

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

FILED

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BOARD OF PROFESSIONAL
RESPONSIBILITY

EXEC. SEC.

IN RE: LANCE W. PARR
BPR No. 024651, Respondent,
An Attorney Licensed to Practice
Law in Tennessee
(McMinn County)

Docket No. 2009-1821-3-RS
(File No. 31335-3-DB)
(File No. 32691-3-RS)

JUDGMENT OF THE HEARING PANEL

This cause came on to be heard on December 14, 2010, in Athens, Tennessee, pursuant to Rule 9 of the Rules of the Tennessee Supreme Court, before a Hearing Panel of the Board of Professional Responsibility of the Tennessee Supreme Court, composed of Robert L. Lockaby, Jr., Chair, Barry L. Gold, and Cara J. Alday.

The Respondent, Mr. Lance W. Parr, appeared with his counsel, Mr. Paul Campbell, III. The Board appeared through its counsel, Mr. Randall J. Spivey. Opening statements were made, the testimony of witnesses was presented, and exhibits were offered and received into evidence.¹

At the close of the proof, by agreement of the parties and the Hearing Panel, the parties were to submit proposed Findings of Fact and Conclusions of Law, along with final arguments in writing. Both parties submitted all these items for filing with the Board on January 14, 2011.

¹ A total of eighteen (18) exhibits were admitted at trial. References to exhibits in this Judgment refer by number to the exhibits introduced at the December 14, 2010 hearing in this cause.

All of the testimony, exhibits, arguments, and proposed findings of fact and conclusions of law presented to the Hearing Panel, have been thoroughly reviewed and considered. After due deliberation and careful consideration, the Hearing Panel makes the following findings of fact and conclusions of law, and submits its judgment in this cause.

PROCEDURAL HISTORY

1. On May 22, 2009, the Board filed a Petition for Discipline against the Respondent. Exhibit 1.

2. The Petition for Discipline contains two complaints against Respondent, alleging violations of RULES OF PROFESSIONAL CONDUCT 1.3 (Diligence), 1.7(b) (Conflict of Interest), 3.1 (Meritorious Claims and Contentions), 3.3(a)(1) (Candor Toward the Tribunal), and 8.4(c) (Misconduct).

3. Both complaints in the Petition for Discipline were designated File No. 31335-3-DB.

4. On June 29, 2009, the Respondent filed an Answer. Exhibit 2.

5. On January 7, 2010, the Board filed a Supplemental Petition for Discipline. Exhibit 3.

6. The Supplemental Petition contains the Respondent's self-report² and a related complaint³, alleging violations of RULES OF PROFESSIONAL CONDUCT 1.15 (Safekeeping Property), 3.3 (Candor Toward the Tribunal), and 8.4 (Misconduct).

7. Both complaints in the Supplemental Petition for Discipline were designated File No. 32691-3-RS.

² Respondent's self-report was also marked and received separately at trial, as Exhibit 5.

³ The related complaint, initiated by Chancellor Jerri S. Bryant, was also marked and received separately at trial, as Exhibit 6.

8. On March 8, 2010, the Respondent filed an Answer to the Supplemental Petition. Exhibit 4.

9. Following a pre-hearing Case Management Conference on March 24, 2010, a Case Management Order was entered April 1, 2010, and served upon both parties. The parties thereafter engaged in discovery, and participated in various scheduling conferences.

10. Respondent tendered a conditional guilty plea and supporting affidavits on November 29, 2010. The Board filed an objection on November 30, 2010 to Respondent's proposed plea. The proposed plea was thereafter considered and rejected by the Hearing Panel.

11. A final hearing was held in Athens, Tennessee on December 14, 2010. The proof was completed at the conclusion of the hearing on December 14, 2010.

12. Both parties submitted final argument and proposed Findings of Fact and Conclusions of Law on January 14, 2011.

FINDINGS OF FACT

1. Respondent was born in 1976 in Kentucky. He attended Tennessee Tech in Cookeville on a basketball scholarship, and later transferred to the University of Tennessee at Chattanooga, where he again played basketball on scholarship. After graduating in 1998, Respondent remained in Chattanooga waiting for his wife to finish her degree; the couple then moved to Birmingham where he entered Cumberland School of Law at Samford University.

2. Respondent excelled in law school and graduated in 2002. From the time of his graduation until early 2005, he practiced law in Birmingham, Alabama before he and his wife decided to return to her home town of Athens, Tennessee.

3. In 2005, Respondent interviewed with *Higgins, Biddle, Chester & Trew* in Athens, Tennessee, and was offered and accepted a position in early 2005. In 2005 he passed the Tennessee Bar, and practiced with *Higgins, Biddle, Chester & Trew* from 2005 until late November or early December 2009.

4. During his collegiate career as a basketball player, Respondent suffered a number of injuries, and while in law school sought treatment for serious back pain. In 2004, he was treated at the University of Alabama at Birmingham and was told that he had problems at multiple levels of the lumbar spine. The options offered him were either a multi-level fusion, or a pain management program. There was no guarantee that the surgery would cure his problems, and even if it were successful, it would probably have to be re-done, possibly more than once. Believing himself too young for such a procedure, Respondent chose the pain management program.

