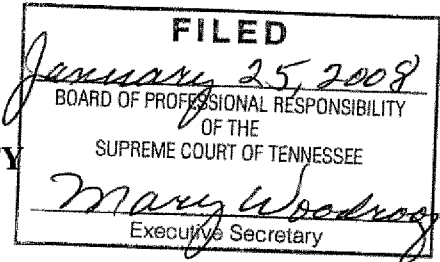


**IN DISCIPLINARY DISTRICT V
OF THE BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE**



IN RE:

MICHAEL H. SNEED,
BPR #11141,

Respondent.

Docket No. 2005-1544-5-SG

JUDGMENT OF THE HEARING COMMITTEE

Pursuant to Rule 9, Rules of the Tennessee Supreme Court, on August 13 and 27, 2007, the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee heard the petition, as supplemented, for discipline against Respondent, Michael H. Sneed. The Hearing Committee, W. Neal McBrayer, Chair, Julie N. Jones and Lela Hollabaugh, makes the following findings and submits as judgment in this cause as follows:

STATEMENT OF THE CASE

On September 20, 2005, the Board filed a Petition for Discipline against the Respondent based on the complaints of Vickie Berry and Enrique Lopez. On October 19, 2005, the Board filed a Motion for Default Judgment and that Charges be Deemed Admitted and a Request for Hearing Panel. On November 1, 2005, the panel was appointed. On that same date, the Respondent filed a Motion to Extend the Time to File an Answer, Answer to Petition for Discipline, and a Response to Motion for Default Judgement [sic] and that Charges be Deemed Admitted.

On January 13, 2006, the Board filed a Supplemental Petition for Discipline based on the complaints of the Board, Dwaine M. Allison, D.C. and Elliot Ozment. Failing a response to the Supplemental Petition for Discipline, the Board, on February 14, 2006, filed a second Motion for

Default Judgment and that Charges be Deemed Admitted. On March 15, 2006, an Order of Judgment by Default was filed.

Respondent filed a response to the motion for default judgment on March 27, 2006. On March 30, 2006, the Respondent also filed his first reply to the supplemental petition for discipline in the form of a motion to dismiss. The Board responded to the motion on the same day. On April 27, 2006, Respondent filed an Answer to Supplemental Petition for Discipline, an Amended Motion to Extend Time to File an Answer, and a Motion to Alter or Amend Judgement [sic] by Default. On May 1, 2006, the Board filed its reply to the Motion to Alter or Amend Judgment by Default.

On September 19, 2006, the Board filed a Second Supplemental Petition for Discipline based on the complaint of Sean Lewis.

By order filed on October 13, 2006, the Hearing Panel denied the Respondent's Motion to Alter or Amend Judgement [sic] by Default. Disciplinary counsel was further ordered to submit a memorandum recommending appropriate discipline based upon the Order of Judgment by Default, and Respondent was directed to file any reply by a date certain. Subsequently, both disciplinary counsel and Respondent obtained extensions of time in which to submit memoranda related to appropriate discipline.

On October 17, 2006, the Board filed a Motion for Default Judgment and that Charges be Deemed Admitted in the Second Supplemental Petition for Discipline. On November 7, 2006, the Board submitted its memorandum on appropriate discipline. On December 28, 2006, the Respondent filed a Motion to Set Aside Default Judgement [sic]. The Board filed its Response to Respondent's Motion to Set Aside Default Judgment on January 3, 2007. On January 10, 2007, the Respondent file a Supplement to Motion to Set Aside Default Judgement [sic]. The

Board responded on January 16, 2007, and Respondent filed a further Supplement to Motion to Set Aside Default Judgement [sic] on January 24, 2007. The Board responded on January 26, 2007. The Respondent replied on February 5, 2007.

By order filed on April 25, 2007, the Hearing Panel set aside its previous Order of Judgment by Default based upon the Supreme Court's decision in Henry v. Goins, 104 S.W.3d 475, 481 (Tenn. 2003), ordered the Respondent to file a response to the Second Supplemental Petition for Discipline, and set this matter for hearing on August 13, 2007. On July 6, 2007, the Hearing Panel filed an order to show cause why a default should not be entered based on Respondent's failure to file a response to the Second Supplemental Petition for Discipline. On July 11, 2007, the Respondent filed a response to the show cause order and his Answer to Second Supplement Petition for Discipline.

On August 7, 2007, the Respondent filed a Motion to Dismiss Petition, Supplemental Petition and Second Supplemental Petition, and on August 13, 2007, Respondent filed an Amended Motion to Dismiss Petition, Supplemental Petition and Second Supplemental Petition and a Motion to Dismiss for Failure to Cooperate in Discovery and for Disciplinary Counsel's Misconduct. The Hearing Panel denied the Respondent's motion immediately prior to the commencement of the hearing on August 13. Following a recess of the August 13th hearing, the hearing resumed on August 27. Prior to the resumption of the hearing, the Hearing Panel heard the Respondent's Motion to Continue, Motion to Set Pretrial Conference, and Motion of Judgment of Acquittal, all of which were denied. At the conclusion of the day on August 27, in lieu of closing arguments, the parties were given the opportunity to submit proposed findings of fact and conclusions of law.

On November 26, 2007, the Respondent filed a motion to allow submission of post trial evidence, namely the Court of Appeals of Tennessee's decision in Berry v. Houchens Market of Tennessee, Inc. et. al., No. M2006-02103-COA-R3-CV (Tenn. Ct. App. Nov. 15, 2007). The motion was granted by order filed on January 11, 2008, and the proof was closed.

