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

BOARD OF PROFESSIONAL
RESPONSIBILITY

Rw
EXECUTIVE

IN RE: PETER M. NAPOLITANO,]
BPR#21240, Respondent,]
An Attorney Licensed to]
Practice Law in Tennessee]
(Montgomery County)]

NO. 2013-2272-6-AW

FINAL ORDER

This cause came on to be heard September 17, 2014 before the duly appointed Hearing Panel, consisting of David Alan Bates, George Benson Boston, and Dana Lloyd Dye, who served as Chairperson. Present for the hearing were the Respondent Peter M. Napolitano, Respondent's attorney Mark A. Rassas, and Disciplinary Counsel A. Russell Willis. Based upon the Petition for Discipline filed November 25, 2013, the Respondent's Answer filed January 16, 2014, sworn testimony of the Respondent and witnesses, statements of counsel, exhibits received in evidence, and the entire record herein, the Hearing Panel makes the following findings of fact:

1. Peter Napolitano was licensed to practice law in the State of New York in 1981. In 1993, his New York license was suspended for five years based on missing funds from his escrow account and giving false testimony in the course of the investigation.
2. Peter Napolitano has been a licensed attorney in the State of Tennessee since 2002. His only prior discipline in Tennessee was a private reprimand related to an overdraft of his Trust account.
3. On December 23, 2005, Complainant Gayle Connelly retained Peter



Napolitano to represent her in a civil service employment claim against the Department of the Army. Ms. Connelly signed a written fee agreement, which provided that Mr. Napolitano was to be compensated at the rate of \$200.00, support staff at \$35.00 per hour, and that Ms. Connelly was to be responsible for all other expenses (Board Ex.11). Ms. Connelly paid Mr. Napolitano \$5,000.00 towards his retainer fee.

4. On June 20, 2006, Ms. Connelly paid an additional \$8,000.00 to Mr. Napolitano, for a total payment of \$13,000.00.
5. The retainer fees paid by Ms. Connelly were deposited to Mr. Napolitano's firm trust account and drawn down until the retainer was exhausted on July 21, 2006.
6. Ms. Connelly paid an additional \$9,000.00 to Mr. Napolitano on or about September 4, 2006, for a total payment of \$22,000.00.
7. A bench trial was held on Ms. Connelly's employment claim and on or about June 22, 2007, she was awarded \$25,000.00 pursuant to a Preliminary Decision by an Administrative Law Judge. Such decision also directed Ms. Connelly's attorney, Mr. Napolitano, to file a verified statement of attorney fees and costs (Board Ex. 5).
8. Mr. Napolitano prepared a Motion for Attorney's Fees and Expenses which he filed on July 27, 2007. According to his Motion, Mr. Napolitano's fees totaled \$49,957.50 and his expenses were \$7,120.83 for a total bill of \$57,078.33.
9. After submission of the Motion for Attorney's Fees, Ms. Connelly and Mr. Napolitano entered into settlement negotiations with the Army regarding a global settlement of the case whereby Ms. Connelly would waive her right to appeal, would be reimbursed her attorney's fees and expenses, would have certain compensatory time she had earned restored, and would have a poor performance review removed from her personnel file.
10. On September 18, 2007, Mr. Napolitano sent an e-mail to Ms. Connelly

explaining how the Army's global settlement offer of \$75,000.00 would be divided. He erroneously stated that his total fees and expenses were \$56,358.33 (rather than \$57,078.33 as stated in his Motion). He estimated that the time to finalize the settlement would require additional fees of \$2,000.00, which he added to his fee amount. He then erroneously deducted \$21,000 for prior payments by Ms. Connelly (rather than \$22,000.00) and summarized that the total of unpaid fees and expenses that Ms. Connelly would owe was \$37,642.00. (Technically, the amount that she would have owed at such time would have been \$57,078.33 plus \$2,000.00 minus \$22,000.00 or \$37,078.33). "In an effort to make the settlement option more appealing," Mr. Napolitano then offered to compromise and accept a reduced amount for fees and expenses of \$35,000.00, from which he would pay all expenses, so that Ms. Connelly would "get a check for \$40,000.00 (even)." Ms. Connelly testified that Mr. Napolitano represented to her that she would owe nothing further to Mr. Napolitano if she accepted the \$75,000.00 offer and paid him \$35,000.00 of the settlement.

