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

BOARD OF PROFESSIONAL  
RESPONSIBILITY

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IN RE: CARLOS EUGENE MOORE DOCKET NO: 2016-2644-9-WM  
BPR# 28649, Respondent  
An Attorney Licensed to  
Practice Law in Tennessee  
(Shelby County)

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JUDGMENT, FINDINGS OF FACT AND CONCLUSIONS OF LAW  
OF THE HEARING PANEL  
FOR DISCIPLINARY DISTRICT IX

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This cause came on to be heard upon the Petition for Discipline of the Board of Professional Responsibility of the Supreme Court of Tennessee (the "Petition"), the Response to Petition for Discipline of Respondent, Carlos Eugene Moore (the "Response"), the testimony of Carlos Eugene Moore ("Respondent"), the deposition testimony of the Complainant, Linda Day ("Day"), the testimony of Robert Moore (as an expert witness on behalf of the Respondent), Exhibits 1 to 6, the statements of counsel for the Board of Professional Responsibility (the "Board") and the statements of counsel for Respondent, and the entire record in this cause.

**PRELIMINARY MATTERS**

In the Petition, the Board asserted that Respondent had violated Rules 1.3, 1.5 (a) & (c), 1.8(i), 1.16 and 8.4(a) of the Rules of Professional Conduct. At the Pre-Hearing Conference, the Board dismissed the alleged violations of Rules 1.3 and 1.16 of the Rules of Professional Conduct.

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In essence, after the dismissal of the alleged violations of Rules 1.3 and 1.16, there were two issues before this Hearing Panel.

- I. Whether paragraph d. of the Contingent Fee Agreement between Respondent and Day (the "Fee Agreement") was improper under Rule 1.5 (a) and (c) of the Rules of Professional Conduct?
  
- II. Whether paragraph d. of the Fee Agreement created a conflict of interest between Respondent and Day in violation of Rule 1.8(i)?

Additionally, as presented to this Hearing Panel, it only has two options as to outcomes; This Panel can dismiss the alleged violations against Respondent, or the Panel can determine that the Respondent has violated the Rules of Professional Conduct, in which case a Public Censure is required.

Finally, as a preliminary matter, the Hearing Panel notes that at the close of the Board's presentation of its case, Respondent moved for a directed verdict. The Hearing Panel concluded that the motion was actually a Motion for Involuntary Dismissal under Rule 41.02 (2) of the Tennessee Rules of Civil Procedure. Regardless of the rule under which the Motion should have been made, the Hearing Panel determined that the Board has presented sufficient evidence and denied the Motion.

#### SUMMARY OF JUDGMENT

After considering the evidence presented to it, the Hearing Panel has determined that Respondent violated Rule 1.5(a) and (c) and Rule 1.8(i) of the Rules of Professional Conduct.

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Accordingly, Respondent has also violated Rule 8.4 of the Rules of Professional Conduct. The Hearing Panel, therefore, has concluded that Respondent should receive a Public Censure.<sup>1</sup>

#### FINDINGS OF FACT

After considering the evidence presented to it, the Hearing Panel makes the following findings of fact:

1. Respondent was licensed to practice law in Mississippi and Tennessee.
2. Respondent was admitted to practice law in Mississippi in 2002 and was admitted to practice law in Tennessee in 2010.
3. Respondent has never been disciplined by the Mississippi State Bar or the Tennessee Board of Professional Responsibility.
4. In 2012, Day filed a *pro se* action against United Neighborhood Centers of Memphis, Inc., d/b/a Miriam Child Development Center ("UNC") in the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis (the "Subject Action"). The Subject Action was assigned to Division 7 and docketed under no. CT-005120-12.
5. In the Subject Action, Day contended that she was injured as a result of water on the floor and that UNC had breached its duty to warn her of the dangerously slippery floor.

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<sup>1</sup> Section 15.4 of Rule 9 of the Rules of the Supreme Court of Tennessee provides specifically that there are only two options available to the Hearing Panel in this matter; that of public censure or dismissal. Section 15.4 specifically provides "Temporary Suspension (Section 12.3), private reprimand (Section 12.5) and private informal admonition (Section 12.6) are not types of discipline available to the Hearing Panel following the filing of a Petition for Discipline." Accordingly, for the foregoing reason, the Hearing Panel did not consider whether a Private Reprimand or a Private Informal Admonition might have been the appropriate sanction. The Hearing Panel also did not accept the argument of counsel for Respondent that mitigating factors permitted reducing the type of discipline to an admonition.

