

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

FILED
February 26, 2008
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE
Mary Woodruff
Executive Secretary

IN RE: MATTHEW F. MAYO, DOCKET NO. 2007-1672-5-SG
BPR #20872, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Davidson County)

JUDGMENT OF THE HEARING COMMITTEE

This cause was heard on January 31, 2008 before the Hearing Committee of the Board of Professional Responsibility of the Tennessee Supreme Court upon the Petition for Discipline filed on April 18, 2007 by the Board of Professional Responsibility (the "Board") and the Answer thereto filed by the Respondent, Matthew F. Mayo (the "Respondent") on May 21, 2007. The Board appeared at said hearing through counsel; Respondent appeared in person and through counsel. Upon the sworn testimony of witnesses before the Committee, exhibits introduced into evidence at the hearing, statements of counsel and the entire record herein, the Hearing Committee, consisting of Larry Hayes, Jr., Esq., Chair; James A. Crumlin, Jr., Esq. and Richard A. Johnson, Esq., makes the following Findings of Fact and Conclusions of Law and renders the following Judgment in this matter.

I. FINDINGS OF FACT

1. The Respondent was admitted to the practice of law in Tennessee in 2000 and is therefore subject to the disciplinary procedures set forth in Rule 9 of the Rules of the Tennessee Supreme Court.

Wesley Street - File No. 29637-5

2. In early 2006, attorney Jerry Hamlin referred Wesley Street to the Respondent.

3. Jerry Hamlin forwarded to the Respondent an envelope containing a letter regarding Wesley Street's claim, \$300 cash, photographs of Mr. Street's damaged car and Mr. Street's receipt from Circuit City.

4. After receiving Wesley Street's information and \$300, the Respondent did not initiate any contact with Mr. Street.

5. Wesley Street telephoned the Respondent leaving messages but the Respondent did not return Mr. Street's calls.

6. After not hearing from the Respondent, Wesley Street went to the Respondent's office in July, 2006 and waited to see the Respondent.

7. The Respondent met with Wesley Street in July, 2006 and told Mr. Street he had a good case.

8. The Respondent told Wesley Street in July, 2006 that he would file Mr. Street's complaint and send Mr. Street a copy of the complaint.

9. In July, 2006, the Respondent retained \$100 or \$200 of Mr. Street's \$300.

10. The Respondent never filed Mr. Street's lawsuit.

11. From July, 2006 until after Mr. Street filed a complaint against the Respondent with the Board, the Respondent never communicated with Mr. Street.
12. On October 25, 2006, Mr. Street filed a complaint against the Respondent with the Board of Professional Responsibility.
13. On October 27, 2006, the Board asked the Respondent for his written response to Mr. Street's complaint.
14. The Respondent failed to respond to the Board's October 27, 2006 letter.
15. On November 17, 2006, the Board sent the Respondent a second Notice of Wesley Street's complaint and asked for the Respondent's written response.
16. The Respondent failed to respond to the Board's November 17, 2006 letter.
17. On December 4, 2006, the Board sent the Respondent by regular and certified mail a third notice of the complaint and asked for the Respondent's written response.
18. The Respondent's response dated December 12, 2006 was received by the Board.
19. The Respondent never refunded Mr. Street's \$100 the Respondent kept as a filing fee.

Alleen Ferguson/Beverly Johnson - File No. 29649(c)-5

20. On July 12, 2002, Aleen Ferguson hired the Respondent to file suit against Paul Ligon.
21. Aleen Ferguson paid the Respondent \$2,000.00.
22. On January 1, 2003, Alleen Ferguson died.

23. Ms. Ferguson's daughter, Beverly Johnson, hired the Respondent after Ms. Ferguson's death to probate the estate and pursue the case against Paul Ligon.

24. The Respondent did not provide Ms. Johnson with a contract or written engagement letter.

25. Ms. Johnson wrote the Respondent on April 17, 2003.

26. In Ms. Johnson's April 17, 2003 letter, Ms. Johnson asked the following:

We do have some questions, which we would like to have answered in a written response.

1. I don't know how to properly ask this but are you certified to handle the probate of our mother's estate or would another lawyer be required? Since you talked to my mother and handled her suit from the beginning I do think you have a very good idea of the problems she incurred.
2. What would be the steps involved to take this through the legal system?
3. What time frame would you estimate each step would take?
4. I understand you believe that sufficient funds are in the account to take this action.
5. What is your assessment about the success of this effort and what do you feel will be obtained by the legal action?

