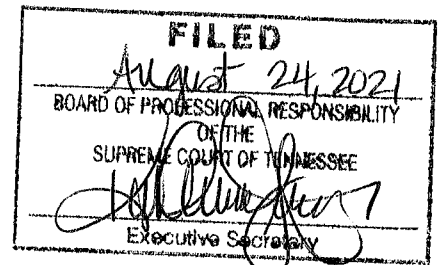


IN DISCIPLINARY DISTRICT IV
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE



IN RE: WENDELL J. O'REILLY,
BPR NO. 022217, Respondent,
An Attorney Licensed to Practice
Law in Tennessee
(Williamson County)

DOCKET NO. 2019-3028-6-AJ

FINDINGS OF FACT AND RECOMMENDATIONS OF THE HEARING COMMITTEE

PANEL

This cause came before the Hearing Panel on Thursday May 6, 2021. Alan D. Johnson represented the Board of Professional Responsibility. Wendell J. O'Reilly appeared remotely via Zoom and represented himself.

Background:

A petition for discipline was filed by the Board of Professional Responsibility on August 2, 2019. The petition alleged unethical conduct in violation of the Tennessee Rules of Professional Conduct, specifically Rule 1.4 (Communication), Rule 1.5 (Fees), Rule 1.15 (Safekeeping of Funds), Rule 3.3 (Candor Toward the Tribunal), Rule 4.1 (Truthfulness), Rule 5.5 (Unauthorized Practice of Law), Rule 8.1 (Bar Admission and Disciplinary Matters), and Rule 8.4. (Misconduct). On October 29, 2019, Wendell J. W. O'Reilly responded to the petition by denying any unethical conduct.

On March 3, 2020, a Supplemental Petition for Discipline was filed by the Board of Professional Conduct. Mr. O'Reilly failed to respond to the petition. Accordingly, the allegations that Mr. O'Reilly violated Rule 5.5. (Unauthorized Practice of Law) and Rule 8.4 (Misconduct) were deemed admitted as true based on Mr. O'Reilly's failure to respond.

FINDINGS OF FACT:

1. Mr. O'Reilly was administratively suspended from the practice of law in Tennessee on August 22, 2018 for failure to comply with mandatory continuing legal education requirements. He was again administratively suspended from the practice of law on August 23, 2018 for failure to pay professional privilege taxes. (Ex. 1). During the hearing, Mr. O'Reilly complained that he did not receive notice of the suspensions. However, despite being given additional time to supplement the hearing record to support his position, he failed to do so. The Board of Professional Responsibility provided additional information supporting proper notice to Mr. O'Reilly.

2. The Board and Mr. O'Reilly stipulated that Mr. O'Reilly served as counsel, along with Ken Burger from Murfreesboro, TN, in the trial of State ex rel. Slatery v. HRC Med. Centers, Inc. On appeal to the Tennessee Court of Appeals, Mr. O'Reilly was present at counsel table for argument on October 3, 2018, but only Mr. Burger argued to the Court. Mr. O'Reilly did not address the Court during argument, nor did he tell the Court he was suspended from the practice of law. (Exhibit 5, Testimony of Senior Counsel Brant Harrell, TN Attorney General's Office) State ex rel. Slatery v. HRC Med. Centers, Inc., 603 S.W.3d 1 (TN. Ct. App. 2019), perm. to appeal denied (April 16, 2020).

3. In October 2018, Keith Fry was not aware that Wendell O'Reilly was suspended from the practice of law in Tennessee when he paid Mr. O'Reilly \$5000.00 to provide legal representation. Mr. Fry needed legal assistance in his effort to purchase property in Trousdale County. (Ex. 7) He also paid Mr. O'Reilly \$1,600.00 to be presented as an escrow payment with his purchase offer to the seller's real estate agent. (Ex. 8) Both checks were cashed by Mr. O'Reilly but were not deposited in his IOLTA account.

