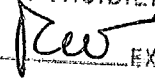


IN DISCIPLINARY DISTRICT II
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FILED
2019 APR 18 PM 2:05
BOARD OF PROFESSIONAL
RESPONSIBILITY


EXEC. SEC.

IN RE: **ARTHUR WAYNE HENRY,**
BPR# 9484, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Loudon County)

DOCKET NO. 2018-2943-2-WM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for a hearing on April 15, 2019 before a Hearing Panel consisting of John W. Butler, Mark E. Stephens, and Brian Kingsley Krumm, Chair, upon a Petition for Discipline, a Supplemental Petition for Discipline and a Second Supplemental Petition for Discipline. William C. Moody, Disciplinary Counsel, participated in the hearing. Mr. Henry did not participate in the hearing despite being given notice.

STATEMENT OF THE CASE

On November 29, 2018, the Board filed a Petition for Discipline against Mr. Henry. An Order for Default Judgment was entered February 14, 2019. On January 23, 2019, the Board filed a Supplemental Petition for Discipline. An Order for Default Judgment was entered February 25, 2019. On February 26, 2019, the Board filed a Second Supplemental Petition for Discipline. There has been no further response from Mr. Henry since entry of the Orders for Default Judgment.

FINDINGS OF FACT

PETITION FOR DISCIPLINE

File No. 56000-2-PS – Complainant – Brandon Noe

On or about October 18, 2017, Mr. Noe and his wife retained Mr. Henry to file suit against

a homebuilder for which he paid Mr. Henry a \$2,000.00 retainer. Mr. Henry did not deposit the \$2,000.00 retainer to his trust account but instead deposited it to his personal account. Between October 18, 2017 and January 23, 2018, Mr. Noe and his wife made numerous efforts to communicate with Mr. Henry regarding the status of their matter. Mr. Henry frequently failed to respond to their efforts to communicate with him. Mr. Henry never filed the lawsuit which he was retained to file. By email on January 23, 2018, Mr. Noe terminated Mr. Henry's representation and requested a refund of the unearned portion of the retainer. Mr. Henry never responded to the January 23, 2018 email and never provided any refund.

File No. 56570-2-PS – Complainant – Danny Leonard, Informant – Hon. Rex Dale

The Estate of Cassie B. Leonard was admitted to probate by Judge Dale on November 10, 2008. Stella Scott was appointed executrix of the estate. Danny Leonard is the son of Ms. Leonard. Mr. Henry represented the executrix.

The Bureau of TennCare filed a claim against the estate in the amount of \$82,905.31. The estate was declared insolvent and on March 20, 2012, Judge Dale ordered the sale of the decedent's real estate, providing that the expenses of the estate and the claim of TennCare be paid from the proceeds of the sale. Judge Dale approved the sale of the real estate to Danny Leonard for \$25,000.00 on the same date.

Danny Leonard delivered a cashier's check made payable to Mr. Henry, dated April 12, 2012, to Mr. Henry's office in the amount of \$25,000.00 for his purchase of the real estate. Mr. Henry endorsed the check and deposited it to his trust account on April 12, 2012. On April 13, 2012, Mr. Henry paid himself a \$1,500.00 fee from the \$25,000.00. On April 17, 2012, Mr. Henry paid Ms. Scott \$2,337.00 from the \$25,000.00 for reimbursement of expenses incurred administering the estate.

Mr. Henry should have promptly paid TennCare the balance of the \$25,000.00, \$21,163.00,

in satisfaction of its claim. At no time did Mr. Henry pay TennCare any amount from the \$25,000.00. The \$21,163.00 should have remained in Mr. Henry's trust account. Instead, the balance in Mr. Henry's trust account on May 31, 2012 was only \$431.92. Mr. Henry misappropriated the \$21,163.00.

Mr. Henry took no further action to close the estate or communicate with Danny Leonard regarding the status of the matter. On January 4, 2016, Danny Leonard wrote a letter to Mr. Henry inquiring about the status of the deed he never received after purchasing the property. In response to the January 4, 2016 letter, Mr. Henry telephoned Mr. Leonard and blamed the misappropriation of the \$21,163.00 on his assistant. Mr. Henry asked Danny Leonard to pay another \$25,000.00 in order to purchase the real estate.