FINDINGS OF FACT

Respondent is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee and has been since 1984. (Transcript, p. 148). He maintains offices at 525 Gallatin Pike South, Madison and 4025 Nolensville Pike, Nashville, Tennessee. (*Id.*) The Petition for Discipline, Supplemental Petition for Discipline, and the Second Supplemental Petition for Discipline filed in this matter each allege violations of the Tennessee Rules of Professional Conduct and request the imposition of appropriate discipline based on complaints filed with the Board against the Respondent. The complaints and the Hearing Panel's findings with respect to each are addressed *seriatim*.

Complaint of Vickie Berry – File No. 27499-5-SG

Vickie Berry complains that the Respondent, after having been engaged to represent her in a personal injury case, failed to communicate with her or to pursue the case with diligence and promptness. The Board contends that the Respondent's handling of Ms. Berry's case and alleged failures to communicate with Ms. Berry constitute misconduct in violation of Rules 1.3 and 1.4 of the Tennessee Rules of Professional Conduct, and therefore, the Respondent is guilty of professional misconduct under Rule 8.4.

The Respondent filed a general sessions case on Ms. Berry's behalf on September 2, 2003 for injuries she sustained in a store parking lot. (Transcript, pp. 56, 149). After the

Respondent filed Ms. Berry's case, the case was continued on several occasions. (Petition for Discipline, ¶ 7, Answer to Petition for Discipline ¶ 7). The case was initially set for October 22, 2003, and Respondent requested and received a continuance until October 29, 2003. On October 28, 2003, Respondent requested that the trial be continued to December 18, 2003, and on December 18, Respondent requested that the trial be continued to February 20, 2004. (Transcript, pp. 59-60). On February 18, 2004, Respondent continued Ms. Berry's case indefinitely. (Petition for Discipline, ¶ 8, Answer to Petition for Discipline ¶ 8).

On June 4, 2004, Respondent moved to transfer the case to circuit court, and by order entered on July 30, 2004, the case was transferred. (Ex. 1). On June 28, 2005, an order of dismissal for lack of prosecution was entered in Ms. Berry's case. (Transcript, pp. 59-60). On July 21, 2005, Respondent filed a motion to alter or amend, and the order of dismissal was set aside on September 14, 2005. (Ex. 1). In May of 2006, the case was dismissed on a motion for summary judgment. After the trial court denied a motion to alter and amend, Respondent perfected an appeal on behalf of Ms. Berry. On November 15, 2007, the Court of Appeals affirmed the judgment of the trial court. Berry v. Houchens Market of Tennessee, Inc. et. al., No. M2006-02103-COA-R3-CV (Tenn. Ct. App. Nov. 15, 2007).

The Hearing Panel finds that Respondent did not keep Ms. Berry reasonably informed about the status of her matter or comply with reasonable requests for information made by Ms. Berry. During direct examination, Ms. Berry testified that Respondent had represented her for six years. In response to the inquiry of whether the Respondent had kept her informed of her case, Ms. Berry testified as follows:

The past two years, yes. The past two years, he's been on top of it. The last two years. But for four years, I was pretty much in the dark. I would try to catch him or get in contact with Michael Sneed. But the past two years, he's been on top of it.

(Transcript, p. 212). Ms. Berry correlated Respondent's improved communications with the filing of her complaint with the Board. (*Id.*). Ms. Berry went on to describe the extraordinary efforts she undertook to communicate with the Respondent prior to the filing of her complaint with the Board. She would leave messages on Respondent's mobile phone and at his office. (Transcript, p. 213). When the Respondent would no longer answer telephone calls originating from her telephone number, the Respondent used her son's mobile phone to place calls to the Respondent. (Transcript, pp. 223-224, 226). On one occasion, Ms. Berry estimated that she left fifteen messages for the Respondent. (Transcript, pp. 224-225). She sent the Respondent a certified letter complaining about the Respondent's failure to keep her informed. (Ex. 40).

For his part, although asserting the complaint is frivolous, Respondent stated in his opening as follows:

The only thing she was mad about, I think, was because she felt that I wasn't returning all of her telephone calls. And I will admit, every phone call that she makes, I did not return. She calls on a pretty consistent basis because she is legitimately concerned about her lawsuit. I talk to her as often as I can. I believe I talked to her last week. She asked me what's happening with the Court of Appeals.

(Transcript, pp. 44-45). However, Ms. Berry's testimony concerning the lack of communication from the Respondent went unchallenged. The Respondent offered into evidence two letters that he had written to Ms. Berry, one dated August 29, 2005, and the other dated May 4, 2007. (Transcript, pp. 155-156, Ex. 28 and 29). The letter dated August 29, 2005, confirmed that Respondent was aware that Ms. Berry was dissatisfied with the progression of her case and suggested that Ms. Berry seek the services of other attorney. (Ex. 28).

In responding to this complaint, the Respondent places particular emphasis on the fact the Ms. Berry remains his client. (Transcript, pp. 159, 220-21). But, as Ms. Berry explained, she

could not find anyone else to take her case. (Transcript, pp. 214, 221). Ms. Berry was also reluctant to engage substitute counsel because it might further delay an already protracted resolution to her case. (Transcript, p. 221).

As for Respondent's handling of the case itself, the Hearing Panel finds that he did not pursue the case with reasonable diligence and promptness. Although the decision of the Court of Appeals establishes that the defendants in the action had no legal liability based on the undisputed facts, until that ruling, Respondent was unconcerned because he believed Ms. Berry's case had merit and that she would prevail on appeal. (Transcript, pp. 43-44, 222). In any event, having taken Ms. Berry's case, Respondent was under a professional duty to "act with commitment and dedication to the interests of the client." RPC 1.3 cmt. 1.

