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

IN RE: KENT THOMAS JONES
BPR No. 020158, Respondent
an Attorney Licensed to Practice
Law in Tennessee (Hamilton County)

DOCKET NO. 2022-3282-3-DB

DECISION OF THE HEARING PANEL

This matter is before the undersigned members of the Hearing Panel upon the Petition for Discipline instituted by the Board of Professional Responsibility (hereafter, "BPR" or "Board"), by and through the BPR's Disciplinary Counsel, pursuant to Rule 9 of the Rules of the Tennessee Supreme Court on September 30, 2022. The matter was heard by the Panel on September 27 and 28, 2023 at the Hamilton County Courthouse. Both parties appeared and provided evidence to the panel. Complaints relative to three separate matters were heard. The findings of the Panel as to each are set forth below.

File No. 66613-3-ES-Daniel Alexander Horwitz

Trevor Seth Adamson retained Respondent Jones[1] to appeal a judgment obtained against Mr. Adamson by three defendants represented by Mr. Horwitz in a civil action in the Circuit Court of Sumner County at Gallatin.[2] Respondent timely filed his notice of appeal of the Sumner County Judgment on December 11, 2020. Thereafter, on January 2021, Plaintiffs filed a motion in the Circuit Court of Sumner County for a stay on appeal pursuant to Tenn R. Civ. P. 62 and Tenn. R.

[1] The Respondent in this action is Kent Thomas Jones. He is referred to herein as "Mr. Jones", "Respondent", or "Respondent Jones" depending on context.

[2] The "Sumner County Judgment".

App. P. 7(a).[3]

By that time, Mr. Horwitz had already served Rule 69 debtor interrogatories to Respondent Jones in an attempt to obtain information to collect on the Sumner County Judgment.[4] Respondent Jones took the position that there should be no discovery while the case was on appeal and therefore the Tennessee Rules of Civil Procedure and the Tennessee Rules of Appellate Procedure did not require him to respond to Mr. Hortwitz's discovery requests.[5]

Thereafter, in a series of emails between Respondent Jones and Mr. Horwitz, Respondent Jones made several inappropriate and concerning statements. For example, on January 26, 2021 at 2:16pm Respondent Jones wrote Mr. Horwitz and stated, "My girlfriend's Bengal cat (which is half cat and half leopard) could eat you alive."[6] In another email on January 26, 2021 at 2:43pm Respondent Jones advised Mr. Hortwitz, "If you want to box with me, after 9 years of winning, you are welcome to come to our ring in Red Bank, TN. I'll meet you there with gloves."[7] As part of another email exchange on January 26, 2021 at 3:30pm, Respondent Jones wrote Mr. Horwitz and stated "Come after my girl and me, and you will leave in a box."[8] In yet another email to Mr, Horwitz, Respondent Jones made reference to a Johnny Cash song and stated, in part, "I shot a man, just to watch him die."[9]

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[3] Exhibit G to Petition for Discipline.

[4] Id.

[5] The Sumner County Circuit Court did not agree with Respondent Jones and ultimately granted a motion to compel the discovery responses.

[6] Exhibit 5 to September 27, 2023 Hearing.

[7] Id.

[8] Id.

[9] Id.

When questioned about these emails at the hearing, Respondent Jones stated that the comments were made to get to some "common ground" with Mr. Horwitz and to have Mr. Horwitz "stop thinking he could write a letter and end the case." When questioned further about the communications at the hearing, Respondent Jones stated that he was "trying to stay off the litigation subject" with these emails. On January 26, 2021 at 3:17pm, Mr. Horwitz forwarded Respondent Jones's email communications to Eileen Burkhalter Smith and Sandy Garrett at the Tennessee Board of Professional Responsibility and requested that the Board "have someone check on" Mr. Jones.[10]

As the appeal of the Sumner County Judgment continued, Respondent Jones filed a brief on behalf of the Plaintiff on July 19, 2021.[11] In addressing the investigation of the Board of Professional Responsibility into Respondent Jones's email communications with Mr. Horwitz, Respondent Jones stated on page 23 of his brief: "Moreover, opposing counsel, for no reason known, turned us into the Board of Professional Responsibility, solely due to perceived jesting the day before. That has been resolved."[12] In fact, the Board's investigation had not been resolved, and was ongoing. When Respondent Jones was questioned about his statement at the hearing that the investigation "ha[d] been resolved", he indicated that he had not received any correspondence from the Board on the matter in some time, and therefore thought that the investigation was closed. Respondent Jones acknowledged that he had not received any form of closure letter from the Board.