5. At the time Respondent chose the pain management option, Respondent had no experience as to what would be involved; it turned out that pain management consisted of Respondent receiving a prescription for narcotic-strength pain killers. This regimen worked successfully for a couple of years, but Respondent gradually developed a high tolerance for the narcotics, and the pain medication stopped working.

6. By 2006, Respondent's pain management protocol failed him. Respondent became addicted to, and began abusing, his prescription pain medication. His first period of active addiction lasted from some time in 2006 until he contacted the Tennessee Lawyers' Assistance Program and sought professional treatment at the Ridgeview Institute in Atlanta, Georgia ("Ridgeview") at the end of February 2008.

7. During the initial period of his addiction, Respondent made repeated efforts to break the addiction on his own, relying upon personal willpower. His efforts proved unsuccessful.

8. As Respondent admitted, when abusing his pain killing medication, his judgment was affected. Respondent testified that impulsivity and lying is part of the

addiction. It was during this first period of active addiction that the complaints giving rise to the first Petition for Discipline (Exhibit 1) against Respondent occurred. The Hearing Panel's factual findings regarding the first Petition for Discipline are set forth in detail beginning with Factual Finding No. 22, below.

9. Respondent was discharged from Ridgeview on June 1, 2008, and resumed practicing law for approximately four to five months. In late September or early October 2008, Respondent relapsed. Respondent's relapse followed knee surgery, when Respondent's orthopedic surgeon prescribed pain-killing medication despite being advised that Respondent was a recovering drug addict.

10. Respondent was able to "get clean" in March 2009, and remained "clean" until around July 4, 2009, when he relapsed again. The complaints giving rise to the Supplemental Petition for Discipline (Exhibit 3) against Respondent occurred after this second relapse. The Hearing Panel's factual findings regarding the Supplemental Petition for Discipline are set forth in detail beginning with Factual Finding No. 53, below.

11. On August 19, 2009, Respondent sought treatment from Dr. Charles B. Cox ("Dr. Cox"), an Athens, Tennessee physician and surgeon who also runs a clinic specializing in opiate-dependent patients and those suffering from addiction. Dr. Cox's *curriculum vitae* was marked and received as Exhibit 18.

12. Dr. Cox testified that he is board-certified as a general surgeon; that he also has a general practice; that he has been practicing in Athens for 23 years; that as a result of his surgery practice, he came to see patients who had become addicted to pain killers properly prescribed; that he has developed a subspecialty of treating opiate addictions; that he treats them by use of the drug Suboxone; that this requires a separate DEA number to write a prescription; that this, in turn, requires additional training; that he has taken the training and received a certification in the treatment; that drug addiction produces in the addict a real, physiological pain; that this is perceived as a

generalized musculoskeletal pain; and that this pain is worse than the pain for which the opiates were prescribed.

13. Dr. Cox further testified that he began treating Respondent in August 2009; that he obtained a thorough and accurate history; that he also received the records from Respondent's treatment at Ridgeview; that he reviewed and relied upon the Ridgeview records; that Respondent was a patient who had an extremely legitimate reason to have pain; that medical science does not understand why some people become addicted to pain medication; that Respondent had serious problems with his back; that he had been given the option of a multi-level fusion or pain management; that Respondent has been extremely candid and forthcoming about his problem; that he candidly admitted that he has suffered two relapses since his treatment at Ridgeview; that he candidly admitted the professional problems which led to the hearing; and that Respondent is a very dedicated patient and that he is optimistic about Respondent's recovery.

14. Dr. Cox further testified that addiction is a disease and not a moral failing; that treatment for an addiction is a learning process; that it is a common misperception to believe that when you leave in-patient treatment you will be fine; that the fact of one or more relapses is not indicative of failure in the fight to break addictions; that honesty about your situation is an extremely important part of the recovery; that the goal of Dr. Cox's program is to gradually taper down the use of Suboxone until the patient no longer requires it; that patients who are abusing opiates and in an active period of addiction suffer severe impairment of their judgment; that when this occurs, impulsivity takes over; that he sees the analysis of Respondent done at Ridgeview which described him in terms of rampant impulsivity as "nailing" the situation; that the impulsivity disorder diagnosed at Ridgeview stems from the abuse of narcotics and active addiction; and that, to a reasonable degree of medical certainty, the mistakes

made by Respondent were caused or contributed to by his abuse of prescription pain medication which severely affects one's judgment.

15. Dr. Cox testified that the patients he treats with Suboxone for opiate addiction have additional requirements; that they are required to come to the office, at least monthly, to check in; that they are subject to random drug testing; that they cannot receive a prescription medication from any source but his office; that they are required to do AA, NA or counseling; that Respondent has completely complied with all of these conditions; that Dr. Cox can see Respondent's office from his office; that Respondent comes to the office frequently just to talk about issues or concerns; that he stays connected; in addition, Dr. Cox testified he has other eyes and ears in the community; that certain of his staff members go to church with Respondent; that Respondent has fulfilled the game plan set out for him; that the doctor is optimistic about Respondent's future; that Respondent has a strong family and social community structure; that Respondent's education and intellect are advantages; that the state of Tennessee has a hotline to check on people receiving pain medication; that he has done this on Respondent to make sure he is not receiving medications from another source; that he does not believe Respondent needs another lawyer to supervise him.