Taken in the light most favorable to Respondent, he did not attempt to schedule the deposition of Ms. Berry's treating physician, Dr. Butcher, until February of 2005. (Transcript, p. 61). This delay may have prejudiced Ms. Berry's claim because, about the time the Respondent finally sought to schedule Dr. Butcher's deposition, Dr. Butcher sold her practice. (Transcript, p. 217). Respondent testified that Dr. Butcher "actively resisted" the taking of her deposition. (Transcript, p. 151). Respondent clearly understood the importance of Dr. Butcher's testimony (Transcript, p. 152) and even advised his client of that fact. (Transcript, p. 155). In settlement negotiations, when the case was still before the general sessions court, counsel for the defendant indicated a need to assess Ms. Berry's injuries and her medical records. (Transcript, p. 150). However, the Respondent delayed even attempting to schedule Dr. Butcher's deposition until over a year after the general sessions case was filed.

Although his conduct improved after Ms. Berry filed her complaint, the Hearing Panel concludes that Respondent did violate Rules 1.3 and 1.4 of the Tennessee Rules of Professional

Conduct in the conduct of Ms. Berry's case, and therefore, the Respondent is also guilty of professional misconduct under Rule 8.4.

Complaint of Enrique Lopez – File No. 27097C-5-SG

Enrique Lopez complains that the Respondent failed to communicate with him or to pursue his claims for monies seized by the federal government with diligence and promptness. The Board additionally asserts that Respondent had a conflict of interest in representing Mr. Lopez because he simultaneously represented two other individuals with claims to the seized monies, Fernando Funes and Migel Herrera. The Board contends that these acts violate Rules 1.3, 1.4, 1.7, 1.16 and 8.4 of the Tennessee Rules of Professional Conduct.

The Respondent was retained by Mr. Lopez to pursue a claim against the Drug Enforcement Agency regarding the seizure of \$19,790 from Mr. Lopez at the Nashville International Airport. (Petition for Discipline, ¶ 16, Answer to Petition for Discipline ¶ 16). The Respondent filed a claim on Mr. Lopez's behalf. (Petition for Discipline, ¶ 17, Answer to Petition for Discipline ¶ 17). The claim dated April 16, 2002, was initially filed with the Department of Justice. (Transcript, p. 68). By letter dated May 1, 2002, the Department of Justice informed the Respondent that the claim was defective. (Transcript, pp. 68-69).

Respondent admits that the request for return of the funds was not timely filed. (Transcript, p. 161). Respondent described the circumstances in his response to the summary complaint:

Mr. Lopez contacted me and I filed a claim for the return of the money. The procedure requires that the initial claim is made to the US Attorney. That request was denied and a forfeiture warrant was filed in the US District Court for the money. I filed a n [sic] answer to the Petition for Forfeiture. However, the Answer to the Petition was filed late and Judge Echols granted the US Attorney's motion for default judgment and the money was forfeited to the Government.

I have made an offer to Mr. Lopez to pay the amount of the money that he owned back to him. He did not own all of the money. There were at least three claimants but the only individual that I met was Mr. Lopez.

(Transcript, pp. 71-72, Ex. 3). Mr. Lopez has since retained other counsel and filed suit against the Respondent. (Transcript, pp. 73-74).

The Respondent did testify that Mr. Lopez, despite the order forfeiture, still had another avenue for recovery of the seized funds. The Respondent offered into evidence a letter from the Department of Justice indicating that the claim for the funds might be reconsidered if it could be established that Mr. Lopez was the owner of the seized funds and if there was some evidence to justify a reversal of the claim denial. (Transcript, pp. 162-164, Ex. 33). Although there was some question of whether the Respondent actually requested that the denial of the claim be reconsidered (Transcript, p. 167), ultimately, the Respondent could not pursue this avenue because he was unable to locate Mr. Lopez. (Transcript, pp. 162, 165, 166-67).

The Hearing Panel finds that the Respondent did violate Rule 1.3 of the Tennessee Rules of Professional Conduct in the representation of Mr. Lopez. The Hearing Panel further finds that the Board did not carry its burden with respect to the alleged violation of Rule 1.4.

The alleged violations of Rule 1.7 of the Tennessee Rules of Professional Conduct relate to Respondent's simultaneous representation of Mr. Lopez, Fernando Funes, and Migel Herrera. Respondent admits representing Fernando Funes and Migel Herrera. (Petition for Discipline, ¶ 22, Answer to Petition for Discipline ¶ 22). Respondent described his clients' interests in the seized monies as follows:

. . . Mr. Lopez asked me to file the claim and indicated these other individuals were co-owners of the money. Basically, Mr. Enrique (sic) said he was asked by his friends to take the money back to Mexico. He said he would do that routinely. So these friends would give him money and he would put the money in an envelope and fly the money back to Mexico. And he said these other

individuals owned some of the money and he owned some of the money. So since they were potential claimants and Mr. Enrique was the actual individual from whom the money had been taken, he was the individual who had the claim because he was the person in possession at the time it was taken. I technically represented Enrique Lopez on behalf of the other individuals and their claims.

(Transcript, p. 70).

From the Respondent's description of his clients' interest, there was the possibility that the representation of one of the clients could be materially limited by the Respondent's responsibilities to the other client, and consequently, the Respondent should have at least undertaken the steps required by Rule 1.7(b) of the Tennessee Rules of Professional Conduct. We find that these steps were not taken because the Respondent testified that he did not explain the potential conflict and never met either Messrs. Funes or Herrera. (Transcript, pp. 69-70). Accordingly, we find the Respondent did violate Rule 1.7 in his representation of Messrs. Lopez, Funes, and Herrera.