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[10] Id.

[11] Exhibit M to Petition for Discipline.

[12] Id. at 23.

The Petition for Discipline filed by the Board in this matter cites Respondent Jones's false statements to the Court of Appeals as violations of Tennessee Rules of Professional Conduct 3.3(a) and 8.4(c).[13] The Board also cites Respondent Jones's "knowing failure" to timely respond to discovery requests and make reasonable efforts to comply with legally proper discovery requests as violations of Tennessee Rules of Professional Conduct 3.4(d) and 8.4(d).[14] The Board also cites the "unprofessional, derogatory, threatening, pejorative, and unnecessary" emails sent by Respondent Jones to Mr. Horwitz as violations of Tennessee Rules of Professional Conduct 4.4(a) and 8.4(d).[15] For "knowingly violating" other rules of professional conduct, the Board states that Respondent Jones is therefore also in violation of Tennessee Rule of Professional Conduct 8.4(a).[16]

The Panel does not find that Respondent Jones's actions rise to the level of a knowing violation of Tennessee Rule of Professional Conduct 3.3(a) or 8.4(c). Respondent Jones's comment that the investigation "has been resolved" in his July 2021 brief filed with Tennessee Court of Appeals was not determinative of the issue on appeal and seemed to have no bearing on the matters presented to the Court. Perhaps Respondent Jones should have been more diligent in checking on the status of the Board's investigation before making the statement to the Court, but the record includes no proof to establish that Respondent Jones included the statement in his brief knowing that the statement was false or to otherwise gain any advantage in the appeal. Accordingly, the Board does not find that Respondent Jones violated Tennessee Rule of Professional Conduct 3.3(a) or 8.4(c) through his statements in the July 2021 brief filed with the Tennessee Court of Appeals.

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[13] Petition for Discipline at p.5.

[14] Id.

[15] Id. at p.4.

[16] Id. at p.5.

Likewise, the Panel finds no violation of Tennessee Rule of Professional Conduct 3.4(d) or 8.4(d) related to Respondent Jones's failure to comply with the debtor interrogatories propounded to him by Mr. Horwitz. While Respondent Jones may have been incorrect in his belief that discovery was stayed on appeal, the record establishes that Mr. Horwitz ultimately was able to collect on his judgment by attaching and subsequently selling certain personal property of Respondent Jones's client even before the Tennessee Supreme Court ultimately overturned a significant portion of the Sumner County Judgment which required Mr. Horwitz to return a portion of the collected funds.

The Panel finds, however, that Respondent Jones knowingly violated Tennessee Rule of Professional Conduct **4.4(a)** and **8.4(d)** with his email communications with Mr. Horwitz. Respondent Jones's email communications clearly had no purpose other than to attempt to make Respondent Jones appear tough and appear to be the type of lawyer that Mr. Horwitz could not push around. In so doing, Respondent Jones used language that had no legitimate purpose and he used phrases, words, and references that were far beyond the pale. No reasonable person or lawyer could find his email communications to be properly tailored to accomplish his duties. Moreover, by communicating with Mr. Horwitz in this manner Respondent Jones engaged in conduct that is prejudicial to the administration of justice by creating an environment between counsel that did not - in any way - serve to further his client's interests in the case or advance the matter in an appropriate direction. Instead, Respondent Jones's emails served only to needlessly mire down the communications between counsel in a way that added tension, discord, and confusion leading to a delay in the appropriate resolutions of his client's case.

