

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

FILED

2012 AUG 30 PM 3:35

BOARD OF PROFESSIONAL
RESPONSIBILITY

Ree
EXEC. SEC.

**IN RE: YARBORO ANN SALLEE
BPR No. 16884, Respondent
An Attorney, Licensed and
Admitted to the Practice of
Law in Tennessee
(Knox County)**

DOCKET NO. 2011-2092-2-KB

JUDGMENT OF THE HEARING PANEL

Pursuant to Rule 9 §8.2 of the Rules of the Supreme Court of Tennessee, this cause came to be heard by the Hearing Panel assigned by the Board of Professional Responsibility of the Supreme Court of Tennessee on August 14 and 15, 2012. The Hearing Panel, comprised of attorneys Cheryl G. Rice (chair), Steve Erdely, IV and Timothy C. Houser, makes the following findings of fact and conclusions of law, and submits its judgment in this cause as follows:

I. STATEMENT OF THE CASE

1. The Petition for Discipline was filed in this matter on December 16, 2011.
2. Respondent through her counsel timely filed a ‘Motion for Extension of Time to File a Responsive Pleading’ on December 28, 2011 to which the Petitioner filed a Response on December 28, 2011, and the Motion was granted by the Chair of the Board of Professional Responsibility on January 3, 2012, allowing until January 23, 2012 to file an ‘Answer’.
3. Respondent filed a ‘Motion to Dismiss for Lack of Jurisdiction and Unconstitutionality of Procedure’ on January 23, 2012 and Petitioner filed a response to that motion together with its first Motion for Default on January 24, 2012.

4. The Notice of Appointment of Hearing Panel was filed January 26, 2012.
5. A pre-trial conference call was held pursuant to Tennessee Supreme Court Rule 9 §13.6 on March 6, 2012 and a Scheduling Order was filed March 23, 2012. Counsel for the Petitioner and the Respondent and all three Hearing Panel members participated in the conference call and the Respondent's Motion to Dismiss was discussed.
6. On March 12, 2012, the Hearing Panel filed its Order concluding that it did not have explicit authority under Tennessee Supreme Court Rule 9 §8 to grant the relief requested by Respondent's Motion to Dismiss, and therefore denied the same. The Respondent was directed to file her Answer to the Petition for Discipline within fourteen (14) days of entry of the Order.
7. On March 29, 2012, Respondent filed a "Motion for Recusal of Panel Members Timothy Houser and Steve Erdely" and at the same time attempted to file an "Answer" which was refused by the Board as not timely. On that same date, the Petitioner filed a renewed Motion for Default. The Respondent's Motion for Recusal was denied and the Petitioner's renewed Motion for Default was not ruled upon by the Hearing Panel's Order filed April 4, 2012.
8. On April 12, 2012, upon its own motion and after reconsideration of the Petitioner's Motion for Default and Renewed Motion for Default, the Hearing Panel filed its Order modifying in part its Order of April 4, 2012, and denying Petitioner's Motion for Default and Renewed Motion for Default; and finding that the attempted filing of the Answer by the Respondent on March 29, 2012 to be timely under its previous ruling and effective that date, as subsequently was reflected in the record by the Board's filing.
9. Notice of Hearing was filed on June 14, 2012, and the Petitioner filed its pre-trial brief filed July 5, 2012 and the Respondent submitted her pre-trial brief filed July 19, 2012 and the Petitioner filed a Motion in Limine on August 8, 2012 which was not ruled upon by the Hearing

Panel prior to the Hearing herein, and which in large part had become moot due to the quashing of subpoena's by the issuing court and/or withdrawal of proposed witnesses by the Respondent.

10. This matter came for hearing on August 14 and 15, 2012 with the Petitioner represented through counsel and with the Respondent appearing through counsel but electing not to appear in person to testify before the Hearing Panel.

II. FINDING OF FACTS

1. The Respondent has been licensed to practice law in Tennessee since 1994.

2. The Respondent has been in private practice since 2002.

3. Frances G. Rodgers was called to testify by the Petitioner.

4. The Petitioner did not call Harley Vearl Bible to testify.

5. The Respondent represented Frances G. Rodgers and Harley Vearl Bible in *Frances G. Rodgers, Harley Vearl Bible, on behalf of minors, Julia Noll and Aiden Noll, Individually and for the Estate of Lori Bible Noll v. John Adam Noll*, Knox County Circuit Court Docket No. 1-525-10.