The basis for the Board's allegation that the Respondent violated Rule 1.16 of the Tennessee Rule of Professional Conduct is unclear. The claim could relate to either the termination of his representation with Mr. Lopez or his failure to decline the representation of all three individuals when he knew such representation could potentially violate Rule 1.7 of the Tennessee Rule of Professional Conduct. In either event, the Hearing Panel finds that the Board has failed to meet its burden on the alleged violation of Rule 1.16.

In light of the Hearing Panel's findings that the Respondent did violate Rules 1.3 and 1.7 of the Tennessee Rules of Professional Conduct in the representation of Mr. Lopez, the Hearing Panel also finds that the Respondent is guilty of professional misconduct under Rule 8.4.

Complaint of the Board of Professional Responsibility – File No. 26861-5-SG

The Board complains that the Bank of America reported an overdraft in the trust account of the Respondent. After repeated demands for an explanation of the overdraft, the Respondent offered the explanation that checks were written out of the wrong account. The Board further complains that Respondent failed to respond to requests for additional information concerning the overdrafts and for the trust account bank statements. The Board contends that these acts violate Rules 1.15, 8.1(b), and 8.4(a)(c)(d) of the Tennessee Rules of Professional Conduct.

The facts relevant to this complaint are admitted by the Respondent. On November 26, 2003, the Bank of America reported to the Board of Professional Responsibility an overdraft in the trust account of the Respondent. (Supplement Petition, ¶ 3, Answer to Supplemental Petition for Discipline ¶ 3). The Respondent admits that at least three checks did not clear his trust account. (Transcript, p. 46). By letters dated December 23, 2003, January 8, 2004, and January 22, 2004, disciplinary counsel requested that the Respondent explain the overdrafts. In response to these requests, by letter dated January 21, 2004, the Respondent advised the Board that the overdrafts occurred because checks were written out of the wrong account. (Supplemental Petition for Discipline, ¶ 4, Answer to Supplemental Petition for Discipline ¶ 4).

Disciplinary counsel requested additional information from the Respondent by letters dated January 29, 2004, and March 16, 2004, to which the Respondent failed to respond. (Supplemental Petition for Discipline, ¶ 5, Answer to Supplemental Petition for Discipline ¶ 5). By letters dated April 21, 2004, June 30, 2004, and July 20, 2004, disciplinary counsel requested the Respondent's trust account bank statements from November, 2003, December, 2003, and January, 2004, but the Respondent failed to respond or comply to these requests. (Supplemental Petition for Discipline, ¶ 6, Answer to Supplemental Petition for Discipline, ¶ 6). Ultimately, the

Board subpoenaed the Respondent's trust account records. After examining the records, the Board discovered thirteen checks made payable to cash and twenty-four debits for the Respondent's trust account. (Supplemental Petition for Discipline, ¶ 7, Answer to Supplemental Petition for Discipline ¶ 7). None of the checks payable to cash or the debits reflect client names or case numbers. (Supplemental Petition for Discipline, ¶ 8, Answer to Supplemental Petition for Discipline, ¶ 8).

By letters dated August 4, 2005, September 8, 2005 and September 23, 2005, disciplinary counsel requested an explanation of the checks made payable to cash and the debits from the Respondent's trust account, but again the Respondent failed to reply. (Supplemental Petition for Discipline, ¶ 9, Answer to Supplemental Petition for Discipline, ¶ 9). Not until disciplinary counsel, on October 7, 2005, sent a notice of petition for summary suspension did the Respondent reply. By letter dated October 21, 2005, the Respondent wrote that "[e]ach one of the checks is for a disbursement from my Trust Account as a result of a settlement of a personal injury case or some type of case whereby the monies were deposited into my trust account and later withdrawn." (Supplemental Petition for Discipline, ¶¶ 10-12 & Ex. H, Answer to Supplemental Petition for Discipline, ¶¶ 10-12). The Respondent further explained that "I do not always withdraw the monies from my account as the monies are earned." In closing the letter, the Respondent indicated that he was "attempting to retrace . . . [the] transactions [in question]" and that he should have the information by next week. (Supplemental Petition for Discipline, Ex. H). However, the Respondent admits never providing any further trust account records or documentation. (Supplemental Petition for Discipline, ¶ 13, Answer to Supplemental Petition for Discipline, ¶ 13).

In support of the complaint, the Board introduced into evidence the correspondence from disciplinary counsel to Respondent, Respondent's two written replies and the trust account statements.

Based upon the admissions of the Respondent and review of Exhibits, the Hearing Panel concludes that Respondent, in maintaining his trust account and in failing to respond to disciplinary counsel, violated Rules 1.15 and 8.1(b) of the Tennessee Rules of Professional Conduct.

Complaint of Dwaine M. Allison, D.C. – File No. 28446C-5-SG

Complainant Dwaine M. Allison filed a complaint with the Board against the Respondent arising out of Respondent's representation of Jose Marmol and Jesus Mendez. (Supplemental Petition for Discipline, ¶ 15). Dr. Allison alleges that Marmol and Mendez were referred to him for medical care by Respondent, that Respondent was aware that Dr. Allison asserted a lien against any lawsuit proceeds for his services, that Respondent kept Dr. Allison advised as to the status of the underlying litigation and that Respondent failed to take any steps to protect Dr. Allison's lien upon settlement of the underlying litigation. (Supplemental Petition for Discipline, ¶¶ 17, 19).

