

IN THE CHANCERY COURT OF TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

FILED

2010 JAN -6 PM 12:52

CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

[Signature]
D.C. & M.

G. THOMAS NEBEL
Petitioner,

v.

No. 08-2713-II

BOARD OF PROFESSIONAL
RESPONSIBILITY OF THE
SUPREME COURT OF
TENNESSEE,
Respondent

ORDER

This matter came to be heard by the Hon. C. K. Smith, Special Judge, on October 12, 2009, pursuant to Tenn. Sup. Ct. R. 9 on the Petition of G. Thomas Nebel ("Petitioner") for review of the Judgment of the Hearing Panel of the Tennessee Board of Professional Responsibility ("Board"). Following arguments by the Petitioner and the Board, consideration of the briefs filed by each party and due deliberation by the Court, the Court makes the following findings.

STANDARD OF REVIEW

The standard of review for this matter is found at Tennessee Supreme Court Rule 9, section 1.3, which states in pertinent part:

The respondent-attorney (hereinafter "respondent") or the Board may have a review of the judgment of a hearing panel in the manner provided by [Tennessee Code Annotated section] 27-9-101 et seq., except as otherwise provided herein. The review shall be on the transcript of the evidence before the hearing panel and its findings and judgment. If allegations of irregularities in the procedure before the panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The court may affirm the decision of the panel or remand the case for further proceedings. The court may reverse or

modify the decision if the rights of the petitioner have been prejudiced because the panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record.

In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact. *See* Tenn. Sup. Ct. R. 9, § 1.3.

With that standard in mind, the court has carefully reviewed the evidence introduced at the hearing held on July 21-24, 2008 and the entire record. The court's findings with regard to each complaint filed against Mr. Nebel are set forth below.

COMPLAINT OF BENITA PRESSLEY (File No. 29296-6-JJ)

The Hearing Panel concluded that the Board did not carry its burden of showing that Petitioner willfully neglected Ms. Pressley's case or that he failed to exercise reasonable diligence. The Hearing Panel dismissed this complaint. However, the Panel also found that Petitioner did not earn the fee that he charged her and ordered Petitioner to refund the \$3,000.00 fee.

Tenn. Sup. Ct. R. 9, Section 8.4 states that upon finding one or more grounds for discipline, the judgment shall specify the type of discipline to be imposed. In this complaint, however, the Hearing Panel specifically determined that the complaint should be dismissed. In light of the Panel's decision to find that Petitioner did not violate one of the Rules of Professional Conduct, this Court finds that the Panel's sanction of restitution is arbitrary and capricious and characterized by an abuse of discretion. Further, this Court finds that the

judgment is unsupported by substantial and material evidence. Accordingly, the judgment of the Hearing Panel regarding this complaint is reversed.

DR. MELVIN LAW

The Board called Dr. Law to testify regarding the Pressley complaint because Petitioner stated that he asked Dr. Law, another client of Petitioner, to perform an evaluation of the Pressleys' case. In the course of direct examination, Dr. Law testified that Petitioner had represented him from October 2004 until May 2007. Dr. Law also testified that Petitioner had borrowed approximately \$300,000.00 from him during this time period. Additionally, Petitioner had leased property from Dr. Law and had failed to pay him approximately \$25,000.00 under the lease agreement.

As a result of this testimony, the Panel ordered Petitioner to pay restitution to Dr. Law. However, Dr. Law was not a complainant and there had been no allegations regarding ethical misconduct in the Petition for Discipline related to Petitioner's conduct with Dr. Law. Accordingly, the Court finds that the Panel abused its discretion by finding that Petitioner should pay restitution to Dr. Law.

COMPLAINT OF EDDIE MAHAFFEY (File No. 29007-6-JJ)

With regard to the Mahaffey complaint, the Panel made the following findings of fact:

On March 20, 2006, Eddie Mahaffey employed Respondent to represent him in a pending case after Respondent convinced him that his then-current lawyer was fine but not a trial lawyer like him. Mr. Mahaffey nonetheless paid \$1000 a month until he had paid a total of \$10,000 and Respondent assigned a new lawyer just out of law school to manage the case. For two years, while Respondent had the case, nothing was done. Suddenly, Mr. Mahaffey received an e-mail from Respondent saying that he could not be his lawyer anymore. No reason was given.

