

COPY

IN THE CHANCERY COURT FOR SHELBY COUNTY, TENNESSEE,
AT MEMPHIS

DIXIE WHITE ISHEE,)
 Petitioner,)
 v.)
)
)
 BOARD OF PROFESSIONAL)
 RESPONSIBILITY OF THE)
 SUPREME COURT OF TENNESSEE,)
 Respondent.)

No. 05-1170
BPR Docket No. 2004-1416-9-LC

JUDGMENT

This cause came on to be heard before Honorable Jerry Scott, Senior Judge, while sitting and holding the Chancery Court of Shelby County, Tennessee, upon the petition for Certiorari filed by Dixie White Ishee, the Response to Petition for Certiorari filed by the Board of Professional Responsibility, the various documents filed as the Return to Writ of Certiorari, including the Petition for Discipline, the Respondent's Response thereto, the transcript of the hearing before the Hearing Panel and the various exhibits thereto, the testimony of witnesses in open court, arguments of counsel and the entire record on the cause, from all of which the Court finds as follows:

The Petitioner, Dixie White Ishee, is an attorney at law licensed by the Tennessee Supreme Court in 1986. Her Board of Professional Responsibility Number is 11837. Her office is located in Memphis, Tennessee, and her field of practice is the representation of plaintiffs in medical malpractice cases.

By letter dated August 26, 2003, Ms. Ishee self-reported misconduct to the Board. Her letter was received by the Board on September 5, 2003. Her complaint was assigned File No. 26606-9-LC. She reported that she had given conflicting testimony in two depositions.

In her divorce case styled Jerry Erwin Ishee, II v. Dixie Kay White Ishee, No. 156379-6 R.D., in the Circuit Court of Shelby County, Tennessee, Ms. Ishee testified extensively in her deposition taken on August 9 and 10, 1998, regarding her fee arrangement with the law firm of Deal, Cooper & Holton, PLLC. Early in her deposition she was asked the following question and responded as follows:

Q: You wouldn't even have a file?

A. Probably wouldn't even have a file. I'm typically, for example, faxed fetal monitor strips. I read them. I may have no - - hear nothing else about that case for six months to a year, and then I'm called again, and, you know, "do you want to help do this case?" And at that point, I'll make a file, but I don't keep files of everything I look at.

Q. Well, I'm talking about the cases that you're engaged in.

A. I'm rarely engaged, in the normal sense of the word. Very few clients come directly to me. Most calls are made to me from other lawyers who already have a contract with the client. I have worked on many cases that I've never met the client.

Q. Well, what type of arrangements do you have with the other lawyers?

A. Generally, it's a verbal agreement that I will assist them as needed, and if they go to trial or if they need my assistance further, I will get some percentage of the fee. And usually that's worked out at the time or in some cases, as with Tony Deal, he will call me and say, "I need you to go do a deposition in Colorado of So-and-so. Here is the monitor strip." And we'll agree that he'll pay me an hourly rate. It's usually 350 dollars an hour to go take that specific deposition in that case.

(TR. Exhibit 12, p. 43-44)

Shortly thereafter, she testified as follows:

Q. No, I'm talking about cases that you've accepted and then signed agreements with or entered into agreements with other lawyers.

A. Well, again, Tony Deal hired me to work on the Meserve case, which I believe everyone in Memphis knows got a nine-million-dollar judgment. I do not have a contingency fee contract on Meserve, and I am not getting any percentage of that fee. I did work on that case on an hourly basis, and I hope to be paid if and when any money is reached.

Q. Well, how much are you owed?

A. I don't know exactly. I know I went to - - that's why I was in Colorado. . . .

(TR Exhibit 12, p. 56-57)

Later she testified as follows:

Q. What other cases have you worked on for Tony Deal on an hourly basis for which you have not been paid?

A. Gosh, I know Pigram is with Tim and Tony and I'm - - you know, we vary from case to case. I believe on Pigram I have an arrangement of a percentage. We do this on a case-by-case basis, as I do with any lawyer that I work with. It depends on what my expertise is, how much I'm expected to do. But I have no formal contract with anyone.

Q. Well, what is your financial arrangement in the Pigram case?

A. In the Pigram case I get approximately a third of the fee. It's a little bit less than that, and I'm responsible for a third of the expenses.