File No. 68706-3-ES-Michael Matson

Michael Matson retained Respondent to represent his minor daughter, Kimberly Matson, as a result of an automobile accident that occurred on May 30, 2019. The parties mediated the case, and, by the time of the mediation, Kimberly Matson was no longer a minor. A mediation agreement was signed by Respondent and by Kimberly Matson. The mediation was held and a settlement agreement was reached on September 17, 2020. Respondent and Mr. Matson executed an agreement as to legal fees, a copy of which was attached as Exhibit W to the Board's Petition. As part of the agreement, Mr. Matson agreed to pay the mediator's fee from the funds disbursed to him. A dispute subsequently arose as to the payment of the mediator's fee. Respondent received an invoice from the mediator in December 2020. When Respondent inquired of Mr. Matson about the fee agreement for the mediation, he was told that his client had paid his portion. Mr. Matson promised to provide Respondent a receipt but it was never received. In March 2021, Respondent sent Mr. Matson a heated email, calling him names which were derogatory, offensive, and inappropriate.

A series of emails began in late September 2021 between Respondent and Mr. Matson. Again, those emails included language which the Panel finds, and Respondent candidly admits, were derogatory, offensive, and inappropriate.

Respondent explained, at least to some extent, the content of these emails as such were based upon his relationship and prior friendship with Mr. Matson. Respondent explained that he and Mr. Matson talked to one another and joked with one another in this manner. While Mr. Matson did not appear at the hearing despite telling the Board's Counsel he would appear, the Board finds that the alleged friendly relationship between Respondent and his client, Mr. Matson,

is irrelevant to this disciplinary action. By his own admission, Respondent admits the email were inappropriate and should not have been sent.

With respect to the complaint filed by Mr. Matson, the Board's only violation cited in its Petition for Discipline is a violation of Tennessee Rule of Professional Conduct 8.4(d), and 8.4(a). It is the Board's contention that a finding of a violation of any rule, in this case Rule 8.4(d), mandates further violation under 8.4(a).

Rule 8.4(d) provides that:

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice.

Clearly, Respondent engaged in professional misconduct in the emails and communications sent to Mr. Matson, his client. While Respondent explains those emails based upon his prior friendship with Mr. Matson, such emails are inappropriate whether the client and Respondent are friends or not. Accordingly, the Hearing Panel finds that with respect to Respondent's representation of Mr. Matson, Respondent violated Rule **8.4(d).** Having determined that Respondent violated Rule 8.4(d), it is clear that Respondent also violated Rule **8.4(a)** because professional misconduct is defined under the Rule as a violation or attempted violation under the Rules of Professional Conduct.

File No. 66958c-3-ES Kenneth Lee Chaput

As noted in the official comments to Rule 1.15(b) of the Rules of Professional Conduct, "[p]aragraph (b) of this Rule contains the fundamental requirement that a lawyer maintain funds of clients and third parties in a separate trust account." On or about August 27, 2020, Respondent received monies in connection with the settlement of an automobile accident for his client, Mr. Chaput. In connection therewith, Chaput and Respondent executed a "Settlement Breakdown

Agreement" that indicated how the total settlement proceeds of $22,000 would be disbursed.[17] In that document, Respondent indicated that certain funds would remain in his "Business Trust Account" in an effort to settle certain liens, one of which, to Alcoa Billing Center, totaled $1,523.00.

The money purportedly reserved for the liens, however, did not go into Respondent's IOLTA trust account, an account at SouthEast Bank ending in 1878. The bank statements for the IOLTA account show a balance of $100.00 on August 31, 2020 and $1.00 on September 30, 2020.[18] Respondent experienced some delay in getting a resolution of the liens, and in fact never was able to get anything done relative to the Alcoa lien. Mr. Chaput filed a complaint with the board, and in that document, and in his live testimony, stated that the delay attending to these charges damaged his credit rating.

In response to Mr. Chaput's complaint, disciplinary counsel investigated and ultimately, on May 24, 2022, Respondent informed disciplinary counsel that he had a cashier's check issued to Mr. Chaput for the $1,523.00 from his IOLTA account, well over a year after first receiving the funds and agreeing to undertake to resolve the Alcoa claim.[19] As demonstrated by the bank statement for the IOLTA account dated May 31, 2022, on May 1, 2022 the beginning balance in the account was $5.00.[20] There were deposits of $1,000.00 on May 9 and $600.00 on May 24, which allowed Respondent to issue the $1,523.00 check on May 24.

