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2012 MAY 29 AM 11:00

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

BOARD OF PROFESSIONAL
RESPONSIBILITY
kw EXEC. SEC.

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

Docket No. 2011-2061-9-KH

JUDGMENT OF THE HEARING PANEL

This matter was heard before the Hearing Panel on May 8, 2012 upon the Board's Petition for Discipline and Supplemental Petition for Discipline filed against Michael E. Latimore. The Panel entered an Order on November 28, 2011 granting the Board's Motion for Default Judgment on the Petition for Discipline. The Panel entered an Order on March 15, 2012 granting the Board's Motion for Default Judgment on the Supplemental Petition for Discipline. Mr. Latimore did not appear for the final hearing of this matter.

FINDINGS OF FACT

1. Michael E. Latimore is an attorney licensed to practice law in Tennessee. Mr. Latimore was licensed to practice law in 1999.
2. Mr. Latimore is currently serving a three (3) year suspension from the practice of law, which was imposed by the Tennessee Supreme Court on August 15, 2011.
3. Mr. Latimore was suspended for failing to properly maintain settlement proceeds in a trust account and using the funds for personal benefit, failing to distribute settlement proceeds to third parties on behalf of his clients, failing to adequately communicate with his

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clients, and failing to inform clients that he had been temporarily suspended.

4. Mr. Latimore also received a private informal admonition on June 17, 2008 for neglect.

5. Mr. Latimore has been temporarily suspended on two (2) prior occasions due to his failure to respond to disciplinary complaints.

Complaint of Joyce Watson

6. On September 28, 2010, the Board's Consumer Assistance Program ("CAP") received a complaint from Joyce Watson alleging ethical misconduct by Mr. Latimore.

7. On April 11, 2011, the Board sent a formal inquiry to Mr. Latimore requesting that he provide a response to the complaint within ten (10) days.

8. Mr. Latimore has never provided a response to this complaint.

9. In 2003, Mr. Latimore represented Ms. Watson in a personal injury case.

10. A settlement was reached; however, Ms. Watson began receiving notices that medical bills related to the accident remain unpaid.

11. Ms. Watson has been unable to locate Mr. Latimore to discuss the matter.

12. At the time of Ms. Watson's case, Mr. Latimore was working at the law firm of Lucchesi and Skahan.

13. While at the firm, Mr. Latimore held his own trust account.

14. Ms. Watson initially contacted Mr. Latimore's previous law firm, Lucchesi and Skahan, to complain that Mr. Latimore had failed to satisfy all of the bills arising from her personal injury matter.

15. In response to CAP's inquiries, attorneys Ronald Lucchesi and Gerald Skahan attempted to contact Mr. Latimore to obtain information regarding Ms. Watson's settlement.

16. Mr. Lucchesi and Mr. Skahan were unable to get any information or cooperation from Mr. Latimore responsive to Ms. Watson's inquiries.

17. Mr. Lucchesi spoke to Mr. Latimore on two (2) occasions, once at the court house and once at a restaurant, about this matter.

18. Mr. Latimore agreed to come to the offices of the law firm and to bring his trust accounting records; however, Mr. Latimore failed to appear.

19. Mr. Lucchesi attempted to contact Mr. Latimore via certified mail and telephone calls, to no avail.

20. The law firm made inquiry to the insurance defense attorney for Farmers Insurance Exchange, the carrier for the defendant in Ms. Watson's case.

21. The firm learned that on August 22, 2006, a settlement draft in the amount of \$25,000.00 was made payable to Joyce Watson and her attorneys (the Skahan law firm).

22. According to Mr. Skahan, he never endorsed the settlement draft for deposit into the Skahan firm account.

23. Because Mr. Latimore never provided her with a settlement sheet or other documentation regarding the settlement and subsequent payments to medical providers, Ms. Watson does not know which bills have been paid and which bills have not been paid.

Complaint of Max Foner, M.D.

24. On June 1, 2010, the Board's Consumer Assistance Program ("CAP") received a request for assistance from Dr. Max Foner alleging ethical misconduct by Mr. Latimore.

25. On July 6, 2010, Mr. Latimore responded to CAP's inquiry.

26. Beginning in 2005, Mr. Latimore represented Jacqueline Yarbrough in a personal injury case.

27. On October 28, 2005, Mr. Latimore signed a medical lien agreeing to pay the medical charges owed to Dr. Max Foner from any settlement proceeds that Ms. Yarbrough may receive.

