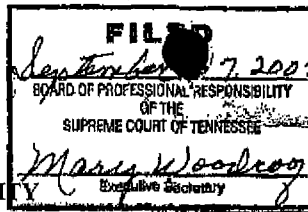


IN DISCIPLINARY DISTRICT III
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: H. OWEN MADDUX DOCKET NO. 2001-1218-3(C)-JV

An Attorney Licensed to
Practice Law in Tennessee
(Hamilton County)

JUDGMENT OF THE HEARING PANEL

This matter is presently before this Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee upon a Petition for Discipline filed February 7, 2001 (hereinafter "Petitioner"), Response to Petition filed on behalf of H. Owen Maddux (hereinafter "Respondent"). The Hearing Panel consists of Robert Thompson, Chairman, Doris Matthews, and Joseph Young McCoin, III. A hearing was conducted on August 29, 2002. Following the hearing, additional Findings of Fact and Conclusions of Law were submitted on behalf of the parties. All of the testimony, exhibits and arguments presented to this Panel have been considered, and the Hearing Panel has engaged in deliberations concerning the issues raised in the Petition. Based on the evidence presented, the Panel finds as follows:

1. FINDINGS OF FACT

1. The Respondent was licensed to practice law in 1974.
2. The Respondent joined the existing law firm of Jahn, Jahn and Cavett, comprised of Richard P. ("Dick") Jahn, Sr., Richard P. Jahn, Jr., and John Cavett, as a partner on January 1, 1991.
3. The Respondent agreed to contribute all of his existing accounts receivable to the law firm.
 - (a) There are no written memoranda memorializing or recording the understanding of the parties with regard to financial requirements expected of Respondent at the time he joined the firm.
 - (b) No written partnership agreement was ever adopted by the members of the firm.
4. Jerry Weeks became a partner in the law firm on or about January 1, 1992.

5. It was agreed and understood by all partners that any attorney fees generated by any attorney during the duration of the partnership were partnership income and would be paid into the partnership and partnership account.

(a) In October, 1994, Dick Jahn promulgated a 17-page document entitled "Study of Various Issues Involved in Reaching Agreement Relative to the Partnership Jahn, Cavett, Maddux & Weeks."

(b) This document acknowledges that there was no agreement between the partners as to how incoming partners were to be assessed for the partnership interests.

(c) On October 21, 1994, Dick Jahn issued a "memo" regarding "partnership agreement -- accounting."

(d) In this memo, Dick Jahn asserted that each of the three partners (John C. Cavett, Jr., H. Owen Maddux and Jerry Woods Weeks) owed negative capital accounts, payable to Dick and Rick Jahn, in amounts ranging from \$105,000 to \$130,000.

(e) Three of the five partners disagreed with this assessment.

(f) Specifically, John Cavett, Respondent and Jerry Weeks all took issue with this assessment.

(g) At no time prior to the issuance of this Memo did the partners agree on these figures.

(h) At no time prior to the issuance of this Memo did the partners ratify or otherwise adopt Dick Jahn's assessment of the liabilities of Cavett, Maddux and Weeks.

(i) This Memo further provided that "there will be no further draws in the absence of mutual agreement by all five of us...."

6. John Cavett withdrew from the partnership on October 24, 1994.

7. On or about January 16, 1995, Richard Jahn, Jr., and Jerry Weeks withdrew from the partnership and formed a new partnership.

8. At that time, the Respondent and Dick Jahn, Sr., became sole practitioners.

9. All attorney fees generated by the Respondent up through the dissolution of the partnership were to be paid into the partnership.

10. From the time that the Respondent joined the partnership, the partners took monthly draws out of the partnership. The Respondent continued to take draws out of the

partnership each month through on or about January 17, 1995, at which time the Respondent took a draw in the amount of \$5,500.00.

11. The Respondent physically remained in the offices occupied by the partnership until January, 1996.

12. In December, 1994, the Respondent began taking and converting partnership fees, income, and/or client payments made by at least seventeen separate partnership clients in the total sum exceeding \$92,000.00.

13. In each instance, the Respondent received checks or payments from partnership clients and deposited same directly into his own personal business or trust account.

14. Except for the Respondent's partnership percentage, the fees, income, and/or client payments taken and converted by Respondent belonged to the other partners.

15. In each instance, the Respondent took the partnership fees, income, and/or client payments without the knowledge or consent of the other partners.

16. The Respondent took the partnership fees, income, and/or client payments to use as a bargaining and/or leverage tool to negotiate partnership or firm differences.

17. The Respondent did not tell the partners or partnership that he was taking the partnership fees, income, and/or client payments for any purpose or reason.

18. The Respondent did not, however, retain the fees, income, and/or client payments, taken by him, but in each instance, spent and used same for his own personal benefit.

19. The first such taking of partnership fees, income, and/or client payments by Respondent was the taking of payments made by partnership client Bonnie Hixon in excess of \$4,700.00 in December, 1994. The Respondent spent the funds for his own use and benefit in December, 1994, without the knowledge and/or consent of the other partners.

20. The taking by Respondent of the Bonnie Hixon payments was first discovered by the firm in January, 1995.

21. The next discovery of the Respondent's taking of partnership fees, income, and/or client payments was in July, 1996, when it was discovered that Respondent had taken payments made by the Church of God in the amount of \$3,000.00 on September 9, 1995, and \$17,483.52 on November 16, 1995. The Respondent was confronted with these takings by telephone call and letter dated July 8, 1996, from Richard Jahn, Jr.