At trial, Mr. Mahaffey testified that he had received a \$500 refund on his fees after Respondent offered to refund his \$10,000 in \$1000 monthly increments. Respondent testified that he did promise to refund the fees. However, before any further refunds could be made, Respondent filed for bankruptcy protection, although the promised refund was not listed as a debt.

(Judgment of the Hearing Panel, pp. 15-16)

As a result of their findings, the Hearing Panel determined that Petitioner should refund unearned fees in the amount of \$9,500.00.

In contrast to the Pressley complaint, the Panel did not dismiss the Mahaffey complaint. Instead, they made specific findings of fact and imposed a sanction of restitution.¹ Petitioner has not demonstrated that the judgment of the Panel is in error pursuant to Tenn. S. Ct. R. 9, Section 1.3. Further, based upon the facts articulated by the Panel, this Court is of the opinion that a violation of Rule of Professional Conduct 1.3, Diligence, is fully supported by substantial and material evidence. This Court also finds Petitioner's admission that very little work had been done on the case in two (2) years and his subsequent failure to refund the fees to be substantial and material evidence of ethical misconduct pursuant to RPC 1.3. Accordingly, the judgment of the Hearing Panel regarding this complaint is affirmed.

COMPLAINT OF HAROLD HARDAWAY (File No. 28706-5-JJ)

With regard to the Hardaway complaint, the Panel made specific findings of fact and concluded the following:

In the Hardaway complaint, Respondent once again failed to properly communicate with his client at a time when critical issues were at stake. Regardless of the relationship between Mr. Hardaway and Respondent's firm, once the Court found that the Respondent was required to remain on record as Mr. Hardaway's

¹ The Panel designated the refund of fees as "disgorgement," however, this Court finds that the appropriate title for this sanction is "restitution." Pursuant to Tenn. S. Ct. R. 9, Section 4.7, the Panel has the authority to award restitution, in addition to any other type of discipline imposed.

attorney, Respondent had an ongoing obligation to appear for court dates and advise his client accordingly. Instead, Respondent failed to appear for Court on the following dates: August 15, 2005; September 19, 2005; October 3, 2005; October 31, 2005; November 14, 2005, and November 28, 2005. Respondent admits receiving letters advising him of the court dates. The first letter and court dates (through October 31) were received by Respondent prior to the relocation of Respondent's office. Respondent failed to alert his client that he was moving. He failed to notify the Court or opposing counsel that he was moving. His actions were prejudicial to the administration of justice in that the client, opposing party, and the Court were seriously inconvenienced by his repeated failure to appear. Respondent violated RPCs 1.3, 1.4(a)(b), 3.4(c), 8.4(a) and (d). The Panel finds the following ABA Standards to be applicable to this complaint: ABA Standard 4.41, stated above, 7.2, and 6.22.

ABA Standard 6.22 states:

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or party, or interference or potential interference with a legal proceeding.

Respondent's failure to communicate with his client, opposing counsel or the Court prior to a Show Cause hearing demonstrates neglect to a degree that Mr. Hardaway's case was delayed for at least four (4) months. The opposing party was also affected by his actions in that their summary judgment motion was continued several times due to Respondent's failure to appear. The facts of this complaint support a suspension. However, in combination with the other complaints discussed herein, it provides an additional basis for disbarment.

(Judgment of the Hearing Panel, pp. 27-28)

After a full review of the record, this Court finds that Petitioner has not demonstrated that the judgment of the Panel is in error pursuant to Tenn. S. Ct. R. 9, Section 1.3. Petitioner admits that he received correspondence from the Court and from opposing counsel alerting him of court dates set between August 15, 2005 and November 28, 2005 in Mr. Hardaway's case. During that period of time, Petitioner moved to a different office address yet failed to ensure that his client,

the court, or opposing counsel were notified of the change. Despite admitting that he received notification of court dates, specifically the October 3, 2005 date, Petitioner does not provide any reason for his failure to attend.

This Court finds that the judgment of the Hearing Panel is fully supported by substantial and material evidence as set forth in the Panel's findings of fact. Accordingly, the judgment of the Hearing Panel regarding this complaint is affirmed.

