

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

FILED
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BOARD OF PROFESSIONAL
RESPONSIBILITY

IN RE: Elbert Jefferson, Jr.,
BPR No.14907, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Shelby County)

DOCKET NO. 2014-2386-9-AJ

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came to be heard on April 23, 2015, for final hearing on the Board's Petition for Discipline before Leland M. McNabb, Panel Chair; Marjorie S. Baker, Panel Member; and, Phyllis L. Aluko, Panel Member. Alan D. Johnson, Disciplinary Counsel, appeared for the Board. Mr. Jefferson did not appear.

FINDINGS OF FACT

1. A Petition for Discipline, Docket No. 2014-2386-2-AJ, was filed on October 31, 2014¹.
2. Mr. Jefferson did not file a response or otherwise answer the Petition, and a Default Judgment was entered against him on March 4, 2015.
3. Pursuant to the Default Judgment, all allegations contained in the Petition for Discipline are deemed admitted.
4. The Hearing in this matter was originally scheduled to begin at 1:00 in the Supreme Court Courtroom of the Shelby County Courthouse; however, the location was changed

¹ Because this case was initiated prior to January 1, 2014, it is governed by Tenn. Sup. Ct R. 9 (2006).

to room 227 of the Shelby County Courthouse.

5. By email dated April 20, 2015, the Board's Executive Secretary notified the Panel, Disciplinary Counsel, and Mr. Jefferson of the change of the location.

6. The Hearing Panel delayed commencement of the proceedings and Disciplinary Counsel went to the Supreme Court Courtroom to see if Mr. Jefferson was there, but he was not,

7. The Panel began the trial at 1:24 p. m.

File No. 36209c-9-ES-- Complaint of Alma Ingram

8. The Complainant, Alma Ingram, retained Mr. Jefferson to represent her in a case to recover damages for injuries sustained when she was bitten by a dog.

9. In December, 2012, the case settled for \$2,100.00.

10. On December 11, 2012, Mr. Jefferson presented Ms. Ingram with the settlement check made payable to both Mr. Jefferson and Ms. Ingram, and requested that she sign the check so that he could deposit it.

11. Mr. Jefferson told her that he would give her a check in the amount of \$1,700.00 by January 20, 2013, which amount represented her share of the settlement.

12. Mr. Jefferson did not present Ms. Ingram with a check by January 23, 2013, and when she asked him about it, he told her that he was waiting on Medicare to let him know how much she owed for her medical treatment of the injuries sustained from the dog bite.

13. A review of Mr. Jefferson's trust account records reveals that he deposited the \$2,100.00 check into his trust account on December 11, 2012.

14. On December 12, 2012, Mr. Jefferson transferred \$700.00 to his operating account, and wrote himself a counter check in the amount of \$300.00. (Collective Exhibit B)

15. On December 17, 2015, Mr. Jefferson transferred \$320.00 to his operating

² The Exhibits referenced herein were introduced at the trial.

account.

16. On December 24, 2012, Mr. Jefferson transferred \$300.00 to his operating account.

17. At the end of December, 2012, the balance in his trust account was negative \$1.46.

18. Mr. Jefferson's trust account had a negative balance until the middle of February, 2014.

19. In November, 2013, Ms. Ingram filed suit against Mr. Jefferson to recover her portion of the settlement proceeds. On January 4, 2014, Mr. Jefferson issued Ms. Ingram a cashier's check in the amount of \$1,400.00, and promised to pay any amounts owed to Medicare from his fee.

20. On June 26, 2014, Disciplinary Counsel sent Mr. Jefferson a copy of his December, 2012, trust account bank statement that revealed the transactions outlined above, and asked that he explain what happened to the funds.

21. By letter dated July 21, 2014, Mr. Jefferson wrote to Disciplinary Counsel purportedly in response to Ms. Ingram's letter dated August 2, 2013; however, he did not respond to Disciplinary Counsel's request for information about the funds missing from his trust account.

22. In his July 21, 2014, letter, Mr. Jefferson stated that the reason for the delay in disbursing the funds to Ms. Ingram was her delay in completing the necessary forms for Medicare.

23. The Hearing Panel finds that the true reason for the delay in distributing the funds to his client is the fact that Mr. Jefferson converted the funds to his own use within two (2)

weeks of receiving the settlement check.