(a) The Respondent denied to the partners in June, 1995, that he had taken any client payments other than Bonnie Hixon's.

(b) The Respondent had, in fact, taken client payments other than Bonnie Hixon's prior to June, 1995, as set forth in Exhibit A, without the knowledge or consent of the partners.

(c) The Respondent's denial was deceptive and misleading.

22. The taking by the Respondent of the additional fees, income, and/or client payments was not discovered until confirmed by the Respondent by letter dated October 11, 1996.

23. The fees, income, and/or client payments taken by the Respondent were never repaid by the Respondent, except partially through the subsequent civil judgment referenced in Paragraph 26 below.

24. Respondent willfully and deliberately converted the partnership fees, income, and/or client payments to his own personal use and benefit.

25. By judgment filed in the Chancery Court for Hamilton County, Tennessee, on October 2, 2000, the Respondent was found to have defrauded the partnership and wrongfully converted \$92,534-57 in receivables from the partnership by deceptive means. The court rendered judgment for punitive damages, attorney's fees, and other damages against the Respondent. Respondent has complied with the terms of the final judgment as of the date of hearing.

26. The judgment referenced in the preceding paragraph was not appealed and is a final judgment.

(a) Respondent subsequently entered an agreed upon judgment, after negotiation, in which he obligated himself to pay substantial attorney fees despite his belief that there was no basis in law for awarding same.

(b) In addition, Respondent agreed to an assessment of \$20,000 in punitive damages as an acknowledgement of the wrongfulness of his conduct.

27. Regardless of the October 2, 2000, judgment, the evidence supports a finding that the Respondent converted the partnership fees, income, and/or client payments, without the consent or knowledge of the other partners, and acknowledged the taking of these fees was improper.

(a) The trial judge filed the judgment under seal.

28. In over a quarter of a century of practice, Respondent has never before been disciplined by the Board nor found guilty of any offense involving any type of inappropriate professional conduct.

29. With the single exception of the events growing out of the acrimonious dissolution of this partnership, Respondent has apparently conducted himself in exemplary fashion and has served the local bar, the local community and his church.

II. CONCLUSIONS OF LAW

The acts and omissions of the Respondent as alleged constitute a violation of the following Disciplinary Rules:

DR 1-102. Misconduct.

(A) A lawyer shall not:

- (1) Violate a Disciplinary Rule.
- (3) Engage in illegal conduct involving moral turpitude.
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (5) Engage in conduct that is prejudicial to the administration of justice.
- (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

III. SANCTIONS

Respondent's misappropriation of funds belonging to others and the scheme of deception he employed violated the Rules of Professional Conduct as set forth herein. Respondent in his answer admitted most, but not all of the allegations in the charges. Respondent's consent to a punitive damage award is a clear indication of his acknowledgement of wrongdoing. Respondent requests that the Panel consider the context within which he committed the inappropriate acts. The Panel is mindful of the disharmony and apparent stormy relationship that was ongoing within the firm. There was ample testimony of the trials and tribulations that Respondent and others were experiencing within the firm. This climate, coupled with Respondent's acceptance of responsibility are mitigating factors, but do not excuse his conduct or render him inculpable. Respondent's payment of restitution, although important, was not

given great weight since it was made only after this conduct was discovered and a complaint was filed. In view of the severity of the offense we believe that suspension is warranted. The Panel finds the appropriate sanctions for the Respondent are as follows:

1. Respondent shall be suspended from the practice of law for thirty (30) days.

Respondent shall provide notice of said suspension to his clients. Respondent's law practice during this period shall be supervised by an attorney approved by the Office of Disciplinary Council. Respondent shall not handle or have access to any client funds, accounts, or other property during the suspension.


2. Respondent shall submit an article to the Tennessee Bar Association and the Hamilton County Bar Association for publication discussing Partnership Law and the pitfalls of partnership dissolution within six (6) months.

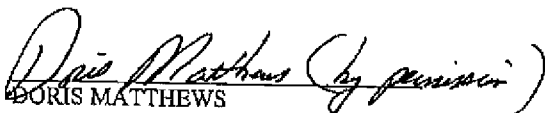
3. Respondent will perform one hundred (100) hours of community service within two (2) years to be supervised by Honorable Douglas Meyer of the Criminal Court sitting at Hamilton County.

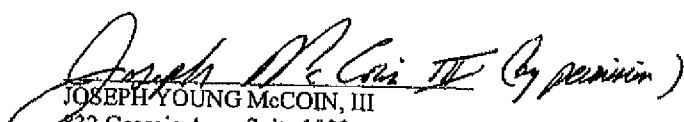
4. Respondent shall reimburse the Board of Professional Responsibility for all costs and expenses resulting from this hearing on or before December 31, 2002.

5. Respondent shall comply with the Restriction Order entered in the Chancery Court for Hamilton County.

APPROVED BY:


ROBERT S. THOMPSON, Chair
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Cleveland, TN 37364-1495


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause by placing a true and exact copy of same in the United States Mail, addressed to said counsel at his/her offices, with sufficient postage thereupon to carry the same to its destination at the following addresses:

H. Owen Maddux, Respondent
c/o Paul Campbell, III, Counsel
1100 SunTrust Bank Building
736 Market Street
Chattanooga, TN 37402-4856

James A. Vick, Disciplinary Counsel
1101 Kermit Drive, Suite 730
Nashville, TN 37217

This 12th day of September, 2002.


ROBERT S. THOMPSON
Hearing Panel Chair