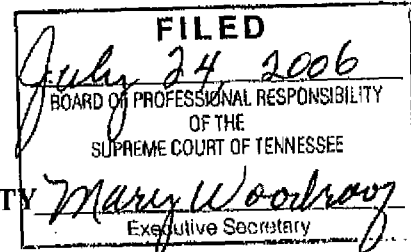


**IN DISCIPLINARY DISTRICT IX
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



IN RE: JOHN HOUSER PARKER, BOPR #10326, DOCKET NO. 2005-1533-9-JJ
**Respondent. An Attorney Licensed
to Practice Law in Tennessee
(Shelby County)**

JUDGMENT OF THE HEARING COMMITTEE

THIS CAUSE came on to be heard by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee on May 23, 2006. Pursuant to Rule 9 of the Supreme Court of Tennessee, the Committee makes the following findings of fact and judgment:

I. STATEMENT OF THE CASE

John Houser Parker was temporarily suspended from the practice of law by the Tennessee Supreme Court on July 29, 2004, because of his misappropriation of client funds which posed a risk of irreparable harm to the public pursuant to Tenn.R.Supp.Ct. 9, § 4.3. Respondent remains suspended on this basis as of present.

The petition for discipline was filed in this cause on August 9, 2005. On February 16, 2006, the Board of Professional Responsibility filed a motion for default judgment. The record reflects that respondent has failed to file a written answer to the petition and that he has not filed any response to the Board's motion for default judgment. Accordingly, the Hearing Panel entered an order granting default judgment on April 26, 2006, pursuant to Tenn.R.Supp.Ct. 9, § 8.2. Pursuant to said order granting default judgment, the charges as contained in the instant

petition for discipline are therefore admitted. This matter was scheduled for final hearing which occurred on May 23, 2006, in Memphis, Tennessee.

The Respondent was represented by counsel in these matters by William M. Monroe, Esquire.

II. RESPONDENT'S MOTION TO STAY PROCEEDINGS

In this matter, Respondent's counsel has filed a dignified and authoritative motion to stay these proceedings in light of the criminal action pending against Respondent in Shelby County. Respondent, through counsel, has asserted his Fifth Amendment right to remain silent in this proceeding in response to the allegations against him.

Both the Respondent's counsel and counsel for the Board submitted excellent briefs for the consideration of the Panel. Rule 9, § 11 of the Rules the Supreme Court provides that a disciplinary matter "shall not be deferred or abated because of a substantial similarity to the material allegations of pending civil or criminal litigation, unless authorized by the Board in its discretion, for good cause shown."

The Panel has carefully considered the motion and cases cited by the Respondent. The Panel noted the language set forth in *Securities and Exchange Commission v. Dresser Industries, Inc.*, 628 F.2d 1368 at 1375:

The Constitution, therefore, does not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings. [*citing cases*]. . . Nevertheless, a court may decide in its discretion to stay civil proceedings, postpone civil discovery, or impose protective orders and conditions "when the interests of justice seem to require such action, sometimes at the request of the prosecution, ... sometimes at the request of the defense. ... The court must make such determinations in the light of the particular circumstances of the case. Other than where there is specific evidence of agency bad faith or malicious governmental tactics, the strongest case for deferring civil proceedings until after completion of criminal proceedings is where a party under indictment for a serious offense is required to defend a civil or administrative action involving the same matter. The noncriminal proceeding, if not deferred, might undermine the party's Fifth

Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits of Federal Rule of Criminal Procedure 16(b), expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case. If delay of the noncriminal proceeding would not seriously injure the public interest, a court may be justified in deferring it.

Likewise, the Constitution of Tennessee expressly provides at Article I, § 8:

No man to be disturbed by law – that no man shall be taken or imprisoned or deseized of his freehold liberty or privileges or outlawed or exiled, or any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

The Tennessee Court of Appeals in *Bell v. Todd*, M2003-000192 (2005 Tenn.App.)

LEXIS 583 set forth the balancing test for courts to consider when the issue of stay of civil proceedings in light of pending criminal matters was presented. Those tests are as follows:

1. The extent to which the issues in the civil and criminal proceedings overlap;
2. The status of the criminal proceeding;
3. The Plaintiff's interest in expeditious civil proceedings weighed against the prejudice to the Plaintiff caused by the delay;
4. The hardship on the Defendant, including the burden on the Defendant if the cases go forward in tandem;
5. The convenience of both the civil and criminal courts; and
6. The interest of third parties and the public.