Danny Leonard delivered a second cashier's check made payable to Mr. Henry, dated January 27, 2017, to Mr. Henry's office in the amount of \$25,000.00 for his purchase of the real estate. Mr. Henry did not deposit the January 27, 2017 check to his trust account. Mr. Henry misappropriated the January 27, 2017 check.

On February 21, 2017, Mr. Henry sent a letter to Danny Leonard enclosing a copy of a deed transferring the real estate to him and purportedly signed by Stella Scott as executrix of the estate. Stella Scott's signature was a forgery.

Mr. Henry eventually reimbursed Mr. Leonard in the amount of \$1,000.00.

File No. 56879-2-PS – Complainant – Patricia Wilson

On or about October 16, 2017, Ms. Wilson and her sisters retained Mr. Henry to probate an estate for which they paid a fee of \$1,000. In February 2018, Mr. Henry told Ms. Wilson that he had filed the petition to probate the estate. Mr. Henry never communicated with Ms. Wilson again. Mr. Henry never filed the petition to probate the estate or took any action in furtherance of his representation of Ms. Wilson. Mr. Henry abandoned his representation of Ms. Wilson. Mr. Henry

did not refund the unearned fee.

File No. 57064-2-PS – Complainant – Susie Moss-Adkins

Franklin E. Adkins was the husband of Ms. Moss-Adkins. On February 16, 2016, Mr. Henry agreed to represent Mr. Adkins by reviewing an unexecuted will and making any necessary changes for which Mr. Adkins paid Mr. Henry \$125.00. On February 18, 2016, Ms. Moss-Adkins telephoned Mr. Henry's office and left a message for him stating that Mr. Adkins was in the hospital and that it was urgent the will be executed promptly. Mr. Henry did not respond to Ms. Moss-Adkins' efforts to communicate with him regarding execution of the will. Approximately four weeks later, Mr. Henry provided Ms. Moss-Adkins with a revised will. However, by this time, it was too late to have Mr. Adkins execute the will before his death.

Ms. Moss-Adkins retained Mr. Henry to file a petition to probate her husband's estate for which she paid a flat fee of \$1,500.00. Ms. Moss-Adkins was appointed the administratrix of her husband's estate. Mr. Henry failed to timely file an inventory and failed to timely notify TennCare. Other heirs filed a motion to compel the filing of an inventory and notification of TennCare. The motion was set for June 20, 2017 and Mr. Henry failed to appear. An order was entered granting the motion.

While the estate of Ms. Moss-Adkins' husband was still pending, Mr. Henry was temporarily suspended by the Tennessee Supreme Court on April 26, 2018 and suspended for one year and one day on April 30, 2018. Both suspensions remain in effect. Mr. Henry failed to notify Ms. Moss-Adkins of his suspensions. After learning of Mr. Henry's suspensions, Ms. Moss-Adkins requested that Mr. Henry return the file to her and refund the unearned fee. Mr. Henry failed to do so.

File No. 57189-2-PS – Complainant – Michael Thompson

Mr. Thompson retained Mr. Henry to file a petition to probate his mother's estate for which

he paid a flat fee of \$2,000.00. Mr. Henry never took any action in furtherance of his representation of Mr. Thompson. On numerous occasions, Mr. Thompson attempted to communicate with Mr. Henry regarding the status of the matter but Mr. Henry failed to respond. Mr. Henry failed to notify Mr. Thompson of his suspensions. After his suspensions, Mr. Henry failed to refund the unearned fee.

File No. 57271-2-PS – Informant – Hon. John Weaver

Mr. Henry represented the plaintiffs in *Bowman v. Hayes* in the Chancery Court for Knox County. Mr. Henry failed to withdraw from *Bowman v. Hayes* upon his suspensions.

