

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

IN RE: RONALD K. NEVIN, DOCKET NO. 2000-1147-5-LC
 Respondent, an Attorney
 Licensed to Practice Law in
 Tennessee (Davidson County)

JUDGMENT

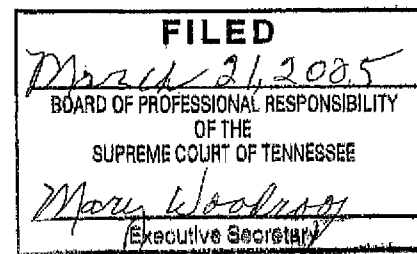
This matter was heard before the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee on February 28, 2005, at which time the hearing was concluded upon the filing by both parties of supplemental briefs (the last of which was filed on March 4, 2005). This matter was heard pursuant to Rule 9 of the Tennessee Supreme Court. This Hearing Committee, Gary Housepian (Chair), Barbara Holmes and Lela Hollabaugh, make the following findings of fact and submits its judgment in this cause as follows:

I. STATEMENT OF THE CASE

1. On February 1, 2000, the Petition for Discipline, Docket No. 2000-1147-5-LC, herein was filed against the Respondent arising out of File No. 21366-5-LC, filed with the Board of Professional Responsibility on August 17, 1999; and File No. 21388-5-LC¹, filed with the Board of Professional Responsibility on August 20, 1999.

2. Respondent filed an Answer to the Petition for Discipline on February 28, 2000.

¹ The matters raised in File No. 21388-5-LC were not pursued by Disciplinary Counsel.



3. Respondent filed an Amended Answer to the Petition for Discipline on March 24, 2003.

4. All pleadings, including without limitation, the Petition for Discipline, are hereby amended to conform to the evidence presented.

II. FINDINGS OF FACT

5. At all times relevant herein the Respondent served as the public guardian as elected by the Davidson County Metropolitan Council, serving from 1975 to 1999, except for a brief period.

6. As the public guardian for Davidson County, Respondent not only served as an attorney representing clients in Probate Court, but also served as a court-appointed fiduciary.

7. Respondent was issued Letters of Conservatorship of Cara Sneed Pyle, Davidson County Circuit Court Docket No. 95P-2014, on October 30, 1997.

8. By the Oath of Fiduciary, sworn to by the Respondent on October 30, 1997 the Respondent swore:

I, Ronald K. Nevin, do hereby solemnly swear or affirm that I will honestly and faithfully perform the duties as the court-appointed fiduciary in this matter and further shall honestly and faithfully promise to timely file an Inventory of the respondent's estate, and file Annual Accountings with the clerk on the anniversary date of my appointment each year, unless waived by this court, and to spend the assets of the respondent only as approved by the Court.

9. The Respondent thereafter served as conservator and fiduciary of Cara Sneed Pyle.

10. A Property Management Plan had previously been filed by the prior conservator on July 8, 1997, which proposed the sale of the ward's house and 12.17 acres around the house and the personal contents of the house. The property management plan was adopted by the Probate Court on July 16, 1997.

11. The Respondent was obligated to comply with the property management plan which had been adopted by the Court, subject to future modifications by the Court.

12. On November 19, 1997, the Respondent received \$82,551.70 from the prior conservator.

13. On December 8, 1997, an Order proposed by the Respondent was entered *nunc pro tunc* authorizing the conservator, the Respondent, to list the ward's house and 17 (+/-) acres for sale with a licensed real estate agent and granted permission to sell the contents of the house at public auction. The Order further provided that the contract was subject to court approval.

14. The Respondent did not list the real property with a real estate agent.

15. On December 17, 1997, the Respondent purchased a certificate of deposit for \$50,000.00, with the ward's funds, to mature in six months, even though the Property Management Plan indicated that the ward might be in need of these funds for living expenses prior to the 6-month maturity date.

16. On January 17, 1998, an auction of the ward's personal property was conducted.

17. On or about February 1, 1998, the Respondent contacted an appraiser to appraise the real property, including the house and all acreage.

18. On March 2, 1998, the Respondent received \$39,237.57 as proceeds of the auction of personal property.

19. On March 13, 1998, the Respondent purchased a \$20,000.00 certificate of deposit with part of the proceeds of the auction to mature in six months.

20. On April 24, 1998, the Respondent received the appraisal of the real property.

21. The Respondent expended monies of the ward to facilitate the sale of real property, excluding the home place and certain acreage, without prior approval of or notice to the Probate Court.

22. By May of 1998, the funds available in the ward's account were insufficient to satisfy ongoing obligations. Rather than liquidating either of the certificates of deposit, the Respondent knowingly transferred \$25,000.00 to the ward's account from the Respondent's trust account, check no. 4335. The Respondent made no accounting adjustment or withdrawal notation to any of the clients' trust accounts to reflect the funds transferred to the ward's account.

