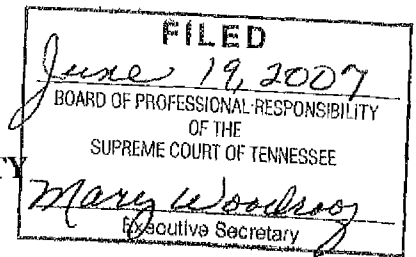


**IN DISCIPLINARY DISTRICT III
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



IN RE: **ROBERT PHILIP RAYBURN,**
 BPR No.: 6557, An
 Attorney Licensed to
 Practice Law in Tennessee
 (Hamilton County)

DOCKET NO. 2006-1603-3(C)-JV

File No. 29025-3(c)-JV

FINAL JUDGMENT OF HEARING PANEL

This matter came before the Hearing Panel on June 5, 2007 at a duly noticed hearing for the purpose of receiving proof and hearing argument on the issue of whether and to what extent discipline should be imposed against Respondent Robert Philip Rayburn for his violations of the Code of Professional Responsibility as established by the entry of Judgments by Default against him by the Hearing Panel's Order of January 4, 2007 on each of the three pending Petitions for Discipline. Petitioner Board of Professional Responsibility was represented at the hearing by Disciplinary Counsel James A. Vick. Respondent Rayburn, who has represented himself throughout these proceedings, did not appear despite being given notice of the hearing.

FINDINGS OF FACT

After hearing the sworn testimony of witness Michael E. Rice, reviewing the documents admitted into evidence, reviewing the facts deemed admitted by virtue of the Judgments by Default, hearing the arguments of Disciplinary Counsel Vick, and considering the record as a whole, the Hearing Panel makes the following findings of fact:

File No. 28192-3(C)-JV -- Complaint of Lloyd Swicegood

1. (Paragraph 6 of Petition). Respondent Rayburn represented Complainant Swicegood in litigation arising out of a real estate transaction in the Chancery Court for Hamilton County, Docket No. 01-1297.
2. (Paragraph 7 of Petition). The case was settled.
3. (Paragraph 8 of Petition). By Order entered November 10, 2004, the case was dismissed with prejudice.
4. (Paragraph 9 of Petition). The insurance company and adversary paid \$31,000.00 and \$1,000.00, respectively, to Respondent Rayburn on October 21, 2004.
5. (Paragraph 10 of Petition). The \$31,000.00 and \$1,000.00 were deposited into Respondent Rayburn's trust account on October 22, 2004.
6. (Paragraph 11 of Petition). Another insurance company paid \$10,000.00 in late January, 2005.
7. (Paragraph 12 of Petition). Respondent Rayburn received an Earnest Money Distribution Release for \$5,000.00 prepared by the real estate company in January, 2005.
8. (Paragraph 13 of Petition). The check for \$10,000.00 and Earnest Money Distribution Release were forwarded to Complainant Swicegood by letter dated February 9, 2005.
9. (Paragraph 14 of Petition). The \$20,726.50 proceeds of the settlement were not paid to Complainant Swicegood until May 25, 2005, after Respondent Rayburn was notified of this complaint.
10. (Paragraph 15 of Petition). Respondent Rayburn failed to respond to numerous requests by Disciplinary Counsel to provide trust account records regarding these transactions to establish that the settlement proceeds were maintained in Respondent Rayburn's trust account for the period from receipt until disbursed to Complainant Swicegood.

