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IN DISCIPLINARY DISTRICT 0
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

BOARD OF PROFESSIONAL
RESPONSIBILITY
Jaw
EXEC. SECRETARY

IN RE: ASCHALEW GUADIE NIGUSSIE,
BPR No. 32278, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Decatur, Georgia)

DOCKET NO. 2017-2761-0-AJ

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for final hearing on July 27, 2018, at the law office of Tune, Entrekin and White, P. C., 315 Deaderick Street, Suite 1700, Nashville, Tennessee, beginning at 9:00 a. m. Present at the hearing were Gerald Wigger, Hearing Panel Chair, Chris Fowler, Hearing Panel Member, Steve Parman, Hearing Panel Member and Alan D. Johnson, Disciplinary Counsel. The Respondent, Aschalew Guadie Nigussie, did not appear.

STATEMENT OF THE CASE

Mr. Nigussie is an attorney licensed to practice law in Tennessee in 2013. A Petition for Discipline was filed against Mr. Nigussie on August 14, 2017. Mr. Nigussie did not file a response or otherwise answer the Petition. On April 2, 2018, Disciplinary Counsel sent Mr. Nigussie the Petition for Discipline by email. Mr. Nigussie responded to the email on April 3, 2018, and stated that he had to move to Ethiopia and it would be six months before he could return to the States. On April 3, 2018, Disciplinary Counsel asked that he send a response to the Petition or a request for additional time within thirty days. On April 10, 2018, Mr. Nigussie responded stating that he would try. Disciplinary Counsel has heard nothing from Mr. Nigussie since receiving his email dated April 10, 2018.

On May 30, 2018, Disciplinary Counsel filed a Motion for Default Judgment and emailed it to Mr. Nigussie using the same email address that he used in the earlier correspondence. A Default Judgment was entered against him on June 18, 2018. As a result of the Order of Default, the allegations contained within the Petition are deemed admitted.

FINDINGS OF FACTS

FILE NO. 48344c-0-ES – COMPLAINANT – FITSUM ADUGNA

By letters dated March 27, 2017 and April 5, 2017, the Board notified Mr. Nigussie of a complaint filed against him by Fitsum Adugna. The Board's letters to Mr. Nigussie were returned and the Board sent the complaint to him by email on April 6, 2017. On April 7, 2017, the Board received confirmation that the email had been delivered. Mr. Nigussie did not respond to Mr. Adugna's complaint.

Mr. Adugna hired Mr. Nigussie to file an application to bring his wife to the United States. Mr. Adugna went to Mr. Nigussie's office on January 15, 2016, to provide required documents and to make a payment of \$1,170.00 in fees. That was the last time he had any contact with Mr. Nigussie. (Petition for Discipline, Exhibit A, complaint of Mr. Adugna)

Mr. Nigussie asked Mr. Adugna to return to his office after two or three weeks. Subsequently, Mr. Adugna tried unsuccessfully to contact Mr. Nigussie by phone and went to his office to find no one there. Mr. Adugna learned that Mr. Nigussie had traveled to Ethiopia. (Petition for Discipline, Exhibit A, complaint of Mr. Adugna)

Mr. Adugna did not receive a copy of the application that Mr. Nigussie was to file on his behalf, and has not received a response from United States Citizenship and Immigration Services (USCIS) regarding his application. Mr. Nigussie abandoned his client and did not respond to Disciplinary Counsel.

FILE NO. 47745-0-ES – COMPLAINANT –TIEGSTY FIKREYESUS

By letters dated June 3, 21, and 27, 2016, the Board notified Mr. Nigussie of a complaint filed against him by Tiegsty Fikreyesus. On June 3, 2016, Disciplinary Counsel sent the complaints to Mr. Nigussie by email and he responded to the email on July 1, 2016.

By letter dated July 1, 2016, Disciplinary Counsel sent Mr. Nigussie's response to Ms. Fikreyesus and requested a reply. On July 13, 2016, the Board received Ms. Fikreyesus' reply and on July 14, 2016, mailed the reply to Mr. Nigussie and requested a response.