COMPLAINT OF E. CLIFTON KNOWLES (PAUL CARUANA CASE)

With regard to the Caruana complaint, the Panel made the following findings of fact (in part):

Beginning in October of 2001, Respondent represented Paul F. Caruana and his wife Ms. Fitch-Caruana, in a dispute involving Mr. Caruana's ownership of an automobile dealership through a corporation. Mr. Caruana employed Respondent's law firm and agreed to pay respondent's law offices contingent fees of 1/3 of any recovery, unless the case was appealed. According to the Employment Contract, Mr. Caruana agreed to pay Respondent all costs on a monthly basis, and the employment contract allowed Respondent's firm to advance the costs incidental to the case which Mr. Caruana agreed would be reimbursed to Respondent from any ultimate recovery or settlement.

Although the Employment Contract between Respondent and the Caruanas was on a contingency fee basis (unless the case settled by October 15, 2001, which gave the client the option of paying Respondent's firm on an hourly basis), Respondent paid Suzette Peyton, Esq., actual attorneys fees in the following amounts: \$2,500 incurred April 16th, 2002; \$4,000 incurred on June 12th, 2002; and \$1,224.42 incurred November 27th, 2002. Each of these amounts were identified as "Research/Contract" services.

In the "EXP" section of the Value Code Report, Respondent included another bill from Ms. Peyton in the amount of \$6,682.00, incurred April 1st-23rd, 2002. This charge is also listed as "Research/Contract" services.

(Judgment of the Hearing Panel, pp. 13-14)

The basis for this complaint arose from Mr. Caruana's letter to U.S. Magistrate Knowles expressing concern because his expert witness, Lucian Pera, Esq., had not been paid by Petitioner. As required by the employment contract, Mr. Caruana paid Petitioner money expressly designated for expenses. However, Petitioner used money designated for expenses to pay attorney's fees to Ms. Peyton. Even if Mr. Caruana agreed to hire Ms. Peyton to assist on the case, there was no proof in the record that there was a change to the employment contract so that the funds designated for expenses could be redirected to pay her fees. In fact, the employment contract is a contingency fee contract wherein no attorney's fees were due to be paid until the conclusion of the case since it had not been resolved prior to October 2001. The record clearly supports the Hearing Panel's conclusion that Petitioner violated RPCs 1.5(a) and 8.4(a).

This Court further finds that the Panel's findings with regard to RPCs 1.3, 1.4, 1.16(d)(1)(2)(3), 3.4(c), and 8.4(c)(d) are not supported by the record. However, given the violations of RPC 1.5(a) and 8.4(a), the Court finds that the Panel's application of the ABA standards was appropriate. Accordingly, suspension is an appropriate sanction for this complaint.

COMPLAINT OF DR. RALPH WESLEY

With regard to the complaint filed by Dr. Ralph Wesley, the Panel made the following findings of fact (in part):

During the litigation of this suit for Dr. Wesley against Paul Revere, Respondent requested that Dr. Wesley loan him money to help keep Respondent's law practice afloat. Respondent stated to Dr. Wesley at this time that he needed \$250,000 to help with "cash flow" issues, but that he should be able to repay the loan within a year. Dr. Wesley explained to Respondent that he did not have

\$250,000 to lend but discussed with Respondent the possibility of mortgaging his farm in Williamson County to obtain the money for Respondent.

At the time Respondent asked him for a loan, Dr. Wesley was particularly vulnerable. Given his health issues and uncertainty about whether he would be able to continue practicing medicine, Dr. Wesley was very concerned about how Respondent's financial difficulties might affect his lawsuit, and he didn't want to lose Respondent as his lawyer at that point in the litigation, thereby being forced to start over with a new lawyer. Dr. Wesley felt compelled to make the loan due to his concern about his pending litigation and the effect changing counsel would have on the case. Dr. Wesley described Respondent as his only "hope." Dr. Wesley described the circumstances as "desperate."

In connection with the requested loan, Respondent promised to provide Dr. Wesley with complete financial information such as tax returns, business statements, personal financial statements, and term insurance payable to Dr. Wesley in the amount of the loan. Respondent never did provide these documents to Dr. Wesley. Respondent further failed to provide the promised life insurance. At no time in discussing the potential loan with Dr. Wesley did Respondent advise Dr. Wesley that an IRS lien was pending against Respondent. Respondent in fact provided no real picture of his then financial situation. In the end, Dr. Wesley provided Respondent with an unsecured loan of \$250,000. Dr. Wesley would never have made an unsecured loan of \$250,000 to anyone and did so to Respondent only because Respondent was Dr. Wesley's lawyer, and Dr. Wesley trusted Respondent to protect his interests.