6. In the middle of September, 2010, the Respondent met with Frances G. Rodgers. The Respondent and Ms. Rodgers agreed that the Respondent would investigate the circumstances surrounding the death of their daughter, Lori Bible Noll, on October 15, 2009.

7. Subsequently, on September 21, 2010, Respondent had a second meeting with Ms. Rodgers and Mr. Harley Vearl Bible. During that second meeting, Ms. Rodgers and Mr. Bible agreed to pay the Respondent at an hourly fee of \$250.00 to represent them in regards to the death of their daughter, Lori Bible Noll. At that time the Respondent told Ms. Rogers and Mr. Bible that although her normal hourly rate was \$500 per hour, she would charge them only \$250 per hour for

her services in this matter. When asked, the Respondent also advised Ms. Rogers and Mr. Bible that she did not believe it would cost them as much as \$100,000 in attorney's fees to pursue this matter. Although the Respondent, Ms. Rogers and Mr. Bible reached a verbal agreement to pay the Respondent at an hourly fee of \$250.00, no written fee agreement was ever signed.

8. On September 21, 2010, Ms. Rodgers paid the Respondent \$5,000.00 by personal check.

9. Ms. Rodgers paid the Respondent an additional \$15,000.00 on October 13, 2010 by personal check. The additional \$15,000.00 was paid to the Respondent by Ms. Rodgers on October 13, 2010 because the Respondent told Ms. Rodgers she needed a "\$20,000.00 retainer.

10. On October 15, 2010, the Respondent filed a wrongful death lawsuit on behalf of Frances G. Rodgers and Harley Vearl Bible which was styled *Frances G. Rodgers, Harley Vearl Bible, on behalf of minors, Julia Noll and Aiden Noll, Individually and for the Estate of Lori Bible Noll v. John Adam Noll*, Knox County Circuit Court Docket No. 1-525-10 ("the Wrongful Death Suit").

11. Neither Ms. Rodgers nor Mr. Bible was the legal guardian for Julia Noll and Aiden Noll at the time the Wrongful Death Suit was filed. Also, neither Ms. Rodgers nor Mr. Bible was the Personal Representative of the Estate of Lori Bible at that time.

12. On October 19, 2010, Ms. Rodgers paid the Respondent \$4,000.00 by personal check as a flat retainer fee to represent her in a separate child custody action.

13. Also, on October 19, 2010, Ms. Rodgers paid the Respondent an additional \$10,000.00 by personal check for "retainer balance (hourly fee)."

14. On November 28, 2010, Ms. Rodgers paid the Respondent an additional \$20,000.00 by personal check because the Respondent "needed some more money."

15. Overall, from September 21, 2010 through November 28, 2010, Ms. Rodgers paid the Respondent \$54,000.00.

16. The Respondent did not personally attend the disciplinary hearing and her deposition was offered into evidence by counsel for the Petitioner. Counsel for the Respondent objected to introduction of the Respondent's deposition transcript on the basis that it did not meet the formal requirements of the Rules of Civil Procedure despite the waivers stated on the deposition's face. The Respondent's objection was overruled by the Hearing Panel and the deposition transcript was admitted with the allowance that the Respondent was allowed to make objections and corrections to the transcript within three days of the conclusion of the Hearing. No corrections were submitted within the time allowed, and on August 22, 2012 the Respondent filed a written "Objection to the Allowance of Deposition as Evidence". The Petitioner thereafter filed its response to the objection on August 24, 2012. The Hearing Panel, having previously ruled on the Respondent's objection, maintains its previous ruling. However, no specific finding of fact herein is supported solely by the deposition transcript objected to.

17. During the course of her legal representation of Ms. Rodgers and Mr. Bible from September 16, 2010 through December 3, 2010, the Respondent never provided either Ms. Rodgers or Mr. Bible with a written itemized billing statement.

18. Respondent prepared a statement of goals and itemized billing statement dated December 3, 2010 which itemized time billed for services claimed by the Respondent to have been performed in the representation of Ms. Rodgers between September 16, 2010 and December 3, 2010. This document was prepared after the Respondent's representation of Ms. Rogers and Mr. Bible was concluded in January, 2011, and was first provided to Ms. Rogers and Mr. Bible through the Board of Professional Responsibility after Ms. Rodgers submitted her complaint to the Board.

