating Representation, Rule 3.2 - Expediting Litigation, and Rule 8.4 - Misconduct

b) Facts

The parties filed pleadings, conducted discovery, and attended mediation. The mediation failed to settle the case. Both sides prepared fully for trial. On the day of trial, the parties were able to stipulate several contentious issues. However, a hearing was conducted on those matters still in dispute resulting in a ruling by the Court.

Attorney Lisa Bowman represented Taylor's wife in this divorce case which she characterized as "complicated". She testified, for example, that one of the complicating matters was that Hanzelik's client lied about having a second job as a lawn landscaper and another was that he client was awarded a piece of jewelry that Hanzelik's client no longer had necessitating a judgment and garnishment proceeding.

One of the most difficult aspects of the divorce proceeding involved the preparation and implementation of a Qualified Domestic Relations

Order (QDRO)¹ documents for both Taylor's and his wife's employers. It appears that there was a great deal of difficulty, largely associated with dealing with the respective employers, and that Hanzelik spent a lot of time trying to resolve these issues. Eventually Taylor became dissatisfied with Hanzelik and hired a new attorney, Jamie Hurst, to represent him.

On November 1, 2001, at the beginning of his representation of Taylor, Hanzelik sent Taylor a letter stating, among other things, that he would represent Taylor "at the rate of \$250 per hour, plus expenses". Taylor testified that Hanzelik requested a retainer from him at the beginning of the representation of approximately \$1000. Before trial, he was asked for approximately \$300 for costs. During the pendency of the divorce, however, he received no billing. The explanation, not contradicted by Taylor's testimony, was that given Taylor's financial situation he and Hanzelik agreed that his attorney's fees would be paid out of the proceeds he would receive as a result of the implementation of the QDRO. So, the parties agreed to delay billing until that time.

Taylor hired Mr. Hurst in October 2005. He testified that he received Hanzelik's invoice for fees at the latest two months after he hired Mr. Hurst. He expressed his displeasure with the bill. After receiving the bill, Hanzelik offered to submit the fee issue to the Chattanooga Bar Association Fee Arbitration Committee. Taylor declined.

¹ These are Orders that deal with allocation of future benefits in a divorce including, but not limited to, retirement, pension, 401(k) and veterans' benefits.

Hanzelik filed a suit to collect his fees in February 2006. It was served upon Mr. Hurst. However, no answer was filed and Hanzelik filed a Motion for Default Judgment. He did not, however, take steps to enter a Default Judgment at that time. In April 2006 Taylor filed his complaint with the Board of Professional Responsibility. In July 2006, approximately 4 months after the filing of a Motion for Default Judgment in the fee suit, Default Judgment was entered against Taylor. However, nothing has been done to collect the Judgment and nothing further has taken place with respect to this dispute.

In a further effort to obtain information about the case, the Board asked Hanzelik's adversary in the Taylor matter, Lisa Bowman, to provide it information with respect to the kind, character, and amount of work done on the case as well as her billing. She submitted a document to the Board in response to this request (Exhibit T-17). The document indicates that she billed her client \$4,699.50 at \$125 per hour. She explained that one of the factors causing a difference in the amount of her fees as compared to Hanzelik's was that his billable rate was \$250 per hour. Additionally, it appears that the work that had to be done to put the QDRO agreements in effect fell mainly to Hanzelik.

The Board asked Mrs. Bowman to compare her billing with Hanzelik's. In order to comply, she obtained a copy of the rule docket and compared it to her billing records and Hanzelik's. She learned – and reported to the Board – that Hanzelik's were more accurate than hers.

She found many instances where the docket showed they were both in Court on the matter and that Hanzelik billed for it while she did not. She explained this as resulting from her faulty bookkeeping. She also testified that her client either was or became "broke" and that at some point she quit billing her client altogether for the work that she did. Finally, she said she told the Board that she believed Hanzelik's fee to be reasonable.

Taylor testified more than once that he recognized he owed Hanzelik a fee but that the amount claimed by Hanzelik was excessive. At no time in his testimony did Taylor dispute any particular item entered in Hanzelik's fee invoice nor did he offer an amount he believed he owed or should owe.