11. Ms. Connelly authorized Mr. Napolitano to accept the \$75,000.00 settlement offer on this basis and the parties began to work on a written settlement agreement.
12. On September 21, 2007, Ms. Connelly and Mr. Napolitano executed a written negotiated Release and Settlement Agreement which provided for a lump sum payment of \$75,000.00. The Settlement Agreement included Ms. Connelly's compensatory award of \$25,000.00 and reimbursement of the attorney's fees and expenses reflected in Mr. Napolitano's Motion. Ms. Connelly also waived her right of appeal, received 300 hours of compensatory time, and had the poor performance review removed from her personnel record.
13. The \$75,000.00 settlement proceeds were deposited into Mr. Napolitano's

Trust account on October 16, 2007 and Mr. Napolitano sent Ms. Connelly an e-mail confirming the receipt of these funds.

14. In his October 16, 2007 e-mail, Mr. Napolitano explained that, when he has previously calculated the amount to which he was willing to reduce his fee, he had failed to include an additional court reporter expense (\$1,878.00) that he had paid out of his own pocket (Board Ex. 10). He thereby asked Ms. Connelly to reimburse such expenses by allowing him to keep \$36,878.00 rather than the previously reduced amount of \$35,000.00, which would result in Ms. Connelly receiving \$38,122.00 rather than the \$40,000.00 proposed in the earlier e-mail.
15. On or about Tuesday, October 23, 2007, Ms. Connelly sent an e-mail to Mr. Napolitano's office in which she stated that she would not accept less than the amount he had agreed upon in his previous e-mail (Board Ex. 12), and that she "should not be [sic] pay for bookkeeping errors." The Panel finds that Mr. Napolitano received such e-mail no later than October 24, 2007, as he billed Ms. Connelly for reviewing the e-mail (Board Ex. 36).
16. Less than one week later, on Monday, October 29, 2007, Ms. Connelly wrote a letter to the Administrative Law Judge who had heard the employment case and stated that she wanted "to repeal the NSA on the basis that I signed it under duress and financial threats from my attorney...". No evidence was produced that Mr. Napolitano had made any financial threats to Ms. Connelly, nor was there evidence produced that he had refused to honor her rejection of his request to allow him to keep \$36,878.00 rather than the previously agreed upon fee of \$35,000.00.
17. Mr. Napolitano had not responded to Ms. Connelly's 10/23/07 e-mail prior to her letter to the Administrative Law Judge. Mr. Napolitano asserts that, after October 23, 2007, he lost contact with Ms. Connelly and that she failed to remain in contact with his office. There is no dispute that Ms.

Connelly had moved to Utah and that, on November 30, 2007, she sent her forwarding address to the Kennedy Law firm, where Mr. Napolitano had not practiced for approximately a year. Nor is there dispute that the letter to the Kennedy Law Firm was returned to Ms. Connelly.

18. On November 7, 2007, Administrative Law Judge David R. Teeter issued a "Notice to Interested Parties" regarding Ms. Connelly's letter and notified the parties that he lacked jurisdiction to consider the dispute, which would have to be handled under applicable regulations (Board Ex. 13).
19. It is not for this Panel to make a determination as to the contractual dispute between Mr. Napolitano and Ms. Connelly. Notwithstanding, from an ethical standpoint, the Rules of Professional Conduct impose conditions on attorneys when they hold money in dispute, regardless of the merits of the attorneys' claims. Specifically, Rule 1.15(c) of the Rules of Professional Responsibility (2003) states that "[w]hen in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests."
20. This Panel finds that, starting on or about Tuesday, October 23, 2007, when Ms. Connelly rejected Mr. Napolitano's request to keep more of the settlement money, Mr. Napolitano was in possession of property in which both he and Ms. Connelly claimed interests. Therefore, starting at such time, he was required to keep a minimum of \$40,000.00 in Ms. Connelly's separate trust account "until there [was] an accounting and severance of their interests." RPC 1.15(c) (2003).
21. On or about January 14, 2008, Mr. Napolitano sent a letter to the Board of Professional Responsibility (Resp. Ex. 8). In such letter, Mr. Napolitano stated that Ms. Connelly had moved and that he had been unable to communicate with her. He also stated that "I am retaining the balance of

settlement funds belonging to Ms. Connelly in my IOLTA account until I either hear from her with instructions, if ever, or with the Board's or Judge's advice as to their disposition. I have prepared her final billing statement but do not have any address to send it or her check to as yet."