On November 17, 2016, the Board sent a request for additional information to Mr. Nigussie by email and he did not respond. The Board received confirmation of delivery of the email. On November 29, 2016, the Board sent Mr. Nigussie additional information received from Ms. Fikreyesus, and requested a response. After sending his reply to the complaint by email on July 1, 2016, Mr. Nigussie did not correspond with the Board and did not provide information requested.

Ms. Fikreyesus hired Mr. Nigussie in June 2014 for an immigration matter to file a waiver for grounds of inadmissibility with the USCIS. Mr. Nigussie filed the waiver on September 4, 2014, but did not provide Ms. Fikreyesus with a copy of what he filed. (Petition for Discipline, Exhibit C, Affidavit of Tiegsty Fikreyesus) When Ms. Fikreyesus contacted Mr. Nigussie for a an update on her application, he told her "to wait patiently." (Petition for Discipline, Exhibit C, Affidavit of Tiegsty Fikreyesus) During the course of the representation, Ms. Fikreyesus provided Mr. Nigussie with two new addresses as she had moved twice since retaining him. (Petition for Discipline, Exhibit C, Affidavit of Tiegsty Fikreyesus)

The waiver was denied on February 24, 2015. The dismissal order was addressed to Ms. Fikreyesus at the first address she provided to Mr. Nigussie, and copied to Mr. Nigussie.

(Petition for Discipline, Exhibit H) It was not until January 2016 that Ms. Fikreyesus learned from the USCIS office that the waiver had been denied. (Petition for Discipline, Exhibit C, Affidavit of Tiegesty Fikreyesus) Mr. Nigussie did not notify his client of the denial, and had not updated the new address with USCIS, thus depriving her of the ability to file an appeal, or I-290B, timely.

Mr. Nigussie failed to keep Ms. Fikreyesus informed about the status of the case, failed to update USCIS with the current address, and did not provided a response to Disciplinary Counsel's additional inquiry.

CONCLUSIONS OF LAW

Pursuant to Tenn. S. Ct. R. 9, § 3, the license to practice law in this state is a privilege and it is the duty of every recipient of that privilege to conduct himself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct (hereinafter "RPC") of the State of Tennessee shall constitute misconduct and be grounds for discipline.

The admitted facts establish that Mr. Nigussie accepted fees from clients, performed little if any work on their behalf and abandoned the cases when he ceased communicating with them.

1. Mr. Nigussie violated RPC 1.3 (diligence) by failing to file the application for waiver for Mr. Adugna and pursuing the appeal for Ms. Fikreyesus.

2. Mr. Nigussie violated RPC 1.4 (communication) by failing to communicate with his clients after he was retained.

3. Mr. Nigussie violated RPC 1.5 (f) (fees) by accepting a fee in the amount of \$1,170.00 from Mr. Adugna and doing nothing thereafter.

4. Mr. Nigussie violated RPC 1.16 (d) (terminating representation) by failing to provide any notice to his clients that he was no longer representing them and taking steps to protect their interests.

5. Mr. Nigussie violated RPC 8.1 (b) (disciplinary matters) by failing to respond to the Board's requests for information.

6. Mr. Nigussie violated RPC 8.4 (a) and (d) by violating the Rules of Professional conduct and engaging in conduct that is prejudicial to the administration of justice. Specifically, Mr. Nigussie did not file Mr. Adugna's application or inform the USCIS of the address changes for Ms. Fikreyesus resulting in the loss of her ability to timely appeal the decision denying her request for a waiver.

When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, ("ABA Standards") pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court. The following ABA Standard apply in this matter:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Mr. Nigussie abandoned his clients resulting in serious or potentially serious injury. He accepted \$1,170.00 from Mr. Adugna and told him to contact him in two to three weeks. When Mr. Adugna tried to contact him, Mr. Nigussie had apparently already left the country. After accepting the fee, Mr. Nigussie did nothing.

He did not maintain communication with Ms. Fikreyesus and his failure to update her address with the USCIS may have cost her the right to appeal the adverse decision. Mr. Nigussie's response to Ms. Fikreyesus request for information about her case was simply to be patient. Finally, Mr. Nigussie failed to inform his clients that he was either leaving the practice of law or leaving the country, and abandoned his clients resulting in serious injury to them.