The Board alleges that Respondent failed to respond to the complaint by Dr. Allison within the time requested by the Board. In addition the Board alleges that Respondent violated the Tennessee Rules of Professional Conduct 1.3, 1.15 and 8.4(a)(d). (Supplemental Petition for Discipline, ¶¶ 15, 22).

The Hearing Panel heard testimony from Respondent and Dr. Allison in regard to this Complaint. In addition, the Hearing Panel admitted evidence of the liens and a letter from Allison to Respondent, Exhibits 12, 20 and 21, respectively.

Respondent admitted under examination by disciplinary counsel that he represented Mr. Marmol and Mr. Mendez and that he was aware of the documents that purported to be liens in favor of Dr. Allison signed by Mr. Marmol and Mr. Allison. (Transcript, p. 82). Respondent also admitted that he settled the underlying litigation but that he did not pay Dr. Allison the amount of the lien or withhold any monies from the settlement to protect the lien. (Transcript, p. 84). Dr. Allison testified that Respondent represented on several occasions that he would protect Dr. Allison's lien. Respondent did not dispute this testimony. (Transcript, p. 115). Respondent took the position at the hearing that he was not obligated to protect the liens because he did not sign them and did not agree in writing to protect them. (Transcript, p. 47).

Disciplinary counsel alleges a violation of Rule 1.3 in regard to diligence in the representation of a client. Disciplinary counsel failed to present any evidence of improper delay in the representation of Mr. Marmol or Mr. Mendez, and they have complained of none. Rule 1.3 does not address conduct related to third parties, such as Dr. Allison. Accordingly, the Hearing Panel finds no violation of Rule 1.3.

However, the Hearing Panel finds that Respondent violated Rule 1.15 in regard to this complaint by failing to safeguard the funds in which a third party had an interest of which the Respondent was aware. Respondent failed to take any action to safeguard the funds in which Dr. Allison claimed an interest. Respondent does not assert that his clients disputed the validity of the liens or in any manner took the position that Dr. Allison was not owed the money. Even if

his clients disputed the validity of the liens, Respondent is required to safeguard the disputed funds until such time as the dispute is resolved. See Rule 1.15.

Based upon the violation of Rule 1.15, the Panel finds a violation of Rule 8.4(a). However, the Panel does not find that this violation rises to the level of conduct prejudicial to the administration of justice under Rule 8.4(d).

Complaint of Margarita Kennen-Sanchez – File No. 28276-5-SG

Complainant Margarita Kennen-Sanchez filed a complaint with the Board arising out of Respondent's representation of her in regard to an immigration matter. (Supplemental Petition for Discipline, ¶ 29). Complainant does not speak English. Complainant alleges she met with Respondent through an interpreter at Ceja Enterprises and paid him \$1,500 to attend an interview with her in Memphis on her petition for a change in her immigration status. (Transcript, pp. 230-33). Complainant alleges that Respondent was late to the interview and failed to advise her that her husband would be required to be present for the interview, and as a result, he was not present and the interview could not proceed. (Transcript, pp. 231, 233). Complainant alleges and Respondent admits that she asked for and was promised a refund, but Respondent failed to pay her. (Transcript, p. 53).

The Board alleges that Respondent is not competent to handle immigration matters, was paid a commission to Ceja Enterprises for referrals, and is assisting in the unauthorized practice of law by non-attorney in violation of Rule 1.1, 1.2(c), 1.4, 1.5, 5.4, 5.5(b) and 8.4. (Supplemental Petition for Discipline, ¶ 54).

The Hearing Panel considered the testimony of Respondent, Ms. Kennen-Sanchez, Mr. Sean Lewis and Mr. Fred Ramos in regard to this matter. In addition several exhibits were admitted into evidence regarding this complaint and were considered by the Hearing Panel.

Ms. Kennen-Sanchez's complaint can be succinctly summarized by saying that she is upset with the Respondent because he did not tell her that her husband needed to be present for an interview before the immigration officials in Memphis and that her interview had to be rescheduled as a result. Ms. Kennen-Sanchez wanted part of the fee she paid to be refunded, and it was not. Ms. Kennen-Sanchez simply believed that she received no services of value from the Respondent.

Both Respondent and Mr. Ramos, who Ms. Kennen-Sanchez admittedly consulted regarding this immigration matter, contradict Ms. Kennen-Sanchez's testimony in many ways. Based upon the entire evidence before the Hearing Panel, the Hearing Panel finds Ms. Kennen-Sanchez's testimony regarding her lack of knowledge about the need for her husband to be present from the immigration interview and that the interview would need to be rescheduled not credible.

Disciplinary counsel asserts a violation of Rule 1.1 in regard to competence. Mr. Sneed was hired by Ms. Kennen-Sanchez to appear with her at the immigration interview. He provided that service, although admittedly he was late to the interview. There is no credible evidence before the Hearing Panel that Respondent was not competent to make that appearance with Ms. Kennen-Sanchez. The rescheduling of the interview occurred because Ms. Kennen-Sanchez's husband was not present. (Transcript, p. 233). According to the testimony of Mr. Ramos, Ms. Kennen-Sanchez's husband refused to attend the interview, and he advised Ms. Kennen-Sanchez that the husband's presence was required. (Transcript, pp. 459-460). Likewise, Mr. Ramos

testified that he provided this same information to Respondent. (Transcript, p. 461). The testimony of Mr. Ramos is credible. Moreover, it appears, considering the internally inconsistent testimony of Ms. Kennen-Sanchez and her demeanor providing such testimony, that she was desperate to ensure that her immigration status was changed, and she is looking to place blame because that did not occur at that time.