22. As early as February of 2008, Mr. Napolitano's trust account reached balances less than \$40,000.00, when such account's lowest balance reached \$33,073.06 (Board Ex. 33). The Panel was not provided with sufficient information to determine the extent that funds from other clients, if any, were kept in the trust account and, therefore, theoretically, Ms. Connelly's portion of the account could have fallen below the required amount prior to February of 2008. However, without this additional information, the Panel makes no finding with regard to any violations prior to February of 2008.
23. On April 14, 2008, Ms. Connelly filed a complaint against Mr. Napolitano with the Board of Professional Responsibility based on Mr. Napolitano's failure to pay her the \$40,000.00.
24. In a letter to the Board on July 14, 2008 requesting advice, Mr. Napolitano indicated that, by his calculations, the portion of the settlement proceeds that were due to Ms. Connelly totaled approximately \$22,000.00, based upon his assertions that he had incurred additional time since his July 2007 Motion for Attorney's Fees. In his letter, he indicated that he was holding "the balance of the settlement funds belonging to Ms. Connelly in my IOLTA account."
25. In a revised billing statement from Mr. Napolitano dated on or about March of 2008 (Board Ex. 36), Mr. Napolitano indicated that his total fees for his time had increased to \$67,455.00. Including his previously stated expenses of \$7,120.83, his total bill was represented as \$74,575.83.
26. Much of the additional time included by Mr. Napolitano in his March 2008

billing statement is questionable, including time spent communicating with the Board, as well as a portion of his hourly rate that was not consistent with his July 2007 Motion.

27. In any event, even in the light most favorable to Mr. Napolitano under the contractual dispute, the most that Mr. Napolitano could have ever charged under his Representation Agreement would have been \$74,575.83, as represented by him in Board Exhibit 36. Therefore, after crediting Ms. Connelly with prior payments of \$22,000.00, the most that Mr. Napolitano could have ever claimed as his interest in the settlement funds was \$52,575.83, leaving a balance of at least \$22,424.17 that under any set of circumstances would have been the property of Ms. Connelly. This fact was admitted by Mr. Napolitano during his testimony at the hearing.
28. Notwithstanding, not only did Mr. Napolitano fail to keep the disputed funds separate, but starting in March of 2009 his trust account balance fell below \$22,424.17 (Board Ex. 33). Based upon Mr. Napolitano's admission that, under any scenario, at least \$22,424.17 was the property of Ms. Connelly, the Panel finds that Mr. Napolitano starting converting his client's property to his own use on or about March of 2009.
29. Mr. Napolitano's trust account thereafter continued to go below the amount in dispute (\$40,000.00) and, under any scenario, the minimum amount of Ms. Connelly's interest (\$22,424.17). For example such trust account reached a balance as low as \$7,979.58 in August of 2009 (Board Ex. 33).
30. On February 24, 2010, Mr. Napolitano sent a check in the amount of \$13,000.83 to the Board made payable to Gayle Connelly and marked "payment in full." The Board held the check and notified Mr. Napolitano that his billed fee appeared to be unreasonable and in violation of Rule 1.5 of the Rules of Professional Conduct.
31. In late May or early June of 2010, it appears that a disciplinary counsel for

the Board indicated to Mr. Napolitano that she had determined that Ms. Connelly was owed \$16,715.50. In correspondence to Ms. Connelly's attorney, Mr. Napolitano tendered this sum to her on June 4, 2010 (Board Ex. 19). The Panel is unable to understand how disciplinary counsel made such determination; however, due to the fact that disciplinary counsel did make this determination, the Panel finds that, to the extent Mr. Napolitano relied on such Board determination and to the extent that he kept at least \$16,715.50 in his trust account after June of 2010, the same is a mitigating factor for the time period thereafter.