16. Dr. Cox concluded by testifying that when Respondent's mind is not beset by a period of active addiction, and/or consumed with the need to obtain narcotics, Respondent is quite able to practice appropriately.⁴

17. Respondent testified that he has never purchased medication illegally and that his problem with drugs stems from the narcotic pain-killers prescribed him for his back injury, and not from any recreational drug use.

⁴ While Dr. Cox's testimony was not rebutted by the Board, and may appear credible on a "dry record," the Hearing Panel unanimously finds that after carefully listening to Dr. Cox's testimony and observing Dr. Cox's demeanor, Dr. Cox's credibility is exceedingly suspect.

18. Respondent testified, as did Dr. Cox, that since August 19, 2009, Respondent has been clean and fully compliant with Respondent's prescribed treatment protocol.

19. Respondent testified he has had no problem or complaints against him as a practicing attorney since undertaking treatment with Dr. Cox on August 19, 2009.

20. Respondent's association with the law firm of *Higgins, Biddle, Chester & Trew* ended in late November 2009, when the matters giving rise to the Supplemental Petition for Discipline were discovered by the firm's partners. Respondent's partners gave him an opportunity and time frame within which to self-report, after which Respondent was told that he would be reported by his partners if he did not self-report.

21. By letter dated December 4, 2009, Respondent reported himself to the Board of Professional Responsibility. Exhibit 5. Respondent's self-report pertained to the matters set forth in the Supplemental Petition for Discipline. Exhibit 3.

PETITION FOR DISCIPLINE

File No. 31335-3-DB (Complaint of Andrea Webb)

22. In 2005, Respondent met and thereafter became friends with Mrs. Andrea Webb ("Mrs. Webb"), an employee of Cherokee Medical Group in Athens, Tennessee.

23. In June 2007, Respondent and Mrs. Webb began an extramarital affair.

24. By late June 2007, Mrs. Webb confided in Respondent that she was ready to divorce her husband.

25. On July 2, 2007, Respondent agreed to represent Mrs. Webb in an action for divorce.

26. Respondent admitted, both in his Response to the Petition for Discipline, and in his testimony at trial, to having an extramarital affair with Mrs. Webb in June of

2007, and to thereafter agreeing on July 2, 2007 to represent Mrs. Webb in her divorce proceedings. Exhibit 2, ¶¶8, 9.

27. Respondent was in a period of active abuse/addiction to prescription narcotic pain medication, when he began his affair with Mrs. Webb, and when he undertook to represent her in her divorce case.

28. The testimony was in sharp conflict as to when the extramarital affair ended. Respondent contends the affair ended by the night of June 30, 2007. Mrs. Webb insists the affair continued through at least the month of July 2007, and maybe August or September 2007. After a thorough review of all of the testimony and evidence presented on this point, including certain text messages (part of the Petition for Discipline, Exhibit 1, and independently admitted as Exhibit 13), the Hearing Panel finds Mrs. Webb's testimony to be more credible as to when the affair ended.⁵ Regardless of when the affair ended, it was undisputed that the affair began before Respondent undertook to represent Mrs. Webb in her divorce case.

29. Respondent did advise Mrs. Webb at the outset of the representation about the potential conflict of interest which their extramarital affair presented.⁶

30. Respondent did not obtain the written consent required by RPC 1.7(b)(2) to waive the conflict of interest arising from his sexual relationship with Mrs. Webb.

⁵ While we find Mrs. Webb's testimony more credible as to when the affair ended, the Hearing Panel does not find that Respondent intentionally misrepresented the truth, nor does the Hearing Panel find that Mrs. Webb's testimony was more credible than Respondent's testimony on other disputed facts. It should be noted that after Mrs. Webb testified to the affair continuing into the Fall of 2007, Respondent did not re-take the witness stand to rebut or otherwise contravene her testimony. It should be noted that during her testimony, Mrs. Webb stated that she was in a room full of lawyers, all of whom "knew only how to lie," and she repeatedly refused to answer a particular question until specifically ordered to do so by the Panel Chair.

⁶ Though Respondent testified he did not specifically use the terminology "conflict of interest" in advising Mrs. Webb, he explained that if an agreement settling her divorce case was not reached, he could not continue to represent her. Mrs. Webb testified that Respondent told her about the "conflict of interest," but continued to represent her anyway, and kept reminding [her] that he'd be able to keep the text messages protected, but if [she] went with another attorney, they couldn't keep the messages secure.

31. Respondent admitted, both in his Response to the Petition for Discipline, and in his testimony at trial, that he did not obtain Mrs. Webb's written consent to waive the conflict of interest arising from his affair with Mrs. Webb. Exhibit 2, ¶10.

32. Respondent did not properly advise Mrs. Webb about the ramifications of the conflict of interest.

33. Respondent's representation of Mrs. Webb, though diligent for the most part, is also suspect, because Respondent could not exercise the requisite independent judgment and duty of undivided loyalty to Mrs. Webb, and simultaneously protect his own self-interest in keeping the extramarital affair a secret.