23. The Respondent testified that he did not cash in the CD's to pay the ward's living expenses because of the penalty for early withdrawal.

24. On May 28, 1998, the Respondent entered into a contract to sell 345 acres, not including the house and nine acres, to Royce McClintock for \$890,000.00, subject to court approval.

25. On May 29, 1998, the Respondent deposited the \$250,000.00 earnest money paid by Mr. McClintock into the Respondent's trust account.

26. On June 5, 1998, the Respondent prepared a draft of a Petition to sell the real property, not including the house and nine acres.

27. On or about June 11, 1998, the Respondent purchased a 90-day certificate of deposit with the \$250,000.00 earnest money from McClintock and an additional \$50,000.00 that, according to the Respondent, was either funds of the ward (available from liquidation of the fully matured CD) or funds of other clients held in the Respondent's trust account. The Respondent made no accounting adjustment or withdrawal notation to any client's account for the funds used to purchase the CD.

28. When the \$50,000.00 certificate of deposit purchased by the Respondent on December 17, 1997, matured on or about June 15, 1998, the Respondent knowingly deposited the entire \$50,000.00 into the Respondent's trust account on June 19, 1998.

29. The Respondent knowingly deposited the \$50,000.00 into his trust account to repay the \$25,000.00 which the Respondent had advanced to the ward's estate from his trust account on May 21, 1998.

30. Respondent failed to account for the remaining \$25,000 in his trust account.

31. On August 17, 1998, the Respondent knowingly transferred \$20,000.00 to the ward's account from his trust account as an advance on the \$20,000 certificate of deposit due to mature on September 17, 1998. The Respondent made no accounting adjustment or withdrawal notation to any of the clients' trust accounts to reflect the funds transferred to the ward's account.

32. In August, 1998, the Respondent contacted a real estate agent regarding the sale of the house and nine acres.

33. When the \$20,000.00 certificate of deposit purchased by the Respondent on March 13, 1998, matured on or about September 17, 1998, the Respondent knowingly deposited the \$20,000.00 into his trust account.

34. On September 19, 1998, the Respondent filed a Petition to Sell Real Property to sell approximately 345 acres, not including the house and nine acres, for the sum of \$890,000.00, to which was attached a contract for the sale of real estate dated May 28, 1998, asserting that it was necessary to sell same to pay the debts of the ward and maintain her in the health care facility. As reflected in the Petition to Sell, the proposed purchaser had paid \$250,000.00 in earnest money.

35. On September 22, 1998, the Court appointed Roger K. Smith guardian *ad litem* for Cara Pyle Sneed.

36. On November 16, 1998, the Respondent knowingly transferred \$20,000.00 from his trust account to the ward's account.

37. On November 20, 1998, the Respondent filed a motion for authorization to sell the ward's house and nine acres of land adjacent to the house.

38. On December 3, 1998, the Respondent filed an annual accounting.

39. On December 18, 1998, the Respondent disbursed \$20,000.00 from the ward's estate account to the Respondent's trust account.

40. On December 10, 1998, the Respondent sold Ms. Pyle's stocks and bonds without court approval. Court approval was unnecessary for some but not all of the stocks and bonds.

41. On January 22, 1999, the children of Cara Pyle filed a Petition to remove the Respondent as conservator of Cara Pyle.

42. On February 5, 1999, the Probate Court conducted a status conference and ascertained that there were difficulties due to a lack of liquid assets in the estate. The ward's bills were substantially in arrears, including rent at the place of the ward's residence.

43. On February 22, 1999, the Respondent filed a motion for authorization to obtain a short-term loan in order to provide the ward's necessary living expenses. Respondent obtained this short term loan.

44. An Order was entered by the Court on March 1, 1999 arising out of the status conference conducted by the Court on February 5, 1999, at which the conservator, the Respondent, the guardian *ad litem*, and Susan Bass and Donald Hildebrand, counsel for the ward's children, appeared. The

Respondent voluntarily withdrew as conservator and attorneys Bass and Hildebrand were appointed co-conservators. The contract for the sale of 345 acres was disapproved as unauthorized and the earnest money ordered returned to the proposed buyer. The Respondent was ordered to submit his Final Accounting and Inventory on or before April 5, 1999.

45. Respondent was in arrears in payment to the ward's nursing home when he resigned as conservator.

46. The Respondent filed a Final Accounting on April 29, 1999, and Amended Final and Annual Accounting June 7, 1999.

47. On May 25, 1999, the Respondent returned to the ward \$25,000.00. This \$25,000.00 was the deficiency owed by the Respondent to the ward's estate for funds received by the Respondent when he cashed in the \$50,000.00 certificate of deposit that matured on June 17, 1998.

48. Respondent was unaware that he owed this \$25,000.00 to the ward until notified by the new conservators. Because of his failure to properly account for the transactions between his trust account and the ward, he did not know this money was owed to the ward's estate. Nor did the Respondent make any effort to reconcile the records between the ward's account and his trust account in June of 1998 when he cashed in the CD and distributed the proceeds.