19. The itemized billing statement states the hourly fee as "Hourly Fee \$250/hour/off hours x 1/2 or 375/hour (weekends, holidays after 6 before 8)".

20. The itemized billing statement also states that "pursuant to contract agreed on October 9, 2010 with Ms. Rodgers, overtime, and weekends billed at time and one-half." However, the emails between Ms. Rodgers and Respondent on October 9, 2010 do not state any agreement to overtime, holidays and weekends being billed at time and a one-half and Ms. Rogers testified that no agreement for the Respondent to be paid time and one-half on weekends or overtime was ever made.

21. According to the itemized billing statement, on September 28, 2010, the Respondent billed Ms. Rodgers 20 ½ hours; on October 1, 2010, the Respondent billed Ms. Rodgers 21 hours; on October 6, 2010 the Respondent billed Ms. Rodgers 21.9 hours; and on October 10, 2010 the Respondent billed Ms. Rodgers 19 hours.

22. Also in the itemized billing statement, the Respondent billed 8 ½ hours on October 15, 2010, 11 ½ hours on October 16, 2010, and 8 ½ hours on October 17, 2010. The Respondent billed these hours on the weekend of October 15, 2010 through October 17, 2010 after she told Ms. Rodgers she was "trying to get to a wedding in Charleston" that weekend.

23. On November 3, 2010, the Respondent billed Ms. Rodgers 20 hours.

24. In the Respondent's itemized billing statement the Respondent claims she is owed legal fees totaling \$140,250.00, for the period of time from September 16, 2010 through December 3, 2010. After credit for \$54,000.00 paid by Ms. Rodgers, Respondent still claims \$86,250.00 in outstanding legal fees are owed to her.

25. Ms. Rodgers admits that Respondent did a lot of work in the wrongful death case. The Respondent, however, did not do anything in either in the juvenile petition (child custody) or

probate matters. The only action Ms. Rodgers was aware the Respondent took in the probate matter was a petition to remove Mr. Noll as personal representative of her daughter's estate. Ms. Rodgers was apprised of that petition only after the Respondent had prepared and filed it. The Respondent also claimed to have performed services for her clients with regard to the proceeds of Ms. Noll's life insurance policy, but the Respondent provided Ms. Rodgers with no documents or information at any point during the representation which evidenced what if any efforts the Respondent made with regard to Ms. Noll's life insurance policy proceeds.

26. Ms. Rodgers terminated Ms. Sallee in January, 2011 because Respondent failed to provide her with a written employment agreement after multiple demands for it. Further, the Respondent had communicated to Ms. Rodgers that she wanted a contingency fee of forty percent (40%) on the "homeowner's policy or life insurance policy."

27. At the time Respondent's employment as attorney for Ms. Rodgers and Mr. Bible was terminated the Complaint had been filed and served, but there had been no depositions, written discovery or substantive motions in the Wrongful Death Suit.

28. Upon termination of her employment, the Respondent failed to return to either Ms. Rodgers or Mr. Bible a complete copy of their file. Instead, the Respondent wrote Ms. Rodgers on January 5, 2011 and told her the following:

Further, an attorney, according to the TBA, is entitled to retain, with some limited exceptions, **any documents or material** that were obtained through his or her efforts on behalf of the client when that client has not fulfilled the financial obligations to the attorney. As you know, you owe my office a large outstanding balance. **The documents you referred to in your email are comprised primarily of documents that I, solely, have obtained through work on the case.**

29. Further, in her January 5, 2011 letter to Ms. Rodgers, the Respondent states the amount outstanding as \$130,025.00. This is in contradiction to her December 3, 2010 itemized

billing statement of a total amount of \$140,250.00. Likewise, in her January 5, 2011 letter to Ms. Rodgers, the Respondent states that Ms. Rodgers is credited for \$50,000.00. This is in contradiction to her December 3, 2010 itemized billing statement which states a credit for \$54,000.00.

30. As a result of the Respondent's refusal to forward a complete copy of their file to them, Ms. Rodgers and Mr. Bible employed another attorney, Larry Vaughn, to represent them. Ms. Rodgers and Mr. Bible paid Mr. Vaughn \$10,000.00 to file suit against the Respondent in the Chancery Court for Knox County, Tennessee, Docket No. 179875-3 to cause the Respondent to turn over the file and materials necessary to the litigation of the Wrongful Death Suit to their new counsel of record. This suit was filed on or about March 4, 2011.

