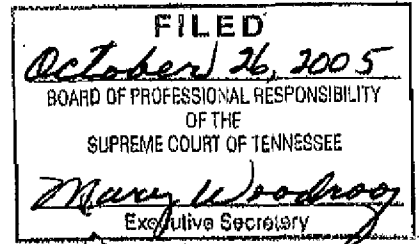


IN DISCIPLINARY DISTRICT V  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE



IN RE: ) Docket No. 2004-1442-5-LC  
Kathy A. LESLIE, BPR #13587  
An Attorney licensed to practice law  
In Tennessee (Davidson County)

RULING AND RECOMMENDATION OF THE HEARING COMMITTEE

This cause came to be heard by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee on June 1, 2005 and August 1, 2005. Present at the hearing were Laura I. Chastain, Deputy Chief Disciplinary Counsel for the Board of Professional Responsibility, Tyree B. Harris IV, attorney for the Respondent Kathy A. Leslie and the Respondent Kathy A. Leslie.

This matter was originally brought to the Supreme Court of Tennessee which entered an Order temporarily suspending the Respondent Kathy A. Leslie (BPR #13587) from the practice of law as provided in Section 4.3, Rule 9 of the Rules of the Tennessee Supreme Court. The Respondent filed a motion to dissolve the Order of Temporary Suspension on May 5, 2004. This motion was denied by a three person Hearing Committee of the Board of Professional Responsibility (John J. Hollins, Gail Carr-Williams and John D. Kitch) on July 8<sup>th</sup>, 2004.

On June 1, 2005 this disciplinary proceeding commenced before this panel and concluded on August 1, 2005. Both sides were represented by counsel and all parties were present during the hearing. On June 1, 2005 the panel heard testimony from Joe A. Jones, a criminal investigator, Margot John, a former client of Ms. Leslie and one of the complainants in this disciplinary proceeding, and Ms. Leslie herself. Because of an open criminal investigation of Ms. Leslie, as confirmed by Mr. Jones, Ms. Leslie repeatedly exercised her rights under the Fifth Amendment upon advice of counsel. According to Mr. Jones testimony, the District Attorney for Davidson County was awaiting the decision of the Board of Professional Responsibility to determine whether to initiate a prosecution against Ms. Leslie.

The hearing was adjourned on June 1, 2005 because one of the complainants and former client of Ms. Leslie, Ms. Ann-Marie Zappola was not available for the panel and it was offered by Ms. Chastain that she have a video statement for the panel. The Hearing Panel and Ms. Leslie agreed it was important to locate and have Ms. Ann-Marie Zappola now of Tampa, Florida testify in person and be available to be crossed examined by Ms. Leslie's attorney. This case was continued while the witness was located and was flown to Nashville to testify in front of this panel. Ms. Leslie agreed to the delay and the hearing was concluded on August 1, 2005.

After hearing the case the Hearing Committee finds that the Respondent violated DR 9-102(A) which states:

**DR 9-102. Preserving Identity of Fund and Property of Client. - (A) All funds of clients paid to a lawyer, or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable insured depository institutions maintained in the state in which the law office is situated.**

For purposes of this rule, "insured depository institution maintaining government insured depository accounts on which withdrawals or transfers can be made on demand, subject only to such notice period which the institution is required to observe by law or regulation. No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (1) Funds reasonable sufficient to pay service charges may be deposited therein;
- (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which the disputed portion shall not be withdrawn until the dispute is finally resolved.

The evidence placed in record by Ms. Chastain and the direct testimony of Margot John and Ann-Marie Zappola supports the finding that funds belonging to Ms.