49. Absent the efforts of the new conservators, the ward would most likely not have received the \$25,000.00 owed to the ward by the

Respondent due to the Respondent's failure to properly account for the foregoing transactions.

50. The Respondent failed to properly account for the monies he held in his trust account.

51. The Respondent failed to properly preserve the identity of client funds in his trust account.

52. The Respondent failed to pay debts due and owing by the ward on a timely basis.

53. The funds from the Respondent's trust account that were paid to the ward's account did not belong to the ward. The Respondent admitted that these funds were either clients' funds or funds owing to him for earned, but unpaid fees. However, Respondent failed to establish that the funds he transferred to the ward's account belonged to him as earned but unpaid legal fees. In the absence of any such proof, an inference can reasonably be drawn that these funds belonged to other clients of the Respondent.

54. The Respondent failed to properly account for and improperly retained interest earned on funds belonging to the ward improperly deposited into his trust account.

55. Respondent misrepresented the nature of the transfers of money between the ward's account and his trust account in the various accountings Respondent provided to the Court, including sworn accountings.

56. Specifically, the Respondent originally stated one of the advances from the Respondent's trust account as a \$20,424.75 royalty payment from Nuveen United Trust, even though payments from Nuveen United Trust had typically been less than \$1,000.00. This misstatement was corrected in a subsequent accounting.

57. However, the Respondent characterized another advance of \$20,000.00 as "escrow earnest money" and did not correct this misrepresentation in his final, sworn accounting. Even at the disciplinary hearing, the Respondent was unable to explain why this \$20,000.00 deposit was misstated, demonstrating his continued inability to explain his record keeping.

58. A malpractice claim was made by the ward's children against the Respondent.

59. A compromise and settlement of the malpractice claims was reached with the Respondent's malpractice insurance carrier.

60. Respondent was not candid in responding to questions posed regarding his handling of this conservatorship.

61. The Respondent was personal representative in the estate of Joseph and Pauline Doucette, Davidson County Circuit Court, Docket Nos. 98P-1510 and 98P-1511.

62. On October 13, 1998, the Respondent was sworn in as personal representative of the estate of Pauline Doucette, Davidson County Circuit Court (Probate Division), No. 98-P-1511.

63. The Respondent thereafter served as personal representative and fiduciary of the estate of Pauline Doucette.

64. On January 14, 1999, the Respondent filed an inventory reflecting a total value of the estate of \$84,599.91, including money on deposit of \$25,599.91.

65. Respondent misrepresented the total value of the estate in the inventory filed with the Court on January 14, 1999.

66. Respondent was aware of the existence of additional assets belonging to the estate with a value of more than \$100,000.00 at the time he filed the inventory with the Court on January 14, 1999.

67. Respondent did not discover the misrepresentation until notified by the daughter of the deceased.

68. On February 9, 1999, the Respondent filed an Amended Estate Inventory reflecting total value of the estate of \$193,286.60, including money on deposit of \$134,286.60.

69. On June 4, 1999, a hearing was conducted on the Respondent's motion for fees as administrator of the estate of Pauline C. Doucette.

70. A fee dispute existed between Respondent and the children of the deceased.

71. The Court entered an Order on June 29, 1999, arising out of the June 4, 1999, hearing to approve the Respondent's attorney fees in the amount of \$4,658.95. The Order reflects, "[f]urther review of the file indicates a

troubling underreporting of the assets of the estate, as much as \$89,000.00," and set the matter for a status conference on August 6, 1999.

72. On June 29, 1999, the Respondent filed a Final Accounting reflecting total disbursements of \$194,296.84.

73. On or about July 15, 1993, the Respondent was appointed limited guardian for Kenneth Jackson, a minor age 4, Davidson County Circuit Court, Docket No. 89C-3494, specifically over the property of Kenneth Jackson.

74. The Respondent was thereafter serving as Limited Guardian and fiduciary of Kenneth Jackson.

75. On December 14, 1994, the Respondent, as Limited Guardian for Kenneth Jackson to authorize purchase of real estate for the ward to be used as his home located at 939 Maxwell Avenue, Nashville, Tennessee.

76. On January 13, 1995, the Court entered an Order authorizing the Respondent to purchase real estate at 939 Maxwell Avenue, Nashville, Tennessee, and ordering the clerk to issue a check to the Respondent for the purchase of the house in the amount of \$43,000.00.

77. On January 23, 1995, a check was made payable to Ron Nevin, Guardian for Kenneth Jackson for the purchase of the home in the amount of \$43,938.10.

78. The Warranty Deed for the house executed on January 25, 1995, and filed January 30, 1995 titled the house in the name of Kenneth Jackson, and provided that tax bills be sent to Kenneth Jackson.