(Judgment of Hearing Panel, pp. 7-8)

The proof regarding this complaint clearly demonstrated that Petitioner did not fulfill his promise to repay the loan within one (1) year. Additionally, the proof demonstrated that Petitioner did not provide the requested collateral or financial statements requested by Dr. Wesley. Further, Petitioner's reliance upon anticipated fees from pending contingency fee cases is clearly unreasonable. This Court finds that Petitioner failed to exercise good faith when he held out the potential fees of pending cases as collateral. As an experienced trial attorney,

Petitioner knew or should have known that he was misleading his client by suggesting that potential fees were sufficient collateral.

The Panel found that Dr. Wesley was a particularly vulnerable client. Based upon the testimony of Dr. Wesley and Petitioner, this Court agrees with the Panel's conclusion that that Dr. Wesley was in fear that Petitioner's failing law practice would have a detrimental effect on his own case.

The Panel concluded that Petitioner's actions violated Disciplinary Rule 5-104 and RPCs 1.8(a), 1.4, and 8.4. Although the loan transaction between Petitioner and Dr. Wesley occurred in 2000 when the Code of Professional Responsibility was in effect, the Panel found that the continual renewal of the loan constituted ongoing misconduct beyond March 1, 2003, which is the date the current Rules of Professional Conduct were adopted. This Court finds that the Panel erred in applying the Rules of Professional Conduct because the initial transaction occurred in 2000. However, this Court concurs with the Panel that Petitioner's conduct violated DR 5-104 which states:

A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

After reviewing the record, this Court concludes that there was substantial and material evidence to demonstrate that Dr. Wesley relied upon Petitioner's professional judgment to ascertain whether or not the loan would be a reasonable transaction. Dr. Wesley trusted Petitioner's claims that he would be able to pay the loan back within a year from proceeds of pending cases. Further, Petitioner did not fully disclose his financial situation so that Dr. Wesley could

adequately assess the risk he would be incurring by making the loan. Accordingly, the Court affirms the Panel's conclusion that Petitioner violated DR 5-104.

Next, Petitioner has not demonstrated that the judgment of the Panel is in error pursuant to Tenn. S. Ct. R. 9, Section 1.3 with regard to the sanction of disbarment for his misconduct in the Wesley matter. The proof is sufficient to support a conclusion that ABA Standards 4.61 and 7.1 apply. In particular, ABA Standard 4.61 states that 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." The evidence in this matter substantiates that Petitioner knew he would not have the ability to repay Dr. Wesley in one (1) year. There is sufficient proof to demonstrate that Petitioner knowingly deceived Dr. Wesley with intent to benefit himself and that his actions caused serious injury or potentially serious injury to his client.

The Panel ordered Petitioner to pay restitution to Dr. Wesley in the principal amount of \$250,000.00 together with a simple interest payment calculated at the annual rate of 10% from April 26, 2000. The Court finds that while restitution is appropriate, Petitioner did make some interest payments through 2005. According to the testimony, the unpaid interest was \$19,200.00. Therefore, the Court finds that it is appropriate to modify the Panel's judgment to reflect that Petitioner should make payment to Dr. Wesley in the principal amount of \$250,000.00 plus \$19,200.00 unpaid interest.

COMPLAINT OF TANYA LUKER

With regard to the complaint filed by Tanya Luker, the Panel made the following findings of fact (in part):

Ms. Luker was seeking representation for a possible medical malpractice case related to the death of her husband, Rick Luker, in August 1998. At the time of her husband's death, Ms. Luker was pregnant, and gave birth to a son only five weeks after her husband's death.

It is undisputed that Ms. Luker was a woman of limited means and Respondent testified that he knew it. Ms. Luker does not have a high school education, failing to complete the eighth grade, and she has never been gainfully employed outside the home.

Ms. Luker hired Respondent and filed a lawsuit against Vanderbilt University on August 12, 1999. The case went to mediation in December, 2000. Ms. Luker and Respondent were both present at the mediation. While they were in mediation, Respondent asked Ms. Luker what she intended to do with any money they might recover in the case. Ms. Luker indicated that she had no idea. Respondent advised her that he had some ideas and that they would talk about it at a later time. Ms. Luker told Respondent that she didn't know anything about investing. Part of Ms. Luker's case settled in mediation for a little over \$150,000, which was to be paid after a trial on the remaining parts of the case in late January, 2001. In about 10 to 15 phone conversations between Respondent and Ms. Luker after mediation (December 2000) but before trial (January 2001), Respondent repeatedly brought up the idea of Ms. Luker's loaning Respondent the \$150,000 that she was to be paid after the date of trial.