Hanzelik testified that he returned calls to Taylor, that Taylor had both his office and his cell phone number, and that it was he who had trouble getting in touch with Taylor because the only way he could phone him was at work and, among other things, Taylor worked sometimes in a Cleveland, Tennessee car dealership and sometimes in a car dealership in Chattanooga.

One of the complaints raised by the Board dealt with the production of documents by Hanzelik. As has been stated, Hanzelik kept records in boxes. His records boxes were made available to the Board. James Vick, the attorney representing the Board during much of this case, testified that he came to Chattanooga and went through several

boxes of records. He marked some of them and those he marked were copied for him.

Hanzelik pointed out, with respect to his interaction with the Board, that he received a letter from disciplinary counsel saying he could respond to the Board with respect to the Taylor matter "if necessary or appropriate".

The Board introduced a number of letters from James Vick to Hanzelik asking for documents. During the hearing Hanzelik introduced a letter he wrote to Taylor outlining the fee arrangement in general terms but with a specific hourly rate. When asked if he had seen this important document when going through the boxes of documents, Mr. Vick said "whether or not this document was among those documents or not, I can't tell you" and "for me to say whether or not this was among those that I asked to be copied, I don't recall".

c) Analysis

1. The Board alleges Hanzelik violated the following rules.

Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

There was no evidence that Hanzelik did not perform his services in a competent manner. The Panel finds that the Board has failed to establish a violation of this rule.

2. The Board alleges Hanzelik violated the following rule.

Rule 1.2. Scope of the Representation and the Allocation of Authority Between the Lawyer and Client

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of the representation and may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A lawyer may limit the scope of a client's representation if the limitation is reasonable under the circumstances and the client gives consent, preferably in writing, after consultation.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

The Panel finds that the Board has failed to establish a violation of this rule.

The Board alleges Hanzelik violated the following rule.

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Although the case was protracted, Panel finds that the Board has failed to establish this violation.

3. The Board alleges Hanzelik violated the following rule.

Rule 1.4. Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and comply with reasonable requests for information within a reasonable time.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Taylor complains that Hanzelik was not diligent in communicating with him about his case. While the communication between attorney and client left much to be desired, it appears that Hanzelik encountered some difficulties, for which he was not responsible, in communicating with Taylor. Therefore, the Panel finds that the Board has failed to establish this violation.

4. The Board alleges Hanzelik violated the following rule.

Rule 1.5. Fees

(a) A lawyer's fee and charges for expenses shall be reasonable. The factors to be considered in

determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
 - (8) whether the fee is fixed or contingent;
 - (9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
 - (10) whether the fee agreement is in writing.
- (b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing, signed by the client, and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of

litigation, settlement, trial, or appeal; other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and whether there was a recovery, and showing the remittance, if any, to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or the award of custodial rights, or upon the amount of alimony or support, or the value of a property division or settlement, unless the matter relates solely to the collection of arrearages in alimony or child support or the enforcement of an order dividing the marital estate and the fee arrangement is disclosed to the court; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or, by written consent of the client, each lawyer assumes joint responsibility for the representation; and

(2) the client is advised of and does not object to the participation of all the lawyers involved; and

(3) the total fee is reasonable.

The Panel finds that the allegations in this matter have not been sustained. While there was certainly a fee dispute, Taylor admits he

owes Hanzelik for his work and that he does not know how much. His adversary testified as to the difficulty of this case. Hanzelik encountered problems instituting the QDRO which apparently required dealing with both his client's and his client's wife's employers. In light of those facts the Panel cannot say that Hanzelik's fees were excessive. The Board has therefore failed to establish this violation.

5. The Board alleges Hanzelik violated the following rule.

Rule 1.16. Declining and Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of the client if:

(1) the representation will result in a violation of the Rules of Professional Conduct or other law; or

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from the representation of a client if the withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) the client has used the lawyer's services to perpetrate a crime or fraud;

(3) a client insists upon pursuing an objective or taking action that the lawyer considers repugnant or imprudent;

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unanticipated and substantial financial burden on the lawyer or has been rendered unreasonably difficult by the client;

(6) other good cause for withdrawal exists; or

(7) after consultation with the lawyer, the client consents in writing to the withdrawal of the lawyer.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of the representation of a client, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including:

(1) giving reasonable notice to the client so as to allow time for the employment of other counsel;

(2) promptly surrendering papers and property of the client and any work product prepared by the lawyer for the client and for which the lawyer has been compensated;

(3) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse affect on the client with respect to the subject matter of the representation;

(4) promptly refunding to the client any advance payment for expenses that have not been incurred by the lawyer; and

(5) promptly refunding any advance payment for fees that have not been earned.