- a. For example, Respondent testified that in his response to the divorce complaint against Mrs. Webb, he denied the allegation that Mrs. Webb was guilty of inappropriate marital conduct (even though Respondent knew Mrs. Webb was, in fact, guilty of inappropriate marital conduct, because he had engaged in an adulterous affair with her).
- b. Mrs. Webb testified that she expressed to Respondent her desire to hire another lawyer, but Respondent insisted that he remain as her counsel. Mrs. Webb questioned Respondent's willingness and ability to effectively advocate for her; she contended that Respondent was more concerned about concealing the affair, than protecting her rights in her divorce case. Respondent denied Mrs. Webb's testimony, and maintained that she was, in fact, pleased with his representation. The Hearing Panel finds Mrs. Webb to be more credible on this point, and concludes that Respondent's insistence that he continue as Mrs. Webb's counsel was motivated by his own self-interest.
- c. Mrs. Webb's mother, Mrs. Cynthia McDaniel, testified that she contacted Respondent to request that he withdraw from the case due to the conflict of interest, but Respondent insisted that he was looking out for Mrs.

Webb's best interest, and said that he wanted to remain as Mrs. Webb's counsel. Mrs. McDaniel was not cross-examined, nor did Respondent or any other witness take the stand to contravene any of Mrs. McDaniel's testimony.

- d. Mrs. Webb's mother went to Respondent's law firm partners to complain about the conflict of interest. When Respondent's law partners confronted Respondent, Respondent lied to his partners and denied the affair with Mrs. Webb.⁷

34. Respondent made substantial and repeated attempts to settle Mrs. Webb's divorce case, but the case did not settle while Respondent was Mrs. Webb's counsel of record, primarily because Mrs. Webb's husband and his attorney would not accept the settlement terms proposed by Respondent.

35. Mrs. Webb and her husband reconciled their marriage in the late Fall of 2007, and thereafter filed jointly for bankruptcy protection in January 2008.

36. During the period of the Webbs' reconciliation, Mrs. Webb did not request that Respondent take any action regarding her divorce case, and Respondent took no action.

37. While Respondent was in treatment for his drug addiction at the end of February 2008, the Webbs' reconciliation broke down, and the Webbs' divorce action was reactivated. Mrs. Webb went to Respondent's law office, picked up her divorce file, and thereafter retained attorney Dwaine B. Thomas to represent her.

38. Mrs. Webb's divorce case was subsequently settled by her new counsel, Dwaine B. Thomas. The settlement terms upon which Mrs. Webb's divorce case were

⁷ Respondent admitted, both in his response to the Petition for Discipline, and in his testimony at trial, that he lied to his law partners about the affair. Exhibit 2, ¶14.

ultimately concluded, were substantially the same terms as those previously proposed by Respondent.⁸

39. Mrs. Webb expressed dissatisfaction with Respondent's representation of her in her divorce case, but did not contend that she was actually damaged thereby. In fact, Mrs. Webb's testimony was that she never said Respondent's representation had damaged her. While there was proof of potential injury to Mrs. Webb, there was no credible proof that Mrs. Webb was actually injured by the representation.

40. In his June 29, 2009 Response of Lance W. Parr to Petition for Discipline, Respondent admits, and the Hearing Panel hereby specifically finds, that "he has failed to conduct himself in conformity with the standards set forth in the *Rules of Professional Conduct*." Exhibit 2, ¶4.

41. In his June 29, 2009 Response of Lance W. Parr to Petition for Discipline, Respondent admits, and the Hearing Panel hereby specifically finds, that Respondent violated Rule of Professional Conduct 1.7(b). Exhibit 2, ¶¶22, 23.

File No. 31335-3-DB (Complaint of Chancellor Jerri S. Bryant)

42. Chancellor Jerri S. Bryant also filed a complaint with the Board of Professional Responsibility against Respondent, regarding Mrs. Webb's case.

43. During discovery in the divorce case, Mrs. Webb's husband twice subpoenaed text messages from U.S. Cellular between the Respondent and Mrs. Webb.

44. The first subpoena requested text messages from Mrs. Webb's phone from

⁸ Respondent testified without contradiction that he reviewed the final settlement terms for the divorce, and "the final settlement agreement was almost identical to what I was trying to get for Mrs. Webb." Respondent's contentions are substantially supported by two affidavits that were filed with Respondent's Conditional Guilty Plea on November 29, 2010, specifically, the Affidavit of Randy George Rogers (the attorney who represented Mrs. Webb's husband in the divorce case), and the Affidavit of Dwaine B. Thomas (the attorney who represented Mrs. Webb in the divorce case after Respondent was discharged).

June 19, 2007 through July 25, 2007.

45. Respondent testified at the hearing that the subpoena he received requested messages from Mrs. Webb's phone through July 25, 2007.

46. The text messages produced by U.S. Cellular extended through July 3, 2007 only. No explanation was provided by U.S. Cellular as to why the last text message produced was dated July 3, 2007, rather than as commanded by the subpoena.

47. Respondent filed, in Chancellor Bryant's court, a motion to quash the first subpoena for text messages, based on the attorney-client privilege. In his motion to quash, Respondent averred that the attorney-client relationship was entered into sometime between June 25 and July 2, 2007, and that "all communications on or after July 2, 2007 are protected by the attorney-client privilege and/or work-product doctrine."

48. None of the communications in the text messages produced by U.S. Cellular were protected by attorney-client privilege because they did not pertain to the representation.