SUPPLEMENTAL PETITION FOR DISCIPLINE

File No. 57418c-2-PS – Complainant – Robert Morris

On or about April 6, 2017, Mr. Morris retained Mr. Henry to represent him in a dispute with a homebuilder for which he paid Mr. Henry a \$2,000.00 retainer. Mr. Henry did not deposit the \$2,000.00 retainer to his trust account but instead deposited it to his personal account. Mr. Morris made numerous efforts to communicate with Mr. Henry regarding the status of the matter. Mr. Henry frequently failed to respond to his efforts to communicate with him. Mr. Henry performed little, if any, of the work for which he was retained to perform. Mr. Henry failed to notify Mr. Morris of his suspensions. By text message on August 9, 2018, Mr. Morris terminated Mr. Henry's representation and requested a refund of the retainer. Mr. Henry never responded to the August 9, 2018 text and never provided any refund.

File No. 58532-2-PS – Complainant – Malissa Taylor

In or about March, 2016, Ms. Taylor retained Mr. Henry to represent her in a child support matter. On April 1, 2015, Mr. Henry filed a Petition to Enforce and Modify Divorce Decree and Permanent Parenting Plan in the General Sessions Court for Loudon County. On July 13, 2017, while that petition was still pending, Ms. Taylor terminated Mr. Henry. Ms. Taylor has requested

that Mr. Henry return her file to her new attorney. Mr. Henry has neither responded to Ms. Taylor's requests nor returned her file.

SECOND SUPPLEMENTAL PETITION FOR DISCIPLINE

File No. 59718-2-WM – Board

On December 10, 2018, Mr. Henry pled guilty to the felony of theft between \$10,000.00 and \$60,000.00 in the Criminal Court for Roane County. The theft to which Mr. Henry pled guilty is that set out above in relation to the Leonard Estate. Mr. Henry was placed on judicial diversion. Pursuant to Tenn. Sup. Ct. R. 9, § 22.6, a certified copy of a guilty plea is conclusive evidence of the commission of that crime in a disciplinary proceeding.

FAILURE TO RESPOND

Mr. Henry failed to provide a response to any of the complaints in the Petition for Discipline and Supplemental Petition for Discipline as requested by the Board.

MR. HENRY'S DISCIPLINARY HISTORY

1. On May 25, 1998, Mr. Henry received a private informal admonition as a result of a conflict of interest.
2. On November 14, 1996, Mr. Henry received a private informal admonition for failing to act diligently in the representation of a client and failing to adequately communicate with the client.
3. On April 16, 2010, Mr. Henry received a public censure for his lack of diligence and communication.
4. On April 21, 2015, Mr. Henry received a private informal admonition for his lack of diligence.
5. On January 25, 2016, Mr. Henry received a public censure for his lack of diligence and communication which resulted in the dismissal of his client's case.

6. On April 11, 2017, Mr. Henry received a public censure for his lack of diligence and communication.

7. On April 30, 2018, Mr. Henry was suspended for one year and one day for a lack of diligence and communication in the representation of three clients.

As a result of the Orders for Default Judgment, all the facts contained in the Petition for Discipline and Supplemental Petition for Discipline are deemed admitted.

CONCLUSIONS OF LAW

Pursuant to Tenn. Sup. Ct. R. 9, § 1, the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline.

The preponderance of the evidence establishes that Mr. Henry has committed the following violations of the Rules of Professional Conduct.

PETITION FOR DISCIPLINE

File No. 56000-2-PS – Complainant – Brandon Noe

By failing to perform the services for which he had been retained, Mr. Henry violated RPC 1.3 (Diligence).

By failing to communicate with the Noes regarding the status of the matter, Mr. Henry violated RPC 1.4 (Communication).

By failing to deposit the \$2,000.00 retainer to his trust account, Mr. Henry violated RPC 1.15(b) (Safekeeping Property and Funds).

By failing to provide a refund, Mr. Henry violated RPC 1.16(d)(6) (Declining and Terminating Representation).