The Panel finds that the Board failed to establish this violation.

6. The Board alleges Hanzelik violated the following rule.

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation.

As with its finding regarding the Diligence claim the Panel finds that the Board failed to establish this violation.

7. The Board alleges Hanzelik violated the following rule.

Rule 8.4. 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;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) attempt to, or state or imply an ability to influence a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

The Panel finds that the Board failed to establish this violation.

LAWSIN

a) Allegations

This Complaint was initiated by Dr. Lored M. Lawsins (Lawsins), a nephrologist, who retained Hanzelik to handle two significant legal matters – a divorce and an employment dispute with another physician, Dr. Chhajwani, and Bradley Memorial Hospital. Lawsins was never provided a written retainer agreement by Hanzelik or any documentation as to the fee arrangement or hourly rate charged by Hanzelik. It is undisputed that Hanzelik required an advanced retainer fee of \$3,500 which Lawsins paid on April 7, 2005. Approximately five (5) weeks after payment of the \$3,500 retainer fee, Hanzelik insisted on an additional \$5,000 retainer fee, which Lawsins paid on May 18, 2005.

The Board charged Hanzelik with multiple violations of the Tennessee Rules of Professional Conduct, which we summarize as follows: Hanzelik's \$8,500 fee charged to Lawsins is in violation of Tenn.

Sup. Ct., R.8, RPC 1.5. Hanzelik's failure to adequately communicate with Lawsin violated Rules 1.2 and 1.4. Hanzelik's neglect of Lawsin's legal matters violated Rules 1.3 and 3.2. Hanzelik's failure to provide his client and the Board with a timely accounting is alleged to be in violation of Rule 1.16. Finally, the Board contends that Hanzelik's misrepresentations regarding his accounting violated Rules 8.1 and 8.4 of the Tennessee Rules of Professional Conduct.

Hanzelik was represented at the Hearing by Daniel Ripper who presented proof at the Hearing through the testimony of Hanzelik. Sandy Garrett, Deputy Chief Disciplinary Counsel – Litigation represented the Board of Professional Responsibility.

b) Facts

I. THE DIVORCE ACTION

With respect to the divorce that Hanzelik agreed to handle, the record reflects that Lawsin's wife beat him to the courthouse and filed a divorce action in Georgia on or about April 19, 2005. Lawsin's wife also propounded written discovery to him in April, 2005. Although Hanzelik entered an appearance for Lawsin in the divorce action and filed an Answer on his behalf, it appears Hanzelik generally ignored the written discovery propounded to his client.

Hanzelik failed to take steps to answer or object to the written discovery propounded to Lawsin. On October 10, 2005, Mrs. Lawsin's counsel filed a Motion to Compel discovery. On April 4, 2006 a Show

Cause Order was entered by the Superior Court of Fulton County, Georgia requiring Lawsin to appear in court on April 27, 2006 to show cause why he should not be held in contempt for failure to provide responses to discovery. Hanzelik never advised Lawsin of the Show Cause Order. Hanzelik failed to inform or otherwise advise Lawsin that he would need to attend the April 27, 2006 hearing. By Order dated May 8, 2006, the court held Lawsin in contempt for his failure to appear. Hanzelik did not advise Lawsin of the Court's Order holding him in contempt.

II. THE EMPLOYMENT CLAIM

In April of 2005, Lawsin retained Hanzelik to file suit against his former employer, Dr. Chhajwani, for wrongful termination, breach of contract, back pay and severance. In addition, Hanzelik was asked to investigate whether Lawsin had grounds to also file suit against Bradley Memorial Hospital for "slander and breach of confidentiality." No lawsuit was filed by Hanzelik, which was an apparent cause of dismay and concern to Lawsin, as reflected by his email correspondence to his lawyer.

On June 17, 2005, Lawsin emailed Hanzelik setting forth his disappointment in Hanzelik's lack of action regarding his claims against Dr. Chhajwani and Bradley Memorial. On June 25, 2005, Lawsin again emailed Hanzelik requesting attention for his legal claims against Dr. Chhajwani and the hospital.

