

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

H. OWEN MADDUX )  
 )  
 Petitioner, )  
 v. ) No. 07-0207  
 )  
 BOARD OF PROFESSIONAL )  
 RESPONSIBILITY OF THE )  
 SUPREME COURT )  
 OF TENNESSEE )  
 )  
 Respondent. )

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MEMORANDUM and ORDER

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This cause came to be heard on the 1st day of May 2008 before Jon Kerry Blackwood, Senior Judge sitting by designation, upon the Writ of Certiorari filed by Petitioner, arguments of counsel and the entire Record in this case.

The Petitioner was retained to represent Mr. and Mrs. Robert Livingston concerning an automobile accident that occurred in Florida wherein Mrs. Livingston was injured. This accident occurred on February 17, 1999. The Petitioner was not licensed to practice law in Florida and did not engage the assistance of an attorney in Florida. The Livingstons made several attempts during the years to contact the Petitioner about the status of their case. In most instances the Petitioner responded that the insurance company was changing representatives.

In 2005, Mr. Livingston was in Florida and made an effort to determine if a lawsuit had been filed by Petitioner on the Livingstons' behalf. After he determined that no lawsuit had been filed, Mr. Livingston contacted the Board of Professional Responsibility. Mr. Livingston was advised to write Petitioner a letter. Mr. Livingston mailed a letter by registered mail that was not accepted. A

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second letter of February 25 was accepted by Petitioner. However, Petitioner made no response. Later, Mr. Livingston went to Petitioner's office and was told that the insurance company was changing representatives. On August 2005, Petitioner came to the Livingston home. Petitioner told the Livingstons that "he had just goofed" and offered to settle the case for \$9000.00. Subsequently, the Livingstons accepted a check from Petitioner for the above sum. These basic facts were found by the hearing panel and the record supports these findings.

In addition, the record reflects that the Petitioner did not file Mrs. Livingston's lawsuit within the applicable statute of limitations for the State of Florida. The Petitioner failed to inform the Livingstons that he did not file their lawsuit within the applicable time frame. The statute had already expired when the Petitioner determined the applicable statutory time. During Petitioner's conversation with the Livingstons, he never advised them that they had a potential malpractice lawsuit against him or that the Livingstons could seek independent counsel. Petitioner never advised the Livingstons that their interests were in conflict. These findings made by the hearing panel are supported by the evidence.

The hearing panel concluded that the Petitioner violated Rules 1.1; 1.2(a); 1.3; 1.4; 1.8(a), (c) and (d). The Panel also found that Petitioner failed to timely respond to the petition for discipline and had been previously suspended from the practice of law by Order of the Supreme Court entered August 27, 2004.

Section 1.3, Supreme Court Rule 9 provides in part:

The review shall be based on the transcript of the evidence before the hearing panel and its findings and judgment . . . 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 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.

The record clearly supports that the Petitioner was not competent in the applicable statute of limitation for Florida. He was not licensed to practice in that State, nor did he associate Florida Counsel. As a consequence the applicable statute of limitations expired before the Livingstons' lawsuit could be filed. Petitioner's conduct violated Rules of Professional Responsibility 1.1 and 1.3.

The Petitioner failed to keep the Livingstons advised of their lawsuit. The Petitioner only advised the Livingstons that he had "goofed" after he learned that the Board of Professional Responsibility had received a complaint.

He borrowed money to settle this claim and then placed it into a trust account, thereby commingling his assets with those of his clients in violation of BPR 1.15.

The Petitioner violated RPC 1.8(a) when he entered into a settlement with the Livingstons. He failed to advise the Livingstons of their claim against him for malpractice or advise them of their right to seek independent counsel. In defense, Petitioner asserts the fairness of the \$9000.00 settlement by citing the medical bills that he had received which totaled between \$3000.00 and \$5000.00. However, Ms. Livingston had substantial problems with her knee, even to the extent of a knee replacement. There were other medical bills that were never considered by Petitioner which might have had a causal relationship to the accident and would have substantially increased the

ultimate liability. The record supports the Hearing Panel findings that RPC 1.1; 1.2(a); 1.3; 1.4; 1.8(a), (c) and (d) were violated.

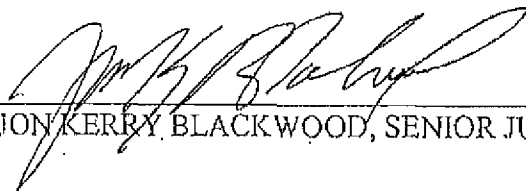
The American Bar Association Standard for Imposing Lawyer Sanction Section 3.0 provides as follows:

In imposing a sanction, after finding lawyer misconduct, a court shall consider

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct;
- (d) the existence of aggravating or mitigating factors.

The Petitioner violated numerous Rules of Professional Responsibility. Those included acting competently and zealously. Further, the Petitioner intentionally created a conflict of interest with his clients and failed to advise of that conflict. Although the Petitioner testified that he tried to be fair in his settlement with the Livingstons, it is clear to the Court that his motivation was to avoid confronting his legal malpractice. The injury cause by the Petitioner's conduct was the loss of the Livingstons' personal injury claim. The aggravating factor is Petitioner's prior order of discipline. Considering these factors and the entire record, the Court affirms the findings and conclusion of the hearing panel.

ENTER this the 8th day of May 2008.

  
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JON KERRY BLACKWOOD, SENIOR JUDGE

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, Clerk, hereby certify that I have mailed a true and exact copy of same to all Counsel of Record this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

I have designated hereby as the true copy of the service has been mailed to all counsel in this case.

\_\_\_\_\_  
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This 13 day of May, 2008  
B. L. B. ALLEN, CLERK

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