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**IN DISCIPLINARY DISTRICT II OF THE BOARD OF PROFESSIONAL RESPONSIBILITY OF THE  
SUPREME COURT OF TENNESSEE**

IN RE: ROY PATRICK NEUENSCHWANDER

DOCKET NO. 2013-2201-2-AJ

BPR No. 921 – Attorney Licensed to Practice  
Law in Tennessee (Knox County)

BOARD OF PROFESSIONAL  
RESPONSIBILITY  
*Mary McKnight*  
CLERK

**JUDGMENT OF THE HEARING PANEL**

This matter came on to be heard on September 25, 2013, before the undersigned Hearing Panel on the Petition for Discipline (filed on April 16, 2013) (“Petition”) of the Board of Professional Responsibility (“BPR”) and the Answer to Petition (filed on May 17, 2013) (“Answer”) of the Respondent, Roy Patrick Neuenschwander (“Neuenschwander”). Present at the hearing was the BPR through its counsel, Alan D. Johnson and Sandy Garrett, and the Respondent *pro se*. Evidence was presented through witnesses and exhibits introduced, including the testimony of Neuenschwander, Kenneth Ray Egbert (“Egbert”), William Timothy Disney and Penny Morrell (“Morrell”)[spouse of the Respondent]. Counsel for the BPR made a Motion to Amend the Petition, pursuant to Rule 15.02, Tennessee Rules of Civil Procedure, to conform the Petition to the evidence presented during the hearing, which motion the Hearing Panel, with the consent of the parties hereto, held in abeyance pending the receipt of a formal written motion to amend by the BPR, the response to the motion to amend from Neuenschwander, and notice of either party of the need for additional evidentiary opportunity. The Hearing Panel entered its Order of its rulings at the close of the hearing on September 25, 2013. Thereafter, the Hearing Panel received the BPR Notice (dated October 24, 2013) that it would not be filing a Motion to Amend to conform to the Evidence, thereby effectively closing the evidence before the Hearing Panel in this matter. After considering carefully the entire record in this cause, and the applicable law, the Hearing Panel issues this Judgment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE PETITION FOR DISCIPLINE**

1. The Respondent, Neuenschwander, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee, with his most recent office address being at 10207 Technology Drive, Suite 102, Knoxville, Tennessee 37932. His Board of Responsibility number is 921.

2. Neuenschwander admitted in his Answer to Petition for Discipline the factual allegations contained in paragraphs 1-3, 5-31 and 38, as well paragraph 33 that he violated Rules 1.7 1.8(a)(3) and 8.4 of the Code of Professional Conduct related to the Egbert attorney-client issues. Included in these admissions were the Exhibits to the Petition which were sent by the BPR to him and those which were sent by him to the BPR. These admissions were not denied or explained during Neuenschwander’s testimony at the hearing. The admission of those factual allegations constitute *prima facie* basis for judgment in favor of the BPR as to the Egbert issues.

2. Neuenschwander had represented Wanda Payne (“Payne”), the mother of Egbert, on multiple occasions involving various matters, including one of her divorce cases, in obtaining for her benefits from the Social Security Administration (“SSA”), and three separate personal injury matters, including the personal injury settlement in 2009 that resulted in an award which, after the payment of bills and attorney fees, left a remaining balance of \$54,405.31, which Neuenschwander deposited into his Interest On Lawyers’ Trust Account (“IOLTA”)(Supreme Court Rule 43). Egbert testified without objection that his mother often referred to Neuenschwander as “her lawyer” and always would refer Neuenschwander

to anyone seeking legal counsel. Neuenschwander served Payne on a continuing basis and never provided a notice of withdrawal as contemplated in Comment [4] of Rule of Professional Conduct 1.3. This balance was deposited into Neuenschwander's IOLTA. In connection with Neuenschwander's borrowing of \$30,000.00 from that IOLTA balance, no effort was made by him to comply with Rule 1.8 of the Rules of Professional Conduct. Payne did not agree to the loans in writing, there was no provision made for interest or agreement of a repayment schedule, and Payne was not advised to seek the advice of independent counsel in the transaction. Payne was a 53 year old divorced mother of Egbert, with a General Education Degree (GED) level of education, who lived alone in her home while receiving benefits from the SSA. Neuenschwander testified that he responded as an attorney after the personal injury settlement to remove an impediment to her admission at a nursing home as a Medicare patient in March 2010 by obtaining a release of a lien for medical bills related to her accident. Egbert only learned of the \$30,000.00 borrowings from his mother at that time.