On November 6, 2005, Lawsin emailed the following to Hanzelik:

It is with regret that I must write you this letter. Despite the multiple efforts I and my mother have made to contact you, you have not responded. I request that you refund my \$5,000 retainer that I gave you to represent me in my legal matters with Dr. Chhajwani and Bradley Memorial Hospital. As a result of you not filing on behalf, BMH has contacted a collection agency to garnish my wages. In addition, I still have not been paid for my last five (5) weeks of employment with Dr. Chhajwani in addition to the three (3) months severance pay for which I am due because of his breach of contract. Repeatedly, we have asked you to act on my behalf before I had to leave in September for deployment with the U.S. Army in Germany. You agreed to represent me in the presence of both of my parents in April of 2005. I will be reporting you to the Tennessee Bar Association for client abandonment. In addition, I will be seeking legal counsel regarding damages I have sustained from your malpractice."

The next day, Hanzelik replied by email to Lawsin and claimed that he had been asked to "stop all work" involving the hospital and Lawsin's former employer. Hanzelik did not produce any documentation confirming such a directive from his client.

Lawsin replied with another email on November 7, 2005 denying Hanzelik had been instructed to stop working on the matter involving the hospital and his former employer:

Yes, I would call the fact that you haven't returned my phone calls, emails, faxes since late June abandonment. I emailed you last week regarding my divorce situation with Aida, but I did not get a response from you. I don't know who told you to stop all work on my hospital matters. I've only been asking you to start working on it since we first met April, 2005, but you kept putting me and my mother off saying you would do it "in the next week or so." As my attached emails show, 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.

I did not "take off to Europe" – I was mobilized to Landstuhl Regional Medical Center in Germany by the US Army to active duty for our wounded, ill soldiers from the Iraq War, as I informed you many times before I left. And you didn't have to put up with my girlfriends or sexual misadventures. So, I am not sure where your're trying to go with that statement. Glass houses.

To mine and my mother's understanding the \$5,000 was a retainer for my case with Dr. C and BMH and because you were not filing on my behalf, I requested you return it. Of course, you may keep it if you file for me as we have requested.

On November 13, 2005, Lawsin emailed Hanzelik:

I hope you are well. I returned from my deployment with the US Army in Germany in three (3) weeks to the US around 6 December. I leave a few weeks after that to start a new job in Washington, D.C. on 2 January 06. Please do the following before I get back. I will call you in a couple of days to communicate further with you.

1) Check on the divorce status w/Aida's lawyer. I want to have my divorce ready to be finalized before I leave. I agree to pay child support. Please work out the details, etc. of this. I will not pay Aida alimony. She has a job and can support herself. Once the divorce is final, she will have to pay 25% of her car payment (\$250) as well as her car insurance and mobile phone bills. Please arrange adequate visitation rights for me. If we are to be separated over a long distance, I think I should be able to have my son for 2-3 months a year (I can find child care) and holiday, summer visitation, etc.

2) Please file suit against Dr. Chhajwani for failure to pay me for my last 5 weeks of employment, b) improper termination, c) breach of contract, and d) three (3) months severance pay.

3) Please investigate whether I have any grounds to sue Bradley Memorial Hospital for a) slander, b) breach of confidentiality, privacy by discussing the allegation of harassment and allowing Dr. C access to the hospital

documents without my permission and before the matters were investigated.

If Hanzelik replied in writing to his client's November 13, 2005 correspondence, it is not part of the record.

As part of the investigation into the complaint, Disciplinary Counsel wrote to Hanzelik on July 24, 2006 requesting Hanzelik's response. On August 25, 2006, Disciplinary Counsel again wrote Hanzelik at which time he specifically requested copies of Hanzelik's fee agreement and itemized statement for Lawsin. Hanzelik failed to make any response to Disciplinary Counsel's August 25, 2006 letter and failed to provide Disciplinary Counsel with the requested information. The record reflects that Disciplinary Counsel sent Hanzelik seven (7) letters between August 25, 2006 and November 9, 2006 requesting a copy of Hanzelik's fee agreement and his itemized fee statement. Although Hanzelik contends in his Second Final Argument that Hanzelik was in "regular contact" with Disciplinary Counsel, the repeated requests for the fee agreement/fee statements were ignored. The only "regular contact" was Disciplinary Counsel's seven (7) letters to Hanzelik, none of which ever received a reply of any type.