28. Although Ms. Yarbrough's case was resolved by settlement, Mr. Latimore failed to honor Dr. Foner's lien.

29. Dr. Foner sent a demand letter to Mr. Latimore on August 21, 2008.

30. Attorneys representing Mr. Foner sent another demand letter to Mr. Latimore on May 22, 2009.

31. In response to CAP's inquiry, Mr. Latimore admitted that he did not disburse funds to Dr. Foner.

32. Further, Mr. Latimore admitted that he did not have the funds to pay Dr. Foner. Mr. Latimore promised to pay Dr. Foner in "increments."

33. By letter dated December 1, 2010, Dr. Foner reported that Mr. Latimore had failed to make any payments since promising to do so in July, 2010.

34. In a deposition taken by Disciplinary Counsel, Mr. Latimore admitted that he did not pay Dr. Foner in relation to Ms. Yarbrough's case and that he used the funds for his personal use and benefit.

Complaint of Tammy Gilliam

35. On March 31, 2011, the Board of Professional Responsibility received a complaint from Tammy Gilliam alleging ethical misconduct by Mr. Latimore.

36. On April 4, 2011, the Disciplinary Counsel sent a copy of the complaint and a request for a response in a letter to Mr. Latimore.

37. On April 20, 2011, after receiving no response from Mr. Latimore, Disciplinary

Counsel sent him a Notice of Temporary Suspension.

38. Mr. Latimore never responded to the Complaint.

39. On September 27 2010, Ms. Gilliam hired Mr. Latimore to represent her in a divorce case.

40. Ms. Gilliam paid Mr. Latimore a retainer fee of \$1,000.00 to be billed against an hourly rate of \$150.00.

41. Ms. Gilliam met with Mr. Latimore on October 18, 2010 to discuss the filing of an answer and counter-complaint in the divorce.

42. On January 18, 2011, Mr. Latimore confirmed to Ms. Gilliam that he had filed the answer and counter-complaint.

43. However, when Ms. Gilliam contacted the clerk's office on March 2, 2011, she learned that Mr. Latimore had not filed an answer and counter-complaint .

44. That same day, Ms. Gilliam spoke with Mr. Latimore and terminated his services.

45. Mr. Latimore told Ms. Gilliam that he would contact her in the next week about delivering her file.

46. Mr. Latimore failed to return her file and he has failed to respond to Ms. Gilliam's phone calls, e-mails, or letters.

47. Mr. Latimore has not refunded her fee despite his failure to file any pleadings on her behalf.

Complaint of Kendra Mitchell

48. On April 11, 2011, the Board of Professional Responsibility received a complaint from Kendra Mitchell alleging ethical misconduct by Mr. Latimore.

49. On April 14, 2011, the Disciplinary Counsel sent a copy of the complaint and a

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request for a response in a letter to Mr. Latimore.

50. On May 5, 2011, after receiving no response from Mr. Latimore, Disciplinary Counsel sent him a Notice of Temporary Suspension to his home and office address.

51. Mr. Latimore never responded to the Complaint

52. On July 4, 2005, Mr. Latimore agreed to represent Ms. Kendra Mitchell and her sister in a personal injury case after they were involved in an automobile accident.

53. Following the initial conversation with Ms. Mitchell, Mr. Latimore had very little communication with his client.

54. After a telephone call in 2006, Mr. Latimore did not communicate with Ms. Mitchell at all.

55. In December 2010, Ms. Mitchell contacted Ronald Lucchesi about the case.

56. Mr. Lucchesi obtained the docket report from her case which shows that Mr. Latimore filed a civil warrant in General Sessions on March 30, 2006; however, the case was dismissed in December 2006 for failure to prosecute.

Complaint of John C. Bogan

57. On September 16, 2011, the Board of Professional Responsibility received a complaint from John C. Bogan alleging ethical misconduct by Mr. Latimore.

58. On October 25, 2011, the Board sent an inquiry to Mr. Latimore requesting that he provide a response to the complaint within ten (10) days.

59. Mr. Latimore has never provided a response to this complaint.

60. Mr. Bogan hired the Mr. Latimore to represent him in a divorce matter.

61. On March 10, 2011, Mr. Bogan paid Mr. Latimore \$301.50 to be used as filing fees for the divorce.

62. According to Mr. Bogan, he also paid over \$350.00 in legal fees to Mr. Latimore.

63. On the same date, Mr. Latimore promised Mr. Bogan that he would file papers with the court that very day since he was going to the courthouse for another matter.