27. On June 18, 2003, Ms. Johnson telephoned the Respondent who agreed to meet with Ms. Johnson and Ms. Johnson's brother and sister regarding Ms. Ferguson's estate while Ms. Ferguson's sister was in Nashville.

28. The June, 2003 meeting with Ms. Johnson, Ms. Johnson's brother and sister and the Respondent did not occur because the Respondent would not accept or return Ms. Johnson's calls.

29. On July 15, 2003, Ms. Johnson wrote the Respondent.

30. Ms. Johnson's July 15, 2003 letter to Respondent states:

On April 17, 2003 I sent you a letter asking about what needed to be accomplished and by whom (copy enclosed). Even though I requested a written response, so I could discuss it with my sister and brother, you have never given a written response. You did call to tell me you had initiated the legal action "Notice of Non-Suit", dated April 16, 2003, and said you had received my letter of April 17, 2003. During that same telephone call you said you would prepare the documents necessary to name me as executor of Mother's estate also do the legal actions to somehow restart the suit between my mother and Paul Ligon so we our family could finish what my mother desired.

31. Ms. Johnson's July 15, 2003 letter to the Respondent further states:

On June 18, 2003 I called and told you my sister Marilyn, my brother Eddie and I would all be in Nashville on the date of June 26, 27 and 28th so we could sign the documents concerning "Probation of my Mother's estate and the settlement of my mother's legal action against Paul Ligon". I called your office on Monday, Tuesday, Wednesday and twice on Thursday of the week of July 23, 2003 and left messages on your answering machine. Finally after telling your receptionist you had not returned any of my calls you called in the late afternoon of June 26th and said you had the paper work ready and we could sign it Saturday the 28th and you would call back and tell me what time and where we would all meet to sign the papers. Late afternoon of Friday June 27th I called your office and told them that I had still not heard from you. We stayed by the phone all day on Saturday the 28th plus trying to call you but I never heard from you and have not heard from you since.

Our family all get together about three times a year and I feel this was very

unprofessional of you to give us a date to meet, sign the papers you said you had prepared and then fail to further respond as to a time and placed.

In reference to my letter of April 17, 2003, I assume you by your action that you think you can represent our family in these actions but I still request short written answers to ... in the next two weeks if you are still going to help us in this matter.

32. The Respondent answered Ms. Johnson's April 17, 2003 questions on July 29, 2003.

33. The Respondent filed the Petition for Letters of Administration in Estate of Aileen Ferguson on August 8, 2003.

34. A probate hearing occurred on September 2, 2003.

35. The Respondent was not present when the case was called at this probate hearing on September 2, 2003.

36. Ms. Johnson addressed the Court without the Respondent being present on September 2, 2003.

37. Ms. Johnson wrote the Respondent on December 15, 2003 the following:

As you are aware, you took a non-suit in this case early last spring. As you are also aware, one of the only reasons we probated Mrs. Ferguson's estate was to preserve her interest in this pending litigation regarding her estate. As this calendar year ends, it seems to me that the time to re-file our suit within the appropriate statute of limitations is fast approaching. After reviewing this letter and the enclosed materials herein, I request that you contact me in writing as soon as possible to ensure that our interest in this cause has been preserved.

38. Ms. Johnson further stated in her December 15, 2003 letter to the

Respondent:

Accordingly, we simply ask that you stay in telephone contact with us over the next few weeks and months so we can tie these loose ends down, and proceed with due diligence in this matter. We want to conclude the litigation regarding Mrs. Ferguson's estate, probate her estate as efficiently as possible, and protect the interests to Mrs. Johnson and any of her siblings with respect to their mother's estate within the next calendar year. We need you to lead us in this endeavor; I know we can count on you.

39. Ms. Johnson wrote the Respondent again on March 4, 2004 stating:

This time delay has allowed Mr. Ligon to make major improvements to my mother's house. This large expenditure of money by Mr. Ligon and the changes to the historical look and feel our family cherishes has greatly altered the value equation of this property to all involved. This has occurred because of delays in proceeding with the litigation in this cause.

40. Ms. Johnson further stated in her March 4, 2004 letter to the Respondent:

I have no heard from you since my sister, Marilyn, my brother, Ed, my husband, David, and I met with you in your office on December 27, 2003. During this meeting I signed the papers which you said you would immediately file and as of this date, March 4, 2004, more than two months have past and you have still not filed them.

