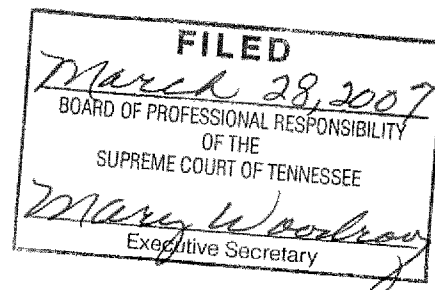


**IN DISCIPLINARY DISTRICT VI
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



IN RE: P. ROBERT PHILP, JR., Respondent B.O.P.R. Docket No. 2006-1621-6-CH
An Attorney Licensed to
Practice Law in Tennessee
(Davidson County, BPR #21824)

JUDGMENT OF THE HEARING COMMITTEE

This cause came to be heard by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee on March 13 and 14, 2007. This cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court. The Hearing Committee, Jill B. Nolan, Chair, Larry B. Watson, and Frank J. Runyon, III, make the following findings of fact and submits its judgment in this cause as follows:

I. STATEMENT OF THE CASE

1. A Petition for Discipline was filed on July 26, 2006, charging the Respondent with violation of disciplinary rules.

2. The Respondent was served with the Petition and filed an Answer on September 6, 2006.

5. A Case Management Order was entered on December 4, 2006, setting the hearing for March 13, 2007, at which time, the matter was heard. Following the close of the proof by the Board of Professional Responsibility, upon motion of counsel for the Respondent, the Board entered a partial Order of Dismissal with regard to File No. 27526c-5-CH, in the Gwen L. Browning matter. The Board of Professional Responsibility withdrew the remaining charges with regard to the File No. 27526c-5-CH, the Gwen L. Browning matter. With regard to the File No. 28127-6-CH, Complainants, Patricia L. Kelley, Deborah K. Critz, Patricia Suddarth, Connie Alexander, and Terrie Woodard, the Hearing Panel makes the following findings of fact.

II. FINDINGS OF FACT

1. The Respondent was engaged by the Complainants, Patricia L. Kelley, Deborah K. Critz, Patricia Suddarth, Connie Alexander, and Terrie Woodard, to represent them in a medical malpractice action for the wrongful death of Thedford L. Kelley. The matter was referred to the Respondent from Jack Butler. Respondent was of counsel with Jack Butler. The Respondent represented to Mr. Butler and the Kelley family that he was experienced in handling medical malpractice cases.

2. The Respondent left the Butler Firm shortly after his representation of the Plaintiffs began. He was a solo practitioner with one full-time assistant, who served as a paralegal and legal assistant. He had part-time assistance from a law school graduate for some portion of the time he represented the Plaintiffs.

3. The Plaintiffs and the Respondent signed a written Contingency Fee Agreement, and the Respondent undertook legal representation of the Plaintiffs. It was stipulated that the Plaintiffs paid to the Respondent Thirty-Two Thousand Five Hundred Dollars and No/100 (\$32,500.00) in fees over the course of the representation as a retainer for expenses.

4. The Contingency Fee Agreement between the parties provided that the Respondent was authorized to incur on the client's behalf costs and expenses, including, but not limited to: court filing fees; process serving fees; private investigator fees; expert witness fees; subpoena and/or witness fees; fees for photographs or graphic artists; jury fees; mail messenger or other delivery charges; parking and mileage; transportation; facsimile telefaxing at \$1.00 per page; telephone charges; photocopy charges at \$.25 per page; word processing charges at \$.75 per page; law clerk fees at \$70.00 per hour; paralegal fees at \$70.00 per hour; computerized legal research at \$85.00 per hour; other computer time at \$35.00 per hour; any and all other out-of-pocket costs and expenses, including, without limitation, secretarial, clerical, administrative, and word processing services and charges. The agreement also provided that such costs and expenses incurred by the Respondent could be deducted from the advance cost retainers paid by client, or deducted from the recovery, net the attorney fee. The Plaintiffs understood that the office expenses would be paid from the recovery or at the end of the litigation if there was no recovery. The Respondent was aware that the Plaintiffs had limited resources.

5. The Plaintiffs requested accountings of the retainer fees expended by the Respondent. Such accountings showed that the Respondent paid from the retainers telephone charges, postage, word processing, copies, facsimile charges, mileage, clerical, paralegal, computer, legal research, filing fees, office supplies, court reporter transcripts and videography DVD costs.

6. The only expert witness fees paid by the Respondent from the retainers from the Plaintiffs included Two Hundred Fifty Dollars and No/100 (\$250.00) to Karenn Hall, R.N., and Tom Vastrick in the amount of \$550.00.

7. There were multiple Defendants in the case and multiple defense attorneys. The depositions of the parties were taken. The Respondent filed a Motion to Extend the Time for deposing the Defendant St. Thomas' personnel. On June 28, 2004, the Trial Court denied this Motion. The Respondent represented to the Plaintiffs that he had won the motion. The Court did allow the Respondent to take depositions of the personnel after June 30, 2004, but limited the time, and ordered the Plaintiffs' counsel to personally pay all Court Reporter fees and costs of providing copies to defense counsel.

8. Defendants filed a Motion to preclude Plaintiffs from introducing expert testimony at trial as sanctions for failure of Plaintiffs to provide adequate expert witness disclosure. The Motion was heard on June 19, 2004 at which time, the Court found that the Respondent failed to provide adequate an Expert Witness Disclosure in violation of the Scheduling Order. The Court noted that the disclosures of the Respondent reflected a lack of knowledge of the Rules of Civil

Procedure that was unexplained by the Respondent. The Hearing Panel observed the arguments via video recordings from the Court.