(TR Exhibit 12, p. 63).

Later, in regard to a case styled Lindsey v. Brooks, she testified as follows:

Q. What's your arrangement there?

A. I'm not certain as to what that is. I would have to look that up. John Carney is with Tim and Tony.

Q. What's your arrangement there?

A. Again, we don't - - we don't have solid arrangements until the case comes down to go to trial. It depends on who originated the case, how much work that individual does.

Q. So you can't give me any estimate as to what your percentage might be?

A. I may go be in trial somewhere else when that case is set for trial and I may have nothing else to do with it. I may have my 5.0 hours, and I certainly would not get a third of the fee.

Q. What share - - what percentage of the expenses are you presently paying on that case?

A. I don't know what percentage I have paid. I know Laura has down some expenses that I have paid.

Q. All right, what other arrangements do you have with Tony Deal and Tim Holton?

A. Filsinger is Tim and I, and he - - he and I were doing that case before he went with Tony. So that's just Tim Holton and myself.

(TR Exhibit 12, p. 64-65)

By a handwritten letter dated March 24, 1999, Ms. Ishee wrote to Lance Bracy, Chief Disciplinary Counsel to the Board of Professional Responsibility regarding, another falsehood in her deposition testimony. She stated that her deposition in her divorce case was scheduled to continue on March 29, 1999 and she told Mr. Bracy that she would testify truthfully regarding that matter. There was no mention of the fee testimony.

In her lawsuit styled Dixie White Ishee v. L. Anthony Deal and Timothy R. Holton, individually, and d/b/a Deal, Cooper & Holton, PLLC, No. GT-004033-01 in the Circuit Court of Shelby County, Tennessee, Ms. Ishee gave her deposition on August 18, 2003, where she testified as follows:

R. Okay. Now, on the Meserve case, is that the way you pronounce his name?

A. Meserve is how I pronounced it.

Q. Okay. It's true, is it not, that Mr. Deal hired you to work on that case on an hourly basis only?

A. Well, that was discussed, but my involvement in that case was extend - - I mean, I went to Colorado Springs, met with her - - the child's doctors, did a day in the life film, did the physical therapy, I was there for the husband, Ms. Meserve, her mother, and then our - - my agreement with them was 75/25, which is what I got.

Q. So you say that you were to get a contingent fee?

A. Yes.

Q. And a percentage contingent fee?

A. And I did.

Q. Okay. And in your answer to one of Mr. Caywood's questions on Page 56 of the deposition was, "well, again, Tony Deal hired me to work on the Meserve case, which I believe everyone in Memphis knows got a \$9 million judgment"; true?

A. That's correct.

R. Next sentence, "I do not have a contingency fee contract on Meserve"; true?

A. I - - I ended up with a contingency fee contract on Meserve. He had that case.

Q. So you're saying that's false?

A. That's false. I did - - I did get 25 percent of the fee minus what was paid Carroll Johnson. Once the case went on appeal, Tony and I met, Tim was not there, and he said, "We're going to hire Carroll Johnson to do the appeal. Do you want to do it?" And I said no.

Q. And that was a comma after the word - - after your statement, "I do not have a contingency fee contract on Meserve", and then you went on to say, "and I am not getting any percentage of that fee".

A. Well, Mr. Caywood - - -

Q. Are you telling me that's false too?

A. That's false. Mr. Caywood knows that I got 25 percent of the fee on that.

Q. But you -- Ms. Ishee, forgive me, but you know the obligation of a deponent to testify accurately, regardless of what the lawyer who's asking the questions knows, do you not?

A. Well, exactly. And I had discussed that with Tim and Tony at length and that's why they gave me the checks that way. They did not want to get involved in my divorce case, so that was their doing. They wrote the check, they controlled the file, not me.

(TR Exhibit 13, p. 23-25).

Later she added:

A. Meserve was begun, I believe, before I really got that involved. I know as of 10/13/98 we had a 75/25 split. Now, whether I kept hours at the beginning of that case, I'm not certain, but it became a case, a pooled case, and our agreement was 75/25 on all of the pooled cases.

I mean, there were cases that I would discuss with Tim or discuss with Tony or look at when I was over there and I was -- it was not a pooled case and I -- I didn't do anything and I didn't get any fee.

