

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

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BOARD OF PROFESSIONAL  
RESPONSIBILITY

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EXEC. SEC.

IN RE: MICHAEL GIBBS SHEPPARD )  
 )  
BPR NO. 19868, Respondent ) Docket No. 2014-2392-6-AJ  
an attorney licensed to practice )  
Law in Tennessee )  
(Williamson County, Tennessee )

FINAL DECREE OF HEARING PANEL

This matter came on for hearing pursuant to Rule 9 Section 15 Supreme Court Rules of Tennessee, upon the Petition for Discipline filed by the Board of Professional Responsibility of the Supreme Court of Tennessee on November 17, 2014, the Answer to the Petition filed on February 12, 2015, the First Amended Answer filed April 15, 2015, Notice of Hearing filed August 15, 2016 and the entire record out of all of which the parties came before the Hearing Panel in Lawrenceburg, Tennessee on August 25, 2016.

The Petition for Discipline alleged that the Respondent, Michael Gibbs Sheppard was the managing partner of Craft & Sheppard, a law firm located in Brentwood, Tennessee. As managing partner, it was alleged that Mr. Sheppard controlled access to the firms financial records, including the trust account. Further, Mr. Sheppard allowed the trust account to fall below the required amounts, apparently using the trust funds for operating capital and specifically in three cases identified as Ali, Utica and Shedd. The Board of Professional Responsibility sought, as sanctions, either disbarment or suspension of his license to practice law for a lengthy period of time.

In response to the Petition the Respondent alleged, among other things, that any wrongdoing with the management of the trust account arose out of his inexperience in the matter of bookkeeping and his failures were premised on negligence rather than any intentional act. Further, the Respondent indicated that he had a equal partner, Perry Craft, with whom the Board had already dealt on these matters and the resulting Board sanction was a public censure for Mr. Craft and therefore his sanctions should be no greater for the same or similar offense.

In terms of the public censure given to Mr. Perry Craft, both the Board of Professional Responsibility and the Respondent rely on Rule 5.1, "Responsibilities of Partners, Managers and Supervisory Lawyers". The hearing panel was faced with the Board's prior public censure of Mr. Craft when considering mitigating circumstances while sanctioning Mr. Sheppard as well as the Boards prior censure

of Craft in trying to envision some consistency in sanctions, all of which created a grave concern for the panel on the facts of this case.

At the Hearing on August 25, 2016 the Board of Professional Responsibility was represented by Attorney Alan Johnson and Michael Sheppard, was represented by Attorney Ed Yarbrough and M. Todd Jackson. The Hearing Panel heard the proof and considered the following issues: (1) whether or not Mr. Sheppard's ethical obligation to the clients, the public, the legal system and/or the profession was violated; (2) whether or not Mr. Sheppard's acts or omissions were intentional, knowing or negligent; (3) whether or not clients or others were seriously injured by the acts or omissions of Mr. Sheppard and (4) whether or not there were either aggravating or mitigation circumstances requiring further action in consideration of a sanction.

Upon the proof presented, the Hearing Panel specifically finds that Mr. Sheppard failed to create, establish, manage, maintain and/or monitor the trust accounts of Craft & Sheppard in such a manner that he could, at any given time, ascertain exactly what was in the trust account for each client. Mr. Sheppard testified that he simply comingled the trust funds from all clients and failed to keep a running journal or file for the trust funds held for each client. Due to the failure of Mr. Sheppard, the trust funds would be used to fund operating expenses and, at times, there were insufficient funds from some client's property (trust account). Simply put, the trust funds of some clients were wrongfully used for purposes outside of the benefit of that particular client. Client's personal property (trust funds) were knowingly used inappropriately. Examples of mismanagement of trust funds was evidenced by:

- a. In July of 2009 a one million dollar settlement came into the trust account of Craft & Sheppard from a client and, while Craft & Sheppard took their 1/3 fee from the settlement, there were insufficient funds in July 2013 to make a payment to this client. Mr. Sheppard recognizing the error immediately went to the bank and borrowed the money to place in the trust account on July 3, 2013 to fulfill the firm's obligations to this client, and
- b. In 2011 a settlement in the amount of \$130,000 was deposited into the trust account on February 11, 2011 and by April 26, 2011 an issue arose with the client about the trust funds. Mr. Sheppard e-mailed the client giving assurances that "the settlement funds reside in our trust account and no one has used these funds." That statement was false when looking at the trust account balances for the date of the e-mail and, without question, Mr. Sheppard simply could not ascertain exactly what remained in the Craft & Sheppard trust account for this client on that date. Once again, client trust funds were inappropriately diverted for other uses by Craft & Sheppard.

Other examples of mismanagement of trust funds were presented, however, it was evident from these two examples that Mr. Sheppard failed to preserve client trust funds and further, he (on behalf of the firm) encroached upon client funds, held in

the trust account, to such an extent that the client's funds were diminished improperly. There is evidence of a continuing mismanagement of trust funds with balances falling far short of what should have been in the account for certain clients.

Further, by failing to establish proper accounting procedures, resulting in improper drafts from the trust account, Mr. Sheppard violated a duty of competence owed to the client and the profession.

Due to the manner of improper trust fund management coupled with communications with clients, the Panel finds that Mr. Sheppard knew or should have known that his acts or omissions were inappropriate and violated his ethical duty to his clients and their trust funds.

