

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

William S. Lockett,)
)
 Petitioner,)
)
 v.) No. 179245-3
)
 Board of Professional Responsibility)
 of the Supreme Court of Tennessee,)
)
 Respondent.)

MEMORANDUM AND ORDER

This is an appeal pursuant to SCR 9, § 1.3 by a lawyer challenging a four-year suspension from the practice of law imposed upon him by a Hearing Panel (“Panel”) of the Board of Professional Responsibility (“BPR”).¹

The petitioner (who is *pro se*) and the BPR have both filed excellent prehearing briefs, and the matter was argued on the record before the Court on April 14, 2011, and taken under advisement.

The standard under which the Court reviews the decision of the Panel is set forth in SCR 9, § 1.3 as follows:

. . . The court may affirm the decision of the panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the panel’s findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the panel’s jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported

¹ The undersigned judge was appointed to preside over this case by Order of the Chief Justice dated December 23, 2010.

by evidence which is both substantial and material in the light of the entire record.

In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

Furthermore, in making a determination regarding whether substantial and material evidence supports the Panel's decision, the Court evaluates whether the evidence "furnishes a reasonably sound factual basis for the decision being reviewed." *Threadgill v. BPR*, 299 S.W.3d 792, 807 (Tenn. 2009).

Petitioner does not challenge the imposition of discipline, but rather takes issue with the length of his suspension: that being four years. As stated in his prehearing brief, "Petitioner appeals only the length of the suspension." Petitioner argues that the length of his suspension violates "the twin concepts of uniformity and proportionality." He then asserts that "the proper length of Petitioner's suspension should be eleven months and twenty-nine days."

The charges by the BPR were based on the following:

1. In April 2010, the petitioner pled guilty and was guilty of theft of money from his law firm in an amount of at least \$32,000.00. He received a sentence of three years imprisonment, which was suspended, and he was placed on probation for three years.
2. In April 2010, petitioner pled guilty in federal court and was convicted for failure to file an income tax return. He was sentenced to one year probation and six months of home incarceration.
3. The petitioner borrowed money from clients.

The Panel decision recited the facts stated above and correctly found all these charges to be accurate. The Panel then considered the cases cited by the petitioner, as well as the mitigating and

aggravating factors. The Panel concluded:

Judgment of the Hearing Panel

The Hearing Panel considered the briefs and arguments presented by the Respondent and Disciplinary Counsel, the testimony of witnesses, the proposed aggravating and mitigating circumstances, and comparable cases. It is the judgment of this Hearing Panel that William S. Lockett, Jr., should be suspended from the practice of law for four years. In the event that Respondent successfully applies for and is granted reinstatement to the practice of law by the Supreme Court following the four-year suspension, it is the judgment of this Hearing Panel that the Respondent should be supervised by a practice monitor for a period of one (1) year following reinstatement.

There is no doubt that petitioner is guilty of serious disciplinary infractions. His two criminal convictions stand as significant witnesses against him and speak to his unfitness to practice law. His financial dealings with clients further add to an already significant case against him.²

Supreme Court Rule 9, § 8.4 instructs that, "In determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the *ABA Standards for Imposing Lawyer Sanctions*."

The Court does agree with petitioner that there are mitigating circumstances present. The Court credits the following from petitioner's brief:

Petitioner respectfully asserts that the following mitigating factors are present in the instant matter: (i) absence of a prior disciplinary record; (ii) personal problems; (iii) timely good faith effort to make restitution or to rectify consequences of misconduct; (iv) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (v) character or reputation; (vi) imposition of other penalties or sanctions; and (vii) remorse.

² Petitioner was elected Knox County Law Director in 2009 but resigned in early 2010 when his theft came to light. There is no indication that any of his disciplinary violations took place when he was Law Director.

The Panel found several aggravating circumstances, including:

1. The petitioner himself had once been a BPR hearing committee member.
2. The petitioner's theft took place over a three-year period (2005-2008) and involved over 25 transactions.
3. The petitioner failed to seek counseling for his personal and financial problems.

With reference to the *ABA Standards for Imposing Lawyer Sanctions*, three appear directly relevant:

Disbarment is generally appropriate when:

(a) lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(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.

ABA Standard 5.11.

Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standards 5.11 (intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses) and that seriously adversely reflects on the lawyer's fitness to practice.

ABA Standard 5.12.

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

ABA Standard 4.32.

In addition to the above, the Panel must consider aggravating and mitigating circumstances that may justify an increase or decrease in the degree of discipline imposed. *ABA Standard 9.21 and 9.31. Beard v. BPR*, 288 S.W.3d 838, 859 (Tenn. 2009).

Mr. Lockett acknowledges the import of his criminal convictions, but he argues that two attorney discipline cases where lawyers were given a much less lengthy suspension indicate that his punishment (four-year suspension) is not consistent with the requirement for uniformity in imposing sanctions. *See, e.g., Flowers v. BPR*, 314 S.W.3d 882, 901 (Tenn. 2010); *BPR v. Bonnington*, 762 S.W.2d 568, 570 (Tenn. 1988).