79. The Warranty Deed, which was prepared by Linda Harris, a real estate closing attorney, did not reflect that the Respondent purchased the house as guardian for Kenneth Jackson nor that Kenneth Jackson was a minor.

80. Respondent failed to have the property tax bills on the minor's property sent to him for payment.

81. Respondent failed to establish any other procedure to ensure the property tax bills of the minor were paid.

82. The standard of professional practice required that Respondent take some action to ensure the property tax bills were paid.

83. When Respondent learned the minor's home was being rented to third parties by the minor's mother, Respondent failed to take any action to protect the assets of the minor.

84. The Respondent received fees as limited guardian for Kenneth Jackson pursuant to Orders entered August 11, 1994, October 5, 1995, August 8, 1996, August 7, 1997, October 9, 1998, and August 5, 1999.

85. The Respondent failed to pay the property taxes on the subject property.

86. The property taxes on the subject property were not paid.

87. Respondent discussed the issue of the real estate taxes with the minor's mother on two occasions in 1997.

88. In December 1997, the subject property titled to the minor, Kenneth Jackson, was sold at a tax sale.

89. Prior to the sale of the minor's real property, Respondent knew or should have known of the tax deficiency.

90. In February 1998, within the period for redemption of the property, Respondent had multiple conversations with the Metropolitan Davidson County Trustees about the unpaid real property taxes.

91. Respondent failed to take any action to prevent the loss of the minor's real property in this tax sale or to redeem the property once sold.

92. On May 25, 1999, the Respondent filed a Petition in the Chancery Court for Davidson County, No. 97-788-II to recover the funds from the tax sale of the subject property in excess of that necessary to pay the property taxes.

93. On May 25, 1999, an Order was entered by the Chancery Court directing the Clerk and Master to pay the Respondent \$16,473.06, the funds received from the sale of the subject property in excess of the amount necessary to pay the property taxes.

94. On June 18, 1999, the Respondent filed a Motion in the Circuit Court moving the Court to authorize him to pay the funds received from the sale of the subject property to the Circuit Court Clerk.

95. On July 9, 1999, the Circuit Court entered an Order permitting the Respondent to pay \$16,473.06 into the Circuit Court Clerk to be invested in an interest bearing account.

96. In addition to the \$16,473.06 recovered from the tax sale, Kenneth Jackson received \$38,376.96 from the Respondent's malpractice

insurance which reflected the difference between the appraised value of the home and the amount recovered from the tax sale after taxes due on the home were paid.

97. Respondent failed to protect the assets of the minor child from dissipation by his mother, the specific objective the Court intended to prevent by appointing him limited guardian.

98. By Agreed Order filed in the Circuit Court on September 28, 1999 the Respondent was terminated as Limited Guardian to Kenneth Jackson and attorney Robert Rutherford appointed substitute Limited Guardian.

99. The Respondent resigned as public guardian in November of 1999.

100. Respondent failed to acknowledge any wrongdoing in the handling of these three matters. Respondent blames others, including his staff, other lawyers and the parent of a ward, for the events that occurred.

101. Respondent's actions evidence a failure to understand or acknowledge the fundamental principals of fiduciary responsibilities and accounting.

102. Respondent's answers to certain questions during this hearing before this hearing panel lacked candor or a cooperative attitude.

103. The Pyle conservatorship and the Jackson guardianship suffered harm as a result of the actions or inaction of the Respondent which were not fully recovered by the settlements with Respondent's malpractice insurance carrier.

104. Each of these clients faced the potential of significant harm as a result of the action or inaction of the Respondent.

105. Each of these clients were particularly vulnerable to the actions or inaction of the Respondent.

106. None of the character witnesses called by Respondent had any knowledge of Respondent's trust accounting practices or accounting practices to the Court.

107. Respondent is an experienced practitioner, particularly in the areas of guardianships and conservatorships.

CONCLUSIONS OF LAW

After hearing all of the testimony and carefully considering the arguments, exhibits and pleadings offered by Disciplinary Counsel and counsel for the Respondent, the Panel makes the following conclusions of law:

The Respondent violated DR 9-102(B)(3) and DR 1-102(A)² by: (i) transferring funds between his client trust account and the Pyle account and (ii) failing to preserve the identity of funds and property of the ward for whom he served as a fiduciary.³ The Respondent engaged in a series of transactions beginning in December 17, 1997 with the initial purchase of a six month \$50,000.00 certificate of deposit with Pyle funds, after which he transferred funds from his trust to the Pyle account, purchased other certificates of

² All references to "DR" refer to the Disciplinary Rules previously found in the Tennessee Code of Professional Responsibility, which is the applicable rules in effect at all times relevant to this proceeding.