File No. 28508c-3(C)-JV – Complaint of Michael E. Rice

11. (Paragraph 18 of Petition). Respondent Rayburn was retained in January, 2000, to represent Complainant Rice in his divorce.
12. (Paragraph 19 of Petition). On April 7, 1999, the complaint for divorce was filed in the Circuit Court for Hamilton County, Tennessee, No. 99D0785.
13. (Paragraph 20 of Petition). The Final Decree of Divorce was entered November 27, 2000, reserving the remaining issue of the division of marital assets.
14. (Paragraph 21 of Petition). By Agreed Order filed June 26, 2002, the sale of the parties' marital residence was approved. The Order required that "the balance of the proceeds from the sale of the marital home will be deposited into an interest bearing account which will require the signatures of both parties for withdrawal."
15. (Paragraph 22 of Petition). The sale of the marital home netted \$128,403.61.
16. (Paragraph 23 of Petition). Check no. 2-23920 in amount of \$128,403.61 dated June 27, 2002, was made payable to Complainant Rice and his wife.
17. (Paragraph 24 of Petition). A replacement check no. 2-24773 in the amount of \$128,403.61 dated September 13, 2002, was made payable to Complainant Rice and his wife.
18. (Paragraph 25 of Petition). Complainant Rice's wife endorsed check no. 2-24773 in December, 2002.
19. (Paragraph 26 of Petition). Complainant Rice's wife was paid \$64,201.80 by Respondent Rayburn in December, 2002.
20. (Paragraph 27 of Petition). Complainant Rice attempted to make telephone and personal contact with Respondent Rayburn to obtain his portion of the proceeds of the sale of the marital residence.

21. (Paragraph 28 of Petition). Complainant Rice was not aware of the distribution to the wife until June, 2005.

22. (Paragraph 29 of Petition). In June and July, 2005, Complainant Rice demanded Respondent Rayburn to pay the proceeds of the sale of the marital residence.

23. (Paragraph 30 of Petition). Complainant Rice told Respondent Rayburn that he no longer needed his services.

24. (Paragraph 31 of Petition). Respondent Rayburn advised Complainant Rice by letter dated July 13, 2005, that Respondent Rayburn was withdrawing from further representation of Complainant Rice.

25. (Paragraph 32 of Petition). Respondent Rayburn advised Complainant Rice that Respondent Rayburn would give Complainant Rice his proceeds of the sale of the marital residence when the court released him from further representation.

26. (Paragraph 33 of Petition). An Order was entered on August 2, 2005, permitting Respondent Rayburn to withdraw from further representation of Complainant Rice.

27. (Paragraph 34 of Petition). On September 8, 2005, Complainant Rice's new counsel filed a Motion to Order Funds Into Court.

28. (Paragraph 35 of Petition). A Supplemental Final Decree of Divorce was filed September 26, 2005.

29. (Paragraph 36 of Petition and Exhibit "6" introduced at hearing). On October 12, 2005, the court entered an Order reflecting that all issues had been resolved and required all agents, including Respondent Rayburn, to immediately pay the proceeds of the sale of the marital home in his possession or control, plus interest, into the Clerk's office for final disbursement by the Court.

30. (Paragraph 37 of Petition). On November 11, 2005, Complainant Rice's new counsel filed a Petition for Contempt arising out of Respondent Rayburn's failure to pay the proceeds of the sale of the residence.

31. (Paragraph 39 of Petition). As of the date of the filing of the Petition for Discipline on May 24, 2006, Respondent Rayburn had not paid Complainant Rice the proceeds of the sale of the marital home, nor given any accounting to Complainant Rice or Complainant Rice's new counsel regarding the proceeds of the sale of the home.

32. (Paragraph 40 of Petition). Respondent Rayburn failed to respond to numerous requests by Disciplinary Counsel to provide trust account records regarding these transactions to establish that the sale proceeds were maintained in Respondent Rayburn's trust account for the period from receipt until disbursed to Complainant Rice.

33. Respondent Rayburn filed Notice of Deposit, depositing \$64,201.80 with the Circuit Court on September 8, 2006.

34. Respondent Rayburn converted or attempted to convert some or all of the \$64,201.80 owed to Complainant Rice to his own use and benefit.

35. As a result of Respondent Rayburn's failure to timely tender the \$64,201.80 owed to Complainant Rice, Complainant Rice incurred \$23,153.10 in expenses and damages.