3. In his Answer, Neuenschwander denied the factual contention that he had an attorney-client relationship with Payne (her date of birth was January 4, 1946) during the period of time in which he held in his IOLTA trust account \$54,405.31 proceeds (net amount after payment of fees and expenses related to incident) from a personal injury settlement Payne received in March 2009. It was his contention that the attorney-client relationship with Payne related to the personal injury settlement was concluded and did not continue merely because he was holding those proceeds in his IOLTA. He testified that after the settlement of the personal injury matter and the deposit of the proceeds into his IOLTA, he had no more cases with Payne nor did she ask for him for any legal advice. However, Neuenschwander admitted during the course of his testimony at the hearing on September 25, 2013, that his review of the Supreme Court decision of *Stanley v. Board of Professional Responsibility*, 640 S.W.2d 210 (Tenn. 1982) caused him to now agree that his relationship with Payne was that of attorney-client during the period of time in which her personal injury settlement proceeds were deposited and maintained in Neuenschwander's IOLTA, from which account Neuenschwander borrowed with Payne's verbal consent the sum of \$30,000.00 in two different transactions, even though he maintained that he did not appreciate that attorney-client relationship at that time. Neuenschwander agreed that this admission at the hearing supported the conclusion that Rule 1.7, 1.8(a)(3) and 8.4 of the Rules of Professional Conduct were also violated with regard to the matters alleged involving Payne.

4. During the course of Neuenschwander's testimony, he admitted that Payne was the recipient of Supplemental Security Income ("SSI") benefits from the Social Security Administration ("SSA") which benefits were sought and obtained for Payne through Neuenschwander's efforts, and he had advised her on receipt of the personal injury settlement proceeds of his interpretation of SSI provisions that the SSA would need to be notified of the receipt of these proceeds which would result in a reduction of Payne's monthly SSI benefits at least for a short period of time. Exhibit F to the Petition, a document prepared by Neuenschwander and submitted to the BPR in response to Egbert's October 18, 2012, correspondence, stated:

"She wanted me to hold those settlement proceeds as she reasoned that her receipt of those proceeds would reduce her monthly SSI benefits, at least temporarily. I explained to her that if she received those funds and used the same to purchase a new house, furnish the same and perhaps purchase a new car, and should those expenditures reduce the amount in her checking account to less than \$2,000.00, then, most likely, her SSI benefit would be cut only during that interval which could perhaps occur in less than one month, if she so chose.

The BPR, in its Notice, advised the Panel that Payne was actually receiving Survivor/Widow benefits from the SSA, and was not receiving SSI benefits, and thus her benefits would not be affected by any of Payne's resources or income. Neuenschwander claimed the retention of the personal injury settlement proceeds in his IOLTA was tantamount to Payne not receiving the benefits of the settlement. Yet, Neuenschwander went to Payne to obtain "consent" to borrow \$30,000.00 from these proceeds, an acknowledgement that Payne in fact did "own" the monies sought to be borrowed. Neuenschwander cannot have it both ways – It was not Payne's money because she had not requested to withdraw the proceeds from Neuenschwander's IOLTA but it was Payne's money because her "consent" was needed and sought when he sought to borrow \$30,000.00 of the \$54,405.31.