24. The Hearing Panel finds that Mr. Jefferson did not tell Ms. Ingram that he converted the funds to his own use.

25. Mr. Jefferson also stated in his July 21, 2014, letter that Ms. Ingram had disbursed to Ms. Ingram her share of the settlement, and provided Disciplinary Counsel with a copy of a cashier's check and Settlement Statement.

26. Mr. Jefferson did not inform Disciplinary Counsel that Ms. Ingram had filed a lawsuit against him in General Sessions Court and that his distribution of the funds was part of the settlement of her lawsuit against him.

CONCLUSIONS OF LAW

27. Pursuant to Tenn. S. Ct. R. 9, § 3, 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 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 (hereinafter "RPC") of the State of Tennessee shall constitute misconduct and be grounds for discipline.

28. Based upon the admitted facts, the Exhibits introduced at trial, and the entire record of this case, the Hearing Panel finds that the Board has established by a preponderance of the evidence that Mr. Jefferson violated Tennessee Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property and funds), 8.1 (b) (disciplinary matters) and 8.4 (a) (misconduct).

29. When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the *ABA Standards for Imposing*

Lawyer Sanctions, ("ABA Standards") pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court. The following ABA Standards apply in this matter:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.41 Disbarment is generally appropriate when:
 - (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.
- 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.

Aggravating Factors

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

- (b) dishonest or selfish motive;
- (c) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law, having been licensed in 1981, and;
- (j) indifference to making restitution.

JUDGMENT

Based on these findings of fact and conclusions of law, it is the judgment of the Hearing Panel that Mr. Jefferson shall be disbarred, pursuant to Tenn. Sup. Ct. R. 9, § 4.1.

IT IS SO ORDERED:


Leland M. McNabb, Panel Chair


Marjorie S. Baker, Panel Member

NOTICE: This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ. See Tenn. Code Ann. § 27-8-104(a) and 27-8-106.

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BOARD OF PROFESSIONAL
RESPONSIBILITY

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

IN RE: Elbert Jefferson, Jr.,
BPR No. 14907, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Shelby County)

DOCKET NO. 2014-2386-9-AJ

DISSENT TO THE JUDGMENT OF THE HEARING PANEL

This matter came to be heard on April 23, 2015, for final hearing on the Board's Petition for Discipline before Leland M. McNabb, Panel Chair; Marjorie S. Baker, Panel Member; and, Phyllis L. Aluko, Panel Member. Alan D. Johnson, Disciplinary Counsel, appeared for the Board. Mr. Jefferson did not appear.

FINDINGS OF FACT

1. A Petition for Discipline, Docket No. 2014-2386-2-AJ, was filed on October 31, 2014¹.
2. Mr. Jefferson did not file a response or otherwise answer the Petition, and a Default Judgment was entered against him on March 4, 2015. However, the hearing panel did have the benefit of receiving a copy of Mr. Jefferson's July 12, 2013 written response to the Board's initial pre-petition inquiry into the issues contained within the Petition. Mr. Jefferson reaffirmed that response on October 31, 2013 when he again forwarded a copy of it to the Board. Mr. Jefferson later provided a follow-up to the response in his written communication to the

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Board dated July 21, 2014. In that communication he clarified that the client's delay in signing the "Red Form" delayed his distribution to her of the funds that he owed her. After she signed the "Red Form" on December 16, 2013, Mr. Jefferson paid her share of the settlement proceeds to her on January 3, 2014.

3. Pursuant to the Default Judgment, all allegations contained in the Petition for Discipline are deemed admitted.

4. The Hearing in this matter was originally scheduled to begin at 1:00 in the Supreme Court Courtroom of the Shelby County Courthouse; however, the location was changed to Room 227 of the Shelby County Courthouse.

5. By email dated April 20, 2015, the Board's Executive Secretary notified the Panel, Disciplinary Counsel, and Mr. Jefferson of the change of the location.

6. The Hearing Panel delayed commencement of the proceedings and Disciplinary Counsel went to the Supreme Court Courtroom to see if Mr. Jefferson was there, but he was not,

7. The Panel began the trial at 1:24 p. m.

File No. 36209c-9-ES-- Complaint of Alma Ingram

8. The Complainant, Alma Ingram, retained Mr. Jefferson to represent her in a case to recover damages for injuries sustained when she was bitten by a dog.