32. Ms. Connelly retained an attorney, Timothy Nichols, to represent her in approximately May of 2010. Ms. Connelly testified that she had made many verbal demands for payment and at least one written demand dated February 25, 2010, but that all of her demands had been ignored.
33. On March 25, 2011, Ms. Connelly filed suit against Mr. Napolitano in the Circuit Court for Montgomery County, Tennessee claiming breach of their agreement regarding division of settlement proceeds. This action was dismissed as time-barred on or about January 31, 2013. The dismissal was appealed and, while the appeal was pending, the parties reached a settlement whereby Mr. Napolitano paid Ms. Connelly \$18,500.00, with an additional payment of \$7,500.00 conditioned on Mr. Napolitano retaining his license to practice law. The Panel finds this to be a final resolution of the contractual dispute between Mr. Napolitano and Ms. Connelly.
34. A review of Mr. Napolitano's trust account records confirms that, after his letter to the Board of January 14, 2008 stating that he was retaining the balance of the settlement funds belonging to Ms. Connelly in his IOLTA account, Mr. Napolitano began removing the disputed funds from the trust account.
35. On February 11, 2008 (approximately four months after receipt of the

- settlement funds), the balance in Mr. Napolitano's trust account fell below \$40,000.00. In 2008, Mr. Napolitano had received no instructions from the Board or from a Judge regarding the disputed funds. His only instruction was from his client, Ms. Connelly, demanding payment of the \$40,000.00.
36. Despite Mr. Napolitano's assertion to the Board in July of 2008 that Ms. Connelly was due \$22,000.00, his trust account balance fell below this amount by March 31, 2009.
 37. Although Mr. Napolitano told the Board on March 8, 2010 that he believed Ms. Connelly was due \$13,000.83, his trust account balance had dropped below this figure in July of 2009.
 38. Mr. Napolitano stated in his Answer that he removed funds from his trust account based upon the Board's determination in May of 2010 that Ms. Connelly was due \$16,715.50. However, this assertion is not credible based on the fact that his trust account balance fell below \$16,000.00 in June of 2009.
 39. By February of 2012, Mr. Napolitano's trust account balance had reached a negative figure.
 40. Mr. Napolitano failed to hold Ms. Connelly's funds separate from his personal funds, failed to promptly deliver to Ms. Connelly undisputed funds which she was entitled to receive, failed to hold disputed funds separate from his personal funds until resolution of the dispute, and failed to render a full accounting of the funds to his client, Ms. Connelly, in violation of Rule 1.15(a), (b), and (c) of the 2003 Rules of Professional Conduct, and in violation of Rule 1.15 (a), (d), and (e) of the 2011 Rules of Professional Conduct.
 41. Mr. Napolitano's statements to the Board that he was maintaining Ms. Connelly's disputed funds in his trust account were patently false.
 42. In the course of Ms. Connelly's Circuit Court litigation, Mr. Napolitano's

deposition was taken on September 26, 2012 by Ms. Connelly's attorney, Timothy Nichols.

43. While under oath, Mr. Napolitano was asked in the deposition if he had received any bar complaints related to his New York law license and Mr. Napolitano falsely stated that he had received no complaints. A bar complaint had been filed against Mr. Napolitano resulting in his suspension from the practice of law for five (5) years on January 27, 1994 by the New York Supreme Court Appellate Division for misappropriating \$5,000.00 and providing false testimony under oath.
44. In the same deposition, Mr. Napolitano was asked if he had ever filed a personal bankruptcy and he stated falsely under oath that he had not filed bankruptcy. In fact, Mr. Napolitano had filed two (2) separate Chapter 7 Petitions for bankruptcy. The first Petition was filed on December 6, 1993 in the United States Bankruptcy Court for the Middle District of Tennessee. The second Chapter 7 Petition was filed on July 1, 2003 in the United States Bankruptcy Court for the Middle District of Tennessee. Mr. Napolitano received a personal discharge in each bankruptcy.
45. In his September 26, 2012 deposition, Mr. Napolitano was asked if any liens had ever been filed against him. Mr. Napolitano testified under oath that he could not recall any liens being filed against him.
46. A Notice of Federal Tax Lien was filed against Mr. Napolitano and recorded in the Office of the Montgomery County Register of Deeds on August 6, 1993. A second unrelated Notice of Federal Tax Lien was filed against Mr. Napolitano and recorded in the Office of the Montgomery County Register of Deeds on February 9, 2007. In his 1993 bankruptcy Petition, Mr. Napolitano listed an IRS attachment that had been issued within the year. Schedule E of the Petition lists the amount of the IRS claim

as \$15,555.28, which is the amount of the recorded Federal Tax Lien of the same year.

