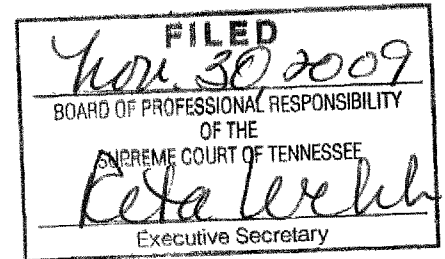


IN DISCIPLINARY DISTRICT V  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE



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

DOCKET NO. 2008-1777-5-KH

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**JUDGMENT OF THE HEARING PANEL**

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This matter came on to be heard on October 28<sup>th</sup>, 2009, before a duly appointed Hearing Panel. Present before the Hearing Panel were Krisann Hodges, Disciplinary Counsel for the Tennessee Board of Professional Responsibility and Ben Cantrell, Attorney for Respondent. The Respondent did not appear. Upon the pleadings filed in this cause, the testimony and evidence before the Panel, statements of counsel, and the entire record in this cause, the Hearing Panel hereby finds as follows:

**Cordero Complaint**

Based upon the arguments of counsel and the entry of several exhibits, the Hearing Panel finds by a preponderance of the evidence that Respondent violated Rule of Professional Conduct (“RPC”) 1.15, Safekeeping Property. Complainant gave Respondent \$3000.00 by check to pay Dr. Stephenson, an expert who had been hired to work on Complainant’s case. Respondent admitted that the check was indeed tendered and cashed and that Dr. Stevenson was never paid the money. The Panel also finds by a preponderance of the evidence that Respondent violated RPC 8.4(a) and (d), Misconduct.

Regarding allegations that the Respondent violated RPCs 1.3, 1.4, 3.2, 3.4, and 8.1 as alleged by the Board, the Panel finds that the exhibits submitted by the Board do not demonstrate violations of those rules by a preponderance of the evidence. Mr. Cordero caused a sworn affidavit to be filed with the Board on February 27, 2007 in which he requested that his complaint be withdrawn and he further exonerated Respondent. Later, Mr. Cordero sent an unsworn letter to the Board reinstating his original complaint. Mr. Cordero was not present to contest his previously sworn affidavit and there was no sworn affidavit to the contrary. The Panel does not find the unsworn letter persuasive. Similarly, the Panel finds that the Board's apparent reliance on Exhibit 18, a Memorandum and Order entered by Judge Trauger, is not enough to find that a violation of RPCs 1.3, 1.4, 3.2, 3.4, and 8.1.

However, based upon the Panel's determination that Respondent violated RPCs 1.15 and 8.4(a) and (d), the Panel has reviewed the ABA Standards to determine the appropriate sanction. Pursuant to ABA Standard 4.12, the Panel finds that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. In this case the Panel finds that he intentionally caused injury to his client by receiving money to pay an expert when the money was never used to pay the expert. Further, the proof demonstrates that there was potential injury to the client due to Respondent's actions.

Regarding aggravating and mitigating factors, the Panel finds that Respondent has a prior disciplinary offense in June 2003. The Panel does not give much weight to this offense. The Panel finds that Respondent has substantial experience in the practice of law. The Panel finds that the Respondent did not appear for this hearing and presented no proof of mitigating factors.

Accordingly, the Panel finds that suspension is the appropriate sanction regarding this complaint.

### **Emery Complaint**

Regarding the complaint filed by Mr. Emery, the Panel has determined that there was no violation of RPCs 1.4 and 1.8 because Benefit Consulting, LLC, and not Mr. Emery, was Respondent's client. The retainer agreement shows clearly that the company, Benefit Consulting, LLC, was the client. Further, Mr. Emery acknowledged in his testimony that the company, not himself, was the client. Therefore, the Panel is unable to find that the Respondent violated either RPCs 1.4 or 1.8. Despite having made such a finding, the Panel would note that the testimony of Mr. Emery was conflicting regarding the frequency of communication and substance of such. He testified that from April of 2007 until October of 2007, that there was not much contact with Respondent, but that he understood that wheels of justice turned slowly. He testified that Respondent told him that Suzanne Peyton would be filing the lawsuit, the then testified that Respondent did not return his phone calls, but was not specific as to times. He then testified that he had no communication with Ms. Peyton, that all of his communication was through Respondent.

Regarding the allegation that Respondent was guilty of misconduct by soliciting a loan from Mr. Emery and then failing to repay the loan as promised, the Panel finds by a preponderance of the evidence that Respondent violated RPC 8.4(c). Respondent was in the unique position as an attorney representing the business in which Mr. Emery had a financial stake. Though Mr. Emery was not the client, he was the president and majority owner of the business. Further, Respondent knew that the Board of Professional Responsibility had actions then pending against him for similar conduct and he knew that he had filed bankruptcy in 2006.

Neither of these material facts were disclosed to Mr. Emery. The Panel finds that such conduct demonstrated that Respondent knowingly engaged in conduct involving deceit.

The Panel recognizes that ABA Standard 5.13 generally recognizes reprimand to be appropriate when a lawyer knowingly engages in conduct that involves dishonesty, fraud, deceit, or misrepresentation and which adversely reflects on the lawyer's fitness to practice law. However, the Panel finds that in light of Respondent's prior disciplinary offense and his substantial experience in the practice of law, these are aggravating factors justifying an increase in the level of discipline. Accordingly, the Panel finds that suspension is the appropriate sanction regarding this complaint.


### **JUDGMENT**


Based upon the findings of fact and conclusions of law cited above, the Panel orders the following:


1. Regarding the Cordero complaint, Respondent shall be suspended from the practice of law for six (6) months. At the expiration of the six (6) month period, he will be eligible for reinstatement only upon showing that he has made full restitution to Mr. Cordero in the amount of \$3,000.00. He must further comply with all disciplinary orders and rules. He is ordered to pay the costs of this cause.

2. Regarding the Emery complaint, Respondent shall be suspended from the practice of law for six (6) months. This suspension shall run concurrent with the Cordero suspension. At the expiration of the six (6) month period, he will be eligible for reinstatement only upon showing that he has made full restitution to Mr. Emery in the amount of \$14,000.00. He must further comply with all disciplinary orders and rules. He is ordered to pay the costs of this cause.

SO ORDERED on this 24<sup>th</sup> day of November, 2009.

  
FRANK JASPER RUNYON, III  
PANEL CHAIR

/s/ Jackie Lynn Garton   
JACKIE LYNN GARTON  
With Permission by Frank Jasper Runyon, III  
PANEL MEMBER

/s/ Carol Mathis Joiner   
CAROL MATHIS JOINER  
With Permission by Frank Jasper Runyon, III  
PANEL MEMBER