5. On December 20, 2010, Neuenschwander was retained by Egbert, Personal Representative of the Estate of Payne, as counsel for the probate of the estate and when Neuenschwander executed and delivered to Egbert his "Promisoy (sic) [Promissory] Note" in the sum of \$30,000.00 which was done to memorialize in writing the loans taken from the personal injury settlement proceeds deposited into his IOLTA "Terms to be worked out later." Against that unpaid balance, Neuenschwander has paid to Egbert a total of \$3,000.00 (\$2,000.00 on February 28, 2012 shortly after he was fired by Egbert as counsel for the estate and \$1,000.00 on October 3, 2012 after Egbert had filed his Memorandum of Complaint with the BPR in this matter). After having been discharged as counsel for the Estate of Payne, Neuenschwander called Egbert to suggest that Neuenschwander file a motion with the probate court to have it declared insolvent even though both of them knew that was not truthful because of the personal injury settlement proceeds paid to Egbert and because of the debt Neuenschwander owed from the \$30,000.00 he had borrowed from Payne. Multiple efforts were exerted by Egbert on Neuenschwander to satisfy the unpaid balance but these efforts have been unsuccessful beyond what Neuenschwander has paid. The present unpaid balance owed by Neuenschwander from the monies he borrowed from Payne is \$27,000.00, based on the testimony of Egbert. Neuenschwander did pay to Egbert (by check dated December 15, 2010) (Exhibit A to the Petition) the balance of Payne's personal injury settlement which was being held in his IOLTA. Neuenschwander asked no questions of Egbert on cross examination at the hearing. In connection with this matter, Neuenschwander did not comply with the Rules of Professional Conduct as alleged in the Petition and in particular Rules 1.7(a) (2), 1.8(a) (1) – (3), and 8.4.

6. Neuenschwander's explanations of financial difficulties arising from theft of law practice funds totaling \$15,872.64 from July 2007 through December 2010 by a former employee (See Exhibit K – Affidavit of Complaint in the General Sessions Court for Knox County which resulted in the indictment of Charleen Ayers ("Ayers"), Case No. 99171 do not coincide with his admission of borrowing \$30,000.00 in 2010 (exact dates unknown) from Payne's settlement proceeds maintained in Neuenschwander's IOLTA. Neuenschwander explained Ayers' had not paid creditors of his law practice which adversely affected his credit, which, among other things, made it impossible for him to borrow money from a bank even using the equity in his house as collateral. He admitted his borrowing from Payne was essentially an interest free loan without collateral which was of less benefit to her. He had been aware of Payne's health problems for some time prior to her death.

7. Neuenschwander "threw himself on the mercy" of the Hearing Panel, stated that he had no other occupation than the practice of law with which to earn a living by which he promised to repay Egbert the unpaid balance on the original \$30,000.00 he borrowed from Payne, had been licensed since 1974 without incident to the BPR Code of Professional Conduct, and that he would have no means to pay if his license were suspended. As of the time of the Hearing, he could not provide any reasonable basis to conclude even if he were to continue to practice law that he could or would be able to satisfy

the debt remaining in favor of Egbert or the Estate of Payne. He stated Payne had trust and confidence in him, both as a friend and as her attorney. He admitted that if Payne had called him for legal help, he would have represented her. And though he had promised Egbert on occasions since Payne died to repay the unpaid balance, he had not been able to do so.

8. Creditors of the Estate of Payne were paid amounts agreed to by them with Egbert, as personal representative of her estate, from the \$24,405.31 (Exhibit A to Petition – Check payable to Kenny from the Trust Account of Neuenschwander, dated December 15, 2010) but Egbert, as sole heir of Payne, was required to borrow monies from a bank using his residence as collateral in order to make necessary repairs to his mother's house. Egbert is now faced with having to sell his residence for a price including the unpaid balance of the loan(s) collateralized by his residence.

9. The Hearing Panel further notes the following aggravating and mitigating circumstances (some of which are contained hereinabove):

Aggravating Circumstances:

- Selfish Motive
- Indifference to making restitution
- Substantial experience in the practice of law
- Vulnerability of the victims

Mitigating Circumstances:

- Absence of prior disciplinary record
- Personal problems (health issues, perhaps compounded by a former employee's theft of embezzlement from his law practice)
- Full disclosure with the BPR and cooperative attitude towards the proceeding
- Reputation to provide *pro bono* legal services
- Remorse
- Desire of Egbert not to have Respondent's license suspended

**CONCLUSIONS OF LAW AND JUDGMENT**

A. Neuenschwander had a continuing attorney-client relationship with Payne at the times he borrowed \$30,000.00 from her settlement proceeds which he was deposited in Neuenschwander's IOLATA trust account in March 2009 until her death in December 2010.