This Petition for discipline was filed on December 29, 2006. At no time prior to the filing of the Petition did Hanzelik produce a copy of the fee arrangement with Lawsin and at no time during the discovery phase of this matter did Hanzelik provide any type of accounting of his time incurred to justify the advance retainer fees paid to him by Lawsin. It

was not until the Hearing on January 26, 2010 that Hanzelik first provided a purported "reconstructed" fee statement.

It appears that the document produced at the Hearing on January 26, 2010 is not the same document as the "reconstructed time" Hanzelik claims to have attached to his response filed on June 30, 2008.² Hanzelik was unable to produce a copy of the purported accounting he claims to have prepared in June of 2008. Hanzelik testified "I don't know where it is." (TR. pp. 81-82). Hanzelik's newly "reconstructed" fee accounting was offered and admitted as *Exhibit. L-7* at the Disciplinary Hearing on January 26, 2010. This is the first time Hanzelik produced any accounting for the fees he charged. In his Second Final Argument, Hanzelik now claims that Lawsin owes him an additional \$1,125 in unpaid legal fees based upon the statement "developed by going through the file." Hanzelik has not offered a plausible explanation as to why it took him from August 25, 2006 until January 2010 to "go through his file" to create an accounting of his time and expenses.

At the Hearing on January 26, 2010, James Vick, Esq. testified that the Board had propounded written discovery to Hanzelik requesting a copy of his fee arrangement and itemization of time for Lawsin. A motion was filed to compel discovery. Hanzelik was deposed on August 29, 2007. During that deposition Hanzelik was asked if he had ever

² The Panel notes that Hanzelik claims to have attached such an accounting to a discovery pleading he filed in June, 2008, stating "Attached to this response that I filed is the reconstructed time just completed.". No such document was attached.

provided an accounting to Lawsin to which Hanzelik replied, "I don't think so." Mr. Vick testified that Hanzelik never provided him with an accounting despite the repeated written requests (7 letters), formal discovery pleadings, a motion to compel and a deposition.

c) Analysis

Having heard the testimony of the Complainant, Lawsin, (which was presented by video deposition), the live testimony of Hanzelik and the rebuttal testimony of James Vick, having received the Exhibits, the Final Arguments presented in written form by both sides, and based upon the entire record in this cause, the Hearing Panel concludes as follows:

1. The Board alleges Hanzelik violated the following rule.

Rule 1.5(b) Fees:

When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

This rule requires that fees and charges shall be "reasonable" and properly communicated to the client. The term "reasonable" when used in relation to conduct by a lawyer "denotes the conduct of a reasonably prudent and competent lawyer." Rule 1.0(i).

The Hearing Panel is of the opinion that the total retainer fee of \$8,500 to handle the divorce and the employment 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 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.

2. The Board of Professional Responsibility charges Hanzelik with the violation of the following rules.

Rule 1.2. Scope of the Representation and the Allocation of Authority Between the Lawyer and Client

- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of the representation and may take such action on

behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A lawyer may limit the scope of a client's representation if the limitation is reasonable under the circumstances and the client gives consent, preferably in writing, after consultation.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

Rule 1.4. Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and comply with reasonable requests for information within a reasonable time.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The Board has failed to present sufficient proof with regard to any alleged violation of Rule 1.2, which addresses the scope of the representation and the allocation of the authority between the lawyer

and client. Therefore, the Hearing Panel has determined there was no violation of Rule 1.2.

On the other hand, Rule 1.4, as a corollary to Rule 1.2, underscores the importance of reasonable communication between the lawyer and the client, so that the client may effectively participate in the representation.

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 (*Ex. L-7*) 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.

3. The Board charged Hanzelik with violation of the following rule.

Rule 1.3 entitled "Diligence" states succinctly that:

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation.

The Comments Section under Rule 1.3 underscores the importance of a lawyer diligently pursuing matters on behalf of his client:

[1] A lawyer shall pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interest of the client and with zeal and advocacy upon the client's behalf....

[2] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, a client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client

needless anxiety and under mind
confidence in the lawyer's trustworthiness.