Leslie's clients were not properly held and deposited in a maintained trust account on behalf of the client. In conversations secretly recorded by Ms. Zappola at the request of the criminal investigator, Mr. Jones, Ms. Leslie admitted to her client when confronted about the missing funds on November 24, 2003 that "Um I haven't walked in integrity, I don't have the money. Okay? But I, uh, applied for a loan to get it. And there's no excuse for me to say uh, why I don't have it in. I just took it." (Quotes of from conversation of Ms. Kathy Leslie. Exhibit 2, "Transcript of recorded phone call from Ann-Marie Zappola to Kathy Leslie" November 24<sup>th</sup> 2003 4:30PM):

The Respondent also violated DR-102(B)(1), which states:

**"A Lawyer shall promptly notify a client of the receipt of the client's funds, securities, or other properties; (4) Promptly pay or deliver to the client as requested by a client the funds, securities or other properties in possession of the lawyer which the client is entitled to receive."**

It was Ms. Leslie's duty to hold her client's fund in trust. Ms. Leslie did not properly communicate with Ms. Zappola about the money she collected on her behalf and failed to properly secure the funds at all times in a proper account. Ms. Leslie admitted to her client that "I just took it" when asked about the location of Ms. Zappola's funds. We therefore find her in violation of DR 9-102(B) as well.

#### CONCLUSION

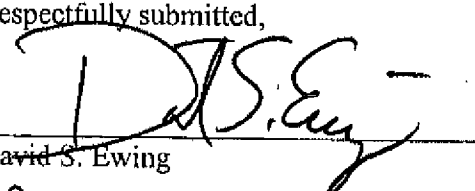
In ruling against Ms. Kathy A. Leslie the Hearing Panel believes she should have her law license suspended for 18 months for violating DR 9-102 (A)(B). This term of suspension shall begin on April 6, 2004 when the Tennessee Supreme Court temporarily suspended Ms. Leslie's law license and she has been without her license since that date. Therefore we recommend that on November 6, 2005 the previous order of the Tennessee Supreme Court shall be lifted and Ms. Kathy Leslie shall be reinstated to practice law in the State of Tennessee.

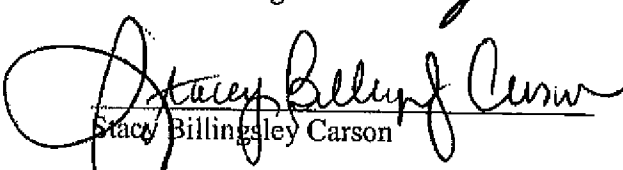
The panel strongly supported strict enforcement of rules DR 9-102(A)(B) and we believe misappropriation of client's funds is a serious offense which requires substantial suspension. In ruling on a suspension of 18 months the panel found many mitigating factors on behalf of Ms. Leslie. (1) The funds were all paid back in full in a timely manner. (2) Ms. Leslie showed remorse in conversations with her clients and admitted that she had "not walked with the integrity." (3) Ms. Leslie has been a practicing lawyer for 14 years without any prior disciplinary incidents, (4) Ms. Leslie was not able to testify during this hearing and put on a different kind of defense because she had to assert her 5<sup>th</sup> Amendment Rights due to a still ongoing investigation by the District Attorney General's Office.<sup>1</sup> (5) Ms. Leslie's license was suspended by the Tennessee Supreme Court and she has not practiced law in over a year.

In addition to the 18 months suspension we rule that Ms. Leslie must take an additional 6 hours of Ethics CLE above and beyond the required amount by the Board in 2006 and 2007.

Therefore, it is hereby recommended that the Ms. Kathy Leslie's temporary suspension be removed on November 6, 2005 and she will be allowed to regain her license to practice law in Tennessee on that date.

Respectfully submitted,

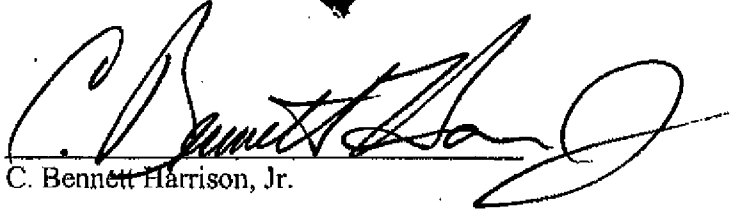
  
David S. Ewing

  
Stacy Billingsley Carson

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<sup>1</sup> The Panel was quite troubled by the District Attorney's apparent use of this disciplinary proceeding to satisfy the State's law enforcement obligations. The criminal investigation of Ms. Leslie remained open without any activity for approximately a year before the hearing in this matter took place. Because of this situation that significantly hampered Ms. Leslie's defense the Panel did not attach any negative inference on Ms. Leslie's exercise of her Fifth Amendment rights.