³ The Respondent's admitted failure to make accounting adjustments or withdrawal notations to any of the clients' trust accounts in reconciliation of the funds he knowingly transferred to the Pyle account is also a violation of these disciplinary rules with respect to those clients' funds.

deposits (with funds from the Pyle account, earnest money in the Pyle case, and other client funds), and eventually deposited the proceeds of the Pyle CDs with other funds in Respondent's trust account.

Over the course of more than a year, the Respondent failed to preserve the identity of the funds and property of Ms. Pyle.⁴ There was no competent proof submitted that demonstrated compliance with the Mechanics of Trust Accounting, Formal Ethics Opinion 89-F-121 or DR 9-102(B)(3).

The Respondent violated DR 9-102(B)(3), DR 6-101(A)(3), DR 7-101(A)(1)⁵, and DR 1-102(A)(1) by failing to detect that he owed \$25,000 to the Pyle account until he was notified by attorneys for Ms. Pyle's children. This demonstrates that the Respondent was not in compliance with the Mechanics of Trust Accounting, that he failed to maintain complete records in accordance with DR 9-102(B)(3), and that the Respondent failed to act with reasonable diligence and promptness in representing a client in accordance with DR 7-101(A)(1).

Additionally, the Respondent's failure to detect this substantial discrepancy is demonstrates neglect of a matter entrusted to him, in violation of DR 6-101(A) (3). Because the Respondent clearly violated these described disciplinary rules, he is also guilty of misconduct by violation of DR 1-102(A).

⁴ These transactions are referenced in Exhibits 8 and 12.

⁵ Although the Petition for Discipline did not originally allege a violation of DR 7-101, Disciplinary Counsel subsequently relied upon this disciplinary rule, including in pre-trial briefs and at the disciplinary hearing. Disciplinary Counsel also presented proof on the violation of this disciplinary rule without objection by the Respondent at the disciplinary hearing. Therefore, the Panel treats the issue of whether Respondent violated DR 7-101 in all respects as if raised in the Petition for Discipline. Further, the Panel specifically finds and concludes that the Petition for Discipline is appropriately amended to conform to the evidence, including without limitation, evidence of the Respondent's violation of DR 7-101.

The Respondent violated DR 9-102(B)(3) and DR 1-102(A)(1) by the commingling of trust fund accounts without documentation of identity of those funds. By failing to comply with the Mechanics of Trust Accounting and without providing the Panel any evidence that the identity of individual trust fund accounts were preserved, the Respondent engaged in a series of transactions that were in violation of DR 9-102(B)(3) and, therefore, DR 1-102(A)(1). The Respondent also violated DR 9-102(A) and (B)(3) and DR 1-102(A)(1) by improperly retaining interest earned from the funds and accounts held in his trust for his own discretionary use.

The Respondent violated DR 7-101(A)(1) and DR 1-102(A)(1) in the Doucette case by misrepresenting the assets of the estate in the inventory accounting that was filed with Court and not corrected until brought to Respondent's attention. Although the accounting report was subsequently amended and corrected less than 30 days later, the Respondent knew of the existence of the additional assets prior to the filing with the Court and did not discover the misrepresentation until notified by the daughter of the deceased.

The Respondent violated DR 7-101(A)(1) and DR 1-102(A)(1) in the Jackson matter by failing to ensure that tax notices were sent to the Respondent as limited guardian or otherwise ensuring that the property tax bills of the minor were paid to preserve and protect the property of the minor. The Respondent further violated DR 7-101(A)(1) and DR 1-102(A)(1) in this matter by failing to pay real estate taxes, which, eventually, resulted in the sale

of the ward's home and by failing to take action and exercise diligence when the Respondent knew or should have known that taxes were due.

Additionally, the Panel specifically rejects the Respondent's contention that the limited guardianship and order did not impose a duty or responsibility on Respondent to protect the property by ensuring that any property taxes were paid. Moreover, this argument by Respondent is further support and indication of Respondent's disturbing position regarding his responsibilities as a fiduciary in this matter specifically and in general.

The Respondent also violated DR 7-101(A)(1) and DR 1-102(A)(1) in the Jackson matter by failing to take action regarding the rental of property purchased for the ward, including not taking control of or otherwise safeguarding the rental income for the benefit of the ward. As with respect to protecting the assets of the minor by ensuring the payment of property taxes, Respondent failed to exercise due diligence as the fiduciary in protecting the property of the ward that had been specifically designated for protection and preservation through a limited guardianship instead of vesting this authority with the parent of the minor.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

Our analysis of the appropriate consequences for the Respondent's offenses must consider any aggravating or mitigating circumstances that may exist. Aggravating or mitigating circumstances are any considerations or factors that may justify an increase or a reduction in the degree of discipline to

be imposed. ABA Standards for Imposing Lawyer Sanctions, §§ 9.21 and 9.31 (1991 ed.).