41. On March 26, 2004, the Respondent filed a Petition styled Estate of Aileen Ferguson v. Ligon, AmSouth Bank, and Chase Manhattan Mortgage.

42. On March 25, 2004, the Respondent wrote Ms. Johnson the following:

I am still awaiting word from the clerk's office as to whether or not the Court has signed the temporary restraining order that I also filed with the Petition against Mr. Ligon. I am seeking to prevent him from selling the home or further encumbering it until such time as our case is heard.

43. In June, 2004, the Respondent non-suited the Fergerson Estate's claim against AmSouth Bank.

44. On August 30, 2004, Ms. Johnson wrote the Respondent the following letter:

This unprofessional conduct by you continues in our interaction with you. Over two years have now passed in what you assured us was not that difficult of a legal issue. During the last eighteen months and despite repeated correspondence to you and numerous telephone calls we have yet to receive any evidence of action by you to move this case along in any manner, much less a timely and professional manner.

45. On September 9, 2005, Ms. Johnson wrote the Respondent the following letter:

We have not heard from you since December 2004 at the hearing to set the date to go to trial on the property at 4208 Nebraska Avenue in Nashville. The judge told you to set the trial date with his clerk after you communicated with Mr. Ligon's attorney. Outside the courtroom you said you would set that date in late January or February 2005. At that meeting with myself, my husband David and my brother Ed you said you would go ahead and the financial information from Mr. Ligon and you would send us a copy to review before you sent it. You have done nothing to date

that we know of and we would like to have a written response as to the reasons. I have called you and you have not returned my telephone calls.

46. Ms. Johnson wrote the Respondent on September 30, 2005 the following

letter:

As we told you the Lignons have the property at 4208 Nebraska Avenue in Nashville up for sale and this weekend they held an open house. We were glad to hear you state that there was a restraining order forbidding the Lignons from selling the house and that you would telephone Mr. Ligon's lawyer on September 23, 2005 so he could notify his client. I did not think about it at the meeting, but should you also send a letter to the Real Estate agency as well?

Would you please send us a copy of the restraining order for our files? You told us to call you on Friday the 2P after you communicated with Mr. Ligon's attorney to get the date set for the trial. We called on both the 23rd and 26th but have not heard from you as of today about the trial date.

47. Ms. Johnson repeatedly requested from the Respondent but the Respondent did not provide Ms. Johnson with a copy of the temporary restraining order.

48. On February 14, 2006, Ms. Johnson wrote the Respondent the following

letter:

I have not received anything from you since our meeting and letter of November 30, 2005 including the items previously listed below.

1. Would you please send us a copy of the restraining order concerning "Mr. Ligon and his ability to sell the property at 4208 Nebraska Avenue" as you promised for our files?

2. You told us to call you on Friday the 23rd after you communicated with Mr. Ligon's attorney to get the date set for the trial. I did call your office on the 23'd and the 26th and left a message but still do not have a date from you.

3. Please send us the documentation you plan to use to get the financial information from Mr. Ligon.

49. The Respondent represented the estate at a hearing against Paul Ligon on June 19, 2007.

50. The Respondent has not communicated with Ms. Johnson since the June 19, 2007 hearing, but the Probate Judge has not yet entered a decision.

Felita Lee/Andre Blackburn - Nos. 29148 and 29711

51. The Respondent agreed to defend Andree Blackburn on criminal charges and on September 2, 2005, Mr. Blackburn's mother, Felita Lee, paid the Respondent \$500 to represent Mr. Blackburn.

52. The Respondent did not provide Ms. Lee or W. Blackburn with any receipt or written contract or engagement letter.

53. After accepting Ms. Lee's \$500 to defend W. Blackburn, the Respondent took no action in his representation of W. Blackburn.

54. Mr. Blackburn's case was continued on March 8, 2006 and March 17, 2006 when the Respondent failed to appear to represent W. Blackburn.

55. The Respondent again failed to appear at Mr. Blackburn's arraignment on March 29, 2006.

56. The Respondent would not accept or return Ms. Lee's calls about W. Blackburn.

57. On May 9, 2006, Ms. Lee filed a complaint against the Respondent with the Board of Professional Responsibility.

58. On May 25, 2006, Respondent again failed to appear at a hearing scheduled for that day in Mr. Blackburn's criminal case and it was again continued.