64. Mr. Latimore drafted a Marital Dissolution Agreement which he sent to the opposing counsel, Wendy Dabbous.

65. On February 17, 2011, Ms. Dabbous returned the signed MDA to Mr. Latimore for filing.

66. Mr. Latimore has failed to take any further action with respect to the MDA.

67. After several months passed, Ms. Dabbous attempted to contact Mr. Latimore but was unsuccessful.

68. Mr. Latimore failed to keep Mr. Bogan reasonably informed about the status of his case or to comply with reasonable requests for information within a reasonable time.

Complaint of Monica Marshall

69. On October 19, 2011, the Board of Professional Responsibility received a complaint from Monica Marshall alleging ethical misconduct by Mr. Latimore.

70. On October 25, 2011, the Board sent an inquiry to Mr. Latimore requesting that he provide a response to the complaint within ten (10) days.

71. Mr. Latimore never provided a response to the complaint.

72. On December 8, 2010, Ms. Marshall paid Mr. Latimore \$750.00 to represent her in a post-divorce matter.

73. Her case was set to be heard on September 23, 2011.

74. Although Mr. Latimore and opposing counsel were able to settle the matter months prior to the court date, Mr. Latimore failed to prepare a draft Order of the agreement for

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the opposing counsel to sign.

75. For at least two (2) weeks prior to the September 23, 2011 court date, Ms. Marshall tried to contact Mr. Latimore, to no avail.

76. She went to his office on September 20, 2011 and discovered that Mr. Latimore was no longer there.

77. In fact, Mr. Latimore was suspended by the Tennessee Supreme Court on August 15, 2011 for three (3) years.

78. Ms. Marshall was compelled to appear at the September 23, 2011 court date without counsel and request a continuance.

79. Mr. Latimore failed to provide Ms. Marshall or the opposing counsel notice of his suspension as required by Tenn. S. Ct. R. 9, §18.

80. He failed to return her files and to refund any unearned legal fees.

CONCLUSIONS OF LAW

81. Pursuant to Tenn. Sup. Ct. Rule 9, Section 1, any attorney admitted to practice law in Tennessee is subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts.

82. Pursuant to Tenn. Sup. Ct. Rule 9, Section 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 or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

83. 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.

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84. The facts set forth in the Petition for Discipline and the Supplemental Petition for Discipline have been deemed admitted.

85. The Board has shown by a preponderance of the evidence that Mr. Latimore is guilty of violations of RPCs 1.1, Competence; 1.3, Diligence; 1.4, Communication; 1.15(c), Safekeeping Property; 1.16(d), Declining and Terminating Representation; 3.2, Expediting Litigation; 8.1(b), Bar Admission and Disciplinary Matters; and 8.4(a)(b)(c) and (d), Misconduct.

86. 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*.

87. Based upon the evidence and admissions in this matter, the Panel finds that disbarment is the appropriate discipline in this matter.

88. The evidence shows that Mr. Latimore failed in his fiduciary duty to his clients. "Attorneys have a fiduciary relationship with their clients and, therefore, must deal with them with the utmost good faith. (*citations omitted*) The fiduciary relationship arises when a client first consults an attorney and extends to all dealings between the attorney and the client, including the process by which the attorney and the client reach an agreement concerning the terms of employment." *Alexander v. Inman*, 903 S.W.2d 686, 693 (Tenn. Ct. App. 1995) *citing Cummings v. Patterson*, 59 Tenn. App. 536, 541, 442 S.W.2d 640, 643 (1968); *ABA Comm. on Ethics and Professional Responsibility, Informal Op. 86-1521* (1986).

89. In the complaint by Dr. Max Foner, Mr. Latimore has admitted converting client funds for his own use.

90. In the other complaints, it is clear he converted settlement proceeds for his own

use and kept unearned legal fees.

91. The Tennessee Supreme Court has opined that “[W]hile the misappropriation of funds, whether from clients or a partnership, always involves serious breaches of trust and violations of ethical duties, the misappropriation of client funds implicates the ‘protection of the public and preservation of the public’s confidence in the legal profession [that] are the primary purposes of attorney discipline.’” *Threadgill v. Bd. of Prof’l Responsibility of the Supreme Court of Tenn.*, 299 S.W.3d 792, 811 (Tenn. 2009) *citing In re Rice*, 99 Wn.2d 275, 661 P.2d 591, 593 (Wash. 1983).

