

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

FILED

2011 FEB -3 PM 3:36

In Re: Samuel Mingledorff  
BPR #17490  
Attorney licensed to practice  
Law in Tennessee (Wilson County)

Docket #2010-1941-4-RS

BOARD OF PROFESSIONAL  
RESPONSIBILITY

*REW*  
EXEC. SEC'Y

**ORDER CORRECTING FINDINGS OF FACT AND CONCLUSIONS OF LAW**

It appears to the Panel that an error of wording is found in paragraph 8, subparagraph c under the "conclusions" of the Panel which reads:

- c. Failing to respond to the Board violates a duty owed to the profession of the practice of law. Failing to respond makes it difficult for the Board to fully and properly investigate complaints as well as fairly determine and dispense that discipline or aid to the lawyer necessary for the modification of the unacceptable behavior pattern.

It is therefore ordered that the above subparagraph is deleted in its entirety and substituted for this subparagraph is the following:

- c. Failing to respond to the Board violates a duty owed to the profession of the practice of law. Failing to respond makes it difficult for the Board to fully and properly investigate complaints as well as fairly determine and dispense that discipline or aid to the lawyer necessary for the modification of the unacceptable behavior pattern.

Dated: February 2, 2011

*Richard W. Rucker*  
Richard W. Rucker, Chairman

*Christina Henley Duncan by RW*  
Christina Henley Duncan

*John R. White by RW*  
John R. White

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

**FILED**  
2011 JAN 31 PM 5:03

In Re: Samuel Mingledorff  
BPR #17490  
Attorney licensed to practice  
Law in Tennessee (Wilson County)

Docket #2010-1941-4-RS

BOARD OF PROFESSIONAL  
RESPONSIBILITY  
*[Signature]*  
EXEC. SEC'Y

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The petition of the Board of Professional Responsibility of the Supreme Court of Tennessee came on to be heard before the Disciplinary Panel of Christina H. Duncan, John R. White, and Richard W. Rucker, Chairman, on November 8, 2010. Present were the Panel, Randall Jason Ivey, Disciplinary Counsel, and the court reporter. Samuel Mingledorff was not present. After waiting 15 minutes, Mr. Mingledorff was called by telephone at the number appearing on his letterhead.

Mr. Mingledorff answered and from the sound of his voice, the Chairman was able to determine that Mr. Mingledorff was suffering from an upper respiratory ailment. Mr. Mingledorff stated that he was sick. The Chairman advised Mr. Mingledorff of the hearing and of the presence of the others. Mr. Mingledorff stated that he had no knowledge of the date or time of the hearing. Mr. Mingledorff was asked by the Chairman if he was planning to appear and present a defense. Mr. Mingledorff stated that he would like to have the opportunity at sometime to do so. The Chairman asked Mr. Mingledorff if he had anything else that he would like to say. Mr. Mingledorff said that he did not. After some comments about him being ill, the Chairman asked Mr. Mingledorff again if he had anything that he would like to say and Mr. Mingledorff said again that he did not.

The Chairman asked Mr. Mingledorff why he had not responded to the motion for default judgment and the other documents that had been sent to him. Mr. Mingledorff advised that he had not received the various items that were mentioned by the Chairman and that he had responded to the items which he did receive. Mr. Mingledorff confirmed that his address at 45 Crosswinds Dr., Mount Juliet, Tennessee was the correct address.

After this exchange Mr. Mingledorff was asked again if he had anything else that he wanted to say. Mr. Mingledorff again referred to being sick.

At no time during the phone call did Mr. Mingledorff ever ask for a continuance based on either being sick or because of failure to receive any notifications.

The phone call was ended. Randall Spivey, Disciplinary Counsel, was invited to make any comments that he desired. He did so pointing out that the Board had requested disbarment and the basis for that had been presented. He went on to point out that an alternative punishment of suspension had been included within his written Proposed Findings of Fact and Conclusions of Law. Upon questioning by the Panel, Mr. Spivey stated that all documents that had been sent to Mr. Mingledorff, had been sent to the same address which appeared on the letterhead of Mr. Mingledorff.

After this the Panel retired to consider what ruling should be made.

From the statements made before the Panel and the record as a whole, the Panel concluded that the following events occurred. The timeline is:

1. Mrs. Tina Osteen originally consulted Samuel Mingledorff on or about March 4, 2009 for the purpose of filing for divorce. Between the initial meeting and November 9, 2009 (the date she filled out a Memorandum of Complaint which appears as Exhibit B to the Petition for Discipline in this cause), she stated that she tried to contact him numerous times including a certified letter, but received no response. At some point she asked him to return the retainer fee a \$507.50 because she believed no work on his part had been completed.
2. Sometime prior to October 14, 2009, Mrs. Osteen contacted the Board of Professional Responsibility. On 10-14-09 she sent the certified letter (referred to in paragraph 1) to Mr. Mingledorff asking him to return the retainer fee and stating that she expected to hear from him within 10 days.
3. Mrs. Osteen stated that she contacted Mr. Mingledorff again approximately the end of October, 2009 and Mr. Mingledorff promised to file her Complaint for Divorce on November 5, 2009.