6. Respondent regularly handles personal injury claims for plaintiffs.
7. In 2012, Respondent was the principal, managing attorney of the Moore Law Group, P.C. ("MLG").
8. On January 23, 2012, MLG and Day entered into the Fee Agreement as to Respondent's representation of Day in the Subject Action.
9. A copy of the Fee Agreement is Exhibit 1 to the Hearing.
10. In the Fee Agreement, MLG agreed to represent Day in a personal injury case on a contingency fee basis.
11. In paragraph d. of the Fee Agreement, it states as follows:

Should I refuse to make any settlement which my attorneys advise me is reasonable and should be taken, then I understand that I am responsible for their fee on the basis of that offer, unless they waive this provision.
12. Respondent Moore, his associate Tangala Harris and Day signed the Fee Agreement.
13. Until sometime in 2016, the Fee Agreement was the standard fee agreement that MLG utilized in cases in which it would be paid on a contingency fee basis.
14. The Fee Agreement was developed from a fee agreement that Respondent's former employer had utilized.
15. In 2015, UNC made a settlement offer to Day in the amount of \$12,500.00.

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16. Respondent made a recommendation to Day that she accept the settlement offer from UNC.

17. Respondent testified that he believed the settlement offer was reasonable based on the information that he had learned about the case during the course of his representation of Day.

18. Day did not agree with Respondent's recommendation to accept the settlement offer and declined the offer.

19. After Day did not follow Respondent's recommendation, Respondent felt that Day no longer valued his professional opinion.

20. As a result of Day's decision, Respondent testified that he believed that the attorney-client relationship between Day and him had been damaged and that it would unreasonably difficult to maintain in the future.

21. Respondent accordingly advised Day and opposing counsel that he planned to request the Court's permission to withdraw from the Subject Action.

22. On March 13, 2015, Respondent filed a Motion to Withdraw as Counsel and Assert Lien (the "March 13, 2015 Lien Notice").

23. A copy of the March 13, 2015 Lien Notice is Exhibit 2 to the Hearing.

24. In the March 13, 2015 Lien Notice, Respondent indicated to the Court that he and Day had reached an "impasse" because "[Day] refuses to adhere to the advice of counsel, making it impossible to continue representation of counsel." (Exhibit 2 at ¶¶2-3.)

25. In the March 13, 2015 Lien Notice, Respondent asked to be allowed to assert an attorney's lien in the amount of \$16,033.52. (Exhibit 2 at ¶4.)

[Day] will suffer no prejudice if her current counsel is allowed to withdraw and assert a lien of \$13,605.00 for 45.35 hours of work at \$300 an hour for attorney's fees, and \$2,428.52 for expenses. See attached Exhibit "A" (Time Slip).

26. On March 27, 2015, the Court granted the Motion to Withdraw and entered an Order allowing Respondent and MLG to withdraw as counsel for Day (the "Withdrawal Order").

27. A copy of the Withdrawal Order is Exhibit 6 to the Hearing.

28. The Court did not address the request for an attorney's lien in the Withdrawal Order.

29. On April 2, 2015, Respondent filed a Motion to Assert Lien (the "April 2, 2015 Lien Notice").

30. A copy of the April 2, 2015 Lien Notice is Exhibit 3 to the Hearing.

31. In the April 2, 2015 Lien Notice, Respondent indicated to the Court, *inter alia*, that Moore Law Group, P.C. was entitled to a common law and statutory "charging" and "retaining" lien against any recovery which Day may obtain in the Subject Action. (Exhibit 3 at ¶2.)

32. In the April 2, 2015 Lien Notice, Respondent stated that Day presently owes \$18,123.91 to the MLG. (Exhibit 3 at ¶3.)

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[Day] presently owes the Moore Law Group, P.C., the sum of \$18,123.91 (51.65 hours of work at \$300 an hour for attorney's fees, and \$2,628.91 for expenses) for the performance of legal services and expenditure of costs and expenses for the benefit of [Day] in regard to [her] cause of action against [UNC] and in connection with the Firm's representation of [Day] in the present action and other matters relating thereto. (See attached Exhibit "A", Time Slip; See attached Exhibit "B", Contingency Contract).