Mr. Lewis' testimony regarding steps that Respondent should have taken to assist Ms. Kennen-Sanchez in effecting a change of her status may have been valid, but it is clear from the testimony of both Respondent and Ms. Kennen-Sanchez that Respondent was only hired to attend the interview in Memphis and that he was essentially fired by Ms. Kennen-Sanchez upon their return to Nashville. (Transcript, p. 234).

Disciplinary counsel also alleges that Respondent failed to properly limit the scope of his representation of Ms. Kennen-Sanchez. This argument is without merit. It is undisputed by Ms. Kennen-Sanchez that she only requested Respondent to attend the immigration interview. Her petition for change of status was prepared by Ceja Enterprises, not Respondent.

Disciplinary counsel also alleges that Respondent violated Rule 1.4 in regard to communication. Again, for the reasons set forth about this allegation is not supported by the credible evidence.

Disciplinary counsel also alleges a violation of Rule 1.5 in regard to his charge of \$1,500 to attend the hearing in Memphis. Neither disciplinary counsel nor Respondent presented any evidence in regard to the reasonableness of this fee. Accordingly, the Board has failed to carry its burden of proof. In addition, any assertion that the fee was unreasonable because of Respondent's lack of competence in immigration matters has been addressed above.

Disciplinary counsel also asserts a violation of Rule 5.4 and 5.5(b) in regard to Respondent's association with Carmen Ceja and Ceja Enterprises on this matter. The Hearing Panel addresses Respondent's association with Ms. Ceja and Ceja Enterprises below.

Complaint of Elliot Ozment – File No. 28275-5-SG

In 2005, Complainant Elliott Ozment, at that time chair of the Nashville Bar Association Committee on Immigration Law, filed a complaint with the Board against the Respondent arising out of Respondent's relationship with nonlawyer Carmen Ceja and her business Ceja Enterprises (collectively, "Ceja"). Mr. Ozment alleges that Ceja engaged in the unauthorized practice of law, that Respondent practiced law in the offices of Ceja, accepted referrals from Ceja, and acted under Ceja's direction.

The Board alleges (a) that Respondent failed to respond to Mr. Ozment's complaint within the time requested by the Board, (b) that Ceja refers clients to Respondent, (c) that Respondent compensated Ceja for those referrals, (d) that Respondent failed to respond to three requests from disciplinary counsel for information concerning the benefit received by Ceja for referrals to Respondent and for copies of cancelled checks and corresponding invoices for the previous six months for payments that Respondent alleges were compensation for his use of Ceja interpreters, and (e) that after fourth request in the form of a Notice for Petition for Summary Suspension, Respondent replied, supplying a copy of one check payable by him to Ceja Enterprises in the amount of \$2,500 under a cover letter asserting that his payments to Ceja were compensation for his use of Ceja interpreters. In addition, the Board alleges that Respondent violated Tennessee Rules of Professional Conduct 5.4; 7.2(c); 5.3; 5.5; 7.6; 8.1(b) and 8.4.

The Hearing Panel considered Respondent's Answer to Supplemental Petition for

Discipline and Answer to Second Supplemental Petition for Discipline, heard pertinent testimony from Respondent, Ms. Margarita Kennen-Sanchez, Mr. Rodolpho Gonzalez, Maria Cristina Gonzales and Sean Lewis, and reviewed numerous exhibits submitted in connection with the Respondent's testimony and the testimony of other witnesses in connection with the Kennen-Sanchez and Lewis Complaints that are relevant to Mr. Ozment's complaint, including copies of the repeated requests of disciplinary counsel for information, the Notice of Suspension from the Practice of Law, the \$2,500 check and accompanying cover letter to disciplinary counsel, all as referenced above, plus copies of numerous letters, the \$3,000 promissory note (Ex. 41) allegedly drafted by Carmen Ceja or a Ceja employee on behalf of Mr. Gonzalez, and Mr. Gonzalez's receipt for \$62.50 paid by him Ceja. Respondent admitted that (a) the Respondent practiced law from two locations, one being his own office on Gallatin Road and the other being an office located on the premises of Ceja Enterprises (Transcript, pp. 55, 148 & 193), (b) that his office at Ceja Enterprises was not indicated by any signage (Answer to Supplemental Petition for Discipline) until it was put up, according to his testimony, "about a month or two ago. It's been fairly recently that we did do that, okay?" (Transcript, p. 196), (c) that he paid Ceja, initially for interpretive services (Transcript, p. 85) and later for rent, inclusive of space, equipment and use of interpreters (Transcript, p. 96), (d) that he tries "to maintain the independence as best [he] can, having an office under the same roof [as Ceja] " (Transcript, p. 193), (e) that he traveled to Memphis with Ms. Kennen-Sanchez to appear at a hearing regarding her immigration status but that he did not prepare her petition in that matter (Transcript, p. 87). Ms. Kennen-Sanchez testified that her documentation was "filled out" by a Ceja employee and by Carmen Ceja (Transcript, p. 229), that Carmen Ceja advised Kennen-Sanchez that she could accuse her husband of abuse (Transcript, p. 229) and that Carmen Ceja wrote a letter to the immigration

administrative body on her behalf (Transcript, pp. 229-230). Rololpho Gonzalez testified that the \$3,000 promissory note (which the Hearing Panel finds to have been negligently prepared) that was the underlying cause of his complaint, was prepared by Carmen Ceja (Transcript, p. 274), and that he was directed by Maria Gonzalez, [then a Ceja employee, see her testimony (Transcript, pp. 406, 407] to file a General Sessions lawsuit on the note and to pay the \$62.50 for the filing of that suit directly to Ceja Enterprises (Transcript, p. 280). He further testified that Respondent filed that suit. (Transcript, p. 281). Cristina Gonzales testified that she was employed by Ceja beginning in April 2004, where she only worked with three lawyers, including Respondent (Transcript, pp. 406-407 and 419), that the events described above regarding the initiation of Mr. Gonzalez's suit occurred during that period, that she terminated her employment there because she was unhappy with the pay, and that she eventually went to work for Respondent where she remained as of the date her testimony before this Hearing Panel (Transcript, p. 411).