Recognizing that there are different standards of proof to be met in the criminal proceeding which is currently pending against the Respondent and the disciplinary proceeding involved in this matter, the Panel in fidelity to Tennessee Rules of Supreme Court, specifically Tenn.R.Sup.Ct. 9, § 11, shall not defer or abate these proceedings because of a substantial similarity to the material allegations of pending civil or criminal litigation unless authorized by the Board in its discretion for good cause shown. Reviewing the status of these proceedings,

especially in light of the Affidavits of J. Richard Rossi, Esquire, and attached documents in the record, the entry of the default judgment whereby the matters asserted in the complaint are deemed admitted and the substance, numerocity and repugnancy of the actions of the Respondent in violating positions of trust and confidence to which he was placed as a result of his privilege to practice law, all of which directly impact the interests of the public, the Hearing Panel finds that good cause has not been shown in order to defer, abate or stay these proceedings in accordance with Tenn.R.Sup.Ct. 9, § 11. Accordingly, Respondent's motion for a stay of the proceedings is denied and judgment is entered as set forth herein.

III. FINDINGS OF FACT

The Hearing Panel makes the following findings of fact based upon the evidence and the entire record in this cause.

In the matter of Attorneys, J. Richard Rossie, William O. Lockett, Jr., Lorrie K. Ridder and David A. Billions:

All allegations concerning this matter were determined to have been admitted by Parker in the order granting the default judgment order on April 26, 2006. Parker misappropriated \$111,988.00 from the law firm's escrow between 1999 and the end of June 2004.

Respondent paid his own personal obligations out of the law firm's general IOLTA escrow account, such as his Express bill (\$10,000 on January 30, 2003); his Bankcard Services bill (\$12,722.79 on January 21, 2003); his private artwork to Park West Gallery (\$14,997.50 on April 4, 2004); his Discover Card bill (\$3,000 on December 1, 2000, \$3,500 on January 5, 2001); his Wachovia bill (\$2,000 on January a5, 2001); and his Goldsmith's bill (\$1,500 on October 14, 1999, \$1,500 on November 8, 1999, and \$270.97 on January 14, 2000) as part and parcel of his misappropriation of the \$111,988.00 from his former law firm's general escrow account through

June 30, 2004. Other checks too numerous to mention were also written by Respondent out of his former firm's general escrow account for his personal use between 1999 and June 2004.

Respondent's misappropriation of trust accounts.

Respondent, without approval of Shelby County Probate Court, between 2002 and 2003, paid himself as Administrator CTA of the William D. Bone probate estate (pending in Shelby County Probate Court in 2004) between \$150,000 and \$200,000 in fees. Respondent misappropriated estate funds from the William D. Bone estate as follows:

- a. Debit of 11-12-02 to Respondent as Administrator CTA for \$8,000 drawn on estate's Enterprise National Bank account;
- b. Check No. 1650 to Respondent dated 10-17-02 (signed by him as Administrator CTA, for \$10,000 (drawn on estate's Enterprise National Bank account);
- c. Miscellaneous debit of 9-18-02 in amount of \$32,000 ("wire at Hab Trust A/C"), drawn on estate's Enterprise National Bank account;
- d. Undated check No. 1648, cashed 9-30-02 to Respondent, signed by Respondent as Administrator CTA, in the amount of \$12,500 as fees, drawn on estate's Enterprise National Bank account;
- e. Check No. 1645 dated 9-3-02 to Respondent, signed by Respondent as Administrator CTA, for \$20,000, drawn on estate's Enterprise National Bank account;
- f. Check No. 1042 dated 7-1-03 for \$6,758.75 to Respondent to "reimbursement," signed by Respondent and drawn on estate's NBC account;
- g. Check No. 1003 dated 12-17-02 for \$5,000, to Respondent and signed by Respondent, drawn on estate's NBC account;
- h. Check No. 1002 dated 11-19-02 for \$30,000 to Respondent and signed by Respondent for "fee," drawn on estate's NBC account.

Respondent misrepresented to an attorney for one of the beneficiaries of the Bone estate an incorrect amount of money purportedly on deposit in the law firm's escrow account. The

amount misrepresented was \$148,911.97. After an independent review, it was determined that there was only \$8,874.94 in the law firm's escrow account on behalf of the Bone estate rather than the misrepresented amount of \$148,911.97 reported to be there as shown on a falsified check register produced by Respondent to the attorney for the beneficiary.