33. Respondent never set the motion set forth in the April 2, 2015 Lien Notice for hearing.

34. The time slips attached to the March 13, 2015 Lien Notice (45.35 hours) and the April 2, 2015 Lien Notice (51.65 hours) differed by 6.3 hours.

35. The time entries set forth in the time slips do not adequately detail the time allegedly spent on the Subject Action to allow the Hearing Panel to evaluate the work allegedly performed even if Respondent were entitled to seek a fee on a non-contingent, hourly basis.

36. Between April 2, 2015, and May 4, 2016, Day filed a Written Notice of Dismissal non-suiting the Subject Action.

37. On May 4, 2016 (over one year after the filing of the April 2, 2015 Lien Notice), Respondent filed an Amended Motion to Assert Lien (the "May 4, 2016 Lien Notice").

38. A copy of the May 4, 2016 Lien Notice is Exhibit 4 to the Hearing.

39. In the May 4, 2016 Lien Notice, Respondent again indicated to the Court, *inter alia*, that MLG was entitled to a common law and statutory "charging" and "retaining" lien against any recovery which Day may obtain in the Subject Action. (Exhibit 4 at ¶2.)

40. In the May 4, 2016 Lien Notice, Respondent stated that Day presently owes \$7,428.91 to MLG. (Exhibit 4 at ¶3.)

[Day] presently owes the Moore Law Group, P.C., the sum of \$7,428.91 (\$4,800.00 in attorney's fees, which is 40% of the \$12,000 offer counsel suggested Plaintiff accept and \$2,628.91 for expenses) for the performance of legal services and expenditure of costs and expenses for the benefit of [Day] in regard to [her] cause of action against [UNC] and in connection with the Firm's representation of [Day] in the present action and other matters relating thereto. (See attached Exhibit "A", Time Slip; See attached Exhibit "B", Contingency Contract).

41. As the Subject Action had been dismissed, Respondent never set the motion set forth in the May 4, 2016 Lien Notice for hearing.

42. The trial court never ruled on any of the requests for an attorney's fee lien which Respondent filed on behalf of the MLG.

43. Respondent testified that on May 4, 2016, he was unaware that the Subject Action had been dismissed.

44. In 2016, Respondent revised the standard fee agreement that the MLG utilized in contingency fee cases to remove paragraph d.

45. Respondent was unable to state whether any current client relationship was still governed by a fee agreement containing paragraph d.

46. Respondent apparently never searched his firm's active cases to determine whether any of the fee agreements in the active cases contained paragraph d.



47. After March 27, 2015, Day retained new counsel to represent her on her claims against UNC.

48. The attorney representing Day dismissed the Subject Action, and subsequently, refiled the claims against UNC. The refiled action remains pending in the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis.

49. Respondent testified that, at the deposition of Day in this disciplinary proceeding, he advised Day's current attorney that MLG was waiving its claim to attorney's fees as to the Subject Action.

50. MLG has not made a written waiver of its claim as to attorney's fees and expenses against Day.

51. Day has not paid the MLG any amount for attorney's fees or litigation expenses as to the Subject Action.

52. Respondent and MLG withdrew as counsel for Day in the Subject Action of the eve of trial with leave of court.

53. The withdrawal of Respondent and MLG, even on the eve of trial, did not have a material adverse effect on Day's interests.

#### **CONCLUSIONS OF LAW**

Based on the testimony presented at the hearing, and after considering the evidence presented to it, the Hearing Panel renders the following conclusions of law:

1. Rule 1.5 of the Rules of Professional Conduct governs the fee issue in this disciplinary proceeding.

2. Paragraph (a) of Rule 1.5 provides:

(a) A lawyer **shall not make an agreement for, charge, or collect** an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

\* \* \*

(Emphasis added.)3. Paragraph (c) of Rule 1.5 of the Rules of Professional Conduct provides:

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(Emphasis added.)

4. In the Subject Action, Respondent made an agreement for and has sought to collect an unreasonable fee in violation of Rule 1.5(a) & (c).

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5. Under paragraph d of the Fee Agreement, Day became liable to Respondent when Day refused accept the settlement which Respondent advised her was reasonable and should be taken.