36. As a result of Respondent Rayburn's failure to timely tender the \$64,201.80 owed to Complainant Rice, Complainant Rice was deprived of the use of his funds from January 1, 2003 until September 8, 2006 (a total of three (3) years, nine (9) months, and eight (8) days). Accordingly, assuming 10 percent simple interest per annum, Complainant Rice's loss of use of those funds for that time period equates to additional damages of \$23,676.14.

46. (Paragraph 13 of First Supplemental Petition). Counsel for Time Insurance attempted to call Respondent Rayburn multiple times regarding the matter, but received no response.

47. (Paragraph 14 of First Supplemental Petition). On March 21, 2006, counsel for Time Insurance filed a Motion to Enforce Settlement and for Attorney's Fees and Interest because they had not received the \$1,000.00 in settlement.

48. (Paragraph 15 of First Supplemental Petition). By letter dated March 23, 2006, Respondent Rayburn forwarded Complainant Williams \$9,998.06 by cashier's check.

49. (Paragraph 16 of First Supplemental Petition). Respondent Rayburn has not paid the \$1,000.00 to Time Insurance Company for the subrogation interest.

50. (Paragraph 17 of First Supplemental Petition). Respondent Rayburn did not maintain the \$10,998.06 in a trust account.

51. (Paragraph 18 of First Supplemental Petition). Respondent Rayburn has provided no evidence that he properly maintained the \$10,998.06 in a trust account.

52. (Paragraph 19 of First Supplemental Petition). Respondent Rayburn converted all or part of the \$10,998.06 to his own use and benefit.

File No. 29438-3(C)-JV – Complaint of Derenda Kay Kirby

53. (Paragraph 4 of Second Supplemental Petition). Respondent Rayburn represented Complainant Kirby in a personal injury case arising out of a slip and fall which occurred on October 2, 2004.

54. (Paragraph 5 of Second Supplemental Petition). On September 19, 2005, Respondent Rayburn filed a civil complaint on behalf of Complainant Kirby in the Circuit Court of Bradley County, No. V-05-840.

55. (Paragraph 6 of Second Supplemental Petition). In mid-January, 2006, Respondent Rayburn received a settlement check in the amount of \$67,000.00.

56. (Paragraph 7 of Second Supplemental Petition). Complainant Kirby endorsed the settlement check.

57. (Paragraph 8 of Second Supplemental Petition). Respondent Rayburn informed Complainant Kirby that Respondent Rayburn would have to deposit the settlement check in the bank for fourteen days for the check to clear.

58. (Paragraph 9 of Second Supplemental Petition). Respondent Rayburn retained the settlement check.

59. (Paragraph 10 of Second Supplemental Petition). After sixteen days, Complainant Kirby called Respondent Rayburn.

60. (Paragraph 11 of Second Supplemental Petition). Three days later, Respondent Rayburn returned Complainant Kirby's call and informed Complainant Kirby that the order of dismissal had not been signed by the court and Respondent Rayburn would call Complainant Kirby as soon as it was. After seven days, Complainant Kirby called Respondent Rayburn and left a message for Respondent Rayburn to please call Complainant Kirby. Respondent Rayburn returned Complainant Kirby's call two days later.

61. (Paragraph 12 of Second Supplemental Petition). Respondent Rayburn told Complainant Kirby that Respondent Rayburn had been out of town and that the order of dismissal was at Respondent Rayburn's office.

62. (Paragraph 13 of Second Supplemental Petition). Respondent Rayburn asked Complainant Kirby to come to his office on March 24, 2006, to pick up Complainant Kirby's money.

63. (Paragraph 14 of Second Supplemental Petition). On March 24, 2006, Respondent Rayburn told Complainant Kirby that she would receive \$44,000.00 of the \$67,000.00. Respondent Rayburn further told Complainant Kirby that Respondent Rayburn was only able to give the money to Complainant Kirby in payments of \$9,500.00, to be paid to Complainant Kirby every Friday. Respondent Rayburn informed Complainant Kirby that the payments were because of the way Respondent Rayburn had to set the account up at the FSG Bank on Ringgold Road, East Ridge, Tennessee.