49. Instead, many of the text messages related to the adulterous affair between Respondent and Mrs. Webb.

50. Respondent did not bring to the Court's attention the fact that the text messages produced by U.S. Cellular were personal in nature.

51. Chancellor Bryant did not rule upon the Respondent's motion to quash, because Mrs. Webb and her husband reached a settlement agreement.

52. Respondent did not move to amend or withdraw his Motion to Quash even after learning that no privileged information had been produced.

SUPPLEMENTAL PETITION FOR DISCIPLINE

File No. 32691-3-RS (Self-Report of Respondent and Complaint of Chancellor Bryant)

53. Respondent was hired by Barry L. Wankan, Conservator of Charlotte A. Wankan, to advise him of his duties and obligations under the Property Management Plan.

54. Respondent was responsible for preparing the annual accounting for Mr. Wankan and filing it with the Court.

55. Respondent was delinquent in filing Mr. Wankan's 2006 - 2007 and 2007 - 2008 accountings.

56. Due to illness, on August 7, 2009, Respondent was unable to attend a status review on these accountings and as a result, on August 10, 2009, Respondent met with Chancellor Bryant to set specific dates on which these accountings were to be signed, notarized and filed with the Court.

57. It was agreed on August 10, 2009 that the 2007 - 2008 accounting in the Wankan Conservatorship was to be filed no later than August 11, 2009.

58. On August 11, 2009, Respondent's client was unavailable. Fearful of missing the deadline and incurring the wrath of the Chancellor, Respondent knowingly and intentionally did as follows:

- a. Respondent forged his client's signature on the accounting.
- b. Respondent notarized his client's forged signature, using Respondent's secretary's notary stamp.
- c. Respondent forged his secretary's signature to the notary stamp.
- d. Respondent signed his own name, as attorney of record and as an officer of the Court, to the accounting.
- e. Respondent filed, or caused to be filed, the accounting containing the forged signatures. Exhibit Z.

59. On December 2, 2009, nearly four months later, and after Respondent's law partner had discovered the forgery and confronted Respondent with it, Respondent self-reported his conduct to Chancellor Bryant.

60. By letter dated December 4, 2009, Respondent self-reported to the Board of Professional Responsibility. Exhibit 5. Respondent's self-report was received by the Board on December 7, 2010, designated File No. 32691-3-RS, and attached as an exhibit to the Supplemental Petition for Discipline. Exhibit 3.

61. On December 9, 2009, a complaint was entered against the Respondent by Chancellor Bryant, added to File No. 32691-3-RS, and attached as an exhibit to the Supplemental Petition for Discipline. Exhibit 3.

62. Respondent testified that since August 19, 2009, he has been "clean," fully compliant with his treatment, and has had no problem or complaints against him. Yet Respondent failed to report his August 11, 2009 forgery to the Chancellor or the Board until December 2009 - almost four months after the forgery occurred, and over three months into a period of time during which Respondent maintains he has been "clean," compliant, and has had no problem or complaint. Furthermore, Respondent only self-reported after Respondent's law partner discovered Respondent's forgery, and after Respondent was warned that if he failed to self-report, his partner would report him.

63. In response to the Board's allegation that "Respondent forged his client's signature on the accounting and notarized the forged signature using his secretary's notary stamp and forging his secretary's name as well," Exhibit 3, ¶12, Respondent admits he signed his client's name to the document and then notarized the document by signing his secretary's name. Exhibit 4, ¶12.

64. Respondent told Chancellor Bryant that the original accounting with the forged signature was a true and accurate accounting, but for the need for an original signature from Respondent's client and a proper notary.

65. Respondent subsequently admitted that he misrepresented to Chancellor

Bryant that the original accounting with a forged signature was a true and accurate accounting but for an original signature from Respondent's client and a proper notary. Exhibit 4, ¶15.

66. The Amended Accounting that Respondent subsequently filed contained slightly different information from the original accounting. Exhibit 8.

67. Respondent admits that the Amended Accounting contained different information than the original accounting. Exhibit 4, ¶16.

68. There was no proof that Respondent's acts or omissions resulted in any financial loss or actual injury to Respondent's client.

69. There was no proof that Respondent's acts or omissions violated Rule 1.15 (Safekeeping Property) of the *Rules of Professional Conduct*.

70. In his March 8, 2010 Response of Lance W. Parr to Supplemental Petition for Discipline, Respondent admits, and the Hearing Panel hereby specifically finds, as follows:

a. Respondent has failed to conduct himself in conformity with the standards set forth in the *Rules of Professional Conduct*. Exhibit 4, ¶4.

b. Respondent has violated Rule 3.3 and Rule 8.4 of the *Rules of Professional Conduct*. Exhibit 4, ¶19.

c. Respondent has demonstrated conduct unacceptable to the Board, has fallen short of what is expected of a Tennessee bar member, and has done so on more than one occasion. Exhibit 4, ¶¶ 22, 23.

71. Respondent's violations of the Rules of Professional Conduct, as set forth in the Supplemental Petition for Discipline, occurred while the original Petition for Discipline was still pending against Respondent.

ANALYSIS AND CONCLUSIONS OF LAW

The license to practice law in Tennessee is a privilege. *Milligan v. Board of Prof. Resp.*, 301 S.W.3d 619, 630 (Tenn. 2009).