File No. 56570-2-PS – Complainant – Danny Leonard, Informant – Hon. Rex Dale

By failing to timely provide Danny Leonard with a deed to the real estate after he paid \$25,000.00 for its purchase on April 12, 2012, Mr. Henry violated RPC 1.3 (Diligence) and 3.2 (Expediting Litigation).

By failing to maintain the balance of the April 12, 2012 check in his trust account, Mr. Henry violated RPC 1.15(b) (Safekeeping Property and Funds).

By failing to distribute the balance of the April 12, 2012 check to TennCare, Mr. Henry violated RPC 1.15(d) (Safekeeping Property and Funds).

By misappropriating the \$21,163.00 balance of the April 12, 2012 check, Mr. Henry committed an act of theft and violated RPC 8.4(b) and (c) (Misconduct).

By failing to deposit the January 27, 2017 check to his trust account, Mr. Henry violated RPC 1.15(b) (Safekeeping Property and Funds).

By failing to distribute the balance of the January 27, 2017 check to TennCare, Mr. Henry violated RPC 1.15(d) (Safekeeping Property and Funds).

By misappropriating the January 27, 2017 \$25,000.00 check, Mr. Henry violated RPC 8.4(b) and (c) (Misconduct).

By failing to communicate with Mr. Leonard, Mr. Henry violated RPC 1.4 (Communication).

By providing Danny Leonard with a forged deed, Mr. Henry violated RPC 8.4(b) and (c) (Misconduct).

File No. 56879-2-PS – Complainant – Patricia Wilson

By failing to file the petition to probate the estate, Mr. Henry violated RPC 1.3 (Diligence).

By failing to communicate with Ms. Wilson, Mr. Henry violated RPC 1.4 (Communication).

By failing to refund the \$1,000.00 fee and by abandoning his representation of Ms. Wilson, Mr. Henry violated RPC 1.16(d) (Declining and Terminating Representation).

By falsely telling Ms. Wilson that he had filed the petition to probate the estate, Mr. Henry violated RPC 8.4(c) (Misconduct).

File No. 57064-2-PS – Complainant – Susie Moss-Adkins

By failing to exercise reasonable diligence in the preparation of Mr. Adkins' will, by failing to timely file an inventory and notify TennCare, and by failing to appear at the June 20, 2017 hearing, Mr. Henry violated RPC 1.3 (Diligence).

By failing to respond to Ms. Moss-Adkins' efforts to communicate with him regarding the urgency to execute the will, Mr. Henry violated RPC 1.4(a) (Communication).

By failing to return the file to Ms. Moss-Adkins and refund the \$1,500.00 fee, Mr. Henry violated RPC 1.16(d) (Declining and Terminating Representation).

By failing to notify Ms. Moss-Adkins of his suspension, Mr. Henry violated RPC 8.4(g) (Misconduct).

File No. 57189-2-PS – Complainant – Michael Thompson

By failing to take any action in furtherance of his representation of Mr. Thompson, Mr. Henry violated RPC 1.3 (Diligence).

By failing to respond to Mr. Thompson's efforts to communicate with him, Mr. Henry violated RPC 1.4 (Communication).

By failing to refund the \$2,000.00 fee, Mr. Henry violated RPC 1.16(d)(6) (Declining and Terminating Representation).

By failing to notify Mr. Thompson of his suspension, Mr. Henry violated RPC 8.4(g) (Misconduct).

File No. 57271-2-PS – Informant – Hon. John Weaver

By failing to withdraw from *Bowman v. Hayes*, Mr. Henry violated RPC 8.4(g) (Misconduct).

SUPPLEMENTAL PETITION FOR DISCIPLINE

File No. 57418c-2-PS – Complainant – Robert Morris

By failing to perform the services for which he had been retained, Mr. Henry violated RPC 1.3 (Diligence).

By failing to communicate with Mr. Morris regarding the status of the matter, Mr. Henry violated RPC 1.4 (Communication).

By failing to deposit the \$2,000.00 retainer to his trust account, Mr. Henry violated RPC 1.15(b) (Safekeeping Property and Funds).

By failing to provide a refund, Mr. Henry violated RPC 1.16(d)(6) (Declining and Terminating Representation).