Aggravating Factors

Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

1. Mr. Nigussie's bad faith obstruction of disciplinary proceedings by failing to respond to Disciplinary Counsel is an aggravating circumstance justifying an increase in discipline.
2. Mr. Nigussie's dishonest and selfish motive, accepting a fee and not performing the work is an aggravating circumstance justifying an increase in discipline.
3. Mr. Nigussie's multiple offenses are an aggravating circumstance justifying an increase in discipline.
4. The vulnerability of Mr. Nigussie's clients is an aggravating circumstance justifying an increase in discipline.

CONCLUSION

The Hearing Panel recognizes that Mr. Nigussie contends that he has family issues in Ethiopia, and that Ethiopia was in a state of emergency until June 2018. Nevertheless, Mr. Nigussie did communicate with Disciplinary Counsel by email on April 3, 2018, when he explained his circumstances, and requested additional time to respond to the Petition for Discipline. Disciplinary counsel responded by email on April 3, 2018, and basically requested

that Mr. Nigussie “just get us something.” Mr. Nigussie responded by email on April 10, 2018, stating that he would try.

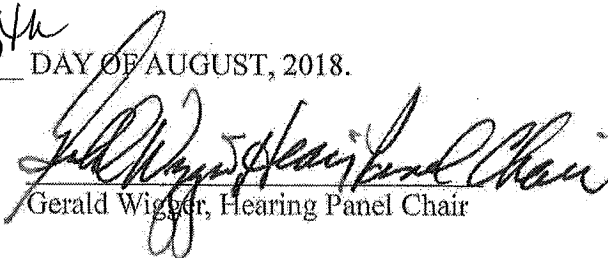
This email exchange raises doubts about Mr. Nigussie’s claim that Ethiopia has no email service. Moreover, it represents a pattern of conduct that he engaged in with his clients who filed the present complaints against him.

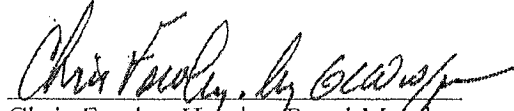
The Hearing Panel notes ABA Standard 4.41 calls for disbarment in cases such as this where a lawyer abandons his practice and causes injury, even to a single client. That is what happened in this case. Mr. Nigussie’s conduct affected the lives of two clients and his failure to respond to the Petition for Discipline indicates a continuing abandonment of his law practice. Accordingly, based upon the application of the ABA Standards to the admitted facts, and taking into account the aggravating circumstances, the Hearing Panel finds that Mr. Nigussie should be disbarred from the practice of law.

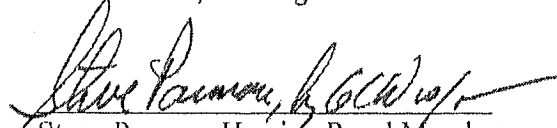
In addition, Mr. Nigussie is ordered to pay restitution to Mr. Adugna in the amount of \$1,170.00. Payment of restitution shall be a condition precedent to any application for reinstatement to the practice of law. In the event restitution, or a portion of restitution, is made by the Tennessee Lawyer’s Fund for Client Protection (“TLFCP”), Mr. Nigussie will be responsible for reimbursement to the TLFCP of the same amount.

The costs of this cause, as set forth in Tenn. Sup. Ct. R. 9, § 31.3 (a), will be taxed to Mr. Nigussie following entry of this judgment pursuant to the procedures established in Tenn. Sup. Ct. R. 9, § 31.3 (a).

ENTERED ON THIS THE 13th DAY OF AUGUST, 2018.


Gerald Wigger, Hearing Panel Chair


Chris Fowler, Hearing Panel Member


Steve Parman, Hearing Panel Member

NOTICE OF APPEAL

The findings and judgment of the hearing panel may be appealed pursuant to Tenn. Sup. Ct. R. 9, Section 33. See also Tenn. Sup. Ct. R. 9, Section 31(a).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Aschalew Guadie Nigussie, via Electronic Mail at aschalewgn@gmail.com, and hand-delivered to Alan D. Johnson, Disciplinary Counsel, on this the 13th day of August, 2018.



Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.