

FILED

IN DISCIPLINARY DISTRICT VI : 2011 JUN 15 PM 4: 27
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY OF PROFESSIONAL
OF THE RESPONSIBILITY
SUPREME COURT OF TENNESSEE
EXEC. SEC.

IN RE: THOMAS HOLLAND MCKINNIE, JR.

Respondent, BPR No. 15580
An Attorney Licensed to
Practice Law in Tennessee
(Williamson County)

No. 2010-1958-6-KH

ORDER AND JUDGMENT OF HEARING PANEL

This cause came before the Hearing Panel on the 8th day of June, 2011, for a final hearing on the Board's Amended Petition for Discipline. At the hearing, the panel heard testimony of the Respondent, Thomas Holland McKinnie, Jr., Williamson County Clerk & Master Elaine Beeler and Williamson County attorney Mark Puryer, considered thirteen (13) exhibits entered into evidence and heard argument of counsel. After hearing the proof and considering the evidence, the panel makes the following findings, Order and Judgment:

1. The panel finds, by a preponderance of the evidence, that the Respondent violated Rules of Professional Conduct 1.15(a), 8.4(a), 8.4(b) and 8.4(c) (specifically finding that Respondent engaged in a conduct involving dishonesty as a finding of violation of Rule 8.4(c)).
2. The conduct giving rise to the hearing panel's findings is, to a great extent, not disputed. It is not disputed that a series of checks were written between the Respondent's personal AmSouth/Regions bank account and the Respondent's law firm trust account and that the series of checks were written by the Respondent with the Respondent's knowledge that the accounts had insufficient funds to cover the checks written, conduct commonly known as "check kiting."

3. It is a finding of the hearing panel that the Respondent anticipated twenty thousand dollars (\$20,000.00) would be placed in his trust account from a nonrefundable retainer and while he anticipated the funds to be received when the first check was written from his trust account to his personal account, he had actual knowledge that the funds had not been received when the remaining checks, referenced in Exhibits 2, 3, 4, 5, 6, 7, 8, 9 and 10 were submitted between his personal account and trust account.

4. Having determined that the above ethical rules were violated, the panel further determined that the Respondent acted knowingly when he committed the violations.

5. The panel has further determined that the injury caused by the lawyer's misconduct was the loss of Seven Thousand, Six Hundred Dollars (\$7,600.00) by First Tennessee Bank, which has now been repaid by the Respondent as a condition of his criminal charges being retired.

6. Based upon these findings, the panel determines that ABA Standard for Imposing Lawyer's Sanctions §5.12 would be the appropriate sanction for the Respondent's conduct absent any mitigating circumstances.

7. The panel finds, however, that the following mitigating circumstances, set forth in ABA Standard for Imposing Lawyer's Sanctions §9.32, exist:

a. Absence of a prior disciplinary record, established by the proof presented at trial that the Respondent has practiced without a finding of an ethical violation in his nineteen (19) years of practice;

e. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

g. Character or reputation, as established by the testimony of both Clark & Master Beeler and Attorney Mark Puryer;

k. Imposition of other penalties or sanctions, specifically, the 100 hours of community service ordered as a condition for the retirement of the Respondent's criminal charges; and,


l. Remorse.

8. Based upon the above findings, it is the ruling of the panel that the appropriate sanctions for the Respondent for his violations of Rules of Professional Conduct 1.15(a), 8.4(a), 8.4(b) and 8.4(c) are as follows:

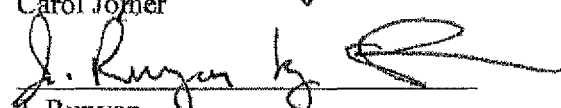
- a. Respondent shall be placed on two (2) years probation for his conduct; and
- b. Respondent shall be taxed with all costs of this proceeding.

SO ENTERED this 13 day of June, 2011.

HEARING PANEL:

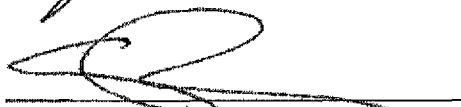

Christopher Pittman, Chair


Carol Joiner


J. Runyon

CERTIFICATE OF SERVICE

I hereby certify that an accurate copy of the foregoing Order has been mailed or delivered to Krisann Hodges, Disciplinary Counsel, 10 Cadillac Drive, Suite 220, Brentwood, TN 37027 and Robert Lee Davies, Attorney for Respondent, 509 New Hwy 96 West, Suite 201, Franklin, TN 37064, by United States mail on the 13 day of June, 2010.