[3] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client.... Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose a lawyer is looking after the client's affairs when the lawyer has ceased to do so....

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.

4. The Board alleges Hanzelik violated the following rules.

Rule 1.16. Declining and Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of the client if:

(1) the representation will result in a violation of the Rules of Professional Conduct or other law; or

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from the representation of a client if the withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) the client has used the lawyer's services to perpetrate a crime or fraud;

(3) a client insists upon pursuing an objective or taking action that the lawyer considers repugnant or imprudent;

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unanticipated and substantial financial burden on the lawyer or has been rendered unreasonably difficult by the client;

(6) other good cause for withdrawal exists; or

(7) after consultation with the lawyer, the client consents in writing to the withdrawal of the lawyer.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of the representation of a client, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including:

(1) giving reasonable notice to the client so as to allow time for the employment of other counsel;

(2) promptly surrendering papers and property of the client and any work product prepared by the lawyer for the client and for which the lawyer has been compensated;

(3) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse affect on the client with respect to the subject matter of the representation;

(4) promptly refunding to the client any advance payment for expenses that have not been incurred by the lawyer; and

(5) promptly refunding any advance payment for fees that have not been earned.

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation.

Although a lawyer should not accept representation in a matter unless it can be performed competently, promptly and to completion, it is the opinion of the Hearing Panel that the Board has failed to establish a violation of Rule 1.16. Hanzelik is a very capable and experienced attorney. While the Hearing Panel certainly does not approve of the manner in which Hanzelik represented Lawsin, the Board has failed to establish by a preponderance of the evidence that Rule 1.16 was violated.

5. The Board alleges that Hanzelik violated the following rules.

Rule 8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;
or

(b) fail to disclose a fact necessary to correct a misapprehension of material fact known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Rule 8.4. 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;

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) attempt to, or state or imply an ability to influence a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

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 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's August 25, 2006 letter and never provided 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 8.1 because he systematically and knowingly failed to respond to a reasonable and highly relevant demand for information from the Board's disciplinary counsel.

SANCTIONS FOR PROFESSIONAL MISCONDUCT

The Tennessee Supreme Court has noted that in considering the appropriate level of attorney discipline, it is "guided by the ABA Standards for Imposing Lawyer Sanctions ('ABA Standards'). Tenn. Sup. Ct. R. 9, Section 8.4". Sneed v. Board of Professional Responsibility of Supreme Court, 301 S.W.3d 603, (Tenn. 2010). Section 3 of the ABA Standards identifies four factors to consider: "(a) the duty violated; (b) the lawyer's mental state; and (c) the actual or potential injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors." Under section 9.22 of the ABA Standards, aggravating factors include, among other things, prior disciplinary offenses, a pattern of misconduct, multiple offenses, a refusal to acknowledge the wrongful nature of the misconduct, and substantial experience in the practice of law. The ABA Standards provide that disbarment is appropriate when "a lawyer engages in a pattern of neglect" that causes serious or potentially serious injury to a client, or when the lawyer "knowingly engages in conduct that is a violation of a duty owed as a

professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system." ABA Standards, §§ 4.41, 7.1.

Additional factors include, but are not necessarily limited to, a pattern of misconduct, deceptive practices during the disciplinary process, refusal to acknowledge the nature of conduct, the attorney's experience in the law (in this case 30 plus years) may be considered. In view of the multiple violations involved, the Hearing Panel is of the opinion that sanctions are appropriate in this matter.

The ABA Standards recognize that Suspension is generally an appropriate sanction when a lawyer is found to lack diligence in the representation of his client, especially when a lawyer fails to perform services for a client and causes injury or potential injury to a client or when a lawyer engages in a pattern of neglect and causes injury or potential injury to his client.

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.