5.12



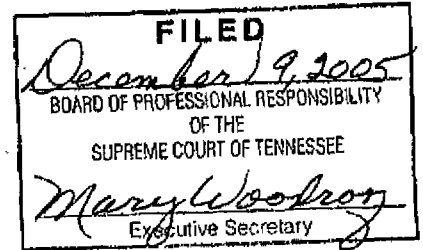
C. Bennett Harrison, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Report and Recommendation of the Hearing Committee has been forwarded to Laura Chastain, Deputy Chief Disciplinary Counsel, Board of Professional Responsibility of the Supreme Court of Tennessee, 1101 Kermit Drive, Suite 730, Nashville, TN 37217, and to Attorney Tyree b. Harris IV, Wills & Knight, 215 Second Avenue, North, Nashville, TN 37201-1601, this ~~26th~~ day of October 2005.

  
David S. Ewing

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



IN RE: KATHY A. LESLIE, BPR #13587 )  
Respondent, An Attorney Licensed ) Docket No.: 2004-1442-5-LC  
to Practice Law in Tennessee )  
(Davidson County) )

ORDER ALTERING OF AMENDING  
RULING AND RECOMMENDATION OF THE HEARING COMMITTEE

In this cause, upon the Joint Motion and application of the Petitioner, the Board of Professional Responsibility of the Supreme Court of Tennessee, and the Respondent, Kathy A. Leslie, presented by and through their respective counsel, and for good cause shown unto the Hearing Committee;

**IT IS ORDERED AND DECREED** that the Ruling and Recommendation of the Hearing Committee shall be and is hereby altered and amended by redacting therefrom all references to the date of the expiration of the suspension of the law license of the Respondent, Kathy A. Leslie, as being 6 November 2005 and in their place and stead to provide that the suspension of the law license of the Respondent, Kathy A. Leslie, for a period of eighteen months to begin on 6 April 2004 shall conclude and expire on 6 October 2005.

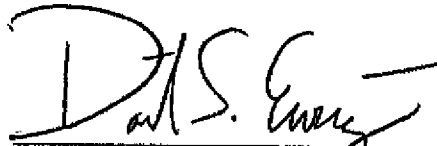
**IT IS FURTHERED ORDERED AND DECREED** that the Ruling and Recommendation of the Hearing Committee shall be and is hereby altered and amended by redacting therefrom the sentence, "...[T]herefore, we recommend that on November 6, 2005 the previous order of the Tennessee Supreme Court shall be lifted and Ms. Leslie shall be reinstated to practice law in the State of Tennessee..." and also to redact therefrom the concluding sentence of the Ruling and


Recommendation of the Hearing Committee that, "...[T]herefore, it is hereby recommended that Ms. Leslie's temporary suspension be removed on November 6, 2005 and she be allowed to regain her law license to practice law in Tennessee on that date...", and in their place and stead the following language shall be substituted therefor at the conclusion of the Ruling and Recommendation of the Hearing Committee:

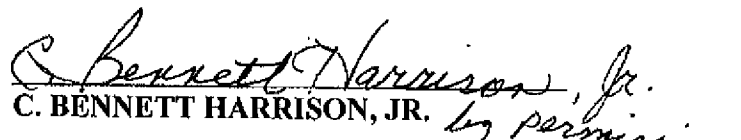
"Therefore, because of the duration of the suspension of the law license of the Respondent, Kathy A. Leslie, as provided herein, it is hereby recommended that on or after October 6, 2005, the Respondent, Kathy A. Leslie, be permitted to petition for reinstatement to resume the practice of law in Tennessee consistent with Rule 9, Section 19, Supreme Court Rules..."

ENTERED this the 6<sup>th</sup> day of December, 2005.

HEARING COMMITTEE:

  
\_\_\_\_\_  
DAVID S. EWING

  
\_\_\_\_\_  
STACY BILLINGSLEY CARSON

  
C. BENNETT HARRISON, JR. *by permission  
Mary Woodruff*

**APPROVED FOR ENTRY:**

**BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE SUPREME COURT OF TENNESSEE**

By: Laura L. Chastain

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**WILLIS & KNIGHT, PLC**

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