47. Mr. Napolitano's assertion that he truthfully could not recall any liens is not credible.

ANALYSIS

Mr. Napolitano acknowledges that he did not maintain disputed funds in his trust account as required by the Rules of Professional Conduct. He also acknowledges that his anger and frustration with Ms. Connelly and her attempt to repudiate the settlement agreement was not a justification for withdrawing the disputed money. Whether Ms. Connelly's actions constituted a breach of the agreement or not, Mr. Napolitano had no basis for taking her money prior to a final resolution of the dispute. His representations to the Board that he was holding the disputed funds in his trust account were simply false.

With regard to the false statements made under oath in his deposition, Mr. Napolitano can have no justification. The questions were straight-forward, unambiguous, simple questions. There was no way that the questions could have reasonably been misunderstood.

Mr. Napolitano asserts that the questions were not relevant and that his answers would not have been admissible in court. Mr. Napolitano is a seasoned attorney who understands that the relevancy of a question is not for the witness to decide and that relevancy does not in any way justify providing false answers under oath. His assertion that opposing counsel already knew about his New York suspension, his bankruptcies, and his tax liens does not in any way diminish Mr. Napolitano's duty to answer truthfully.

The Panel appreciates the insights of Judge John Gassaway. However, with due respect to Judge Gassaway, the Panel is not persuaded that Mr. Napolitano's ethnicity as an emotional, spontaneous New York Italian in any way lessens his ethical and legal duty to answer truthfully under oath. Neither does

testimony that Mr. Napolitano was agitated and upset during the deposition justify his outright lying.

Mr. Napolitano admits that his answers concerning his New York license and his bankruptcies were false but he claims that he truly could not recall having two Federal Tax Liens filed against him, even though he acknowledged the 1993 lien in his bankruptcy. The Panel does not find Mr. Napolitano's claims of impaired recollection credible.

As a mitigating factor, Mr. Napolitano argues that his false statements under oath were not made for personal gain or with an intent to deceive. Nonetheless, Mr. Napolitano intentionally and knowingly made false statements under oath in his deposition. The absence of a purpose for lying under oath is not a particularly mitigating circumstance. Lying under oath for no purpose, or as a default reaction, or simply for the sport of it does not in any way make such behavior less reprehensible or concerning. The Panel finds that Mr. Napolitano's claims of mitigation or justification for his false swearing are actually an aggravating factor.

The oath to testify truthfully is serious business and is central to our legal system. Emotional, upset or distraught litigants are called upon every day to testify truthfully under oath and are punished if they fail to do so. When a lawyer swears falsely or violates his oath to testify truthfully, his conduct "strikes at the heart of our system of justice" and threatens "the very core of a legal system based on probity and honor." See, Culp v. BPR, 407 S.W. 3d 201, 211 (Tenn. 2013).

Tennessee Supreme Court Rule 9, §8.4, requires that appropriate discipline for violations of the Rules of Professional Conduct must be based upon the ABA Standards for Imposing Lawyer Sanctions. The Board has argued that a case for disbarment has been made under the following ABA Standards:

4.11 Disbarment is generally appropriate when a lawyer knowingly

converts client property and causes injury or potential injury to a client.

- 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.
- 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; or
 - (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.
- 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes significant or potentially significant adverse effect on the legal proceeding.
- 8.1 Disbarment is generally appropriate when a lawyer:
- (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

It has been proven by a preponderance of the evidence that Mr. Napolitano misappropriated his client's money and that he violated the Rules of Professional Conduct with regard to maintaining client funds in his trust account. It has also been proven that Mr. Napolitano testified falsely under oath on three occasions.

Pursuant to Standard 9 of the ABA Standards, the Panel must consider the aggravating and mitigating circumstances surrounding Mr. Napolitano's

misconduct. The aggravating circumstances that affect a determination with regard to discipline are:

1. The fact that Mr. Napolitano previously received a 5-year suspension for similar violations, i.e., inappropriate use of escrow funds and giving false testimony.
2. The motive for personal gain with regard to appropriation of client funds.
3. Mr. Napolitano's lack of candor with the Board in his repeated claims that he was maintaining the disputed Connelly funds in his trust account.
4. The outright perjury committed by Mr. Napolitano in his deposition.
5. Mr. Napolitano's unwillingness or inability to acknowledge the gravity of his perjury indicating only that he was sorry he had "shot from the hip" in his sworn testimony.
6. Mr. Napolitano's significant and substantial experience in the practice of law.