The licensing of attorneys and their regulation is under the inherent authority of the judicial branch. *Crews v. Buckman Laboratories, Int'l*, 78 S.W.3d 852, 860 (Tenn. 2002). Thus, the Tennessee Supreme Court has the power to regulate the conduct of attorneys in Tennessee. *Doe v. Board of Prof. Resp.*, 104 S.W.3d 465, 469 (Tenn. 2003).

The *Rules of Professional Conduct* ⁹, as enacted by the Tennessee Supreme Court, govern the conduct of Tennessee Lawyers. TENN. SUP. CT. R. 9. Tennessee attorneys have a duty to act at all times in accordance with these standards. *Sneed v. Board of Prof. Resp.*, 301 S.W.3d 603, 618 (Tenn. 2009).

A situation in which an attorney has divided loyalties is a conflict situation. *McCullough v. State*, 144 S.W.3d 382, 385 (Tenn. Crim. App. 2003). Thus, whenever an attorney is put in a situation where he has divided loyalties, he has a conflict of interest. *Frazier v. State*, 303 S.W.3d 674, 683 (Tenn. 2010).

Under the common-law and the *Rules of Professional Conduct*, an attorney is prohibited from representing conflicting interests. *Autry v. State*, 430 S.W. 2d 808, 809 (Tenn. Crim. App. 1967).

Rule 1.7(b) of the *Rules of Professional Conduct* prohibits a lawyer from representing a client "if the representation...may be materially limited by...the lawyer's own interests...."

"Loyalty to a client is ... impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict, in effect, forecloses alternatives that would

⁹ The *Rules of Professional Conduct* were amended in January 2011, after the acts and occurrences which form the basis of the complaints against Respondent. Accordingly, all references to the RPC in this Opinion refer to the RPC in effect prior to the 2011 amendments.

otherwise be available to the client.” RPC 1.7, at cmt. [4]. Conflict of interest “includes any circumstances in which an attorney cannot exercise his independent professional judgment” free of competing interests. *State v. Culbreath*, 30 S.W.3d 309, 312; *see also State v. White*, 114 S.W.3d 469, 476 (Tenn. 2003).

Conflicts of interest may be waived. *Frazier v. State*, 303 S.W.3d 674, 683 (Tenn. 2010); *McCullough v. State*, 144 S.W.3d 382, 386 (Tenn. Crim. App. 2003). However, the waiver of a conflict of interest requires client consent in writing after consultation.

Adultery is grounds for divorce in Tennessee, T.C.A. §36-4-101(3). “The courts of this state have regularly held that adultery can serve as a basis for a divorce on the grounds of inappropriate marital conduct. [cit. omitted].” *Boyatt v. Boyatt*, 248 S.W. 3d 144, 149 (Tenn. App. 2007). The Tennessee Supreme Court has held that “proof of adultery is admissible in a divorce action charging cruel and inhuman treatment [now known as inappropriate marital conduct] and may form the basis for a decree resting upon cruel and inhuman treatment.” *Farrar v. Farrar*, 553 S.W.2d 741, 744 (Tenn. 1977).

A client can discharge an attorney with or without cause at any time. *Spofford v. Rose*, 145 Tenn. 483, 237 S.W. 68, 76 (1922); *In re: Ellis*, 822 S.W.2d 602, 607 (Tenn. App. 1991).

In 2002, the ABA amended the *Model Rules of Professional Conduct* to provide that: “A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. Rule 1.8(j). Tennessee has chosen not to follow the ABA, and under the Tennessee *Rules of Professional Conduct*, there is no specific prohibition against a lawyer having a sexual relationship with his or her client.

Hearing committees are charged with considering the *ABA Standards for Imposing Lawyer Sanctions*. *Flowers v. Board of Prof. Resp.*, 314 S.W.3d 882, 899 (Tenn. 2010); *Board of Prof. Resp. v. Maddux*, 148 S.W.3d 37, 40 (Tenn. 2004).

The *ABA Standards for Imposing Lawyer Sanctions*, Section 3.0, set forth four factors to consider when imposing a sanction: (1) the duty violated; (2) the lawyer's mental state; (3) the potential or actual injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Threadgill v. Board of Prof. Resp.*, 299 S.W.3d 792, 810 (Tenn. 2009).

The *Standards* recite, *inter alia*, that "the discipline to be imposed 'should depend upon the facts and circumstances of the case, should be fashioned in light of the purpose of lawyer discipline, and may take into account aggravating or mitigating services.'" *ABA Standards for Imposing Lawyer Sanctions*, "Preface."

Under Tennessee law, the Hearing Panel is required to consider both aggravating and mitigating factors and circumstances. *Beard v. Board of Prof. Resp.*, 288 S.W.3d 838, 859 (Tenn. 2009). Aggravating and mitigating circumstances have been held to be any considerations or factors that may justify either an increase or reduction in the degree of discipline to be imposed. *Beard v. Board of Prof. Resp.*, 288 S.W.3d 838, 859 (Tenn. 2009); *Board of Prof. Resp. v. Maddux*, 148 S.W.3d 37, 41 (Tenn. 2004).