31. The Petitioner did not call Larry Vaughn to testify.

32. On March 4, 2011, the Respondent sent Larry Vaughn an email which stated as follows:

Dear Mr. Vaughn: I am in receipt of your complaint drafted on behalf of Fran Rodgers (Mr. Bible was not my client). I suggest an immediate meeting between you and I at you earliest convenience. The crucial facts pled in your complaint are grossly incorrect or deliberate misrepresentations or outright fraud by your client. Further, there are issues that you have apparently unfairly been deliberately kept ignorant of. I am confident that you will agree to immediately withdraw the complaint after I share the overwhelming proof on the facts in this matter. If not, of course, I will be filing a cross complaint against your clients for theft of services and other unsavory torts committed by them against my firm. My direct cell is 8652589529. I am available next Tuesday afternoon at 4:00 and suggest a meeting at that time if you can arrange your schedule. Sincerely, Yarboro Sallee

33. On March 7, 2011, the Respondent sent Larry Vaughn an email which stated as follows:

I am enclosing a letter to you that needs an immediate response from you. Please respond to my offer of meeting with you to show you the

overwhelming proof that I have against your client. This investigation is required by Rule 11. If I do not hear from you today before end of business, you can respond by email to accept my offer of a meeting, I will be proceeding to charge your clients with felony violations of TCA 39-14-104(1). Sincerely, Yarbi

34. Although the Respondent objected to admission of the above-referenced e-mails at the hearing, the Hearing Panel notes that the Respondent conceded in her Pre-trial Brief that she did send the e-mails.

35. On April 27, 2011, Chancellor Michael W. Moyers entered his Order in *Frances G. Rodgers and Harley Vearl Bible v. Yarboro Ann Sallee*, Chancery Court Docket No. 179875-3. In this Order, the Chancery Court ordered as follows:

Defendant Yarboro Ann Sallee, shall immediately transfer her file pertaining to that litigation in the Circuit Court for Knox County, Tennessee bearing docket number 1-525-10, to the Plaintiffs, said file to include any and all medical records, x-rays, x-ray records and reports, autopsy photographs, any and all tissues slides, witness statements and/or recordings, the preliminary report from Dr. Cyril Wecht, any and all EMT statements, the statement from Sheila Young, the police file(including paper and disc), any and all reports from the Medical Examiner, any correspondence from the Medical Examiner, any and all correspondence pertaining to the aforesaid litigation with exception of a letter of November 2, 2010, from Genworth Financial to Frances G. Rodgers, a letter dated November 11, 2010, from Defendant to Dr. Mileusnic, and a letter dated November 23, 2010, from Defendant to Chief Mike Ruble.

IT IS FURTHER ORDERED, that the Defendant shall not be required to create documentation of any sort but only proffer the physical and tangible file in her possession.

The costs of this cause shall be taxed to the Defendant, Yarboro Ann Sallee, 820 Josepi Drive, Knoxville, Tennessee 37918, for which execution may issue if necessary.

36. Ms. Rodgers testified that the Respondent never returned the tissue slides to her. Because the Respondent failed to return the tissue slides to Ms. Rodgers as requested, Ms. Rodgers

incurred \$140 in expenses in order to obtain duplicate tissue slides for use in the wrongful death litigation.

37. The Respondent called Herbert Moncier, an attorney licensed to practice law in Tennessee for forty (40) years, to testify.

38. Mr. Moncier testified that he was not allowed to attend the September 9, 2011 private meeting of the Board of Professional Responsibility.

39. Mr. Moncier testified that he was also refused a copy of the transcript of the September 9, 2011 private meeting of the Board of Professional Responsibility.

III. CONCLUSIONS OF LAW

Unfortunately, the Hearing Panel in this matter did not have the benefit of the testimony of the Respondent at the hearing of this matter. Nor did the Hearing Panel have the benefit of the testimony of Larry Vaughan, Esq. However, based upon the testimony and the evidence presented to the Hearing Panel and the resulting Findings of Fact set forth herein, the Hearing Panel makes the following conclusions of law:

1. The Respondent entered into an oral agreement to provide legal services and representation to both Ms. Rodgers and Mr. Bible on or about September 21, 2010.