59. On June 7, 2006, the Respondent wrote to the Board of Professional Responsibility the following letter in response to the Complaint by Ms. Lee:

I currently represent Ms. Lee's son in Division Five of the Criminal Court for Davidson County, Tennessee on the charges for which she and her son retained me. There was an error by the clerk of the court in notifying me that his case had been indicted. This oversight has been corrected and I am now listed as his attorney of record.
(Emphasis added)

60. Mr. Blackburn's criminal court file indicates that on June 29, 2006, the following notation was made:

substitute Mr. Mayo

61. Mr. Blackburn filed a complaint against the Respondent with the Board on November 29, 2006.

62. On December 12, 2006, the Respondent wrote the Board of Professional Responsibility in response to the Complaint by Mr. Blackburn and offered a different explanation, stating the following:

As of the date Mr. Blackburn was indicted, I had not yet been fully retained and so I had not informed the trial court that I would be representing Mr. Blackburn. Upon the date of his arraignment the trial court was under no obligation to inform me that Mr. Blackburn was to appear in court as I was not listed as the attorney of record. After speaking with Ms. Lee, I then informed the court that I

would go ahead and represent Mr. Blackburn.
I did this even though I had not been paid in full. (Emphasis added)

63. The Respondent further wrote the Board on December 12, 2006:

I filed a Request of Discovery on his behalf and received the information provided to me by the District Attorney General's office.

64. Mr. Blackburn's criminal court file reflects that the Request for Discovery was actually filed by Jonathan Levy, Assistant Public Defender, not the Respondent, and that the Request was made on March 30, 2006.

65. The Respondent further states in his December 12, 2006 letter:

I told Mr. Blackburn that I would forward him a copy of his Discovery information.

66. The Respondent did not forward to Mr. Blackburn a copy of his discovery information.

67. The Respondent relocated his law office while representing Mr. Blackburn without advising Ms. Lee and/or Mr. Blackburn.

68. The Respondent failed to accept or return Mr. Blackburn's calls.

69. Mr. Blackburn's case was set for trial on February 5, 2007.

70. On January 17, 2007, the Respondent filed a Motion to Withdraw from Mr. Blackburn's case.

71. The Respondent's Motion to Withdraw was granted and Mr. Blackburn's case was taken off the trial docket.

72. The Board of Professional Responsibility has previously publicly censured Respondent on January 17, 2007, for the following:

FILE NO. 29363c-5-SG

The Respondent was retained in August, 2004, and paid in full \$1,000 to represent the Complainant on a Juvenile Court case regarding visitation and legitimation of a minor child. The Complainant is currently incarcerated. The Respondent has failed to respond to the Complainant's five (5) letters requesting information about his case. The Respondent filed an Amended Petition for Visitation and Legitimation on behalf of the Complainant, but has been unsuccessful in serving the mother of the Complainant's child. The Respondent's neglect and failure to act with reasonable diligence and promptness in representing the client violates Rules 1.3 and 3.2 of the Tennessee Rules of Professional Conduct. The Respondent's failure to respond to the Complainant's letters and/or accept the Complainant's calls violates Rules 1.4 and 8.4(a)(d).

FILE NO. 29107c-5-sg

The Complainant retained the Respondent for a divorce on September 8, 2003. The Respondent has failed to respond to the Complainant's inquiries and failed to respond to her certified letters. The Respondent filed the Complainant's divorce on October 8, 2003. The Complainant was incarcerated from approximately August, 2004 until December, 2005. The Complainant's final decree of divorce was entered July 13, 2006. Approximately September 1, 2006, the Respondent forwarded to the Complainant her \$8,717.58 which the Respondent had been holding in trust. By letter dated September 29, 2006, the Respondent provided the Complainant with a copy of her final decree. The Respondent's neglect of Complainant's divorce and failure to respond to the Complainant's inquiries about her divorce violate Rules 1.3; 1.4; 3.2 and 8.4 of the Tennessee Rules of Professional Conduct.

II. CONCLUSIONS OF LAW

73. The Respondent violated Rules 1.3 and 8.4(a) of the Tennessee Rules of Professional Conduct by failing to act with reasonable diligence and promptness in representing or declining to represent Wesley Street.

74. The Respondent violated Rules 1.4 and 8.4(a) of the Tennessee Rules of Professional Conduct by failing to keep Wesley Street reasonably informed.

75. The Respondent violated Rules 8.1 and 8.4(a) of the Tennessee Rules of Professional Conduct by failing to promptly respond to the Board's requests for information regarding Wesley Street's complaint.