In addition, for the sake of uniformity, any punishment should be proportional, *i.e.*, in line with sanctions previously administered in other cases presenting similar facts and circumstances. *Rayburn v. Board of Prof. Resp.*, 300 S.W.3d 654, 664 (Tenn. 2009); *Board of Prof. Resp. v. Allison*, 284 S.W.3d 316, 327 (Tenn. 2009).

Respondent's absence of a prior disciplinary record is a mitigating factor to be considered. *Board of Prof. Resp. v. Curry*, 266 S.W.3d 379, 394 (Tenn. 2008).

In addition, a respondent's cooperation with the Board and the proceedings in general is a mitigating factor to be considered. *Board of Prof. Resp. v. Maddux*, 148 S.W.3d 37, 42 (Tenn. 2004). In the instant case, Respondent was, for the most part, cooperative with the Board and the proceedings in general, but Respondent's self-report cannot be deemed a "full and free disclosure" to the Board, given the circumstances under which Respondent self-reported (Respondent only self-reported after his misconduct was

discovered by his law partner, over three months after the misconduct occurred, and only after Respondent was warned that if he did not self-report, his law partner would report him.)

Health problems which “clearly affect a lawyer’s ability to distinguish between right and wrong,” can be considered in mitigation. *Board of Prof. Resp. v. Bonnington*, 762 S.W.2d 568, 571 (Tenn. 1988), see also *Disciplinary Board v. Banks*, 641 S.W.2d 501, 504 (Tenn. 1982). In the instance case, the Hearing Panel finds that Respondent’s addiction impaired Respondent’s judgment, but did not clearly affect Respondent’s ability to distinguish between right and wrong.

Respondent’s relative inexperience in the practice of law may be considered as a mitigating factor (Respondent was licensed for about five (5) years at the time of the first complaint and no more than seven (7) years at the time of the second complaint). *ABA Standard 9.1*.

Respondent’s prescription drug abuse/addiction may only be considered a mitigating factor, if the following conditions are satisfied: (i) there was medical evidence of Respondent’s chemical dependency/addiction; (ii) Respondent’s chemical dependency caused the misconduct; (iii) Respondent’s recovery is demonstrated by a meaningful and sustained period of successful rehabilitation; and (iv) Respondent’s recovery arrested the misconduct and recurrence of that misconduct is unlikely. *ABA Standard 9.1*. The Hearing Panel is concerned about the possibility of Respondent suffering a relapse, but nevertheless finds by a preponderance of the evidence that Respondent’s prescription drug abuse/addiction is a mitigating factor.

Personal problems experienced by the Respondent may be considered as a mitigating factor. *Board of Prof. Resp. v. Curry*, 266 S.W.3d 379, 394 (Tenn. 2008). In the instant case, Respondent’s personal problems are part and parcel of his addiction, which we are already considering in mitigation of his misconduct.

Additionally, a delay in disciplinary proceedings, and Respondent's remorse for his misconduct, may both be considered mitigating factors. *ABA Standard 9.1*. The Hearing Panel concludes that Respondent's expressions of remorse should be considered in mitigation of Respondent's punishment. The Hearing Panel further concludes that the five month delay in filing this Opinion (from the date on which the parties submitted proposed findings of fact and conclusions of law) has regrettably delayed these proceedings, and should be taken into account as a mitigating factor.

Aggravating factors which may be considered include Respondent's dishonest or selfish motive, and Respondent's multiple offenses. *ABA Standard 9.1*. The Hearing Panel concludes that although Respondent's misconduct was not motivated by financial gain or avarice, Respondent's motive was, in substantial part, dishonest and selfish. The Hearing Panel further concludes that while there was no pattern of misconduct on Respondent's part, Respondent is guilty of multiple charges of misconduct, some of which occurred while Respondent was already the subject of a disciplinary complaint.

The standard of proof applicable to this proceeding requires Disciplinary Counsel to prove the case "by a preponderance of the evidence." TENN. SUP. CT. R. 8.2.

1. The Petition for Discipline and the Supplemental Petition for Discipline collectively charge the Respondent with violations of Rules of Professional Conduct 1.3, 1.7(b), 1.15, 3.1, 3.3(a)(1), and 8.4(a) and (c).

2. Rule 1.3 of the *Tennessee Rules of Professional Conduct* requires that a lawyer "act with reasonable diligence and promptness when representing a client." Comments to the rule state that a lawyer should "pursue a matter on behalf of his client despite any personal inconvenience to the lawyer" and "act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."

3. With regard to the allegations in the Petition for Discipline, the proof does not support a finding that Respondent violated Rule 1.3 in representing Mrs. Webb. The proof which Disciplinary Counsel relies upon to establish a violation of Rule 1.3 does

establish a clear conflict of interest in violation of Rule 1.7, but not a Rule 1.3 failure to "act with reasonable diligence and promptness."

4. With regard to the allegations in the Supplemental Petition for Discipline, the proof would support a finding that Respondent violated Rule 1.3 by failing to diligently create and file the required accountings. However, since the Supplemental Petition for Discipline does not charge Respondent with violating Rule 1.3, we believe due process precludes us from finding a Rule 1.3 violation.¹⁰

5. Rule 1.7(b) of the *Tennessee Rules of Professional Conduct* requires that "a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless, the client consents in writing after consultation."