The Hearing Panel was not presented with proof of intentional acts, which benefited Mr. Sheppard to the detriment of others. While counsel for Mr. Sheppard argued that Mr. Sheppard's poor accounting practices were mere negligence, the Panel found from the testimony and the above stated examples of misconduct that Mr. Sheppard knowingly misled or misrepresented to at least one client the status of the client's trust funds.

Mr. Sheppard's knowing violation(s) is balanced by evidence that, on one occasion, when Mr. Sheppard discovered the trust funds were inadequate to pay a client the proceeds due them, he immediately took action to borrow funds and place them in the trust account to "cover" the unauthorized misuse of otherwise client protected funds.

Finally there was no proof that Mr. Sheppard's acts or omissions seriously injured his clients. That would not be true, however, of obligations to numerous lenders who funded the law firm to their apparent detriment.

In summary the Panel finds that Mr. Sheppard knowingly violated Rule 1.15 **Safekeeping** of client property in that certain client funds were improperly withdrawn or transferred to cover other expenses and such funds were commingled in such a manner as to be unable to tell on any given date whose trust funds remained in the account. This failure further violated Rule 1.15 in that the trust funds were basically being used to fund the operation of the firm and were not therefore kept separate from the lawyers own funds irrespective of whether or not they were in a "trust" account. The panel further finds that Mr. Sheppard knowingly engaged in misconduct in violation of Rule 8.4

Upon finding a knowing violation of the Tennessee Rules of Professional Conduct by Mr. Sheppard of his duty to his clients, the profession and the public, the Panel then considered aggravating and/or mitigating factors brought out in the evidence at the hearing.

There was no proof of such aggravating factors as (a) prior disciplinary offenses, (b) dishonest or selfish motive, (c) bad faith in obstruction of disciplinary proceedings, (d) submission of false evidence, statements or deceptive practices, (e) refusal to acknowledge his wrongdoing, (f) substantial experience in the practice of law or illegal conduct.

However, there was significant proof of mitigation factors, which the Panel finds to be sufficient in considering sanctions. Mitigating factors the Panel finds to be of substance include: (a) the absence of any prior disciplinary record, (b) the absence of any proof that the knowing violations by Mr. Sheppard were grounded on dishonesty or a selfish motive, (c) there was evidence of a good faith effort, on at least one occasion, to rectify the violation by borrowing funds to deposit into the firm's trust account, (d) proof that Mr. Sheppard was inexperienced in Law Office Management or accounting systems, (e) testimony that Mr. Sheppard was a person of good character and involved in many charitable and pro bono efforts, (f) repeated comments exhibiting remorse for his failures, (g) the length of time from the events (2009 or 7 years in one case) evidencing misconduct and the date of the hearing, and finally the imposition of the Board's sanction of a public censure to Mr. Perry Craft the law partner of Mr. Sheppard at Craft & Sheppard. As to Mr. Craft, the Panel heard his and do not believe his testimony to be credible. Further, while much of Mr. Sheppard's testimony has credibility issues, his truthfulness is at least as believable as that of Perry Craft.

THEREFORE, upon these findings and conclusions, the Panel considered the knowing violations and misconduct against the backdrop of the mitigating factors and it is hereby ORDERED that:

1. Mr. Michael G. Sheppard shall be suspended from the practice of law for a period of sixty (60) days as provided by Rule 9, Section 12.2 Rules of the Supreme Court, and
2. Mr. Michael G. Sheppard shall, after the period of his suspension, be placed on probation, as provided by Rule 9, Section 14, for a period of twenty-four(24) months, the Panel finding that there is little likelihood that Mr. Sheppard will have occasion to harm the public during the period of probation, and
3. During the period of suspension and probation, Mr. Sheppard shall secure the services of a Practice Monitor (see Rule 9 Section 12.9 Rules of the Supreme Court). The duties and responsibilities of the practice monitor shall be to supervise Mr. Sheppard of and concerning his law office accounting practices, law office management, and proper trust accounting by Mr. Sheppard. Further, Mr. Sheppard shall be required to advise the practice monitor of his methods in administering his office, the keeping of his books, the existence and use of trust accounts and cooperate with the practice monitor who shall be required to give a detailed report, on Mr. Sheppard, to the Board of Professional Responsibility no less that twice per year. As provided by Rule 9 Section 12.9(c), Mr. Sheppard shall, within 15 days of the

entry of this Decree, provide to the Board a list of three proposed practice monitors for the Board's approval. Fees incurred by the practice monitor shall be provided to the Board and paid by Mr. Sheppard. (see Rule 9 Section 15 (d)).

- 4. Further, Michael Sheppard shall, within the 24 month period of probation take fifteen (15) hours of Continuing Legal Education dedicated strictly to Law Office Management and Trust Accounting Procedures. Mr. Sheppard shall provide documentary proof of those hours to the Board of Professional Responsibility.

Enter this the 29<sup>th</sup> day of August, 2016.

Michael E. Spitzer, Chair of Hearing Panel

Approved for entry:

Paul B. Plant by MES with  
Paul B. Plant, Member per miss no 8-29-2016  
225 Mahr Avenue  
P.O. Box 399  
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Timothy P. Underwood by Mes with  
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119 South First Street  
Pulaski, Tn. 38478

CERTIFICATE OF SERVICE

I certify that the above Decree was provided to the following by placing same in the U.S Mail at Brentwood, Tn. on this the \_\_\_\_ day of September, 2016.

Alan D. Johnson  
Disciplinary Counsel  
Board of Professional Responsibility  
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**NOTICE TO RESPONDENT**

**This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 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.**