92. Further, Mr. Latimore’s abandonment of practice, lack of diligence, competence and communication provides further justification that disbarment is the appropriate discipline.

93. Mr. Latimore’s actions adversely affected his clients and third parties. By his actions, Mr. Latimore caused serious injury to his clients.

94. The following ABA Standards apply in this case:

- 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:
 - a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
 - b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
 - c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.
- 4.51 Disbarment is generally appropriate when a lawyer’s course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer’s conduct causes injury or potential injury to a client.

- 5.11 Disbarment is generally appropriate when:
- a) ...
 - 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.

7.1 Disbarment is generally appropriate when a lawyer knowingly engaged in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

95. Pursuant to ABA Standard 9.22, a number of aggravating factors are present in this case:

- a. Mr. Latimore's action evidenced a dishonest and selfish motive;
- b. Mr. Latimore's conduct evidences a pattern of misconduct;
- c. Mr. Latimore has engaged in multiple offenses;
- d. Mr. Latimore has refused to acknowledge the wrongful nature of his conduct;
- e. Mr. Latimore's victims were particularly vulnerable in that they were his clients and relied on him to represent and care for their interest;
- f. Mr. Latimore has demonstrated a bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- g. Mr. Latimore has substantial experience in the practice of law; and
- h. Mr. Latimore has evidenced an indifference to making restitution.

96. Additionally, Mr. Latimore has a prior disciplinary history consisting of a three (3) year suspension and a private informal admonition.

97. There is no proof of mitigating factors.

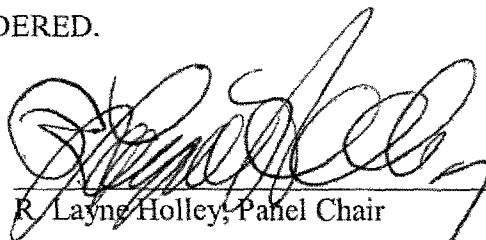
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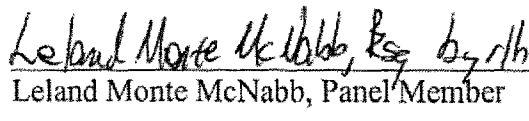
In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Michael Latimore should be disbarred. Further, as a condition precedent to any subsequent reinstatement to the practice of law, the Hearing Panel further finds that the Respondent should be required to pay restitution, and to show proof that restitution has been paid, as follows:

1. Joyce Watson – The full amount of her settlement proceeds less payments to medical providers and third parties made by Mr. Latimore on her behalf.
2. Kendra Mitchell - The full amount of her settlement proceeds less payments to medical providers and third parties made by Mr. Latimore on her behalf.
3. Max Foner, M.D. - \$3,120.00
4. Tammy Gilliam - \$1,000.00
5. John Bogan - \$651.50
6. Monica Marshall - \$750.00

IT IS SO ORDERED.

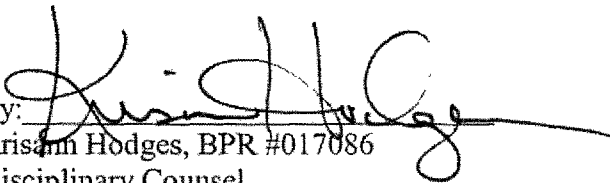
 5/28/12
R. Layne Holley, Panel Chair

 by rth w/permission of 5/25/12
Hayden David Lait, Panel Member

 by rth w/permission of 5/25/12
Leland Monte McNabb, Panel Member

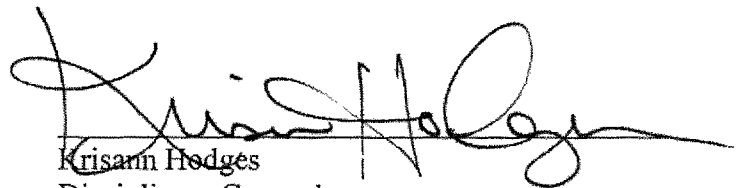
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CERTIFICATE OF SERVICE

I certify that a copy of this Findings of Fact, Conclusions of Law, and Judgment has been served upon Respondent, Michael Latimore, at 3081 Rising Sun, Lakeland, TN 38002 by regular mail on this the 23rd day of May, 2012.


Krisann Hodges
Disciplinary Counsel