6. In essence, the Fee Agreement provides that Day would owe a fee to MLG if Day did not heed Respondent's advice to accept what he deemed to be a reasonable settlement offer.

7. While paragraph d of the Fee Agreement provides that Respondent could waive the provision, the waiver was entirely in control of the Respondent.

8. Paragraph d of the Fee Agreement results in a type of contingent fee which is not permitted under the Rule 1.5 of the Rules of Professional Conduct.

9. The fee under the Fee Agreement was not contingent on the outcome of the case, but rather, it was contingent on Respondent's recommendation of a settlement offer which he deemed reasonable. Respondent, therefore, made an unreasonable fee agreement in violation of Rules 1.5(a) and 1.5(c).

10. In the March 13, 2015 Lien Notice, Respondent asked the Court to impose an attorney's lien in the amount of \$16,033.52 based upon 45.35 hours of work at \$300 an hour plus \$2,428.52 in expenses. See Exhibit 2.

11. Respondent did not disclose the existence of the Fee Agreement in connection with the March 13, 2015 Lien Notice.

12. In the April 2, 2015 Lien Notice, Respondent asked the Court to impose an attorney's lien in the amount of \$18,123.91 based upon 51.65 hours of work at \$300 an hour plus \$2,628.91 in expenses.

13. There was no provision in the Fee Agreement which would allow Respondent to recover based on an hourly rate.

14. Respondent did not calculate and seek to charge, or preserve the lien for his contingent fee calculated on the formula under the terms of paragraph d of his Fee Agreement with Day until the May 2, 2016 Lien Notice was filed.

15. In the May 2, 2016 Lien Notice, Respondent calculated the amount claimed based on \$4,800.00 (forty (40%) of the offer of \$12,000.00 which Respondent "suggested [Day] accept") plus \$2,628.91 in expenses. Respondent, therefore, sought to collect an unreasonable fee in violation of Rules 1.5(a) and 1.5(c).

16. Paragraph (i) of Rule 1.8 of the Rules of Professional Conduct provides:

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

17. In the Subject Action, Respondent violated Rule 1.8(i) because Day became obligated when Respondent advised Day that the settlement offer from UNC was "reasonable and should be taken."

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18. The time records which Respondent attached to the lien notices (Exhibits 2, 3 & 4) do not support of the amount of time which Respondent claims has firm spent on the Subject Action. In many instances, entries purportedly for time were connected solely to expenses.

19. The Hearing Panel rejects Respondent's argument that when a client refuses to accept a proposed settlement offer, even one which the attorney recommends should be taken, an irrevocable conflict between the attorney and the client results.

20. Paragraph d of the Fee Agreement is poorly drafted and must be construed against Respondent as its author.

21. If "contingent" fee agreements with provisions similar to paragraph d of the Fee Agreement were allowed under the Rules of Professional Conduct, it would have a chilling effect on the client's ability to decide whether to accept an offer which was inconsistent with his or her objectives.

22. Regardless of Respondent's position that he had never applied paragraph d as written, and the Hearing Panel's acceptance of that position, the Fee Agreement as written is overbearing and overreaching.

23. To the extent that the Board argued that the withdrawal of Respondent and MLG caused a material adverse effect on Day, the Board did not meet its burden of proof.

24. While Respondent may not have interpreted paragraph d as written, he twice affirmatively sought to impose an attorney's lien on Day's claim in the Subject Action based on

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an hourly fee calculation which is an attempt to collect an attorney's fee to which the client did not agree.

25. While Respondent may not have interpreted paragraph d as written, he ultimately sought to impose an attorney's lien on Day's claim in the Subject Action based on a percentage of the offer which UNC made, which he recommended to Day and which Day rejected, and as a result, Respondent attempted to collect an attorney's fee which violated Rule 1.5 of the Rules of Professional Conduct.

26. While Respondent may not have intended to violate Rule 1.5 or Rule 1.8, under the Rules of Professional Conduct, Respondent's intent is not relevant as to whether a Public Censure should be imposed.

27. Respondent had a duty to be certain that his firm's Fee Agreement comported with the Tennessee Rules of Professional Conduct as to contingency fee agreements.