B. The provisions of Rules of Professional Conduct as alleged in the Petition were applicable to Neuenschwander at the times he borrowed the \$30,000.00 from Payne.

C. Neuenschwander had an attorney-client relationship with Egbert at the time he was retained as counsel for the probate of the estate of Payne and when he executed and delivered to Egbert his "Promisoy (sic) [Promissory] Note" on December 20, 2010.

D. The provisions of the Rules of Professional Conduct as alleged in the Petition were applicable to Neuenschwander on December 20, 2010, and thereafter until he was discharged in February 2012.

E. Neuenschwander violated the Rules of Professional Conduct both with his borrowing of \$30,000.00 from Payne, and from his dealings with Egbert as alleged by the BPR in the Petition for Discipline.

F. The oral consent of Payne for allowing Neuenschwander to borrow \$30,000.00 was not "fair and reasonable to the client nor was it fully disclosed and transmitted to Payne in writing in a manner that can be reasonably understood by her, Payne was not given a reasonable opportunity to seek the advice of independent counsel in the transactions, and Payne did not consent to either in writing(s) signed by her. The aggravating circumstances of this misconduct justify an increase in the degree of discipline to be imposed. Neuenschwander has had non-collateralized, interest free loans totaling \$30,000.00 from 2009 which remain mostly unpaid with no foreseeable prospect they may ever be paid.

G. Neuenschwander be suspended from the practice of law for a period of eleven (11) months twenty nine (29) days and indefinitely thereafter until Mr. Neuenschwander makes full restitution to Egbert and/or the Lawyer's Fund for Client Protection of the unpaid balance of \$27,000.00 with interest from and after December 10, 2012 at the rate of five percent (5%) per year, (presently at \$1,350.00), attendance in a BPR recognized continuing legal education program on ethics which includes IOLTA and trust account materials, full compliance in all respects with the requirements and obligations of suspended attorneys as set forth in Supreme Court Rule, Section 18, and payment in full for the expenses and costs of this disciplinary proceeding pursuant to Supreme Court Rule 9, Section 24.3. Neuenschwander shall be placed on probation for the 11 months twenty nine days suspension subject to his pro rata payments of restitution of twenty-seven thousand dollars (\$27,000.00) plus interest at the rate of five percent (5%) from December 10, 2012 (present balance being \$1,350.00) to Kenny Egbert, 2077 Strawberry Drive, New Market, TN 37820 (or to any newer address of Egbert) and the expenses and costs of this disciplinary proceeding to the BPR (Rule 9, Section 24.3) at the rate of not less than Four-Thousand Dollars (\$4,000.00) per month beginning on January 1, 2014 and by the first (1<sup>st</sup>) of each month thereafter until the entire restitution and interest and the costs and expenses of this disciplinary proceeding are paid in full. Should Neuenschwander fail in making his monthly payment on or before January 1, 2014 or the first (1<sup>st</sup>) of any month thereafter, his probation shall automatically be revoked and he shall be suspended without further notice or petition by the BPR for a period of eleven (11) months twenty nine (29) days effective from the date he failed to make any timely payment. In order to monitor his timely payments, Neuenschwander shall file with the BPR monthly beginning January 1, 2014 and the first (1<sup>st</sup>) of each month thereafter his affidavit with supporting documentation (e.g., cancelled check to Egbert and check to BPR) confirming his monthly payment to Egbert and to the BPR in an amount not less than Four Thousand (\$4,000.00) as required of his probationary status, with failure to provide his monthly affidavit by the first (1<sup>st</sup>) of each month resulting in automatic revocation of his probation and his suspension without further notice or petition by the BPR for a period of eleven (11) months twenty nine (29) days from the date he failed to make any timely filing to the BPR.

H. A copy of this Judgment of the Hearing Panel shall be served upon the Respondent and upon Egbert at his last known address known to the BPR.

#### NOTICE

This Judgment may be appealed pursuant to Section 1.3 of the Supreme Court Rule 9 by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ. See Tenn. Code Ann. §27-8-104(a) and 27-8-106.

IT IS SO ORDERED:

Caul P. McDonald

Panel Member (Chair)

R. Deno Cole with permission  
Panel Member

CPM

Jennifer Pearson Taylor with permission  
Panel Member

CPM