Disciplinary Counsel relies on the following aggravating factors: (1) prior disciplinary offense; (2) dishonest or selfish motive; (3) a pattern of misconduct; (4) multiple offenses; (5) refusal to acknowledge wrongful nature of conduct; (6) vulnerability of victim; and (7) substantial experience in the practice of law.⁶

Respondent, on the other hand, argues that the facts support the following mitigating circumstances: (1) absence of a prior disciplinary record other than one single minor infraction which was resolved by a private informal admonition more than 10 years ago; (2) absence of a dishonest or selfish motive or personal gain; (3) timely good faith effort to make restitution or to rectify the consequences of misconduct by timely acting upon all inquiries in inaccuracies and making full restitution through malpractice insurance; (4) full cooperation with the Board; (5) Respondent's good character and reputation in the legal community; (6) Respondent's voluntary retirement as Public Guardian as the imposition of other penalties or sanctions; (7) Respondent's remorse as demonstrated by taking all measures available to him to correct his errors; and (8) the remoteness of the Respondent's only prior offense.⁷

While the Panel does not agree entirely with Disciplinary Counsel, the Panel does find that the aggravating circumstances in this case substantially outweigh the mitigating circumstances, both in number and degree.

⁶ Disciplinary Counsel merely recites these as aggravating circumstances without any further explanation or detail of the factual basis in support of any specific factor.

⁷ The Respondent also initially argued as a mitigating factor the delay in the disciplinary proceeding. However, the Respondent announced at the disciplinary hearing his election not to pursue this factor.

Specifically, the Panel finds the following aggravating circumstances: (1) a pattern of misconduct; (2) multiple offenses; (3) refusal to acknowledge wrongful nature of conduct; (4) vulnerability of victim; and (5) substantial experience in the practice of law. ABA Standards for Imposing Lawyer Sanctions, § 9.22(c), (d) and (g)-(i).

The Panel finds the following to be mitigating circumstances: (1) character or reputation and (2) remoteness of prior offenses. ABA Standards for Imposing Lawyer Sanctions, § 9.32(g) and (m).⁸

The record demonstrates a pattern of misconduct by the Respondent, which the Panel finds to be an aggravating circumstance. In each of the three complaints heard by the Panel, the evidence established the Respondent's disregard for the safekeeping of property that he had fiduciary and ethical obligations to properly maintain. Those obligations included properly accounting for such property.

A single bookkeeping or accounting error might be explainable as just that. But the Respondent's mishandling of property in the Pyle and Jackson matters and his accounting deficiencies in the Pyle and Doucette cases, all taken together constitute a definite pattern of misconduct.

⁸ The Respondent did have one prior disciplinary action taken against him--a private informal admonition. The Panel did not consider the occurrence of the prior offense to be either an aggravating or a mitigating factor. The Panel did, however, consider the remoteness of the prior action to be a mitigating factor. It is important to make clear that the Panel specifically declines to find mitigation in both the nature of the prior offense and the remoteness of that offense, as urged by the Respondent. Had the Panel considered the prior offense to be an aggravating factor, then it might have been more inclined to give some weight in mitigation to both the nature of the offense and the remoteness. Since the Panel did not find the prior offense to be an aggravating circumstance, giving any more mitigation weight to the circumstances of that prior action is not appropriate. Put another way, if the Panel were to consider both the nature (or occurrence) and remoteness of the offense, then it would add both another aggravating factor and another mitigating factor, the effect of which would not change the outcome of the Panel's decision in any respect.

The record also establishes, as additional aggravation, multiple offenses by the Respondent. The specific offenses and the factual bases for each are detailed above.

As stated above, the Panel specifically finds that the Respondent failed to acknowledge any wrongdoing in the handling of the three matters heard by the Panel. Instead, the Respondent blamed others, including his own staff, other lawyers, and the parent of a ward, for the events that occurred.⁹ Respondent's misconduct is further aggravated by his minimization of his own culpability.

An additional aggravating factor is the vulnerability of the victims of Respondent's misconduct. In the Pyle and Jackson matters, the victims were in need of a guardian for precisely the reason that they were vulnerable and unable to safeguard their own property. In all of the matters, the victims were persons for whom the Respondent acted as a fiduciary.

Finally, the Respondent's misconduct is further aggravated by the fact that he is an experienced practitioner, who should fully understand and appreciate the special obligations imposed upon a fiduciary. The Respondent's failure to adhere to even the minimum standards expected of someone occupying such a position, despite his substantial experience in that area of law, is an additional aggravating circumstance.

⁹ Respondent's counsel stated in opening remarks that Respondent might be guilty of simple negligence but not of sanctionable misconduct. The Panel disagrees.

In contrast, but by no means in full mitigation, the Respondent is obviously well-regarded in the legal community.¹⁰ The one prior offense made part of the record was more than nine years ago, which the Panel also considers to be a mitigating factor.¹¹

The other mitigating factors relied upon by the Respondent are not supported by the record. Although the Respondent characterized his conduct as nothing more than negligence without any dishonest or selfish motive, all reasonable inferences from the evidence are to the contrary.