The mitigating factors that impact discipline are:

1. The high opinion local judges and members of the bar have of Mr. Napolitano in terms of his legal skills, his trial preparation, his helpfulness to the Courts, and his assistance to younger attorneys.
2. The fact that Mr. Napolitano and Ms. Connelly have reached a settlement agreement with regard to the funds due Ms. Connelly which Mr. Napolitano has thus far fulfilled.
3. The fact that Mr. Napolitano's misconduct affected only Ms. Connelly and did not involve multiple clients.
4. The fact that, at least with regard to misappropriation of client funds, Mr. Napolitano has acknowledged the wrongfulness of his conduct.

An attorney's conversion of client funds is a serious matter and the sanctions imposed are appropriately either disbarment or lengthy suspensions. Lockett v. BPR, 380 S.W. 3d 19, 29 (Tenn. 2012). The recent case of Skouteris v. BPR, 430 S.W. 3d 359 (Tenn. 2014) is instructive and has held that disbarment is

the appropriate punishment for an attorney who converts client funds for personal gain. However, Mr. Skouteris had a long pattern of wrongfully appropriating client funds which involved a number of clients, many of whom were especially vulnerable victims. Mr. Skouteris also evidenced an indifference to restitution and a refusal to acknowledge the wrongfulness of his conduct. That is not the case with Mr. Napolitano.

It is extremely concerning that Mr. Napolitano has had a prior 5-year suspension for very similar misconduct. ABA Standard 8.1 (b) indicates that "disbarment is generally appropriate when a lawyer...[h]as been suspended for the same or similar misconduct and intentionally or knowingly engages in further acts of misconduct that cause injury or potential injury to a client, the legal system, or the profession." While Mr. Napolitano's misconduct did not involve multiple clients, it is troubling that after a 5-year suspension he would have any issues related to impropriety *vis a vis* handling client funds and being truthful. See, Hoover v. BPR, 395 S.W. 3d 95 (Tenn. 2012), in which the attorney had eight prior disciplinary actions.

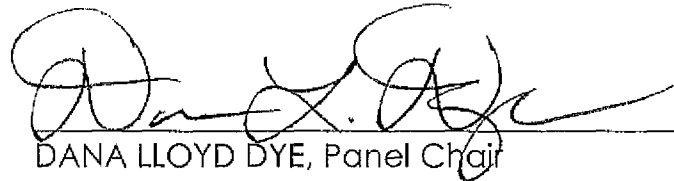
Notwithstanding the above, the Panel finds that, based on the testimony of judges and colleagues, Mr. Napolitano is a competent attorney who does good legal work, is consistently prepared, and does not neglect his cases. He assists the courts in which he practices and mentors younger lawyers in trial practice skills.

Based on the record as a whole, the Panel finds that Mr. Napolitano's license to practice law should be suspended for five (5) years. He should never have control of his client trust account. Management and control of Mr. Napolitano's client trust account must be conducted by an outside certified public accountant or other qualified person who is not employed by Mr. Napolitano. The balance of Mr. Napolitano's suspension may be probated after one (1) year, conditioned upon his payment of the remaining \$7,500.00 owing to Gayle Connelly and restitution to the Board for all costs of this proceeding. Mr.

Napolitano shall perform 100 hours of public service work for each year that his suspension is probated.

IT IS SO ORDERED this 3rd day of December, 2014.


DAVID ALAN BATES, Panel Member


DANA LLOYD DYE, Panel Chair

Panel Member George Benson Boston will file a separate dissent.

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

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IN RE: PETER M. NAPOLITANO,)
BPR#21240, Respondent,)
An Attorney Licensed to)
Practice Law in Tennessee)
(Montgomery County))

NO. 2013-2272-6-AW

CONCURRING/DISSENTING OPINION

I concur with the majority panel decision in all respects except as to the last paragraph of the order pertaining to punishment. I would probate the suspension after 90 days as opposed to after one (1) year. Otherwise I concur.

IT IS SO ORDERED.

 12-3-14

Ben Boston,
Panel Member