28. Respondent did not seek to protect his firm's financial interests in accordance with the terms of the Fee Agreement or the applicable statutory procedure.

29. Under the Rules of Professional Conduct, an attorney is not prohibited from asserting an attorney's lien to protect his/her or his/her firm's interest in the outcome of case in which there is a contingent fee agreement.

30. Respondent's attempt to set forth his time records of services rendered to Day for purposes of later consideration of the equities of how the fee be divided in the event of a recovery was not in itself problematic. However, in each of the three pleadings filed to assert

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liens (Exhibits 2, 3 and 4), Respondent violated the Rules of Professional Conduct both when he sought an attorney's lien for his firm in excess of the amount of the proposed settlement under the impermissible fee agreement and by basing the attorney's lien on a \$300.00 per hour which is not provided for in any written fee agreement between Respondent and Day. 31. Under the ABA Standards for Imposing Lawyer Sanctions (the "ABA Standards"), a "reprimand" is the equivalent of a public censure under the Rules of Professional Conduct.

32. The ABA Standards indicate that a reprimand is appropriate in this matter.

33. Standard 4.33 reads:

Reprimand is general appropriate when a lawyer negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

34. Standard 7.3 reads:

Reprimand is general appropriate when a lawyer negligently engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.

35. In this matter, Respondent's actions in asserting an attorney's lien initially based on an hourly fee basis, and a year later, on the basis of the unaccepted settlement under paragraph d could have caused injury to Day.

36. In this matter, Respondent's actions in asserting an attorney's lien initially based on an hourly fee basis, and a year later, on the basis of the unaccepted settlement under paragraph d could have caused injury to the public.

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37. In this matter, Respondent's actions in asserting an attorney's lien initially based on an hourly fee basis, and a year later, on the basis of the unaccepted settlement under paragraph d could have caused injury to the legal system.

38. The preponderance of the evidence does not support a finding of aggravating factors.

39. The preponderance of the evidence does support a finding of the following mitigating factor under ABA Standard 9.23:

- a. Absence of a prior disciplinary record.

40. The preponderance of the evidence in this matter establishes that Respondent has committed the following violations of the Rules of Professional Conduct:

- a. Respondent violated Rule 1.5(a) and (c);
- b. Respondent violated Rule 1.8(i);
- c. Respondent violated Rule 8.4(a).

41. Under Section 12.4 of Rule 9 of the Rules of the Supreme Court of Tennessee, a public censure is the appropriate form of discipline in this matter. Section 12.4 provides:

Public censure is a form of public discipline which declares the conduct of the attorney improper, but does not limit the attorney's privilege to practice law.



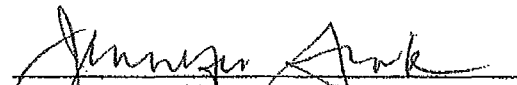
**ORDER OF JUDGMENT**

Based on the findings of fact and conclusions of law, the Panel finds that Respondent violated Rule 1.5(a) and (c), Rule 1.8(i), and Rule 8.4(a), and should receive a public censure pursuant to Section 12.4 of Rule 9 of the Rules of the Supreme Court of Tennessee.<sup>2</sup>


The Findings of Fact, Conclusion of Law and Judgment of this Hearing Panel may be appealed pursuant to Section 33 of Rule 9 of the Rules of the Supreme Court of Tennessee.

It is so ordered this 31<sup>st</sup> day of August, 2017.

DISTRICT NINE HEARING PANEL

  
Jennifer Anne Sink, Chair

  
Kimbrough B. Mullins

  
Michael C. Patton

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<sup>2</sup> The Panel notes that in their collective opinion, a private reprimand would be more appropriate; however, given the posture of this case, the Rules did not permit this Panel to entertain a private reprimand. The Panel duly notes that the more serious allegations were dismissed by the Board on the eve of the hearing in this cause.

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to Respondent, Carlos Eugene Moore, 306 Branscome Drive, Grenada, MS 38901, and to his counsel, Richard Glassman and Lauran Stimac, 26 North Second Street, Memphis, TN 38103, by U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 31st day of August, 2017.



Rita Webb  
Executive Secretary

**NOTICE**

**This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a Petition for Review in the Circuit or Chancery court within sixty (60) days of the date of entry of the hearing panel's judgment.**