64. (Paragraph 15 of Second Supplemental Petition). Complainant Kirby received a cashier's check in the amount of \$9,500.00 from Respondent Rayburn on March 24, 2006.

65. (Paragraph 16 of Second Supplemental Petition). The order of dismissal was entered by the court on April 4, 2006.

66. (Paragraph 17 of Second Supplemental Petition). Complainant Kirby received another cashier's check in the amount of \$9,500.00 from Respondent Rayburn on April 5, 2006.

67. (Paragraph 18 of Second Supplemental Petition). When Complainant Kirby did not receive further payments from Respondent Rayburn, Complainant Kirby called Respondent Rayburn on April 17, 2005, April 21, 2006, April 27, 2006, May 8, 2006, and May 12, 2006, and left messages with regard to not receiving the money.

68. (Paragraph 19 of Second Supplemental Petition). Respondent Rayburn called Complainant Kirby on May 17, 2006, and said Respondent Rayburn was putting a check in the mail.

69. (Paragraph 20 of Second Supplemental Petition). Complainant Kirby received a cashier's check made payable to Complainant Kirby's mother, Carolyn Kirby, in the amount of \$9,500.00 from Respondent Rayburn on May 18, 2006.

70. (Paragraph 21 of Second Supplemental Petition). When Complainant Kirby again did not receive payments, Complainant Kirby called Respondent Rayburn on May 30, 2006, June 7, 2006, and June 12, 2006, and left messages.

71. (Paragraph 22 of Second Supplemental Petition). Respondent Rayburn returned Complainant Kirby's call on June 16, 2006. Respondent Rayburn informed Complainant Kirby that his personal accountant told Respondent Rayburn that Respondent Rayburn was going to have to lower the payments because the bank was questioning the money being withdrawn. Respondent Rayburn also informed Complainant Kirby that the checks would need to be sent in different people's names. When Complainant Kirby asked why, Respondent Rayburn advised Complainant Kirby that Respondent Rayburn did not want to pay taxes on the money.

72. (Paragraph 23 of Second Supplemental Petition). Respondent Rayburn informed Complainant Kirby that Respondent Rayburn would be mailing a check the next day, June 17, 2006.

73. (Paragraph 24 of Second Supplemental Petition). Complainant Kirby did not receive a check.

74. (Paragraph 25 of Second Supplemental Petition). On July 5, 2006, Complainant Kirby delivered a letter to Respondent Rayburn's office stating she needed her money and asking Respondent Rayburn to call Complainant Kirby.

75. (Paragraph 26 of Second Supplemental Petition). Complainant Kirby received a cashier's check from Respondent Rayburn in the amount of \$15,500.00 dated August 31, 2006.

76. (Paragraph 27 of Second Supplemental Petition). Respondent Rayburn did not properly place Complainant Kirby's settlement proceeds in a trust account.

77. (Paragraph 28 of Second Supplemental Petition). Respondent Rayburn commingled some or all of Complainant Kirby's settlement proceeds with Respondent Rayburn's monies.

78. (Paragraph 29 of Second Supplemental Petition). Respondent Rayburn converted some or all of Complainant Kirby's settlement proceeds to his personal use and benefit.

Respondent Rayburn's Conduct During Disciplinary Proceeding

79. Respondent Rayburn's conduct throughout this disciplinary proceeding, his failure to properly respond to discovery served upon him by Petitioner Board of Professional Responsibility, his multiple failures to comply with orders of the Hearing Panel, and his unexcused failure to appear at the duly noticed hearing of June 5, 2007, constitute willful and egregious failures to make discovery, abuses of the discovery and disciplinary process, and a clear record of non-compliance and delay.