4. During an in-person meeting in January 2019 with Mr. Fry and the property seller's realtor, Mr. O'Reilly wrote an escrow check for \$1,600.00 on the account of True Corner Building Supplies and Services, Inc. The check bounced because the account was closed two months before the check was even presented to the realtor. (Exs. 9, 10) During the hearing, Mr. O'Reilly acknowledged he no longer was in possession of the \$6,600.00 paid to him by Mr. Fry. In response to Mr. Fry's claims, Mr. O'Reilly stated that he was not acting as an attorney during this transaction. The panel accredits the testimony of Mr. Fry.

5. John Buffaloe, Jr, was deposed prior to the hearing on April 30, 2021. Attorney Buffaloe represented a client in a Williamson County General Sessions lawsuit against parties represented by Wendell O'Reilly. On December 17, 2018, Mr. O'Reilly answered docket call and identified himself as representing the defendants in the case, despite his law license being suspended at that time. Following an agreement to reset the case until March 2019 and that Mr. O'Reilly would sign an agreed judgment, Mr. Buffalo was unable to reach Mr. O'Reilly. Mr. Buffaloe's internet research led to a finding that Mr. O'Reilly's license was suspended. (Ex. 4)

6. Wendell O'Reilly accepted \$1,000 on April 4, 2019, from Jay Ellis to represent Airtight Resources, Inc. in a lawsuit. Mr. O'Reilly failed to file a response to the complaint leading to motion for a default judgment. Mr. Ellis then paid Mr. O'Reilly an additional \$3,500.00. Mr. O'Reilly misled Mr. Ellis and stopped communicating with him after July 30, 2019. (Supplemental Petition allegations deemed admitted)

7. Wendell O'Reilly has received two public censures from the BPR. On January 9, 2015, the BPR censured Mr. O'Reilly for failing to communicate with his client and neglecting his client's civil matters. (Ex. 11) On January 13, 2017, the BPR censured Mr. O'Reilly for comingling

personal funds with funds in his trust account. The Board noted that Mr. O'Reilly paid personal and business expenses directly from his trust account. (Ex. 12)

CONCLUSIONS:

After review of the pleadings and exhibits, and after hearing testimony in this matter, the Panel finds Wendell O'Reilly violated the following Tennessee Rules of Professional Conduct:

1. RPC 1.4 (communication). Mr. O'Reilly failed to maintain adequate and honest communication with both Mr. Fry and Mr. Ellis after accepting legal fees for representation.
2. RPC 1.5 (a), (b), (c) (unreasonable fees). Mr. O'Reilly accepted fees from Mr. Fry and Mr. Ellis under the false pretense that he was licensed to practice law at the time. Accordingly, the fees were unreasonable because he was not able to represent either party as counsel of record.
3. RPC 1.15 (safekeeping of property). Mr. O'Reilly's failure to deposit funds given to him by Mr. Fry for the purpose of being tendered in a real estate transaction into his IOLTA account demonstrates a disregard for keeping the funds separate and available, as needed, to cover the escrow payment
4. RPC 3.3 (a)(1) (candor toward the court). Prior to his appearance in court, Mr. O'Reilly failed to tell the Williamson County General Sessions Court and the Court of Appeals for the Middle District of Tennessee that he was suspended from the practice of law.

5. RPC 4.1(a) (truthfulness). Mr. O'Reilly presented a check to a realtor on behalf of a client knowing that the bank account on which the check was written had been closed for two months.
6. RPC 5.5(a) and (b) (unauthorized practice of law). Mr. O'Reilly accepted money from Mr. Ellis and Mr. Fry for legal representation knowing he was not authorized to practice law at that time. Mr. O'Reilly appeared in the Middle Section Court of Appeals and General Sessions Court of Williamson County while unauthorized to practice law.
7. RPC 8.1 (b) (disciplinary matters). Mr. O'Reilly failed to respond to Disciplinary Counsel following Mr. Ellis' complaint.
8. RPC 8.4 (a) (misconduct). Mr. O'Reilly's actions violate the Rules of Professional Conduct.
9. RPC 8.4 (c) (conduct involving dishonesty, fraud, deceit and misrepresentation). Mr. O'Reilly failed to inform the courts and his clients that he was suspended from the practice of law. Knowing he could not practice law at the time, Mr. O'Reilly still accepted fees totaling \$9,500 from Mr. Ellis and Mr. Fry. In addition, he presented a worthless check knowing the account it was drawn on was closed.
10. RPC 8.4(d) (conduct prejudicial to the administration of justice). Mr. O'Reilly's continued practice of law while suspended is prejudicial to the administration of justice for his clients and the courts.
11. RPC 8.4 (g) (administrative suspensions). Mr. O'Reilly failed to comply with any of the rules addressing lawyers suspended administratively. He continued to practice law and did not notify his clients or opposing counsel that he was under suspension.

