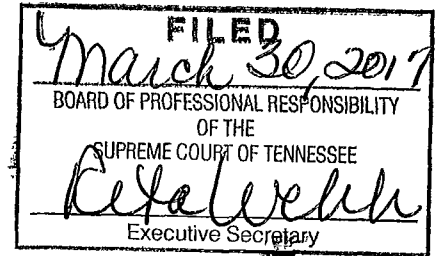


IN DISCIPLINARY DISTRICT V
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: THOMAS HOLLAND MCKINNIE,
BPR No. 15580, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Davidson County)

DOCKET NO. 2016-2636-5-AJ

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came to be heard on March 24, 2017, at 3:00 p. m. for final hearing on the Board of Professional Responsibility's (Board) Petition for Discipline before Hearing Panel Members C. K. McLemore, III, Craig V. Gabbert, Jr., and Daniel C. Todd. Alan D. Johnson, Disciplinary Counsel, appeared for the Board. Mr. McKinnie did not appear.

STATEMENT OF THE CASE

A Petition for Discipline was filed against Mr. McKinnie on September 23, 2016. On October 31, 2016, Mr. McKinnie requested additional time to file a response, upon which Disciplinary Counsel agreed. Mr. McKinnie failed to file a response within the time agreed to by Disciplinary Counsel and a motion for default was filed. On January 31, 2017, the Hearing Panel directed Mr. McKinnie to show cause within fifteen days why default judgment should not be granted. Disciplinary Counsel served the show cause order on Mr. McKinnie, and he did not file a response or otherwise answer the Petition. A Default Judgment was entered against him on February 17, 2016. Pursuant to the Default Judgment, all allegations contained in the Petition for Discipline are deemed admitted.

STATEMENT OF THE FACTS
File No. 40655c-5-BG – Complaint of Carrie Smithson

Thomas Holland McKinnie was appointed the trustee of a testamentary trust that was created in August of 2007 for Carrie Smithson, who was then a minor and is now emancipated. The trust provided that the trustee would apply the net income from the trust for the support, education, and maintenance of the beneficiary and then invest the remainder.

The bank account titled Dorothy H. Hunt Estate by T. Holland McKinnie, Jr., Executor was opened in August, 2012 and had a balance of \$293,500.32. By the end of September, 2014, the account had a deficit balance of \$2,745.09. The bank statements reveal that although some of the funds were paid to the beneficiary, the majority of the funds were paid to Mr. McKinnie.

During the period of time the account was opened, August of 2012 through September of 2014, Mr. McKinnie wrote checks to himself from the trust account in the total amount of \$196,469.05. The last check written to himself was on September 10, 2014. Mr. McKinnie closed the trust account on October 9, 2014, after the funds had been depleted. In January of 2015, Mr. McKinnie failed to pay Ms. Smithson's school tuition, which resulted in the termination of her enrollment.

At the hearing of this case, the Board submitted exhibits into the record, which included bank statements supporting the allegations of misappropriation, and Mr. McKinnie's disciplinary history.

CONCLUSIONS OF LAW

Pursuant to Tenn. S. Ct. R. 9, § 1, the license to practice law in this state is a privilege and it is the duty of every recipient of that privilege to conduct himself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

Acts or omissions by an attorney which violate the Rules of Professional Conduct (hereinafter “RPC”) of the State of Tennessee shall constitute misconduct and be grounds for discipline.

Because the allegations in the Petition for Discipline have been deemed admitted pursuant to the Order for Default Judgment, the Board has met its burden of proof, and established that Mr. McKinnie has violated the following Rules of Professional Conduct.

1. Mr. McKinnie’s misappropriation constitutes a criminal act in violation of Rules of Professional Conduct 8.4(b).
2. Mr. McKinnie engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rules of Professional Conduct 8.4(c).
3. By violating the aforementioned Rules of Professional Conduct, Mr. McKinnie violated Rules of Professional Conduct 8.4(a).

When disciplinary violations are established by a preponderance of evidence, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, (“ABA Standards”) pursuant to Section 15.4, Rule 9 of the Rules of the Supreme Court.

The following ABA Standards apply in this matter:

- 5.11 Disbarment is generally appropriate when:
- (a) 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.
 - (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.