9. In December 2012, the case settled for \$2,100.00.

10. On December 11, 2012, Mr. Jefferson presented Ms. Ingram with the settlement check made payable to both Mr. Jefferson and Ms. Ingram, and requested that she sign the check so that he could deposit it. (Exhibit A)²

11. Ms. Ingram indicated that Mr. Jefferson told her that he would give her a check in the amount of \$1,700.00 by January 20, 2013-- an amount that would have represented more

² The Exhibits referenced herein were introduced at the trial.

than a two-thirds share of the settlement.

12. Mr. Jefferson did not present Ms. Ingram with a check by January 23, 2013, and when she asked him about it, he told her that he was waiting on Medicare to let him know how much she owed for her medical treatment of the injuries sustained from the dog bite.

13. A review of Mr. Jefferson's trust account records reveals that he deposited the \$2,100.00 check into his trust account on December 11, 2012.

14. On December 12, 2012, Mr. Jefferson transferred \$700.00 to his operating account, and wrote himself a counter check in the amount of \$300.00.

15. On December 17, 2012 (instead of the Dec. 12, 2015 indicated in the majority decision), Mr. Jefferson transferred \$320.00 to his operating account.

16. On December 24, 2012, Mr. Jefferson transferred \$300.00 to his operating account.

17. At the end of December 2012, the balance in his trust account was negative \$1.46.

18. Contrary to the majority opinion's finding that Mr. Jefferson's trust account had a negative balance until the middle of February 2014, the February 2013 bank records submitted by Disciplinary Counsel demonstrate that there was a positive balance for the trust account a year earlier in February 2013.

19. In November 2013, Ms. Ingram filed suit against Mr. Jefferson to recover her portion of the settlement proceeds. On January 3, 2014, Mr. Jefferson issued Ms. Ingram a cashier's check in the amount of \$1,400.00, and promised to pay any amounts owed to Medicare from his fee.

20. On June 26, 2014, Disciplinary Counsel sent Mr. Jefferson a copy of his December 2012, trust account bank statement that revealed the transactions outlined above, and

asked that he explain what happened to the funds.

21. By letter dated July 21, 2014, Mr. Jefferson wrote to Disciplinary Counsel purportedly in response to Ms. Ingram's letter dated August 2, 2013; however, he did not respond to Disciplinary Counsel's request for information about the funds missing from his trust account.

22. In his July 21, 2014 letter, Mr. Jefferson stated that the reason for the delay in disbursing the funds to Ms. Ingram was her delay in completing the necessary forms for Medicare.

23. I find that the reason for the delay in distributing the funds to his client is partially the fact that Mr. Jefferson initially misappropriated the trust funds and partially because Ms. Ingram had not yet signed the "Red Form." In February of 2013, Mr. Jefferson had sufficient funds in his trust account to pay the amount owed to Ms. Ingram, but did not receive a signed "Red Form" from her until December 2013. The records demonstrate that the trust fund account had a negative balance for less than two months.

24. Mr. Jefferson did not tell Ms. Ingram that he converted the funds to his own use.

25. Mr. Jefferson also stated in his July 21, 2014, letter that he had disbursed to Ms. Ingram her share of the settlement, and provided Disciplinary Counsel with a copy of a cashier's check and Settlement Statement. (Exhibit E)

26. Mr. Jefferson did not inform Disciplinary Counsel that Ms. Ingram had filed a lawsuit against him in General Sessions Court and that his distribution of the funds was part of the settlement of her lawsuit against him. However, documents verifying the existence and grounds of the lawsuit were not introduced during the hearing.

CONCLUSIONS OF LAW

27. Pursuant to Tenn. S. Ct. R. 9, § 3, 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 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 (hereinafter "RPC") of the State of Tennessee shall constitute misconduct and be grounds for discipline.

28. Based upon the admitted facts, the Exhibits introduced at trial, and the entire record of this case, I find that the Board has established by a preponderance of the evidence that Mr. Jefferson violated Tennessee Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property and funds), 8.1 (b) (disciplinary matters) and 8.4 (a) (misconduct).