RECOMMENDATIONS:

Rule 9, Section 11.1 of the Rules of the Tennessee Supreme Court recognizes that an attorney's acts or omissions "which violate the Rules of Professional Conduct of the State of Tennessee . . . shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the court of an attorney-client relationship." "In determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions." Rule 9, Section 15.4, Rules of the Tennessee Supreme Court.

Under ABA Standard 3.0, this panel considered the duty violated by Mr. O'Reilly, his mental state, the potential or actual injury caused by the misconduct, and the existence of aggravating and mitigating factors. Upon review of these factors, the panel finds that disbarment is an appropriate sanction in this case. Mr. O'Reilly failed to preserve his client's property by taking Mr. Fry's funds for escrow and converting them to his own use. (ABA Standard 4.11) Mr. O'Reilly also neglected his client by converting Mr. O'Reilly's escrow payment and by failing to timely respond in Mr. Ellis' lawsuit, thus engaging in a pattern of neglect causing serious or the potential to cause serious injury to a client. (ABA Standard 4.41(c)).

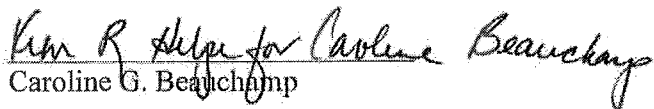
"Disbarment is generally appropriate when a lawyer knowingly deceives a client with intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client." (ABA standard 4.61). Here, Mr. O'Reilly deceived Mr. Fry by presenting a worthless escrow check, as well as Mr. Ellis by claiming he was filing responses when he was not. ABA Standard 5.11(b) also applies whereby Mr. O'Reilly's representations to both his clients, the Courts, and the Board reflected dishonesty and misrepresentation. In addition, Mr. O'Reilly's answer at docket call in Mr. Buffaloe's case, as well as appearance in the Tennessee Court of

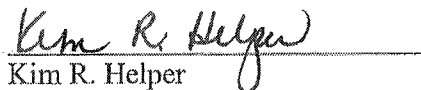
Appeals at counsel table demonstrates deception before the court and "causes a significant or potentially significant adverse effect on the legal proceeding." (ABA Standard 6.11).

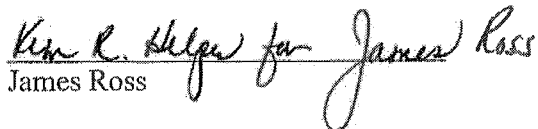
The ABA Standards list several aggravating and mitigating factors for review in determining sanctions. Here, Mr. O'Reilly was censured twice by the BPR which demonstrates a pattern of misconduct. (ABA Standard 9.22 (a), (c)). Although several mitigating factors are listed for consideration, Mr. O'Reilly's defense appeared to be based on a lack of knowledge of his suspension and he did not provide evidence in support of the mitigating factors. When given the opportunity to supplement the record, he failed to do so nor did he file a post-trial brief setting forth his arguments.

Accordingly, based on a review of the facts present, as well as the Tennessee Rules of Professional Conduct and the ABA Standards for Imposing Lawyer Sanctions, this Hearing Panel recommends disbarment. We also recommend that Mr. O'Reilly be ordered to pay Mr. Fry \$6,600.00 in restitution and pay Mr. Ellis \$4,500.00 in restitution.

Respectfully submitted:



Caroline G. Beauchamp


Kim R. Helper


James Ross

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Wendell J. O'Reilly, 660 Harpeth Bend Drive, Nashville, TN 37221, by U.S. First Class Mail, and hand-delivered to Alan Johnson, Disciplinary Counsel, on this the 24th day of August 2021.


Katherine Jennings
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.