Q. (By Mr. Bearman) Let me ask this question, Ms. Ishee. Is the answers -- are the answers that you gave that I read out, were they given because this was a divorce deposition?

A. That -- you know, in a -- in the divorce, it was highly emotionally charged. I mean, the property settlement six years hence is still not settled, so at Tim and Tony's request and after discussing it with them at long length, I was trying to keep them out of that, to the extent that I could, so they wouldn't be questioned.

We had our agreement, and we worked on that agreement. I mean, these are evidence of the work we did on the cases. I would meet with them every week on the cases we worked on.

Q. All right.

A. My goal was to be as truthful as I could be, yet be general so, you know, in the end everybody is going to know, but I did not want them questioned in the case.

Q. Ms. Ishee ---

A. I mean, we were friends. They asked me not to involve them in the divorce case and I was trying not to do that.

Q. And as a result of that, Ms. Ishee, are you saying, so that there will be no question about, is that you deliberately gave false testimony?

A. I was not trying to give false testimony, Mr. Bearman. I was trying to be as general as I could be so that they would not be questioned in the divorce case. I mean, obviously the tax returns and everything else were going to be given. I mean, I knew that I had done divorce work and my ex-husband was going to get whatever the Judge gave him.

(TR Exhibit 13, p. 28-29).

On August 26, 2003, Ms. Ishee wrote a two and one fourth page letter to Laura Chastain, Disciplinary Counsel to the Board of Professional Responsibility, wherein she confessed that she testified falsely that she was working on an hourly basis when she was actually receiving 25% of the fees received in the cases in which they prevailed. She pointed out that in the discovery process in the divorce case her tax returns and records were provided and the amount of money she earned was "no secret."

In the letter she informed Ms. Chastain that she met with Tim Holton and Tony Deal in October 1998, "four months (sic) after [her] deposition" and confirmed the 75%/25% fee split between the firm and Ms. Ishee. She recalled that they signed two contracts to that effect, but she could not find a copy.

Ms. Ishee sought to shift the responsibility for her lack of candor on the deposition to Mr. Deal and Mr. Holton, stating that "Mr. Deal told me he had no intention of being dragged into my divorce and demanded that I not mention our relationship or our fee split of seventy-five (75)

twenty-five (25) which we had been working on for a couple of years." She went on to state that at that time her emotional state was "out of fear that [she] would loose (sic) her financial security and years of work done on the lawsuits" with Mr. Deal and Mr. Holton.

She wrote that the law firm of Deal Cooper Holton refused to pay her the fees she said they owed her and that she hired Richard Glassman to represent her on the breach of contract lawsuit. (Mr. Glassman also represented Ms. Ishee before the Hearing Panel.) She met with Mr. Glassman on August 18, 2003, the day of her deposition in her lawsuit against the law firm, and eight days before she wrote Ms. Chastain. She had previously provided him with portions of her divorce deposition. She stated that "Mr. Glassman insisted that I be truthful and totally forthcoming regarding my dealing with Deal Cooper Holton" and that "[a]t that time made a conscious decision to tell the truth, which I felt was proper," even though her testimony would be in conflict with her previous testimony.

Hence this matter came to light five years and nine days after the false statements were made and then only after her counsel insisted that she be truthful.

At the hearing before the Hearing Panel on April 28, 2005, Ms. Ishee, David Caywood, Timothy Holton and Jerry O. Potter testified.

Ms. Ishee explained that the reason for her deceptive answers was to keep Mr. Holton, whom she considered her best friend, and Mr. Deal out of the divorce. She testified at length regarding her personal problems and the role they played in her actions.

David Caywood, who represented Ms. Ishee's husband in the divorce case and who deposed Ms. Ishee, testified regarding how he found out about the false testimony.

Timothy Holton testified that Ms. Ishee talked with him about her upcoming deposition and that he gave her the standard advice usually given deponents "to listen to the question, to answer yes or no." He denied that she told him she "intended to lie in the deposition," but he admitted that there was "a discussion" about her saying that she had hourly rates with his firm as opposed to contingent fees. He and his partner, Mr. Deal "would not assist her on that," with Mr. Deal "being more emphatic about not being involved at all in her situation." As a result of Ms. Ishee's self-report to the Board, he had to answer to the Board for allegedly putting "her up to lying." The complaint against him was subsequently dismissed.