AGGRAVATING FACTORS

Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

1. The vulnerability of Mr. McKinnie's victim is an aggravating circumstance justifying an increase in discipline.
2. Mr. McKinnie's substantial experience in the practice of law, having been licensed in Tennessee in 1992, is an aggravating circumstance justifying an increase in discipline.
3. Mr. McKinnie's pattern of misconduct is an aggravating circumstance justifying an increase in discipline.
4. Mr. McKinnie's multiple offenses are an aggravating circumstance justifying an increase in discipline.
5. Mr. McKinnie's disciplinary history is an aggravating circumstance justifying an increase in discipline.
6. Mr. McKinnie's dishonest and selfish motive is an aggravating circumstance justifying an increase in discipline to be imposed.
7. Mr. McKinnie's illegal conduct is an aggravating circumstance justifying an increase in discipline.

Mr. McKinnie was the trustee of the trust established for the benefit of a minor. The trust was established for the support, education, and maintenance of the beneficiary. By the time Mr. McKinnie had depleted the trust, he was unable to pay tuition of the beneficiary resulting in her inability to enroll in school at the beginning of 2016. If ever there was a vulnerable victim, it is the beneficiary of the trust managed by Mr. McKinnie.

The bank statements and copies of checks attached to the Petition for Discipline demonstrate a pattern of misconduct and multiple offenses. Over a period of years, Mr. McKinnie wrote checks from the Smithson Trust made payable to himself.

On September 13, 2011, Mr. McKinnie was suspended from the practice of law for two (2) years for improperly depositing checks between his trust account and personal account, resulting in a loss to First Tennessee Bank in the amount of \$7,500.00. On June 28, 2013, Mr. McKinnie was suspended from the practice of law for two (2) years for knowingly writing himself a check from his trust account that created an overdraft, and failing to account for a portion of the money he paid himself. On June 26, 2015, Mr. McKinnie was suspended from the practice of law for one (1) year for failing to pursue his clients' case and misleading them about the status, for not providing the client a settlement sheet after settlement and, leading the client to believe he was negotiating to reduce a subrogation claim after it had been paid. Given Mr. McKinnie's history of inability to properly handle third-party funds, it is clear that he has learned nothing from his previous disciplinary sanctions. As the Supreme Court observed in *Sneed v. Board of Professional Responsibility*, 301 S.W.3d 603, 618 (Tenn. 2010), a lawyer merits disbarment when "he has not heeded lessons from facing numerous prior disciplinary proceedings and, in fact, continues to repeat the same mistakes." Mr. McKinnie's conduct cannot be characterized as a mistake.

Mr. McKinnie's actions constitute theft. Tennessee Code, Section 39-14-103(a) defines theft of property as follows: "A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent."

Mr. McKinnie's brazen theft demonstrates a dishonest and selfish motive. Stealing money from clients is perhaps the most selfish act a lawyer can commit. *Rayburn v. Board of Professional*

Responsibility, 300 S.W.3d 654 (Tenn. 2009) (Lawyer who withheld settlement proceeds from clients found to have acted with a dishonest and selfish motive).

CONCLUSION

Based on these findings of fact and conclusions of law, it is the judgment of the Hearing Panel that Mr. McKinnie shall be disbarred pursuant to Tenn. Sup. Ct. R. 9, § 12.1. As a condition of reinstatement to the practice of law, Mr. McKinnie shall pay restitution to Carrie Smithson in the amount of \$196,469.05, plus interest at the judgment rate of interest provided by Tennessee Law. Interest is to be calculated from the date of the last check written by Mr. McKinnie, September 10, 2014, at the judgment rate of interest in effect on September 10, 2014.

CKM
CVG
DCT

The costs of this cause, as set forth in Tenn. Sup. Ct. R. 9, § 31.3 (a), will be taxed to Mr. McKinnie following entry of this judgment pursuant to the procedures established in Tenn. Sup. Ct. R. 9, § 31.3 (a).

IT IS SO ORDERED,

CK MP3 G

C. K. McLemore, II, Hearing Panel
Chair

Craig V. Gabbert by CK MP3 G

Craig V. Gabbert, Jr., Hearing Panel Member with permission

Daniel C. Todd by CK MP3 G


Daniel C. Todd, Hearing Panel Member with permission

NOTICE TO RESPONDENT

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 3.3.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order, has been sent to Respondent Thomas Holland McKinnie, 479 Sam Ridley Parkway, Suite 105, Box 249, Smyrna, TN 37167, by U.S. First Class Mail, and hand-delivered to Alan D. Johnson, Disciplinary Counsel, on this the 31st day of March, 2017.

A handwritten signature in cursive script that reads "Rita Webb". The signature is written in black ink and is positioned above a horizontal line.

Rita Webb
Executive Secretary