The first case relied upon by petitioner is *BPR v. Maddux*, 148 S.W.3d 37 (Tenn. 2004). In that case Maddux received a 30-day suspension for misappropriation of funds from his law firm.³ Petitioner contends that when you compare the 30-day suspension of Maddux to his four-year suspension, there is a clear illogical disparity.

Maddux I is clearly distinguishable. First of all, Maddux was involved in a dispute with his law partners over the dissolution of the partnership to include a civil suit to resolve their business conflicts. Maddux was not only never charged criminally, but the trial judge found that Maddux “lacked criminal intent because he never intended to keep the converted funds permanently.” 148 S.W.3d at 39. This finding was specifically affirmed by the Supreme Court. *Id. at 40.*

The second case relied upon by petitioner for comparison is *Threadgill v. BPR*, 299 S.W.3d 792 (Tenn. 2009). Mr. Threadgill received a one-year suspension as a result of four incidents

³ Years later, Mr. Maddux was again to have disciplinary problems. *See Maddux v. BPR*, 288 S.W.3d 340 (Tenn. 2009).

wherein he either refused to return portions of attorney's fees he owed clients or failed to remit some monies he had received on behalf of clients in settlement of cases. On all occasions, he failed to communicate and respond to appropriate client requests. In addition, Threadgill had received two prior private admonitions.

Threadgill's conduct was reprehensible, and he acted "knowingly." 299 S.W.3d at 808-810. The court noted, however, that the one-year suspension "may be viewed as lenient" and then cited cases in which two-year to four-year suspensions were imposed for similar conduct. *Id.* at 811. Neither *Threadgill, supra*, nor the comparison cases cited by the Supreme Court involved criminal convictions.

One can argue that the presence or absence of criminal convictions for similar conduct is sometimes fortuitous. Be that as it may, a criminal conviction for theft raises an inference in favor of disbarment or significant suspension. *See ABA Standards* 5.11 and 5.12. That inference, however, can be weakened by the weight of mitigating circumstances measured against lesser aggravating circumstances. *ABA Standards* 9.2 and 9.3. Here, the Court finds that the Panel somewhat deviated by the appropriate factors set out in the *ABA Standards*. The Court finds that the appropriate factors are set out below.

Petitioner has the following mitigating factors:⁴

1. Absence of prior disciplinary record;
2. Personal or emotional problems;
3. Timely good faith effort to make restitution;

⁴ These are based on the mitigating factors listed in *ABA Standard* Section 9.32. The case law indicated that "Section 9 [of the *ABA Standards*] lists the relevant aggravating and mitigating circumstances." *Threadgill*, 299 S.W.3d at 810.

4. Full disclosure and cooperative attitude toward proceedings;
5. Character references;
6. Imposition of other sanctions; and
7. Remorse.

However, the following are aggravators based on those listed in *ABA Standard* Section 9.22:

1. Dishonest or selfish motive; and
2. Multiple offenses - multiple incidents or thefts.

While not exactly a mitigating factor, it is at least a consideration that the theft was from the law firm and not from clients. Theft from clients violates the most fundamental duty of an attorney.

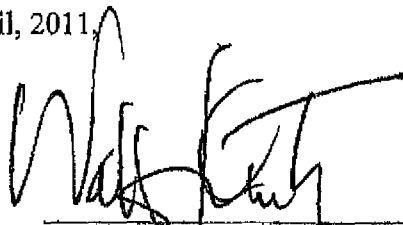
The Court finds instructive the case of *Milligan v. BPR*, 166 S.W.3d 665 (Tenn. 2005). Milligan misappropriated client funds and had forged his client's signature. There were multiple occasions of taking from the client's accounts. The Panel mandated disbarment. On appeal to the trial court, that court merely ordered a public censure.

On appeal, the Supreme Court held that a two-year suspension was warranted. It found that Milligan's conduct involved dishonesty and deceit, and therefore adversely affected his fitness to practice law. 166 S.W.3d at 674. Milligan had prior censures, and the court found only one mitigating factor. While Milligan did not have a criminal conviction, his conduct was one of misappropriation of client funds and forgery. *See also BPR v. Bonnington*, 762 S.W.2d 568 (Tenn. 1988) (four-year suspension for misappropriation of client funds).

In reaching a decision, the Court has weighed the seriousness of the violations described; the principle of consistency in punishment; the weight to be given the mitigating factors weighed against the aggravating factors; and the deference it must give to the decision of the Panel.

It is the judgment of the Court that the Panel's decision is affirmed in all of its particulars except that the time of suspension shall be reduced from four years to two years.⁵

This the 27 day of April, 2011.



Senior Judge Walter C. Kurtz

cc:

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⁵ Any lawyer suspended for greater than one year cannot practice law again unless reinstated upon a clear and convincing showing that he or she can comply with the high standards set out in SCR, § 19.3. *See generally, Milligan v. BPR*, 301 S.W.3d 619 (Tenn. 2009)