9. The Court Order from the June 19, 2004 hearing required the Plaintiffs to make a complete disclosure of expert information by July 6, 2004, and that failure to fully comply would result in case dismissal with no further extensions to be considered. The Court ordered Plaintiff's counsel to pay Defense counsels' expenses in obtaining the order.

10. On July 16, 2004, the Court heard Motions for Summary Judgment by St. Thomas Hospital, Dr. Roger A. Bonau and Dr. Christopher Connelley. The Trial Court entered an Order granting a partial Motion of Summary Judgment for Saint Thomas Hospital, based on failure to produce Affidavits. That Order further provided that the Respondent had not been diligent in seeking Affidavits to support his argument.

11. The Court also entered Orders granting Summary Judgment as to Dr. Roger A. Bonau and Dr. Christopher Connelley. At the hearing on the Motions for Summary Judgment, the Respondent had in his possession a correctly notarized Affidavit that had not been filed by the deadline. He did file an Affidavit with the Court stating that the Affidavit had not been correctly notarized, but that he would have a correctly notarized Affidavit filed on the day of the hearing. The Respondent did bring the notarized Affidavit to the hearing, but did not present same until after defense counsel had argued the Summary Judgment Motion. The Court found that the Respondent should have shown the Affidavit to defense counsel during the one and a half hour wait for the case

to be heard, refused to consider the late filed Affidavit. The Court denied the Respondent's Motion for a Continuance to obtain a controverting Affidavit. The Court Order stated that the Respondent failed to demonstrate due diligence in securing the Affidavits of expert witnesses or providing sufficient reasons for not doing so.

12. The Respondent was ordered to personally pay Twelve Thousand Three Hundred Thirteen Dollars and 48/100 (\$12,313.48) in costs from the July 16, 2004 hearing.

13. The Respondent's services were terminated by Plaintiffs after the July 16, 2004 hearing. Throughout the Respondent's representation of the Plaintiffs, he continued to request additional money as retainers, yet no experts other than Karenn Hall, R.N. (\$250.00), and Tom Vastrick (\$550.00) were paid. The majority of the retainers paid to Respondent paid his office overhead expenses.

III. CONCLUSIONS OF LAW

Based on the proof at the hearing, the Hearing Panel finds that the Respondent has violated the following Rules of Professional Conduct:

1. RPC 1.1 for taking a medical malpractice case without the required experience and proficiency, and without adequate resources and staff to competently prosecute the case, and for failure to adequately prepare the case.

2. RPC 1.3 for failure to adequately pursue and diligently prepare the case, specifically securing expert witnesses.

3. Rule 8.4(a) for violation of the Rules of Professional Conduct set forth herein.

4. Rule 8.4(c) for misrepresentation to the Plaintiffs of the client's ability and experience to handle a medical malpractice matter and for misrepresentation to the Plaintiffs of the estimated expenses and payment of expenses.

5. Rule 8.4(d) for the Respondent's behavior in depositions and in Court.

IV. FACT FINDING OF AGGRAVATING CIRCUMSTANCES

1. The Hearing Committee finds that the Respondent's misconduct is aggravated by his selfish motive with regard to paying overhead expenses prior to securing experts. The Panel recognizes that the fee contract allowed for same, but the fee contract further allowed the Respondent to pay the overhead expenses after the conclusion of the case.

2. The Respondent's lack of remorse and candor in the hearing is an aggravating circumstance. The Respondent refused to acknowledge any wrongdoing. The Panel Members felt that the Respondent's resume, admitted as an exhibit, was deceptive and misleading with regard to the Respondent's legal experience. The Respondent's letterhead continued to show that he was

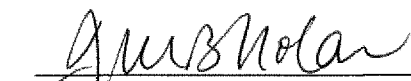
licensed in California, when, in fact, he had transferred his California license to inactive.

3. The Hearing Panel does find, as a mitigating factor, that the Respondent has no prior complaints.

V. JUDGMENT

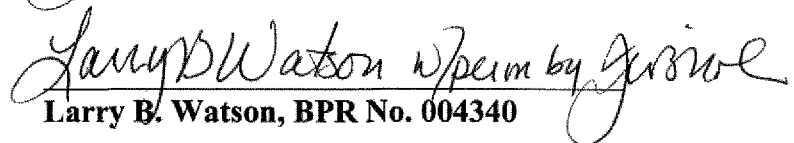
It is, therefore, ORDERED by the Hearing Committee that the Respondent, P. ROBERT PHILP, JR., be suspended from the practice of law for thirty (30) days. The Hearing Panel further finds that the Respondent must maintain malpractice insurance. The Respondent stated that he was unsure as to whether he would continue private practice of law. If he does continue private practice of law, the Hearing Panel recommends the Respondent find a mentor who is a seasoned attorney licensed to practice law in Tennessee.

This 27 day of March, 2007.



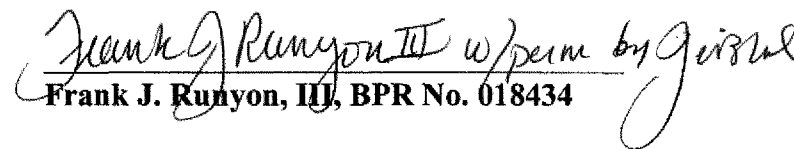
Jill B. Nolan, BPR No. 015352
Chair

This 31 day of March, 2007.



Larry B. Watson, BPR No. 004340

This 27 day of March, 2007.



Frank J. Runyon, III, BPR No. 018434