Subsequent to Respondent's termination from his prior law firm on June 17, 2004, Respondent directed in June 2004 a wire transfer from the Belva Merrill Trust Account (James F. Merrill Family Trust) to the trust account of William D. Bone, Sr., in the amount of \$148,911.57 in an attempt to repay his prior theft of \$148,911.97 from the estate of Mr. Bone.

In addition to his misappropriation by wire transfer of the sum of \$148,911.97 from the James F. Merrill estate, in June of 2004, Respondent as Trustee engaged in further misappropriations of the estate's funds between December 2002 and April 2003 as follows:

- a. Check No. 105 to Respondent signed by Respondent for \$20,000, drawn in December 2002 (estate's Northwestern Mutual Life account);
- b. Check No. 106 to Respondent signed by Respondent for \$25,000 drawn in December 2002 (estate's Northwestern Mutual Life account);
- c. Unnumbered debit to Respondent in December of 2002 for \$20,000 drawn on estate's Northwestern Mutual Life account;
- d. Check No. 129 to Larry Capstock in amount of \$50,000 in early 2003 drawn on estate's Northwestern Mutual Life account;
- e. Check No. 130 to Respondent signed by Respondent for \$30,000 on March 4, 2003, drawn on estate's Northwestern Mutual Life account;
- f. Check No. 132 to Respondent signed by Respondent for \$25,000 on April 10, 2003, drawn on estate's Northwestern Mutual Life account;
- g. Check No. 133 to Respondent signed by Respondent for \$25,000 in spring 2003 drawn on estate's Northwestern Mutual Life account;
- h. Check No. 6639 on Rossie, Lockett, Parker & Ridder's General Escrow account for \$12,722.79 to Respondent's personal credit card creditor,

Bank Card Services, drawn on 1-21-03 and signed by Respondent (taken out of Merrill estate funds);

- i. Check No. 6644 on Rossie, Lockett, Parker & Ridder's General Escrow Account for \$10,000 to Respondent's personal creditor, American Express, for \$10,000 drawn on 1-30-03 and signed by Respondent (taken out of Merrill estate funds).

With respect to the Gary Moore CRUT, Respondent's misappropriations as Trustee included the following transactions:

- a. Check No. 7547 on Rossie, Lockett, Parker & Ridder's General Escrow Account for \$14,987.50, to Park West Gallery for art work, drawn on 4-4-04 and signed by Respondent (taken out of Moore CRUT funds);
- b. Estate's check issued on 11-4-03 in amount of \$20,935 and signed by Respondent made payable to Estate of Mrs. C. W. LeMay.

Respondent as Trustee has also misappropriated to his own use and benefit at least the following amounts from a revocable family trust he created for one of his relatives, Frances L.

Greer:

- a. Firm Escrow Account check issued 10-1-99 and signed by Respondent for \$496.01 to Wachovia, for Respondent's personal credit card bill;
- b. Firm Escrow Account check issued 10-1-99 and signed by Respondent for \$4,267.32 to Bank Card Services, for Respondent's personal credit card bill;
- c. Firm Escrow Account check issued 10-1-99 for \$751.13 and signed by Respondent to Discover Card, for Respondent's personal credit card bill;
- d. Law Firm Escrow Account check dated 10-14-99 to Goldsmith's and signed by Respondent for \$1,500 for Respondent's personal credit card;
- e. Law Firm Escrow Account check dated 10-14-99 to American Express Centurion Bank and signed by Respondent for \$571.91.

Respondent continued to misappropriate entrusted funds from the Premier client liability sub-account (pass through trust) within the law firm's general escrow account as follows:

- a. Two Law Firm Escrow Account checks to Marshall L. Duffey signed by Respondent -- the first for \$5,000 representing Duffey's September CRUT Distribution dated 9-7-99 and the second for \$930.65 on 5-5-2000 for May CRUT Distribution;
- b. Law Firm Escrow Account checks to Discover Card (9-10-99 for \$1,422.61 and 12-1-2000 for \$3,000); to Goldsmith's (1-14-2000 for \$1,087.98 and \$526.11; 3-16-2000 for \$865.25; 5-22-2000 for \$1,081.46); to Wachovia (10-3-2000 for \$2,552.85; 1-5-2001 for \$2,000); to American Express (1-5-2001 for \$3,000); to Bank Card Services 1-6-2001 for \$3,000.