29. When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, ("ABA Standards") pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court. The standards are designed to promote: (1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; (3) consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions. See Section III (A) 1.3 of the *ABA Standards for Imposing Lawyer Sanctions*. The following ABA Standards apply in this matter:

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

that he is dealing improperly with client property and causes injury or potential injury to a client.

4.41 Disbarment is generally appropriate when:

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

4.42 Suspension is generally appropriate when:

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

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

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

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.

5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law,

Aggravating Factors

Pursuant to ABA Standard 9.22, the following aggravating factors are present in this

case:

(b) dishonest or selfish motive;

(g) refusal to acknowledge wrongful nature of conduct;

(i) substantial experience in the practice of law, having been licensed in 1991 (instead of the 1981 indicated in the majority opinion).

Mitigating Factors

Pursuant to ABA Standard 9.32, the following mitigating factors are present in this case:

- (a) absence of prior public disciplinary record;
- (d) timely good faith effort to rectify consequences of misconduct.

Consistency in the imposition of disciplinary sanctions

When reviewing the *ABA Standards for Imposing Lawyer Sanctions*, including the relevant aggravating and mitigating factors, it is necessary to consider the punishment imposed in the past for similar misconduct. As stated previously, promoting consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions is one of the key purposes of the ABA Standards. See Section III (A) 1.3 of the *ABA Standards for Imposing Lawyer Sanctions*. The following cases establish a pattern of imposing disciplinary suspensions of one year or more for violations of ethical rules regarding trust fund accounts—including misappropriation and commingling offenses.

- a) Disciplinary Board v. James V. Ball—one-year suspension for converting to his personal use funds held in trust to pay client's medical providers.
- b) Disciplinary Board v. James L. Banks, 641 S.W.2d 501 (Tenn. 1982)—one-year suspension for investing client funds in personal ventures. Client sued to recover funds.
- c) Disciplinary Board v. Henry M. Beaty, Jr.—four-year suspension for commingling trust funds with personal funds among other violations.
- d) Disciplinary Board v. Travis Brasfield—one-year suspension for commingling personal funds with monies held in trust and converting trust funds to personal

use.

- e) Disciplinary Board v. Francis R. Dichtel—thirteen-month suspension for commingling client trust funds with other monies and paying personal expenses from the trust fund among other violations.
- f) Disciplinary Board v. Danny Kaye Dockery—two-year suspension for commingling entrusted funds with personal funds and misappropriating to his own use funds entrusted to him. The respondent's failure to respond appropriately to Disciplinary Counsel and the Board about the ethical violations was a factor in this case as well as prior patterns of misconduct.
- g) Disciplinary Board v. Ronald E. Hedges—one-year suspension for commingling client funds with personal funds and using client funds for his own personal needs.
- h) Disciplinary Board v. Robert Love—one-year suspension plus indefinite suspension until restitution was paid for misappropriating a client's insurance settlement check.
- i) Disciplinary Board v. Ralph Martin—two-year suspension for misappropriation of client settlement funds.
- j) Disciplinary Board v. Jerry R. Maxwell—three-year suspension for comingling client funds with his own; delay in turning over funds to client; and investing funds on behalf of himself instead of the client.
- k) Disciplinary Board v. Todd Graham Smith—one-year suspension for misappropriating trust funds for personal use. The respondent failed to respond to the Board's inquiry and failed to appear for the disciplinary

hearing. Additionally, he was ordered to attend an educational class on trust accounting prior to reinstatement.

The preceding sanctions demonstrate that hearing panels have found suspension to be the appropriate discipline in cases similar to or more egregious than the instant case. Furthermore, the use of suspension as a disciplinary tool is especially appropriate when, as in this case, there are mitigating factors in addition to aggravating factors.

JUDGMENT

Based on these findings of fact and conclusions of law, I would find that Mr. Jefferson should have his license to practice law suspended for a period of one year pursuant to Tenn. Sup. Ct. R. 9, § 4.2. I would condition reinstatement of his license on proof that he has completed a class on trust accounting and has obtained an additional nine hours of continuing legal education in ethics.

Submitted this the ¹¹/~~7~~ day of May 2015


Phyllis Aluko, Panel Member

NOTICE: The hearing panel's judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ. See Tenn. Code Ann. § 27-8-104(a) and 27-8-106.