The panel allowed the Board to amend its pleadings to conform to the proof as the introduction of Exhibits 21 and 22 further showed that monies withheld for the liens were not held

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[17] Exhibit 14 to September 27, 2023 Hearing.

[18] Exhibit 16 to September 27, 2023 Hearing.

[19] Exhibit 15 to September 27, 2023 Hearing.

[20] *See* Exhibit 16 to September 27, 2023 Hearing.

in the IOLTA account. At the hearing, Respondent stated, "I admit, I was confused, I screwed up and put the money in the wrong account."

In mitigation, Respondent's able counsel demonstrated that eventually, the monies were disbursed as agreed, arguing that no one had been injured by Respondent's mistake, and that all was accounted for as Chaput and Respondent agreed. This evidence did not, however, take into account the inconvenience and damage to Mr. Chaput's credit score.

The evidence firmly establishes that the proceeds from the settlement, belonging to Mr. Chaput's lienors, were not properly held in Respondent's trust account, constituting a violation of **Rule 1.15**. Further, **Rule 8.4** provides that it is professional misconduct for a lawyer to violate the Rules of Professional Conduct. Respondent's apparent loss of interest in resolving the Alcoa lien in a prompt manner is a violation of **Rule 1.3**, requiring reasonable promptness and diligence in representing a client.

Disciplinary Action

The BPR contends that certain aggravating factors should be considered by the Panel from Section 9.22 of the ABA Standards for Imposing Lawyer Sanctions: (a) prior disciplinary offenses; (c) a pattern of misconduct; (d) multiple offenses; (g) refusal to acknowledge wrongful nature of conduct, (i) substantial experience in the practice of law. Respondent Jones, through Counsel, argues that a number of mitigating factors from Section 9.32 of the ABA Standards should apply including: (b) absence of a dishonest or selfish motive, (j) delay in disciplinary proceedings, and (l) remorse.

The Panel finds that there was evidence of prior offenses, that as all three incidents were substantiated, there was a pattern of misconduct and multiple offenses, and that Mr. Jones had substantial experience. Respondent did acknowledge the wrongful nature of his conduct to

some extent, and to the extent that he did not, the Panel finds that it was motivated by his desire to defend the nature and severity of his acts and omissions. As mitigating factors the Panel finds the absence of any dishonest or selfish motive and that Respondent Jones showed remorse.

As noted above, the Panel has found violations of **Rules 1.15**, **4.4** and **8.4(d).** The ABA Standards suggest disciplinary sanctions ranging from disbarment to admonition depending on the factual circumstances involved, including violation of court orders, serious interference with legal proceedings, and injury or potential injury to a client or a third party. Respondent's threatening and/or derogatory emails to Mr. Matson are clearly unprofessional, derogatory, offensive and unnecessary and the emails to Mr. Horowitz were even more serious, including an implied threat against Horowitz's family, invoking Standard 6.22/6.23 (reprimand/suspension). Finally, the violation of Rule 1.15 invokes Standard 6.12 (suspension), as Respondent should be clearly aware of his responsibilities as to client monies and shirking that responsibility caused injury to Mr. Chaput, although, as noted above, Respondent eventually accounted for all the money that should have been held in trust.

The Panel finds that given these matters, and the presence of the aggravating factors, that suspension is the appropriate disciplinary sanction. Standard 2.3 provides that suspension should be for a "period of time equal to or greater than six months." However the Panel finds that Respondent Jones is appropriately remorseful and there was absence of a dishonest motive in connection with these matters and those mitigation factors justify a reduction in the suspension period pursuant to ABA Standard 9.1.

Accordingly, the Panel imposes a **SUSPENSION** of **NINETY (90) DAYS**.

This the 9 day of November, 2023

Larry L. Cash
Hearing Panel Chairman

Sam D. Elliott
Hearing Panel Member

Lance W. Pope
Hearing Panel Member

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Daniel Joseph Ripper, Counsel for Respondent Kent Thomas Jones, via email (dan@lutheranderson.com), and to Disciplinary Counsel, Douglas R. Bergeron, via email (dbergeron@tbpr.org), on this the 9th day of November 2023.

Katherine Jennings
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.