CONCLUSIONS OF LAW

After hearing the sworn testimony of witness Michael E. Rice, reviewing the documents admitted into evidence, reviewing the facts deemed admitted by virtue of the judgments by default, hearing the arguments of Disciplinary Counsel Vick, and considering the record as a whole, the Hearing Panel reaches the following conclusions of law:

VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT

The Hearing Panel finds that Respondent Rayburn violated the following Rules of Professional Conduct:

- (a) 1.1 – Competence;
- (b) 1.2(a) – Scope of Representation and Allocation of Authority Between Lawyer and Client – Abiding by Client's Decisions;
- (c) 1.3 – Diligence;
- (d) 1.4 – Communication;
- (e) 1.15(a) – Safekeeping Property – Segregation of Funds of Client or Third Person Interest on Deposited Funds;

Absent aggravating or mitigating circumstances, upon application of the factors set out in [Standard] 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

* * *

4.4 Lack of Diligence

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

- 4.41 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.

4.6 Lack of Candor

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

- 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

* * *

6.0 Violations of Duties Owed to the Legal System

6.2 Abuse of the Legal Process

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

- 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for

the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

* * *

AGGRAVATING FACTORS

After hearing the sworn testimony of witness Michael E. Rice, reviewing the documents admitted into evidence, reviewing the facts deemed admitted by virtue of the judgments by default, hearing the arguments of Disciplinary Counsel Vick, considering the record as a whole, and considering Section 9 of the ABA Standards for Imposing Lawyer Sanctions, the Hearing Panel finds the presence of the following aggravating factors:

- (a) Respondent Rayburn has been licensed to practice law in Tennessee since 1979 and has substantial experience in the practice of law.
- (b) The violations of the Rules of Professional Conduct by Respondent Rayburn constitute or contribute to a pattern of misconduct, incompetence, or neglect.
- (c) The violations of the Rules of Professional Conduct by Respondent Rayburn constitute multiple offenses.
- (d) Respondent Rayburn's conduct arose out of a dishonest or selfish motive.
- (e) Respondent Rayburn has committed bad faith obstruction of this disciplinary proceeding by intentionally failing to comply with rules and orders of the Hearing Panel.

MITIGATING FACTORS

After hearing the sworn testimony of witness Michael E. Rice, reviewing the documents admitted into evidence, reviewing the facts deemed admitted by virtue of the judgments by default, hearing the arguments of Disciplinary Counsel Vick, considering the record as a whole,

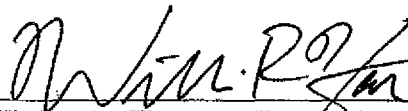
and considering Section 9 of the ABA Standards for Imposing Lawyer Sanctions, the Hearing Panel finds the presence of **no mitigating factors**.

DISCIPLINE

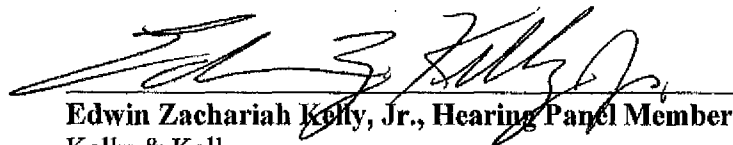
Based on the foregoing, and considering the ABA Standards for Imposing Lawyer Sanctions cited above, the Hearing Panel finds that Respondent Rayburn should be **DISBARRED** from the practice of law.

The Hearing Panel further finds that any reinstatement of Respondent Rayburn to the practice of law should be conditioned upon his pre-reinstatement payment of restitution to Complainant Michael E. Rice in the amount of **\$46,829.24** (based on the Hearing Panel's findings of fact enumerated in Paragraphs 35 and 36).

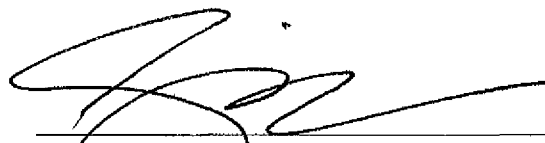
This the 18TH day of June, 2007.



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