

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

FILED

2011 APR 20 PM 4:22
BOARD OF PROFESSIONAL
RESPONSIBILITY
[Signature]
EXEC. SECRETARY

IN RE: MICHAEL E. LATIMORE,
BPR # 20170, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Shelby County)

Docket No. 2009-1854-9-KH

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND JUDGMENT OF THE HEARING PANEL

The final hearing of this matter was held on the 31st day of March, 2011, in Memphis, Tennessee before a duly appointed hearing panel consisting of Saul Belz, Panel Chair; Michael Keeney, Panel Member; and Michael Scholl, Panel Member. Krisann Hodges, Disciplinary Counsel, represented the Board of Professional Responsibility. Respondent Michael Latimore did not appear.

An Order of Default was entered on January 21, 2011 relative to the Supplemental Petition for Discipline. Therefore, the facts and allegations contained in the Supplemental Petition for Discipline are deemed admitted and adopted as findings of fact by this Panel. The findings of fact relative to the initial Petition for Discipline are set forth below.

FINDINGS OF FACT

Complaint of Christopher Wilson

1. On November 18, 2007, the Board's Consumer Assistance Program received a complaint from Christopher E. Wilson alleging ethical misconduct by Respondent.

2. On May 2, 2008, the Respondent was temporarily suspended from the practice of law by Order of the Tennessee Supreme Court due to his failure to respond to this disciplinary complaint.

3. On September 11, 2008, Respondent's temporary suspension was dissolved and Respondent was reinstated to practice law.

4. In June, 2005, Mr. Wilson retained Respondent to sue the seller of his house for nondisclosures and misrepresentations related to the condition of the home.

5. Mr. Wilson paid a total of \$750.00 in fees to Respondent.

6. Respondent filed a petition in General Sessions Court; however, the petition was dismissed in favor of the defendant. Respondent filed an appeal to the Circuit Court. A hearing on the matter was set for June 26, 2007.

7. Adversary counsel filed a motion to withdraw. The Motion was heard on June 26, 2007. The trial was continued by the court until October 23, 2007.

8. Neither party appeared on October 23, 2007.

9. According to Mr. Wilson, Respondent advised him that the case was not going forward.

10. Mr. Wilson attempted to ascertain from Respondent when the next hearing date would be.

11. Respondent did not respond to his inquiries.

12. Mr. Wilson learned from the clerk that the case had been dismissed for failure to prosecute the case.

13. Mr. Wilson asserts that throughout the pendency of the matter, Respondent failed to adequately communicate with him about the status of the case.

14. Mr. Wilson was confused about the various court dates due to Respondent's failure to explain the appeal process and the scheduling changes.

Complaint of Earlean Hall

15. On June 19, 2008, the Board's Consumer Assistance Program received a complaint from Earlean Hall alleging ethical misconduct by Respondent.

16. On September 11, 2008, Respondent sent Disciplinary Counsel an untimely response to the complaint.

17. Ms. Hall hired Respondent to represent her in a divorce. She paid Respondent \$1,000.00 in legal fees.

18. After a typical pre-trial period, the final hearing was set for Monday, May 12, 2008.

19. As noted above in Mr. Wilson's complaint, Respondent was temporarily suspended by Order of the Supreme Court on May 2, 2008.

20. On Friday, May 9, 2008, Respondent met with Ms. Hall and her sister at Respondent's office to prepare for the hearing on Monday.

21. Following the meeting, Respondent called Ms. Hall to inform her that the hearing would be continued.

22. According to Ms. Hall, he did not tell her about his suspension from the practice of law.

23. Ms. Hall called Respondent the next week to find out when the next court date would be. After getting no response, she went to his office.

24. Ms. Hall was informed that Respondent no longer worked in that office. He left no forwarding contact information.

25. Ms. Hall received no further communication from Respondent until July 2008 when he sent an untimely notification of his suspension.

26. Ms. Hall hired new counsel in June 2008 who finalized the divorce on her behalf.

Complaint of Thomas Davis

27. On October 14, 2008, the Board of Professional Responsibility received a complaint from Thomas Davis alleging ethical misconduct by Respondent.

28. Respondent submitted an untimely response on February 9, 2009.

29. Respondent filed a personal injury suit on behalf of Mr. Davis in General Sessions Court. A judgment was obtained in the amount of \$7,125.00.