It is the finding of the Hearing Panel that the testimony of each of these witnesses was, to varying degrees, confusing and inconsistent and in some instances lacking in credibility, but that, with the exception of Respondent, their testimony was more straightforward and relevant to the issues arising from Respondent's relationship with Ceja. In all likelihood, these witnesses were unaware of the significance of their testimony in that regard, and they had no self interest in its impact. Respondent, however, was fully aware of the importance of the facts germane to that relationship, and his testimony regarding it was frequently lacking in clarity, consistency or credibility except in the instances of his own admissions, most if not all of which were also supported by indisputable evidence. The pertinent exhibits speak for themselves.

Based on the totality of the proof described above, the Hearing Panel finds that

Respondent practiced law with Ceja in a manner that was, or would mislead the public into believing that it was, a partnership or association with Ceja, that Ceja was engaged in the unauthorized practice of law, that he assisted Ceja in that activity, that if Carmen Ceja and her employees were acting under Respondent's direction in legal matters, then he failed to provide them with proper supervision, and that he may instead have taken advice and direction from Carmen Ceja and her employees regarding his handling of cases referred to him by Ceja. The proof regarding Respondent's financial relationship with Ceja is unsettling but unclear, and the Hearing Panel finds that the Board has failed to establish that it constituted fee sharing with Ceja or payment for referrals from Ceja.

Upon these findings, the Hearing Panel concludes that Respondent violated Tennessee Rules of Professional Conduct 5.3; 5.4(b); 5.5(b); 7.6(b)(1)(ii); 8.1(b) and 8.4(a) in regard to the Complaint of Elliott Ozment.

Complaint of Anna C. Silva c/o Sean Lewis, Esquire – File No. 28320-5-SG

The Supplemental Petition for Discipline contains five factual allegations, numbers 55 through 59, under the heading for this complaint. There is no summary of the complaint attached to the Supplemental Petition. In addition, the Board alleges that Respondent violated Tennessee Rules of Professional Conduct 5.7 and 8.4.

In his Answer to the Supplemental Petition for Discipline, Respondent admitted all five of the factual allegations. Based upon those admissions and other evidence and findings more fully discussed in connection with the Complaint of Elliott Ozment, the Hearing Panel concludes that Respondent violated Tennessee Rules of Professional Conduct 5.7 and 8.4(a) in regard to the Complaint of Anna C. Silva c/o Sean Lewis, Esquire.

Complaint of Sean Lewis – File No. 29077-5-SG

Complainant Sean Lewis filed a complaint with the Board for the purpose of providing additional information in support of “a complaint filed against” Respondent. Complainant’s allegations relate to Respondent’s representation of Rodolfo Gonzales regarding the collection of the \$3,000 promissory note referred to in the Hearing Panel’s discussion of the Complaint of Elliott Ozment.

The Board’s Petition contains 10 factual allegations, numbers 2 through 11, most of which have been made and addressed by the Hearing Panel in connection with the complaints of Elliott Ozment and others considered by this Hearing Panel. In addition the Board alleges that Respondent violated Tennessee Rules of Professional Conduct 1.15, 5.4; 5.5; 7.6; 8.1 and 8.4.

In his Answer to Second Supplemental Petition for Discipline, Respondent admitted allegations 2 through 5 and 8 through 11. Respondent denied the following allegations:

6. The Respondent compensates Carmen Ceja and/or CEJA Enterprises for referring clients to the Respondent.
7. The respondent assists CEJA Enterprises in the unauthorized practice of law.

The Hearing Panel considered the testimony of the Complainant and other evidence as more fully discussed in connection with the complaint of Elliott Ozment.

The Hearing Panel finds that the Board has failed to establish the truth of allegation number 6 but that, with respect to allegation number 7, Respondent did assist CEJA Enterprises and Carmen Ceja in the unauthorized practice of law. Despite Respondent’s admission of allegations 3, 4, and 11, the Hearing Panel further finds that Respondent’s actions with respect to the \$64.50 payment by Mr. Gonzalez for the filing of a General Sessions lawsuit do not rise to the level of a mishandling of a client’s funds. This is not the case, however, with his

trust/operating accounts. Allegations 9 and 10, also admitted by him, regarding his failure to produce trust/operating account information and the evidence regarding those accounts eventually produced and placed in evidence, raise very significant concerns in this area and are dealt with in connection with the Hearing Panel's discussion of its own complaint, 32861-5-SG.

Based upon its findings, the Hearing Panel concludes that Respondent violated Tennessee Rules of Professional Conduct 1.15, 5.4(b) & (c); 5.5(b); 7.6(b)(1)(ii); 8.1(b) and 8.4(a),(c) and (d) in regard to the Complaint of Sean Lewis.