6. With regard to the allegations in the Petition for Discipline, Respondent violated RPC 1.7(b)(2) by failing to fully disclose to his client the ramifications of a blatant conflict of interest, and Respondent violated RPC 1.7(b)(2) by failing to obtain from his client a written waiver of the conflict of interest.

7. Rule 1.15 of the *Tennessee Rules of Professional Conduct* prescribes the lawyer's duties regarding the "property and funds of clients or third persons that are in a lawyer's possession..."

8. The Petition for Discipline does not allege a violation of Rule 1.15. The Supplemental Petition for Discipline does allege a violation of Rule 1.15, but the proof does not support a finding that Respondent violated Rule 1.15.¹¹

¹⁰ The United States Supreme Court has held that due process rights apply in attorney discipline cases. *In re: Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 1226, 20 L.Ed.2d 117 (1968). Both the United States Constitution and that of the State of Tennessee guarantee individuals due process of law. See Fourteenth Amendment, U.S. Constitution and Article I, § 8 Tennessee Constitution.

¹¹ Disciplinary Counsel apparently concedes that the proof does not support a finding that Rule 1.15 has been violated; in his proposed findings of fact and conclusions of law, there is no proposed finding of fact or conclusion of law regarding any violation of Rule 1.15.

9. Rule 3.1 of the *Tennessee Rules of Professional Conduct* provides, *inter alia*, that “[a] lawyer shall not bring or defend or continue with the prosecution or defense of a proceeding, or assert or controvert or continue to assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.”

10. Rule 3.3(a)(1) of the *Tennessee Rules of Professional Conduct* provides that “[a] lawyer shall not knowingly make a false statement of fact or law to a tribunal...”

11. With regard to the allegations in the Petition for Discipline, and the Supplemental Petition for Discipline, Respondent’s conduct constitutes violations of Rule 3.1 and Rule 3.3(a)(1), as detailed in Finding of Fact ##42 – 71, *supra*.

12. Rule 8.4(a) of the *Tennessee Rules of Professional Conduct* provides that it is professional misconduct for a lawyer to “violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another...”

13. Respondent’s violations of Rule 1.7(b)(2), Rule 3.1, and Rule 3.3(a)(1), also constitute violations of Rule 8.4(a).

14. Rule 8.4(c) of the *Tennessee Rules of Professional Conduct* provides that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...”

15. With regard to the allegations in the Petition for Discipline, and the Supplemental Petition for Discipline, Respondent’s conduct constitutes violations of Rule 8.4(c), as detailed in Finding of Fact #33 and in Finding of Fact ##42 – 71, *supra*.

16. The Supreme Court has adopted for use by its Hearing Panels the ABA Center for Professional Responsibility Standards for Imposing Lawyer Sanctions (ABA Standards).

17. In light of the violations set forth above, the following ABA Standards are applicable.

Section 4.41 of the ABA Standards states:

Disbarment is generally appropriate when:

- (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.

Section 6.11 of the ABA Standards states:

Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

Section 4.32 of the ABA Standards states:

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Section 4.42 states:

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Section 6.12 states:

Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or

potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Section 7.2 of the ABA Standards states:

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation to the duty owed to the profession and causes injury or potential injury to the client, the public, or the legal system.

AGGRAVATING FACTORS

18. Section 9.22 of the ABA Standards sets forth several aggravating factors that may act to increase the level of discipline imposed.

19. After due consideration, the Hearing Panel concludes that two aggravating factors, and only these factors, apply in this case: Dishonest or selfish motive (ABA Standards Section 9.22(b)); and multiple offenses (ABA Standards Section 9.22(d)). These aggravating circumstances justify an increase in discipline.

MITIGATING FACTORS

20. Section 9.32 of the ABA Standards sets forth several mitigating factors that may act to decrease the level of discipline imposed.

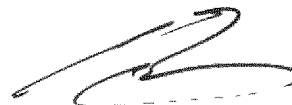
21. After due consideration, the Hearing Panel concludes that the following mitigating factors, and only these factors, apply in this case: Absence of a prior disciplinary record (ABA Standards Section 9.32(a)); cooperative attitude toward proceedings (ABA Standards Section 9.32(e)); inexperience in the practice of law (ABA Standards Section 9.32(f)); chemical dependency (ABA Standards Section 9.32(i)); delay in disciplinary proceedings (ABA Standards Section 9.32(j)); and remorse (ABA Standards Section 9.32(l)). These mitigating factors justify a decrease in discipline.

JUDGMENT

Based upon the foregoing findings of fact, conclusions of law, analysis of the applicable ABA Standards (particularly ABA Standard Section 4.32 and Section 6.12), and consideration of the applicable aggravating and mitigating factors, we, the undersigned Hearing Panel, find that the Respondent, LANCE W. PARR, should be suspended from the practice of law for a period of one (1) year. As a condition to the Respondent's reinstatement to the practice of law after his suspension is completed, the Respondent must be evaluated by the Tennessee Lawyer's Assistance Program and must thereafter comply with all recommendations of the Tennessee Lawyer's Assistance Program.

This 27th day of June, 2011.

Robert L. Lockaby, Jr.



Barry L. Gold



Cara J. Alday