30. Rather than going through the expense and time of an appeal to the Circuit Court, Mr. Davis agreed to accept a settlement from the defendant of \$5,000.00.

31. The funds were paid to Respondent on or around March 2007. The Complainant's settlement proceeds were \$1,666.67.

32. Respondent contacted Mr. Davis' bankruptcy attorney, who indicated that he would file the appropriate documents to allow disbursing of the funds.

33. However, since the date of receiving the settlement money approximately two (2) years ago, Respondent has taken no other action to disburse the funds in any manner to Mr. Davis or through the bankruptcy court.

34. The Board made further inquiry about this matter to the Respondent. He has failed to provide any other information.

35. In a deposition taken by the Board on August 26, 2010, Respondent admitted that he no longer has the settlement money.

36. Respondent testified that he has not made any attempt to reimburse Mr. Davis for

the missing funds.

37. Respondent testified that he could have paid the funds at the time of settlement but that he no longer has the money.

Complaint of April Conley

38. On September 8, 2008, the Board's Consumer Assistance Program received a complaint from April Conley alleging ethical misconduct by Respondent.

39. On February 8, 2009, Respondent sent an untimely response to the complaint.

40. Ms. Conley hired Respondent to file a complaint for legal separation. After an unsuccessful mediation, Ms. Conley asserts that she had difficulty communicating with Respondent.

41. As a result of the Board's investigation, Respondent offered to continue working on her case.

42. Thereafter, the Ms. Conley attempted to contact the Respondent to go forward, but received no response. She made attempts to contact him by phone to no avail.

43. On July 27, 2009, Disciplinary Counsel sent another letter asking Respondent to report on his offer to complete the divorce. Respondent did not respond to the Board's letter.

44. Respondent testified in the August 26, 2010 deposition that he had not contacted Ms. Conley since the Board's correspondence.

Complaint of Audrey Felix

45. On March 2, 2009, the Board of Professional Responsibility received a complaint from Audrey Felix alleging ethical misconduct by Respondent.

46. After receiving no response from Respondent, the Board filed a Petition for Temporary Suspension against Respondent with the Supreme Court.

47. Respondent was temporarily suspended from the practice of law on September 1, 2009 by Order of the Tennessee Supreme Court.

48. On September 15, 2009, Respondent sent Disciplinary Counsel a response to the complaint.

49. On November 3, 2009, by Supreme Court Order, Respondent was reinstated to the practice of law.

50. Ms. Felix hired Respondent on November 3, 2005 to represent her in a personal injury case.

51. The defendant was insured by Preferred Auto Insurance (hereinafter PAI).

52. In December 2005, PAI mailed Ms. Felix a check in the amount of \$1,190.28 only covering the property damage.

53. Ms. Felix was not aware that a settlement had been finalized, so she took the check to Respondent's office.

54. After discussing the matter, Ms. Felix decided she did not want to settle the case for property damages only.

55. Respondent placed the check in his file.

56. Respondent filed suit in General Sessions on or around January 26, 2006. Respondent proceeded with service in the case, issuing alias warrants on behalf of Ms. Felix.

57. They were never served.

58. Thereafter, Respondent has failed to adequately communicate with Ms. Felix.

Supplemental Petition for Discipline

59. The facts in the Supplemental Petition for Discipline have been deemed admitted due to the Respondent's failure to answer. Those facts are fully incorporated herein; however a

summary of the complaints is provided below.

60. On April 30, 2010, the Board received a complaint filed by Jonelle Knox, Assistant Vice President for LawCash, alleging ethical misconduct by Respondent.

61. On June 4, 2010, Respondent provided an untimely, minimal response to the complaint of disciplinary misconduct.

62. Respondent represented Robert Loosier in a personal injury case.

63. In order to fund his lawsuit, Mr. Loosier applied for and received a cash advance from LawCash, the complainant's company. The amount of the cash advance was \$500.00.

64. Respondent signed an Attorney Acknowledgement in relation to Mr. Loosier's cash advance expressly agreeing to withhold the repayment amount owed to LawCash from the proceeds of any settlement received by Mr. Loosier.