76. The Respondent violated Rules 1.3 and 8.4(a) of the Tennessee Rules of Professional Conduct by failing to act with reasonable diligence and promptness in representing Beverly Johnson.

77. The Respondent violated Rules 1.4 and 8.4(a) of the Tennessee Rules of Professional Conduct by failing to keep Beverly Johnson reasonably informed and by failing to comply with reasonable requests for information.

78. The Respondent violated Rules 3.2 and 8.4(a) of the Tennessee Rules of Professional Conduct by failing to make reasonable efforts to expedite Beverly Johnson's litigation.

79. The Respondent violated Rules 1.3; 3.2 and 8.4(a)(d) of the Tennessee Rules of Professional Conduct by failing to act with reasonable diligence and promptness in representing Andre Blackburn.

80. The Respondent violated Rules 1.4 and 8.4(a) of the Tennessee Rules of Professional Conduct by failing to keep Andre Blackburn reasonably informed and by failing to comply with reasonable requests for information.

III. AGGRAVATING AND MITIGATING FACTORS

81. The Committee finds that Respondent's indifferent and at times almost cavalier attitude displayed in the hearing regarding the disciplinary process itself is an aggravating factor.

82. The Committee finds that Respondent's prior discipline by the Board for similar conduct occurring at a different time is an aggravating factor.

83. The Committee finds that having multiple offenses in the current proceedings is an aggravating factor.

84. The Committee finds that the absence of a dishonest or selfish motive on the part of Respondent is a mitigating factor.

85. The Committee finds that Respondent is a relatively young lawyer, that the current problems appear to have started for Respondent approximately four (4) years into his practice, were not corrected, and have continued for four (4) years thereafter due to the lack of a check or balance on Respondent's practice other than the disciplinary process itself, all of which is considered as a mitigating factor.

86. The Committee finds that Respondent's having made some effort to rehabilitate himself by utilizing a receptionist is a mitigating factor.

IV. JUDGMENT

IT IS, THEREFORE, ORDERED by this Disciplinary Hearing Committee empaneled by the Tennessee Supreme Court as follows:

1. The Respondent, Matthew F. Mayo, shall be suspended from the practice of law in Tennessee for a period of THREE (3) MONTHS, with all but FORTY-FIVE (45) DAYS of said suspension being suspended pending strict compliance by Respondent with the terms of probation set forth in the following paragraph.

2. The Respondent, Matthew F. Mayo, shall be placed on probation for a period of ONE (1) YEAR, which probation may be revoked and the remainder of the suspension set forth above imposed, should Respondent fail to comply with any of the following terms of his probation:

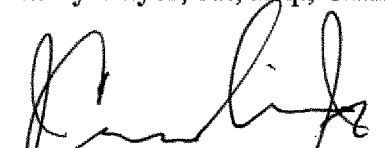
- A. Respondent shall pay all of the costs of this Disciplinary Proceeding within 180 days of the date of this Order.
- B. Respondent shall enroll in and successfully complete the Law Office Management class taught by John Kitch, Esq. at the Nashville School of Law, which class will be offered in the Fall of 2008; or, in the alternative, Respondent may contact Mr. Kitch directly and made arrangements to take an in-person condensed study of said class, which would be offered by Mr. Kitch over the course of two, eight-hour days, at a cost to Respondent of \$1,000.00. Respondent shall file with the Board proof of his successful completion of the alternative chosen.

- C. Respondent shall pay the sum of \$150.00 to Complainant Wesley Street as restitution within 180 days of the date of this Order.
- D. For a period of ONE (1) YEAR, Respondent shall obtain and utilize the services of a mentor to monitor the operation of his law practice and provide advice and suggestions regarding same, which monitor shall comply with the reporting requirements prescribed by the Board.

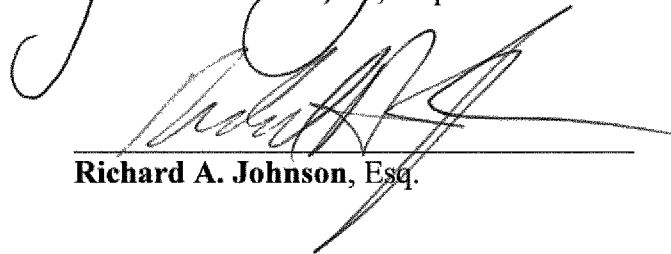
Dated this 20th day of February, 2008.



Larry Hayes, Jr., Esq., Chair



James A. Crumlin, Jr., Esq.



Richard A. Johnson, Esq.