Respondent misappropriated two \$10,000 checks from the Family Trust for Maurice W. Elliott in 1999.

Respondent misappropriated and stole \$52,256.65 from the Elizabeth Ann Wright Charitable Remainder Unitrust which he served as Trustee between 1999 and 2002.

After being temporarily suspended from the practice of law on July 29, 2004, by the Tennessee Supreme Court due to misappropriations which posed a risk of irreparable harm, Respondent misled his former clients and misrepresented the true reason he could not practice law by advising his former client in correspondence that he "apparently was guilty until proven innocent" before the Board and that he was merely "on what will be a temporary leave of absence from the practice of law . . ." Such action on Respondent's part violated Tenn.R.Sup.Ct. 9, § 18.1 because the notice letter did not apprise his clients of the content of the order of the Tennessee Supreme Court suspending him from the practice of law.

It is the judgment of the Hearing Panel that the Respondent violated the following Disciplinary Rules, Rules of Professional Conduct and Rules of Disciplinary Enforcement embodied within Tenn.R.Sup.Ct. 8 and 9: DR 1-102(A)(1)(4)(5)(6); DR 5-101(A); DR 5-105(A)(B); DR 7-102(A)(1)(3)(8); Canon 9 of the Code of Professional Responsibility; and DR

9-102(A)(B)(3)(4); and RPCs 1.2(a), 1.7(b), 1.15(a)(b), 3.4(a)(b)(c), 4.1(a), 4.4(a) and 8.4(a)(c)(d); and Tenn.R.Sup.Ct. 9, § 18.1(a) and 18.8.

IV. CONCLUSIONS

Based upon the entire record in this cause, it is the conclusion of the Hearing Panel that the Respondent, John H. Parker, has demonstrated a pattern of utter disregard for the fiduciary and moral requirements of the practice of law and rules and orders of the Courts of this State and profession. Parker has engaged in a pattern of willful misconduct over an extended period of time.

The inevitable conclusion is that Parker's misconduct was motivated by dishonest and selfish motives. Further, aggravating circumstances exist, including Respondent's previous public censure and temporary suspension by the Supreme Court for misappropriating client trust funds; his pattern of misconduct and multiple offenses; and his substantial experience in the practice of law. No evidence suggestive of any mitigating factor has come to the attention of the Panel.

The Panel concludes that Respondent has clearly misappropriated and stolen the amounts set forth in the petition and set forth in this order.

V. JUDGMENT

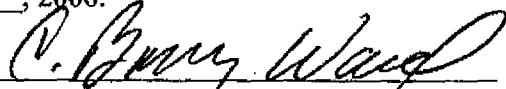
IT IS, THEREFORE, the judgment of the Hearing Committee that:

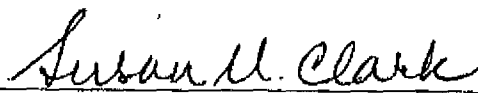
1. Respondent, John H. Parker, be disbarred from the practice of law in the State of Tennessee.
2. That upon any application for readmission by this Respondent, restitution of the following amounts to the following entities be a condition precedent to any petition for


reinstatement, with proper credit given for any amounts covered by insurance, fidelity bond, or other sources:

- a. \$111,988.00 to the Rossie, Lockett firm as misappropriated from said firm's escrow account;
- b. \$148,911.57 to the Belva Merrill Trust Account or its representatives;
- c. \$20,935 to the Gary Moore CRUT or its representatives;
- d. \$20,000 to the Rossie, Lockett firm or to its fidelity insurer to reimburse the firm or the insurer for payment made to Maurice Elliott due to Respondent's misappropriations from Elliott;
- e. \$61,113.52 to the Elizabeth Wright Remainder Charitable Unitrust or its representatives;
- f. \$30,617.60 to Milton Kaplan due to Respondent's theft from this client's Guardian Life policy by obtaining internal policy loans;
- g. Any further amounts to any of the above entities in the way of final judgments of a court with competent jurisdiction or final arbitration awards which included additional amounts due such as fines interest and attorney fees; and
- h. Any further amounts to any further entities or individuals or to the Tennessee Lawyers Fund for Client Protection representing amounts Respondent is adjudged to have stolen, as may be determined by an appropriate reinstatement committee.

ENTERED this 20 day of July, 2006.


C. Barry Ward, Hearing Committee
Chairman


Susan M. Clark, Hearing Committee
Member


Kathleen M. Gomes, Hearing Committee
Member