

FILED

FFR 25 2011

Clerk of the Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: G. THOMAS NEBEL, BPR #5206
An Attorney Licensed to Practice Law in Tennessee
(Davidson County)

NO. M2010-00420-SC-R3-BP

BOPR No. 2005-1491-5-JJ

ORDER OF ENFORCEMENT

On February 8, 2005 the Board of Professional Responsibility ("Board") filed a Petition for Discipline against G. Thomas Nebel ("Respondent"); Respondent filed a Response to the Petition for Discipline on April 5, 2005. The Board filed a Supplemental Petition for Discipline against Respondent on November 1, 2005; Respondent filed a Response to the Supplemental Petition for Discipline on April 4, 2006. The Board filed a Second Supplemental Petition for Discipline on July 12, 2006. Respondent filed a Response to the Second Supplemental Petition for Discipline on August 31, 2006. The Board filed a Third Supplemental Petition for Discipline on June 28, 2007, and Respondent filed a Response to the Third Supplemental Petition for Discipline on August 31, 2007. A three-day hearing on the foregoing Petitions and Responses was held July 21-24, 2008. The Hearing Panel entered its judgment on October 15, 2008, and the Board considered the Hearing Panel's judgment on December 12, 2008.

Respondent attempted to appeal the Hearing Panel's judgment to the Chancery Court of Davidson County and to this Court pursuant to Tennessee Supreme Court Rule 9, section 1.3. However, Respondent's petition for writ of certiorari failed to satisfy the requirements of Tennessee Code Annotated section 27-8-106, and therefore was insufficient to confer subject matter jurisdiction upon the trial court. Accordingly, on January 21, 2011, this Court entered an order vacating the January 6, 2010 judgment of the trial court and dismissing Respondent's appeal. This Court directed the Board to file with this Court a copy of the Hearing Panel's judgment for review in accordance with Tennessee Supreme Court Rule 9, section 8.4.

On January 31, 2011, the Board filed a Protocol Memorandum, supporting documents, including copies of the Petitions for Discipline and the Responses thereto, and a proposed Order of Enforcement. On February 2, 2011, Respondent filed a Motion to Strike the Protocol Memorandum, the attachments to it, and the proposed Order of Enforcement. As grounds for the Motion to Strike, Respondent asserted that the

documents filed by the Board were an “unwarranted attempt to unduly influence the court’s review under Rule 9, Section 8.4.” Respondent asserted that Rule 9, section 8.4 does not “reveal a provision for a ‘Protocol Memorandum’ nor any authority for Disciplinary Counsel’s attempt to pre-empt the Court’s review under the orderly procedure set forth in Rule 9, section 8.4.” Respondent complained that the Board failed to submit the transcript of the proceedings before the Hearing Panel. Respondent asked the Court to award him attorney’s fees and costs associated with the Motion to Strike. On February 4, 2011, the Board filed a Response to the Motion to Strike, stating, correctly, that it has been the customary practice of the Office of Disciplinary Counsel for the Board to submit protocol memoranda and proposed Orders of Enforcement as a method of compliance with Rule 9, section 8.4. The Board pointed out that Rule 9, section 8.4 does not require submission of a full transcript of the proceedings before the Hearing Panel, unless this Court so directs. The Board emphasized, however, that because of the unique posture of this case – dismissal after the appeal had been briefed and argued – the transcript is available to the Court.

Upon due consideration of Respondent’s Motion to Strike and the Board’s response thereto, the Motion to Strike is Denied. As the Board points out, submitting a Protocol Memorandum and a proposed Order of Enforcement is the customary practice of the Office of Disciplinary Counsel as a method of complying with Rule 9, section 8.4. The Board’s submission of these materials in this case was not indicative of an attempt to improperly influence this Court. Furthermore, when complying with Rule 9, section 8.4, the Board is not required to submit a transcript of the proceedings before the Hearing Panel, although in this case such a transcript is available, as the Board pointed out. Having denied the Motion to Strike, Respondent’s request for attorney’s fees and costs is also denied.

Upon review of the materials submitted by the Board along with the Protocol Memorandum, and the entire record in this cause, the Court approves and adopts the Judgment of the Hearing Panel as the Order of Enforcement of this Court.

It is therefore, **ORDERED, ADJUDGED** and **DECREED** by the Court that:

1. Respondent, G. Thomas Nebel, be and is hereby disbarred pursuant to Supreme Court Rule 9, Section 4.1.

2. Pursuant to Supreme Court Rule 9, Section 4.7, Respondent shall pay restitution to the following individuals as set forth below. Payment of restitution shall be a condition precedent to reinstatement.

- a) Tanya Luker: payment of \$150,000.00 together with a simple interest payment calculated at the annual rate of fifteen (15) percent from February 14, 2001.

- b) Dr. Ralph Wesley: payment of \$250,000.00 together with a simple interest payment calculated at the annual rate of ten (10) percent from April 26, 2000.
- c) Eddie Mahaffey: payment of unearned legal fees in the sum of \$9,500.00.
- d) Dr. Melvin Law: payment of \$325,000.00 together with a simple interest payment calculated at the annual rate of ten (10) percent from July 24, 2008.
- e) Benita Pressley: payment of unearned legal fees in the sum of \$3,000.00.

3. Respondent is further ordered to meet the following conditions prior to reinstatement:

- a) Successful completion of the bar exam;
- b) Successful completion of a law office management class taught by John Kitch or comparable class;
- c) Compliance with all applicable discipline orders or rules;
- d) Rehabilitation and satisfaction of a fitness review to practice law;
- e) Completion of a full ethics course at an ABA accredited law school;
- f) Full payment of any borrowed funds used to make restitution;
- g) Full payment of restitution as ordered;
- h) Full payment of unearned fees as ordered;
- i) A prohibition against ever borrowing monies from any clients for any purpose;
- j) Full payment of costs of these proceedings.

4. The disbarment shall become effective ten (10) days after the filing of this Order.

5. Respondent shall comply in all aspects with Supreme Court Rule 9, Sections 18 and 19 regarding the obligations and responsibilities of disbarred attorneys and the procedure for reinstatement. Respondent must demonstrate compliance with continuing legal education requirements, payment of registration fees, and payment of the professional privilege tax prior to reinstatement.

6. By Order entered January 3, 2008, in Case No. M2010-00401-SC-BPR-BP, Respondent was suspended from the practice of law for six (6) months and for an indefinite period thereafter until Respondent demonstrates that he has made full restitution as ordered in that matter. Further, he is currently suspended for failure to pay registration fees to the Board, failure to comply with continuing legal education requirements, and for failure to pay the professional privilege tax. To date, Respondent

has not requested, nor been granted, reinstatement. Therefore, the entry of this Order does not affect the continuing validity of these prior disciplinary actions.

7. Pursuant to Supreme Court Rule 9, Section 24.3, the Respondent shall pay to the Board of Professional Responsibility the expenses and costs of this matter in the amount of \$25,278.86 and in addition, shall pay to the Clerk of this Court the costs incurred herein, within ninety (90) days of the entry of this Order, for all of which execution may issue if necessary.

8. The Board shall cause notice of this disbarment to be published as required by Supreme Court Rule 9, Section 18.10.

FOR THE COURT:

Cornelia A. Clark

CORNELIA A. CLARK
CHIEF JUSTICE