Christopher J. Pittman

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

FILED

2011 JUL 18 PM 4:11

EXEC. SEC'Y

[Signature] EXEC. SEC'Y

IN RE: THOMAS HOLLAND MCKINNIE, JR. DOCKET NO. 2010-1958-6-KH
Respondent, BPR No. 15580
An Attorney Licensed
to Practice Law in Tennessee
(Williamson County)

AGREED AMENDED ORDER AND JUDGMENT OF HEARING PANEL

This cause came before the Hearing Panel on the 8th day of June 2011, for a final hearing on the Board's Amended Petition for Discipline. At the hearing, the panel heard testimony of the Respondent, Thomas Holland McKinnie, Jr., Williamson County Clerk and Master Elaine Beeler and Williamson County attorney Mark Puryer, considered thirteen (13) exhibits entered into evidence and heard argument of counsel. After hearing the proof and considering the evidence, the panel makes the following findings, Order and Judgment:

1. The panel finds, by a preponderance of the evidence, that the Respondent violated Rules of Professional Conduct 1.15(a), 8.4(a), 8.4(b) and 8.4(c) (specifically finding that Respondent engaged in a conduct involving dishonesty as a finding of violation of 8.4(c)).
2. The conduct giving rise to the hearing panel's findings is, to a great extent, not disputed. It is not disputed that a series of checks were written between the Respondent's personal AmSouth/Regions bank account and the Respondent's law firm trust account and that the series of checks were written by the Respondent with the Respondent's knowledge that the accounts had insufficient funds to cover the checks written, conduct commonly known as "check kiting."

3. It is a finding of the hearing panel that the Respondent anticipated twenty thousand dollars (\$20,000.00) would be placed in his trust account from a nonrefundable retainer and while he anticipated the funds to be received when the first check was written from his trust account to his personal account, he had actual knowledge that the funds had not been received when the remaining checks, referenced in Exhibits 2, 3, 4, 5, 6, 7, 8, 9 and 10 were submitted between his personal account and trust account.

4. Having determined that the above ethical rules were violated, the panel further determined that the Respondent acted knowingly when he committed the violations.

5. The panel has further determined that the injury caused by the lawyer's misconduct was the loss of Seven Thousand, Six Hundred Dollars (\$7,600.00) by First Tennessee Bank, which has now been repaid by the Respondent as a condition of his criminal charges being retired.

6. Based upon these findings, the panel determines that ABA Standard for Imposing Lawyer's Sanctions §5.12 would be the appropriate sanction for the Respondent's conduct absent any mitigating circumstances.

7. The panel finds, however, that the following mitigating circumstances, set forth in ABA Standards for Imposing Lawyer's Sanctions §9.32, exist:

a. Absence of a prior disciplinary record, established by the proof presented at trial that the Respondent has practiced without a finding of an ethical violation in his nineteen (19) years of practice;

e. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

g. Character or reputation, as established by the testimony of both Clerk &

Master Beeler and Attorney Mark Puryer;

k. Imposition of other penalties or sanctions, specifically, the 100 hours of community service ordered as a condition for the retirement of the Respondent's criminal charges; and,

l. Remorse.

8. Based upon the above findings, it is the ruling of the panel that the appropriate sanctions for the Respondent for his violations of Rules of Professional Conduct 1.15(a), 8.4(a), 8.4(b) and 8.4(c) are as follows:

a. Respondent shall be suspended from the practice of law for two (2) years, pursuant to Tenn. S. Ct. R. 9, §4.2. However, pursuant to Tenn. S. Ct. R. 9, §8.5, the entire period of suspension shall be probated. The period of probation is subject to the following conditions:

- i. Respondent shall perform three (3) hours of pro bono service each month during the probationary period.
- ii. Respondent shall attend an additional three (3) hours of continuing legal education each year of his probationary period.

b. Respondent shall be taxed with all costs of this proceeding.

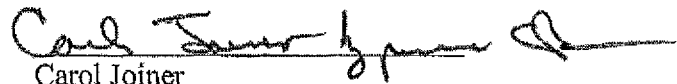
9. This judgment may be appealed pursuant to Section 1.3 of Supreme Court Rule 9 by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the writ. See Tenn. Code Ann. § 27-8-104(a) and 27-8-106.

SO ENTERED this _____ day of _____, 2011.

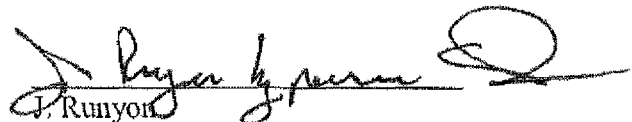
HEARING PANEL:



Christopher Pittman, Chair



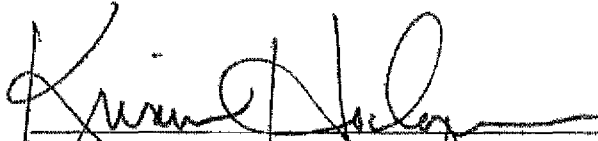
Carol Joiner




J. Runyon

CONSENTED TO BY:

Nancy Jones
Chief Disciplinary Counsel



By: Krisann Hodges, BPR No. 017086
Disciplinary Counsel
Board of Professional Responsibility
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Counsel for Respondent
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(615) 550-2800