For instance, on the accounting in the Pyle case, the Respondent repeatedly mischaracterized the deposits made from his own trust account as either royalty payments or earnest money. The Respondent corrected one of these misstatements, but not the others. Also, the Respondent admitted that he retained the interest earned on the funds improperly deposited into his trust account in the Pyle case. These instances (along with the totality of the circumstances presented) are at least enough to preclude the finding of an absence of dishonest or selfish motive.

Likewise, the totality of the circumstances does not support a finding of cooperation or remorsefulness that would mitigate the Respondent's misconduct. The Respondent's demeanor during the disciplinary hearing, his

¹⁰ The evidence of Respondent's character and reputation was undisputed. However, none of those character witnesses had any personal knowledge of the Respondent's practices or conduct in the specific matters that are the subject of this disciplinary proceeding. Nor did any of the witnesses, including the Respondent's own accountant, have any material personal knowledge of the Respondent's handling of trust funds or property generally.

¹¹ However, the Panel notes with respect to both of these factors that the Respondent offered no evidence of his current practices and procedures for handling trust accounts. Absent such proof, which the Panel, frankly, expected to hear, the Panel is unable to find that these mitigating factors warrant any downward deviation in the baseline sanction of a 6-month suspension.

hesitancy in answering questions about what was done with various sums of money, and his inconsistent testimony all cause the Panel to find that he lacked credibility. The Respondent also failed to show any contrition or remorse for his conduct or the consequences of that conduct.

The Panel disagrees with the Respondent's contention that his resignation as public guardian is a mitigating factor because it constitutes the imposition of another penalty. The Respondent offered no authority for such a contention and the Panel does not find this to be a "penalty" or "sanction" within the meaning of the ABA Standards.

Finally, the fact that the financial consequences of the Respondent's misconduct were satisfied through settlement with his malpractice insurance is not a mitigating factor either. Payment on a malpractice claim is forced or compelled restitution that is neither aggravating nor mitigating. ABA Standards for Imposing Lawyer Sanctions, § 9.4(a).

The strength and severity of the aggravating factors far outweigh the mitigating factors in this proceeding. As a result, the Panel finds that an increase in discipline is warranted for those offenses that would otherwise be sanctioned by a reprimand.

SANCTIONS

As the basis for the sanctions imposed herein, the Panel relies upon various of the ABA standards, including §§ 4.12, 4.42, 4.53, 4.63, 5.22, and

6.13. ABA Standards for Imposing Lawyer Sanctions (1991 ed.).¹² The Panel specifically finds that § 5.1 does not apply because that section, by its plain language applies only in “cases involving commission of a criminal act”. ABA Standards for Imposing Lawyer Sanctions, § 5.1. This proceeding does not involve any allegations of criminal acts.

Under § 4.12 of the ABA Standards, “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”. ABA Standards for Imposing Lawyer Sanctions, § 4.12. Respondent knew or should have known that he improperly handled property in the Pyle matter. The Respondent’s apparent contention that a suspension is not appropriate because all losses were made whole is a misapprehension of the standards.¹³ Potential injury is enough to impose suspension, if all other circumstances so warrant.

Under § 4.42, suspension is warranted because the Respondent both failed to perform services and he engaged in a pattern of neglect, each of which caused actual or potential injury. ABA Standards for Imposing Lawyer Sanctions, § 4.42(a) and (b). Although one or the other of these violations is sufficient to warrant suspension, the Panel finds that the Respondent violated both duties.

¹² The Panel further finds the sanctions imposed herein to be commensurate with the penalties imposed in other proceedings involving mishandling of trust funds.

¹³ The Respondent’s malpractice insurance carrier settled with the Pyle estate for a compromise of the total amount claimed. In the Jackson matter, the estate recovered at least a substantial portion of the lost value of the house occasioned by the Respondent’s misconduct. In all of the matters considered in this proceeding, the Panel specifically finds that the Respondent’s conduct caused at least potential injury.

The record clearly establishes that the Respondent failed to comply with the most basic obligations imposed upon a lawyer acting in a fiduciary capacity and, therefore, demonstrate the Respondent's clear failure to provide competent representation. The Panel does not find that the Respondent was incompetent to practice in the areas of law involved in these matters, so the Panel cannot rely on the language of § 4.52. Although § 4.53 generally calls for a reprimand only, because of the aggravating circumstances detailed above, the Panel finds that a suspension is warranted for the Respondent's demonstrated failure to understand relevant legal doctrines or procedures expected of a lawyer serving as a guardian that caused actual or potential injury. ABA Standards for Imposing Lawyer Sanctions, §§ 4.51, 4.52, and 4.53(a).¹⁴

The appropriate sanction under Standard 4.6 is a close question in this proceeding. The difference turns on the offender's intent. Suspension is appropriate under § 4.62 when "a lawyer knowingly deceives a client". But a reprimand is appropriate if the lawyer "negligently fails to provide a client with accurate or complete information". ABA Standards for Imposing Lawyer Sanctions, §§ 4.62 and 4.63.