4. After checking with the Circuit Court Clerk's office and finding that the Complaint for Divorce had not been filed, she prepared the Memorandum of Complaint, sent it to the Board of Professional Responsibility where it was received on November 10, 2009.
5. On November 20, 2009, the Board sent a letter to Mr. Mingledorff enclosing a copy of the Memorandum of Complaint and attachments and requesting that he respond within 10 days. A second request was sent on December 1, 2009 to Mr. Mingledorff. A third letter was sent on December 18, 2009 containing the warning that failure to respond would result in the filing of a Notice of Petition for Temporary Suspension.
6. A Notice of Petition for Temporary Suspension was sent to Mr. Mingledorff on January 4, 2010. A notice was left by the United States Postal Service at his address (the same as on his letterhead) on January 5, 2010 at 11:53 AM. A second notice was left January 11, 2010 at 10:48 AM.
7. On February 12, 2010, an Order of Temporary Suspension was entered by the Supreme Court of Tennessee.
8. On May 4, 2010, a letter from Mr. Mingledorff, dated May 3, was faxed to the Board of Professional Responsibility responding to the complaint of Mrs. Osteen. In this letter, Mr. Mingledorff stated that the amount paid by Mrs. Osteen was one half of the retainer fee. He further stated that he explained to her that he would prepare the paperwork, but would not file a case or enter an appearance until the retainer was paid in full. He also stated that he had subsequently met with Mrs. Osteen on three occasions, one of which was in a bank where she signed her Complaint for Divorce before a notary public. He stated that he provided her copies up the Marital Dissolution Agreement and Permanent Parenting Plan which he says he had prepared after receiving documentation of her income and the income for husband. He stated he was willing to complete the work on her divorce after he received the balance of the retainer fee.
9. On May 4, 2010, an e-mail was sent to Mr. Mingledorff from Mr. Kevin Balkwill, Disciplinary Counsel, at the e-mail address appearing on the letterhead of Mr. Mingledorff. This letterhead is the letter dated May 3, 2010 which was received by the Board on May 4, 2010. In this e-mail Mr. Mingledorff was advised about correspondence

having been sent to him by regular and certified mail and e-mail to which he had not responded and of a discussion that Mr. Balkwill had with Ms. Asahki Baptist (the adversary counsel to Mr. Mingledorff in the case of *Replogle v Walmart*) on February 23, 2010. Ms. Baptist indicated that she did not know that Mr. Mingledorff had been suspended from the practice of law on February 12, 2010. This e-mail also advised Mr. Mingledorff that Mr. Balkwill had a later conversation with Ms. Baptist where Ms. Baptist indicated that after she had talked with Mr. Mingledorff, that Mr. Mingledorff was aware of the suspension and that he was dealing with it.

10. The e-mail also set out the requirements of Tennessee Supreme Court Rule 9, §18.1, 18.6, 18.7 and 18.8. The e-mail requested an immediate response explaining why he had failed to respond to repeated requests to answer the disciplinary complaint filed against him, when Mr. Mingledorff had first realized that he had been suspended from the practice of law, what steps he had taken to comply with Rule 9, §18 and whether he had continued to actively engage in the practice of law since the suspension.
11. On June 25, 2010, a Petition for Discipline was filed and was sent by certified mail on the same date to Mr. Mingledorff. The certified mail return receipt from the U.S. Postal Service indicates that the petition was delivered on 6-28-10 to Mr. Mingledorff.
12. Mr. Mingledorff did not respond to the Petition within the 20 days provided for by section 8.2 of Rule 9.
13. A Motion for Default Judgment and That Allegations Contained in the Petition for Discipline Be Deemed Admitted was filed July 22, 2010 and was sent by regular and certified mail to Mr. Mingledorff. There was no response to the motion.
14. On August 13, 2010, an order granting the Motion for Default Judgment and That Allegations Contained in Petition for Discipline Be Deemed Admitted was filed with the Board.
15. A Notice of Hearing was sent to Mr. Mingledorff on September 15, 2010 by regular mail and certified return receipt mail setting the hearing for November 8, 2010 at 1:00 PM, CST on the second floor courtroom in the Rutherford County Historic Courthouse.

16. On November 4, 2010, Proposed Findings of Fact and Conclusions of Law were sent by regular mail and certified mail to Mr. Mingledorff.
17. Except for the receipt of the faxed letter on May 4, 2010, there has been no other communication from Mr. Mingledorff to the Board.