The Panel is aided in its determination by the analysis in Maddux v. Board of Professional Responsibility of Supreme Court of Tennessee, 288 S.W.3d 340 (Tenn., 2009). The Court said “in determining an appropriate sanction when an attorney is found to have been guilty of professional misconduct, we are obliged to review all of the circumstances of the case at bar, and, for the sake of uniformity, we must review the sanctions that were imposed in other cases under similar circumstances. See Bd. of Prof'l Responsibility v. Maddux, 148 S.W.3d 37, 40 (Tenn. 2004). We are also guided by the American Bar Association's Standards for Imposing Lawyer Sanctions (1986, as amended 1992) (“ABA Standards”), which have been adopted by the Board for disciplinary matters. See id. While no prior Tennessee case presents circumstances sufficiently similar to those in the present matter to aid us in our decision, we determine that the five-month suspension imposed by the Panel is well-supported under the ABA Standards. First, we note that section 2.3 of the ABA Standards provides that “[g]enerally, suspension should be for a period of time equal to or greater

than six months." We are not bound by the ABA Standards in determining an appropriate period of suspension, see Nevin, 271 S.W.3d at 658, and we may rule that a suspension of less than six months, as was imposed in this case, is appropriate. However, it is apparent from the language of this section that, once suspension has been determined to be an appropriate sanction, a suspension of five months does not exceed the period of suspension suggested by the ABA Standards. Additional sections of the ABA Standards provide that suspension, not public censure, is the appropriate sanction in this case". Maddux at page 348.

For these reasons, and based upon the entire record herein, the Hearing Panel recommends, in connection with the Epstein and Lawsin matters, that Hanzelik be **temporarily suspended** from the practice of law for a period of not less than forty-five (45) days and that the costs incurred by the Board in this matter be paid by Hanzelik. .

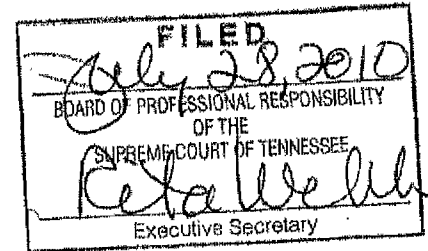
Respectfully submitted,

By: John C. Cavett, Jr.
John C. Cavett, Jr., Chair

By: William E. Godbold, III
William E. Godbold, III,

By: Howard Chris Trew
Howard Chris Trew

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



IN RE: FRED T. HANZELIK

BPR NO. #004773, Respondent
An Attorney Licensed in
Tennessee to Practice
Law in Tennessee
(Hamilton County)

DOCKET NO. 2005P-1510-3(C) - JV
File No. 29366 C-3


AMENDED JUDGMENT OF THE HEARING PANEL

On June 28, 2010, the Board of Professional Responsibility, through Disciplinary Counsel, moved pursuant to Rule 59 of the *Tennessee Rules of Civil Procedure*, to alter or amend the opinion of the Hearing Panel filed June 11, 2010. The opinion of the Hearing Panel (on Page 49) recommends that the Respondent be "temporarily" suspended from the practice of law for a period of not less than forty-five (45) days and that the costs incurred be paid by Hanzelik. The Respondent has not filed any response to the Board's motion to amend the opinion.

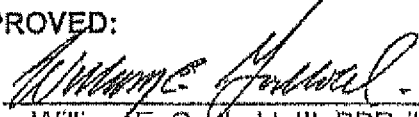
Because it was and remains the intent of the Hearing Panel to recommend a suspension from the practice of law for a period of not less than forty-five (45) days, it is hereby:


ORDERED that the Opinion of the Hearing Panel is hereby amended to delete the word "temporarily" on Page 49. It is the recommendation of the Hearing Panel that the Respondent be suspended from the practice of law for a period of not less than forty-five (45) days and that the costs incurred in this matter be paid by Hanzelik.

IT IS SO ORDERED.


John C. Cavett, Jr.,
Hearing Panel Chairman

APPROVED:

By:  William E. Godbold III
William E. Godbold, III, BPR #4565
801 Broad Street, Third Floor
Chattanooga, TN 37402
(423) 424-3907
by John Cavett with permission

By:  Howard Chris Trew
Howard Chris Trew, BPR #11162
20 Washington Avenue
P.O. Box 10
Athens, TN 37371
(423) 475-3573
by John Cavett with permission

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing, Board of Professional Responsibility's Amended Judgment of The Hearing Panel, upon the following counsel of record:

Sandy Garrett, Esq.
Deputy Chief Disciplinary Counsel
Litigation
Board of Professional Responsibility
1101 Kermit Drive, Suite 730
Nashville, TN 37217

Daniel J. Ripper, Esq.
1100 Market Street, Suite 500
P.O. Box 151
Chattanooga, TN 37401-0151

This the 23rd day of July, 2010.

By: 