In both the Pyle matter and the Doucette matter, the Respondent submitted accountings to the Court that contained misrepresentations of information known to the Respondent. In the Pyle matter, the accounting

¹⁴ The record and circumstances in this proceeding could well support a finding that disbarment is an appropriate sanction under § 4.51. ABA Standards for Imposing Lawyer Sanctions, § 4.51. The Respondent's apparent lack of understanding of (or at least failure to acknowledge) the most basic, fundamental obligations of a fiduciary fits within the scope of circumstances warranting disbarment, particularly given the Respondent's substantial experience in matters of guardianship, conservatorship, and other fiduciary relationships. However, for all of the reasons stated herein, the Panel finds that a six-month suspension is the most appropriate remedy for the Petitioner's offenses.

misrepresented the nature of deposits that Respondent made from his trust account. In the Doucette matter, the accounting misrepresented the assets actually held by the Respondent.

Although the Respondent's knowledge of these misrepresentations might reasonably be inferred from the evidence presented, whether the Respondent acted with knowledge or negligently makes no difference to the Panel's decision. Giving the Respondent the benefit of the doubt and imposing a reprimand under § 4.63, the Panel still finds that the aggravating circumstances described above warrant increasing the penalty to a suspension.

The Panel finds that a suspension is warranted under § 5.22 for the Respondent's failure to maintain the public trust in his position as public guardian by knowingly failing to follow the procedures for handling the estates of wards that resulted in actual injury. Suspension is also warranted for the Respondent's injury to the integrity of the legal process. ABA Standards for Imposing Lawyer Sanctions, § 5.22.

Because of the Respondent's misconduct, it became necessary that he be replaced in both the Pyle and the Jackson matters. In the Pyle case, the ward's family was required to seek court intervention to address the Respondent's misconduct. In the Doucette case, the ward's children had to personally intervene for the Respondent to correct his faulty accounting. In the Jackson case, the Respondent's failure to carry out the responsibilities imposed upon him resulted in the ward losing the house purchased for him,

which required additional court intervention to recover the excess proceeds of the tax sale and to replace the Respondent as limited guardian.

Judge Clement also found it necessary to request that the Respondent retire as public guardian. All of these circumstances actually or potentially impaired the integrity of the judicial process.¹⁵

The appropriate sanction under Standard 6.1 for the Respondent's violations of his duty to make accurate representations is also a close question. Again, the appropriate sanction depends upon the Respondent's knowledge. See, ABA Standards for Imposing Lawyer Sanctions, §§ 6.12 and 6.13.

Based upon the entire record, and for all of the reasons stated herein, the Panel finds it reasonable to infer that Respondent knew that inaccurate documents were being submitted to the court. However, again giving the Respondent the benefit of the doubt and imposing a reprimand under § 6.13, the Panel still finds that the aggravating circumstances described above warrant increasing the penalty to a suspension.¹⁶

CONCLUSION AND JUDGMENT

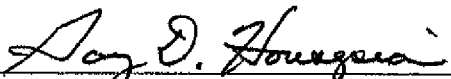
Based on all of the circumstances, the Panel finds that the Respondent should be suspended from the practice of law for a period of six (6) months. As a condition of reinstatement, the Respondent must demonstrate that he has completed not less than fifteen (15) hours in continuing legal education in (i)

¹⁵ The Respondent's failure to provide the court with accurate accountings caused at least potential injury to the integrity of the legal process. Proper accountings of estate assets are an integral part of the conservatorship or guardianship process and failure to properly account for such property potentially injures the legal process.

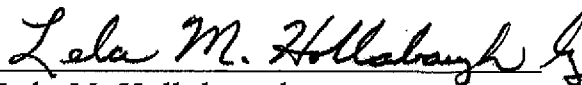
¹⁶ Although the Panel finds the aggravating circumstances to be especially serious, because those aggravating circumstances were already utilized to increase the penalty for various offenses from reprimand to suspension, the Panel does not find it appropriate to impose a suspension of more than six months, which is the minimum length of suspension generally referenced by the ABA standards. ABA Standards for Imposing Lawyer Sanctions, § 2.3.

law office management, specifically the handling of client trust accounts, and
(ii) basic fiduciary obligations.¹⁷

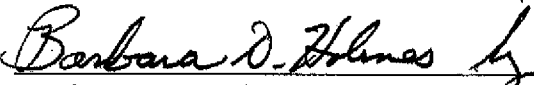
This 21st day of March, 2005.



Gary D. Housepian, Chair



Lela M. Hollabaugh



Barbara D. Holmes

¹⁷ This CLE shall be in addition to the annual mandatory CLE requirements.