Respondent placed considerable pressure on Ms. Luker to agree to the loan. Ms. Luker felt very connected to Respondent and to his law firm because, in her words, they had become like a surrogate family to her. Respondent assisted her at a vulnerable time and she felt that he was acting in her best interests.

(Judgment of Hearing Panel, pp. 3-4)

According to the testimony, Ms. Luker was induced to make the loan based upon Petitioner's assurances that the money would help his law practice and, at the same time, be a good

investment for her. As a result of Petitioner's influence, Ms. Luker loaned him \$150,000.00 which represented all of the settlement proceeds except \$2,000.00 she kept to pay for her husband's funeral expenses. Petitioner agreed to an annual interest rate of fifteen percent. Petitioner agreed to repay the money by February 14, 2003. Petitioner agreed to provide collateral in the forms of stock and life insurance. He also told her that he expected to recover substantial legal fees on pending cases which would enable him to repay the entire loan.

Petitioner failed to secure the stocks and life insurance as promised. He failed to make interest payments as scheduled throughout the original term of the note. In 2003, when no repayment was forthcoming, Ms. Luker asked him to sign another note. Petitioner has never repaid the principal balance. Further, the interest payments were sporadic, at best. Based upon the record, this Court finds that there was substantial evidence demonstrating that Petitioner preyed upon his client's vulnerability. As the Panel stated, "[a]t the time Ms. Luker loaned Respondent the \$150,000 in settlement proceeds, she was not employed, her son was still an infant, and she was receiving social security. Respondent was well aware of Ms. Luker's financial condition at the time." (Judgment of Hearing Panel, p. 5) Petitioner clearly imposed upon Ms. Luker at a time when she was dependent on his services, advice, and protection.

Unfortunately, Ms. Luker was not as aware of Petitioner's financial condition. He did not advise her that he had recently taken another loan from Dr. Wesley. He did not advise her of his total indebtedness to other people, or to the IRS. Since Petitioner did not provide a full and accurate picture of his financial status, he did not act fairly and with full disclosure as to the significant risk she would be taking. In fact, Ms. Luker testified that Petitioner asked her to refrain from speaking to another lawyer about the transaction. There is sufficient proof to demonstrate that Petitioner knowingly deceived Ms. Luker with intent to benefit himself and that

his actions caused serious injury or potentially serious injury to his client.

The Panel concluded that Petitioner's actions violated Disciplinary Rule 5-104 and RPCs 1.8(a), 1.4, and 8.4. Although the loan transaction between Petitioner and Ms. Luker occurred in 2001 when the Code of Professional Responsibility was in effect, the Panel found that the continual renewal of the loan constituted ongoing misconduct beyond March 1, 2003, which is the date the current Rules of Professional Conduct were adopted. As in the Wesley case, this Court finds that the Panel erred in applying the Rules of Professional Conduct because the initial transaction occurred in 2001. However, this Court concurs with the Panel that Petitioner's conduct violated DR 5-104. Ms. Luker clearly relied upon Petitioner's professional judgment to ascertain whether or not the loan would be a reasonable and fair transaction. Petitioner told her that the money would be used to help other people like her, who could not afford an attorney. There is no question that Ms. Luker believed Petitioner was protecting her interests. Accordingly, the Court affirms the Panel's conclusion that Petitioner violated DR 5-104.

Petitioner has not demonstrated that the judgment of the Panel is in error pursuant to Tenn. S. Ct. R. 9, Section 1.3 with regard to the sanction of disbarment for his misconduct in the Luker matter. The proof is sufficient to support a conclusion that ABA Standards 4.11, 4.31, 4.61 and 7.1 apply.

As in the Wesley case, however, the Court finds that it is appropriate to modify the amount of restitution. According to Ms. Luker's calculations, Petitioner owes \$188,544.04 which includes unpaid principal and unpaid interest. Therefore, the amount of restitution shall be modified to \$188,544.04.

