

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

IN RE: PEGGY LEE

DOCKET NO. 2005-1531-9-LC

An Attorney Licensed to Practice  
Law in Tennessee (Shelby County)  
BPR No. 009013

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ORDER OF THE HEARING PANEL

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This cause came on to be heard by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee on August 13, 2007, pursuant to Rule 9 of the Supreme Court Rules. The Hearing Committee, Lee Bloomfield, Tameka Turner Perry, and Chair Bruce McMullen, make the following findings of fact and submits its judgment in this cause as follows:

I. STATEMENT OF THE CASE

In 1995, the Respondent, Peggy Lee, represented Complainants in association with a foreign attorney. The Complainants allege that the Respondent accepted money from them and produced a receipt signed by her. The Respondent initially denied accepting the money but later stated that she gave it to her co-counsel.

The Board of Professional Responsibility authorized an audit of the Respondent's trust account. She was unable to provide adequate documentation regarding the Complainants' money.

On August 3, 2005, the Movant filed a Petition for Discipline alleging that, among other things, the Respondent failed to maintain adequate trust account records. The Respondent declined to plead guilty to the charges opting instead to have a formal disciplinary hearing. A Hearing Committee was impaneled and the requested hearing was conducted on August 13, 2007.

After considering the evidence and relevant Rules, the Hearing Committee concluded that the Respondent did not keep adequate trust account records but found that the Movant did not adequately prove the remaining charges against the Respondent. The Hearing Committee initially suggested that the Respondent's discipline be a private reprimand but was advised that she is not eligible for private reprimand because she elected to have a formal hearing. On September 27, 2007, the Committee issued its judgment wherein it recommended that the Respondent receive a public censure. Because the Committee believes that the Respondent will benefit from training in trust account management, it suggested that the Respondent be required to seek such training and provide proof of completion.

On April 16, 2008, the Supreme Court found that "neither Sections 4.4 [n]or 8.4 of the Rules of the Supreme Court permit contingencies or conditions to be placed upon public censures." The matter was remanded to the Board for further proceedings.

## II. LAW

The ethical standards related to the practice and administration of law in this State are set forth in Rule 8 of the Tennessee Supreme Court Rules of Professional Conduct. Pursuant to Rule of Professional Conduct (hereinafter "RPC") 1.15 within Rule 8, lawyers should hold property of others with the care required of a professional fiduciary. Section (a) of RPC 1.15 "contains the fundamental requirement that a lawyer maintain funds of clients and third parties in a separate trust account." *Id.*, Comments Section.

Rule 9 of the Tennessee Supreme Court Rules provides guidelines associated with trust accounts. Section 29(A) of Rule 9 states:

(1) Attorneys who practice law in Tennessee shall deposit all funds held in trust in this jurisdiction in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise. Attorney trust accounts shall be maintained only in financial institutions approved by the Board of Professional Responsibility, provided however nothing herein shall be construed as limiting any statutory provisions dealing with the investment of trust and/or estate assets, or the investment authority granted in any instrument creating a fiduciary relationship.

(2) Every lawyer engaged in the practice of law in Tennessee shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accounting or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client. The five year period for preserving records created herein is only intended for the application of this rule and does not alter, change or amend any other requirements for recordkeeping as may be required by other laws, statutes or regulations.

In hearings on formal charges of misconduct, the Board must prove cases by a preponderance of the evidence. Rule 9, Section 8.2. “Temporary suspension (Section 4.3), private reprimand (Section 4.5), and private informal admonition (Section 4.6) are not available types of discipline following a formal disciplinary proceeding.” Rule 9, section 8.4.

In *Milligan v. Board of Professional Responsibility*, a hearing panel of the Board ordered disbarment of an attorney who, among other things, persisted in maintaining an inadequate accounting system to support his client’s trust accounts. 166 S.W.3d 665, 670 (Tenn. 2005). On appeal, the Chancery and Supreme Courts determined that public censure is an appropriate sanction for failure to maintain an adequate accounting system. *Id.*

### III. CONCLUSIONS OF THE HEARING COMMITTEE

After reviewing the briefs submitted, hearing argument on behalf of the parties, considering the testimony of witnesses, reviewing exhibits, evaluating the record in this cause, and giving consideration to the relevant Rules, it is the conclusion of the Hearing Committee that the Movant has demonstrated, by a preponderance of the evidence, that the Respondent did not keep adequate trust account records. The other claims made were not adequately established.

Pursuant to the requirement of Rule 8.4, the Hearing Committee considered the *ABA Standards for Imposing Lawyer Sanctions* to assist with its determination of the

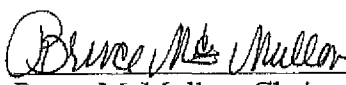
appropriate type of discipline in this matter, which the Committee finds to be public censure. Because neither Sections 4.4 nor 8.4 of the Rules permit the Committee to place contingencies or conditions upon a discipline of public censure, the Respondent, Peggy Lee, shall have no such contingencies or conditions. Specifically, she is not required to seek training in trust account management.


The Hearing Committee finds that it is not the proper body to determine whether Rule 8.4 of the Supreme Court Rules violates the due process clauses of the 5<sup>th</sup> or 14<sup>th</sup> Amendments as alleged by the Respondent. The Committee is bound by the Rules as they exist and cannot deem them unconstitutional or otherwise inappropriate. We must, therefore, obey Section 8.4 within Rule 9, which provide that if a Respondent elects a formal disciplinary hearing, she may not receive as her discipline a private reprimand or private informal admonition.

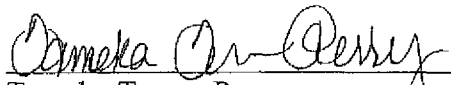
#### IV. JUDGMENT

IT IS THEREFORE ORDERED that the Respondent, Peggy Lee, be publicly censured.

ENTERED:

 *w/ permission by Cameka Perry*  
Bruce McMullen, Chairman

 *w/ permission by [unclear]*  
Lee Bloomfield

  
Tameka Turner Perry