DISCIPLINE

In determining appropriate discipline for the violations found, the Hearing Panel is required to consider the ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS (hereinafter, the "ABA Standards"). Tenn. Sup. R. 9, § 8.4. The ABA Standards recommend consideration of the following factors after a finding of attorney misconduct:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

ABA Joint Comm. on Prof'l Standards, STANDARDS FOR IMPOSING LAWYER SANCTIONS, Standard 3.0 (amended 1992).

The first consideration recognizes that "[a] lawyer's misconduct may be a violation of a duty owed to a client, the public, the legal system, or the profession." *Id.* at Standard 3.0 cmt. In this case, the Hearing Panel has found the Respondent guilty of professional misconduct by virtue of violating Rules 1.3, 1.4, 1.7, 1.15, 5.3, 5.4(b) & (c), 5.5(b), 5.7, 7.6(b)(1)(ii), 8.1(b), and 8.4(a), (c) & (d). Rules 1.3, 1.4, 1.7, 1.15, and 5.4(c) all relate to ethical duties owed to the client, which are considered the most important ethical duties of a lawyer. *Id.* at p. 5. Rules 5.5 and 8.1 involve duties owed to the legal profession. *Id.* at 5-6.

A lawyer may violate ethical rules with “intent, knowledge, or negligence.” Id. at Standard 3.0 cmt. In these matters, Respondent has acted with a conscious objective or purpose to accomplish a particular result. Our finding that Respondent violated the ethical rules with intent is substantiated by the fact that the misconduct described above is the same type of misconduct for which he has been repeatedly disciplined.

The ABA Standards refer to “serious injury,” “injury,” or “little or no injury.” Injury is determined by “the type of duty violated and the extent of the actual or potential harm.” Id. at 6, 7. Given the violations of the Rules noted above, the actual harm in some instances and the potential for harm in others, the Hearing Panel finds that the Respondent’s actions resulted in both potential and actual serious injury.

Based upon the duties violated, the Respondent’s mental state, and the potential or actual injury caused by the Respondent’s misconduct, the Hearing Panel recognizes that suspension is the recommended discipline in the absence of aggravating or mitigating circumstances. See Id. Standards 4.12, 4.42 & 7.2.

Aggravating factors that may be considered include “prior disciplinary offenses,” “a pattern of misconduct,” “multiple offenses,” and a “refusal to acknowledge [the] wrongful nature of the conduct.” Id. Standard 9.2. The Hearing Panel has found that all of these exist in the matters before it. The record establishes numerous prior disciplinary offenses.¹ On May 18, 1993, the Board of Professional Responsibility publicly censured the Respondent for two (2) complaints in which the Respondent neglected clients’ cases and failed to communicate with his clients. (Transcript, p. 139, Ex. 22) On August 18, 1994, the Board of Professional

¹ The Hearing Panel agrees with Respondent that Special Judge Jerry Scott’s April 12, 2006, judgment affirming a Hearing Panel’s recommendation of an eighteen (18) month suspension of the Respondent for neglect of clients’ cases; failure to keep clients informed, failure to adequately maintain a trust account and incompetence in handling a client’s malpractice case (Transcript, p. 147, Ex. 27.) should not be considered as an aggravating factor because the judgment is not yet final.

Responsibility again publicly censured the Respondent for neglect of a client's case. (Transcript, p. 140, Ex. 23) On November 21, 2000, the Respondent received another public censure for neglect of a client's case. (Transcript, pp. 141-142, Ex. 25) On December 13, 2000, the Tennessee Supreme Court affirmed Respondent's suspension for six (6) months, plus an indefinite suspension until Respondent completed ethics and law management courses for neglect of two (2) client matters. (Transcript, p. 141, Ex. 24). On November 25, 2002, the Respondent received another public censure for neglect of a client's case and also conduct prejudicial to the administration of justice and conduct that adversely reflects on the profession. (Transcript, pp. 141-142, Ex. 26).

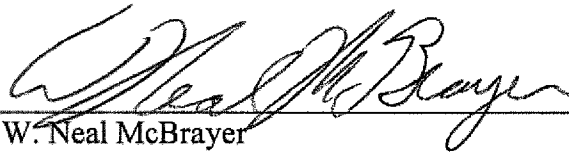
Respondent's prior discipline and repeated failures to respond in a timely matter to requests from disciplinary counsel related to complaints filed with the Board evidence a pattern and practice of disregard for the Rules of Professional Conduct. Respondent also failed to appreciate the severity of his ethical violations. Respondent's defense to some of the complaints implied that no violation had occurred either because the complainant had not terminated the Respondent's representation or Respondent's conduct had not foreclosed all legal remedies available to the complainant. Equally troubling was Respondent's inability to recall prior instances of discipline arising from similar misconduct.

Even while representing himself before this Hearing Panel, Respondent repeatedly failed to respond to pleadings in a timely manner, asking for additional time after the allotted time had expired. During the hearing, Respondent showed a lack of understanding of the fundamental Rules of Evidence and advanced positions that were wholly unsupported by the law or the facts before the Hearing Panel.

JUDGMENT

Based on the foregoing, the Hearing Panel unanimously finds that Respondent has not benefited from prior discipline and that the public would be endangered and the legal profession and the administration of justice would be disserved if the Respondent were permitted to continue the practice of law. Accordingly, the Hearing Panel recommends disbarment for the violations identified herein.

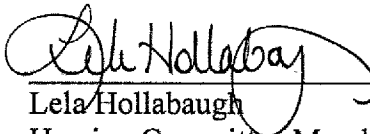
DATED the 25th day of January, 2008.



W. Neal McBrayer
Hearing Committee Chair



Julie N. Jones
Hearing Committee Member



Lela Hollabaugh
Hearing Committee Member