Jerry O. Potter, an insurance defense attorney, testified on Ms. Ishee's behalf regarding her honesty and integrity in their extensive professional adversarial relationship in and out of court over the years. In spite of the untruthful testimony, he stuck to his opinion regarding Mr. Ishee's "voracity (sic)" and her honesty.

The Hearing Panel found that Ms. Ishee's false statements in the divorce deposition and the submission of documents perpetuating the initial false statements was "premeditated" and were made with "a dishonest and selfish motive" "to conceal from her husband the actual nature of her fee arrangement with the Deal-Holton Law Firm." The Hearing Panel found that a suspension from the practice of law for four months is proper discipline for her untruthful testimony.

Candor and fairness with the court and with other lawyers should characterize the conduct of the lawyer. Canon 22, Canons of Professional Ethics, adopted by the American Bar Association on August 22, 1908, as amended from time to time, cited in Raymond L. Wise, Legal Ethics, 172 (Matthew Bender 1966). Although recognized for centuries before, for almost 100 years the lawyer's ethical obligation to tell the truth has been carved in stone.

The Canons of Ethics in the Code of Professional Responsibility, which existed at the time of the divorce depositions in 1998, and the present Rules of Professional Conduct, effective at the time of her revelation and at the time of the deposition in her lawsuit against the firm, require truthfulness from attorneys.

The relevant Disciplinary Rule 1-102 under the Code of Professional Responsibility provides:

(A) A lawyer shall not:

-
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (5) Engage in conduct that is prejudicial to the administration of justice.
- (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

Tenn. Sup. Ct. R. 8, DR 1-102.

The present Rule of Professional Conduct 3.3 provides simply that a lawyer shall not knowingly make a false statement of fact or law to a tribunal. Tenn. Sup. Ct. R. 8, RPCR. 3.3 (2003).

The violation of the requirement of truth and candor requires punishment and the punishment must be tailored to the offense. A mistake can be corrected if quickly noted and confessed. Everyone has misspoken at various times. A deliberate lie could also be subject to mitigation if quickly confessed. Here, Ms. Ishee did not confess her misdeed until just before her deposition was to be taken in her lawsuit against the members of the firm who had previously provided her with very large legal fees in payment for her work. Even then, she filed her self report at the urging of her attorney. Her contrition before the Court, when viewed in the context of the timing and circumstances of the initial confession, does not have the quality of true repentance. Thus it appears that a suspension from the practice of law for four months is fully supported by all of the proof before the Hearing Panel and the Court.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the decision of the Hearing Panel is the Judgment of this Court, i.e., the Petitioner, Dixie White Ishee, shall be suspended from the practice of law for a period of four months.

Pursuant to Rule 9, § 8.4 of the Rules of the Tennessee Supreme Court, if no appeal of this judgment is perfected within thirty (30) days of the filing of this judgment, the Clerk and Master of the Chancery Court of Shelby County, Tennessee, shall forward a copy of this Judgment to the Tennessee Supreme Court at Jackson and the Tennessee Supreme Court shall enter such order of enforcement of this decree, as that court shall find to be right and proper.

The costs of this cause are adjudged against the Petitioner, Dixie White Ishee, for which execution may issue, if necessary.

Enter this 3rd day of November, 2006.



Honorable Jerry Scott, Senior Judge, While
Sitting and Holding the Chancery Court of
Shelby County, Tennessee, by Designation

CERTIFICATE OF SERVICE

I hereby certify that I have served true and exact copies of the foregoing Judgment upon Mr. Richard Glassman and Mr. Robert A. Cox, attorneys for the petitioner, Glassman, Edwards, Wade & Wyatt, P.C., 26 North Second Street Building, Memphis, Tennessee 38103-2602, and Ms. Laura L. Chastain, Disciplinary Counsel, Board of Professional Responsibility, 1101 Kermit Dr., Suite 730, Nashville, Tennessee 37217-5111, by placing the same in the United States Postal Service, with sufficient postage thereon to take them to their destinations this the 3rd day of November, 2006.



Tim Drown