2. The Respondent violated Rule 1.4, Communication, in that Respondent failed to keep her clients reasonably informed of the amount of fees and expenses that were accruing in regards to the representation and because the Respondent did not keep her clients reasonably informed as to the services she intended to perform in the Probate proceeding or what efforts she made on behalf of her clients in regard to the life insurance issue.

3. The Respondent violated Rule 1.5, Fees, in that Respondent's fee was not reasonable considering the amount involved and the results obtained; the nature and length of the professional relationship with the clients; the statements that the Respondent made to the clients regarding the fees she usually charged and the expectations she set with the clients as to total fees to be charged in the matter; because the Respondent sought a contingent fee on top of the amounts already paid by hourly billing; and because the fee agreement between the Respondent and her clients was not in writing.

4. The Respondent violated Rule 1.16, Declining and Terminating Representation in that Respondent failed to promptly surrender papers and property of the client and work product relating to the Wrongful Death Suit which were necessary to prevent a materially adverse effect on the clients with regard to the ongoing Wrongful Death Suit and ultimately, required Ms. Rodgers and Mr. Bible to file a separate civil action against the Respondent and obtain a court order before the Respondent would turn over all appropriate and necessary materials relating to the Wrongful Death Suit to her former clients.

5. The Respondent violated Rule 4.4, Respect for the Rights of Third Persons in that the Respondent threatened to present criminal charges against her former clients in order to obtain an advantage in the dispute with them with regard to fees the Respondent claimed to be owed and client file materials which the Respondent refused to turn over.

6. The Respondent violated Rule 8.4, Misconduct, in that she violated the Rules of Professional Conduct and engaged in a course of misconduct that was prejudicial to the administration of justice.

IV. AGGRAVATING AND MITIGATING CIRCUMSTANCES

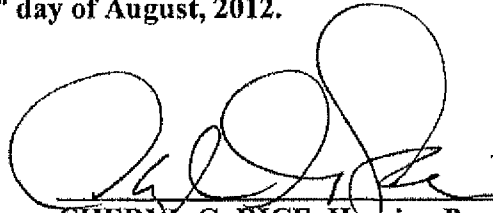
1. The Hearing Panel finds that the Respondent's dishonest or selfish motive is an aggravating circumstance.
2. The Hearing Panel finds that the Respondent's pattern of misconduct is an aggravating circumstance.
3. The Hearing Panel finds that the Respondent's multiple offenses are an aggravating circumstance.
4. The Hearing Panel finds that the Respondent's refusal to acknowledge the wrongful nature of her conduct is an aggravating circumstance.
5. The Hearing Panel finds that the Respondent's indifference to making restitution is an aggravating circumstance.
6. The Hearing Panel finds that the Respondent's absence of prior disciplinary record to be a mitigating circumstance.

V. SPECIFICATION OF DISCIPLINE

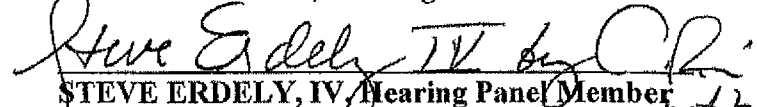
Pursuant to Rule 9 §8.4 of the Rules of the Supreme Court of Tennessee, having found one or more grounds for discipline of the Respondent, the Hearing Panel specifies the following discipline as appropriate:

1. That the Respondent, Yarboro Ann Sallee, be suspended from the practice of law for the period of one (1) year with proof of rehabilitation to be demonstrated in a reinstatement proceeding pursuant to Rule 9 §4.2 of the Rules of the Supreme Court of Tennessee.

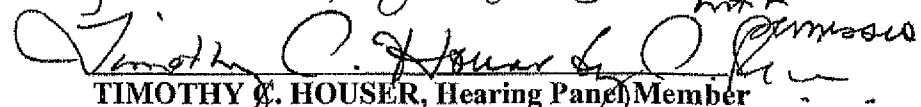
Respectfully submitted this 30th day of August, 2012.



CHERYL G. RICE, Hearing Panel Chair



STEVE ERDELY, IV, Hearing Panel Member



TIMOTHY C. HOUSER, Hearing Panel Member

NOTICE

The judgment of the Hearing Panel herein may be appealed pursuant to Section 1.3 of Rule 9 of the Rules of the Supreme Court of Tennessee by filing a petition for writ of certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the writ. See Tenn. Code Ann. §27-8-104(a) and §27-8-106.