In the course of evaluating the evidence, the Panel reached the following conclusions:

1. Even after Mr. Mingledorff had received the Order of the Tennessee Supreme Court temporarily suspending him from practicing law, he apparently made no effort to contact the Board of Professional Responsibility to see what needed to be done to have his suspension lifted. He continued to hold himself out as a licensed attorney and did not comply with the Supreme Court's Order of Temporary Suspension.
2. His BPR number indicated that he had been practicing for approximately 10 years or more. The requirements of 15 hours of CLE each year, three of which must be ethics, was noted. The Panel concluded that over his years of receiving the ethics portion of his CLE, Mr. Mingledorff must have heard on multiple occasions from a variety of people providing ethics CLE that it was unwise to ignore any request from the Board of Professional Responsibility. He likewise must have heard many examples provided by the same teachers about lawyers who suffered suspension or disbarment for failing to respond to the Board of Professional Responsibility.
3. The nature of the original complaint about Mr. Mingledorff was recognized to be one of the most common types of complaint made by clients about lawyers, and that it was a comparatively minor type of complaint -- a dispute with a client. This is an event that precious few lawyers go through a career without having to experience (although a complaint may not have been made to the Board). It was noted that if the only issue facing the Panel was the dispute with the client, and if the evidence completely supported every allegation of Mrs. Osteen, one of the reprimand alternatives would be the most likely variety of penalty. The Panel concluded that at worst a very short suspension might be imposed.

4. The other issues before the Panel that lifted the nature of this matter to the highest level were the insistent, persistent and consistent ignoring of the correspondence from the Board and the failure to comply with the Supreme Court's Order of Temporary Suspension.
5. The Panel concluded that attorneys must properly and diligently police themselves to enforce the ethical requirements of the profession. This cannot be done when the communications from the Board are ignored. After the Tennessee Supreme Court imposes a suspension which is ignored by a lawyer, and no effort is made to follow the order, explain or justify the failure to follow the order or otherwise account for this behavior, then discipline becomes mandatory.
6. The pattern of behavior of not merely ignoring the correspondence and suspension, but also that of failing to follow up or inquire of the Board as to the status of this matter during the months that this has been pending, raises a variety of questions about whether there are other problems with which Mr. Mingledorff is dealing, but provides no answers. The Board has several options for helping attorneys, but such help is worthless unless the attorney acknowledges the need and seeks it.
7. The Panel finds that Mr. Mingledorff has violated Rules of Professional Conduct as follows:
  - a. The Respondent failed to communicate with the Board regarding this complaint, and this failure is a violation of Rule 8.1(b) of the Rules of Professional Conduct.
  - b. The Respondent violated Rule 1.3 of the Rules of Professional Conduct by abandoning his client in the middle of the representation and failing to adequately pursue his client's case once retained to do so.
  - c. The Respondent violated Rule 1.4 of the Rules of Professional Conduct by failing to communicate with his client.
  - d. The Respondent continued to hold himself out as an active attorney, thereby violating Rule 4.1 of the Rules of Professional Conduct by making false and misleading statements regarding the status of his law license. Specifically, the

Respondent held himself out as a duly licensed attorney, though he had been suspended from the practice of law.

- e. The Respondent failed to comply with the terms of the Supreme Court's Order of Temporary Suspension.

8. With regard to the standards for punishment:

- a. The Panel finds that the ABA standards which could apply are §§4.41 and 7.1. Standard §4.41 would be applicable except that there is no evidence that serious or potentially serious injury has occurred to the client from the failure to prepare and file a complaint for divorce and the other associated documents.
- b. The Panel finds that §7.1 applies to this situation. Mr. Mingledorff has knowingly engaged in the conduct of failing to respond to the Board of Professional Responsibility as well as failing to comply with the order of the Supreme Court temporarily suspending him from practice.
- c. Failing to respond to the Board violates a duty owed to the profession of the practice of law. Failing to respond makes it difficult for the Board to fully and properly investigate complaints as well as fairly determine and dispense that discipline or aid to the lawyer necessary for the modification of the unacceptable behavior pattern.
- d. Because the Board notified Mr. Mingledorff of the Order of Temporary Suspension by the Tennessee Supreme Court and because Mr. Mingledorff continued to engage in the practice of law, he intended to benefit himself by continuing to take cases and receive fees. Therefore, the public and the legal system could be seriously injured.

It is therefore recommended by the Panel that Mr. Mingledorff be disbarred.

Dated: January 28, 2011

*Sc revised 2/3/11 per Order/rw*



*Richard W. Rucker*

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Richard W. Rucker, Chairman

*Christina Henley Duncan by PW/R*

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Christina Henley Duncan

*John R. White by PW/R*

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John R. White

2/2/2018

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11/1/2017 09:10 AM