65. Upon settlement of Mr. Loosier's case and the disbursement of settlement funds, Respondent did not honor the Attorney Acknowledgement and did not pay directly to LawCash the amount owed by Mr. Loosier.

66. Respondent states that Mr. Loosier received the total amount of settlement to which he was entitled, less the amount owed to LawCash which Respondent kept.

67. According to the settlement statement (Exhibit 15), the amount owed to LawCash at the time of settlement was \$2,323.27.

68. As of August 26, 2010, Respondent has not repaid LawCash.

69. Respondent testified in the August 26, 2010 deposition that he has failed to pay approximately four (4) other liens or claims by third parties from settlement proceeds in other cases.

70. Disciplinary Counsel filed a request for production of documents seeking

Respondent's trust and operating account records, but he has not provided them to date.

71. Respondent's actions demonstrate that he has converted the funds for his own use.

CONCLUSIONS OF LAW

72. The facts set forth in the Supplemental Petition for Discipline have been deemed admitted. The violations of RPCs 1.3, Diligence; 1.15(c), Safekeeping Property; 8.1(b), Bar Admission and Disciplinary Matters; and 8.4(a)(b) and (c), Misconduct have been deemed admitted.

73. Respondent has admitted converting client funds for his own use.

74. Further, Respondent's abandonment of practice, lack of communication, and failure to provide notice of his suspension demonstrate violations of RPCs 1.3, Diligence; 1.4, Communication; 1.5, Fees; 1.16, Declining and Terminating Representation; 3.2, Expediting Litigation; 8.1, Bar Admission and Disciplinary Matters; and 8.4, Misconduct.

75. Respondent's actions adversely affected his clients, the courts, opposing counsel, opposing parties, and the Board.

76. By his actions, Respondent's lack of communication and failure to properly comply with Section 18 regarding his temporary suspension resulted in an abandonment of practice and caused serious injury to his clients.

77. Further, Respondent's consistent failure to timely respond to these disciplinary complaints is a violation of RPC 8.1.

78. Therefore, once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions. See *Tenn. S. Ct. Rule 9, Section 8.4*.

79. As a result of these disciplinary violations, the following ABA Standards apply in this case:

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.

4.42 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.

5.11 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system.

80. Pursuant to ABA Standard 9.22, a number of aggravating factors are present in this case and are listed below.

- a) prior disciplinary offense (private informal admonition issued on June 17, 2008);
- b) dishonest or selfish motives;
- c) a pattern of misconduct;
- d) multiple offenses;
- e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- f) – h)...

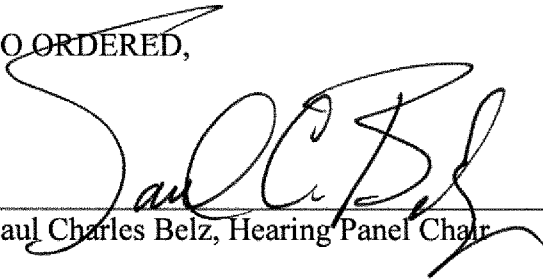
- i) substantial experience in the practice of law; and
- j) indifference to making restitution.

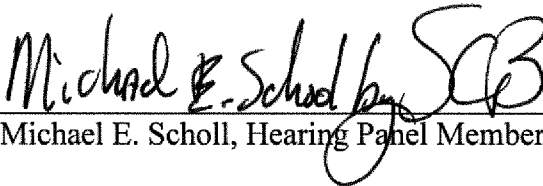
81. The Panel finds that no mitigating factors exist.

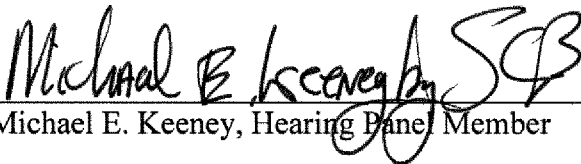
JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, the Panel finds that Respondent shall be suspended for three (3) years. Further, he shall be required to pay restitution as follows: Earlene Hall, \$500.00; Christopher Wilson, \$750.00; LawCash, \$2,323.27; and Thomas Davis, \$1,666.67. Payment of restitution and the Board's costs shall be a condition of reinstatement.

SO ORDERED,


Saul Charles Belz, Hearing Panel Chair


Michael E. Scholl, Hearing Panel Member


Michael E. Keeney, Hearing Panel Member