AGGRAVATING AND MITIGATING FACTORS

The record supports the Panel's conclusion that several aggravating factors justify an increase in the degree of discipline to be imposed. Specifically, Petitioner has prior disciplinary offenses, a dishonest or selfish motive, pattern of misconduct, multiple offenses, refused to acknowledge wrongful conduct, and substantial experience in the practice of law. This Court also finds that Ms. Luker was a vulnerable victim.

Although the Panel found that no mitigating factors existed, this Court concludes that Petitioner had personal and emotional issues which serve as a mitigating factor. Nevertheless, the Panel's conclusion that disbarment is the only appropriate sanction is affirmed.

DISCIPLINARY SANCTIONS

In view of the number of violations that were supported by the evidence together with the aggravating circumstances found to apply, the court is of the opinion that disbarment, and restitution, is an appropriate sanction. Further, should the Petitioner apply for reinstatement, the court finds that the conditions for reinstatement specified by the Panel are appropriate.

It is hereby ORDERED, ADJUDGED, and DECREED that:

1. The Hearing Panel's judgment ordering Petitioner to make restitution to Benita Pressley is reversed.
2. The Hearing Panel's judgment ordering Petitioner to make restitution to Dr. Law is reversed.
3. The Hearing Panel's judgment of disciplinary misconduct by Petitioner in the Mahaffey matter is affirmed. Further, the Panel's award of restitution to Eddie Mahaffey in the amount of \$9,500.00 is affirmed.

4. The Hearing Panel's judgment of disciplinary misconduct by Petitioner in the Hardaway matter is affirmed. Further, the Panel's conclusion that suspension is the appropriate sanction pursuant to the ABA Standards is affirmed. This Court also affirms the Panel's conclusion that aggravating factors justify an increase in discipline.
5. The Hearing Panel's judgment of disciplinary misconduct by Petitioner in the Caruana matter is affirmed as to RPCs 1.5(a) and 8.4(a). The Panel's judgment finding violations of RPCs 1.3, 1.4, 1.16(d)(1)(2)(3), 3.4(c) and 8.4(c)(d) is reversed. However, given the violations of RPC 1.5(a) and 8.4(a), the Panel's conclusion that suspension is the appropriate sanction pursuant to the ABA Standards is affirmed. The Court also affirms the Panel's conclusion that aggravating factors justify an increase in discipline.
6. The Hearing Panel's judgment of disciplinary misconduct by Petitioner in the Wesley matter is affirmed as to DR 5-104. The Panel's judgment finding violations of RPCs 1.4, 1.8(a), and 8.4 is reversed. However, given the violation of DR 5-104, the Panel's conclusion that disbarment is the appropriate sanction pursuant to the ABA Standards is affirmed. The Panel's judgment of restitution is modified to payment of the principal amount of \$250,000.00 and interest in the amount of \$19,200.00.
7. The Hearing Panel's judgment of disciplinary misconduct by Petitioner in the Luker matter is affirmed as to DR 5-104. The Panel's judgment finding violations of RPCs 1.4, 1.8(a), and 8.4 is reversed. However, given the violation of DR 5-104, the Panel's conclusion that disbarment is the appropriate sanction pursuant to the ABA Standards is affirmed. The Panel's judgment of restitution is modified to payment of

the principal and interest in the amount of \$188,544.04.

8. The Hearing Panel's conditions for reinstatement are affirmed.
9. Petitioner shall be assessed the costs in this matter.


SO ORDERED.



C.K. Smith, Special Judge

12/18/09

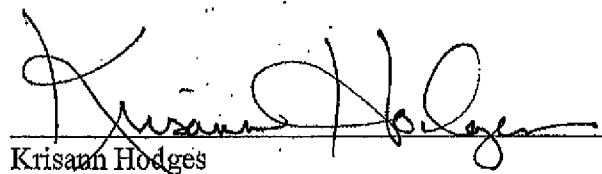
PREPARED BY:



Krisann Hodges, BPR No. 17086
Disciplinary Counsel
1101 Kermit Drive, Suite 730
Nashville, Tennessee 37217
(615) 361-7500

CERTIFICATE OF SERVICE

I certify I have served a copy of the foregoing ORDER on Petitioner's counsel, Ben Cantrell, 315 Deaderick Street, Suite 1700, Nashville, TN 37238-1700 and Scott Neely, 205 Pitts Avenue, Old Hickory, TN 37138 on this the 8th day of December, 2009.



Krisann Hodges