By failing to notify Mr. Morris of his suspensions, Mr. Henry violated RPC 8.4(g) (Misconduct).

File No. 58532-2-PS – Complainant – Malissa Taylor

By failing to return Ms. Taylor's file, Mr. Henry violated RPC 1.16(d)(4) (Declining and Terminating Representation).

SECOND SUPPLEMENTAL PETITION FOR DISCIPLINE

File No. 59718-2-WM – Board

Mr. Henry's plea of guilty to the felony offense of theft constitutes a serious crime and a violation of Tennessee Rules of Professional Conduct 8.4(b). It is conclusive proof of his theft from Mr. Leonard.

FAILURE TO RESPOND

By failing to respond to the complaints, Mr. Henry violated RPC 8.1(b) (Bar Admissions and Disciplinary Matters).

Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a), Misconduct.

APPLICATION OF ABA STANDARDS

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

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

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

Mr. Henry misappropriated from Mr. Leonard on two separate occasions. First, he misappropriated the \$21,163.00 balance from the first time Mr. Leonard paid him \$25,000.00 to purchase the real estate. Then, after he convinced Mr. Leonard to pay him \$25,000.00 on a second occasion, he misappropriated the money again.

- 4.41 Disbarment is generally appropriate when:

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

Mr. Henry has evidenced a pattern of neglect throughout this matter and his disciplinary history. The clients included in this Petition for Discipline and Supplemental Petition for Discipline suffered from Mr. Henry's lack of diligence. Throughout this matter, Mr. Henry has taken fees from clients and then failed to perform the work for which he was paid.

- 5.11 Disbarment is generally appropriate when:

- (b) a lawyer engages in any other intentional conduct involving

dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Mr. Henry engages in acts of dishonesty when he misappropriated Mr. Leonard's money and when he falsely told Ms. Wilson he had filed the estate in order to conceal his lack of diligence.

Pursuant to ABA Standard 9.22, aggravating factors are present in this case. The following aggravating circumstances justify an increase in the degree of discipline to be imposed against Mr. Henry:

1. Prior disciplinary offenses: Mr. Henry's disciplinary history is a most significant aspect of this case. He has displayed a lack of diligence and communication throughout his career.
2. Dishonest or selfish motive: Mr. Henry displayed a dishonest and selfish motive by his misappropriations from Mr. Leonard and his misrepresentation to Ms. Wilson.
3. Pattern of Misconduct: Mr. Henry displayed a pattern of a lack of diligence and communication, not only in his history of previous discipline, but throughout these three matters.
4. Multiple offenses: Mr. Henry committed violations of RPC 1.3, 1.4, 1.15, 1.16, 3.2, 8.1 and 8.4.
5. Respondent's substantial experience in the practice of law: Mr. Henry was licensed to practice law in 1981.
6. Illegal conduct: Mr. Henry's thefts from Mr. Leonard constitute illegal conduct.

Pursuant to ABA Standard 9.32, there are no mitigating factors present in this case.

Based upon the evidence and admissions in this matter, the appropriate discipline is a disbarment from the practice of law.

JUDGMENT


In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Mr. Henry should be disbarred from the practice

of law. In addition, and as a condition of reinstatement, Mr. Henry is ordered to make restitution as follows:

1. Brandon Noe - \$2,000.00
2. Danny Leonard - \$46,663.00
3. Patricia Wilson - \$1,000.00
4. Susie Moss-Adkins - \$1,625.00
5. Michael Thompson - \$2,000.00
6. Robert Morris - \$2,000.00

In the event restitution is paid by the Tennessee Lawyers Fund for Client Protection (TLFCP), Mr. Henry shall reimburse TLFCP the amount so paid.

IT IS SO ORDERED.


Brian Kingsley Krumm, Panel Chair


John W. Butler, Panel Member


Mark E. Stephens, Panel Member

NOTICE TO RESPONDENT

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Arthur Wayne Henry, 8714 Olde Colony Trail, Knoxville, TN 37924, via U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 18th day of April, 2019.

Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.