

FILED

IN THE FIFTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE,  
AT NASHVILLE

2008 DEC 22 AM 9:18

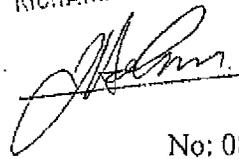
MICHAEL H. SNEED,

Petitioner,

vs.

BOARD OF PROFESSIONAL  
RESPONSIBILITY FOR THE  
STATE OF TENNESSEE

] RICHARD B. BOKER, CLERK

]  D.C.

No: 08C-1698

MEMORANDUM

This case is before the court on a Petition for Certiorari and Supersedeas filed by the petitioner, Michael H. Sneed.<sup>1</sup> The petition seeks a review and stay of the judgment of the hearing panel filed January 25, 2008, in a lawyer disciplinary proceeding against Mr. Sneed.

The hearing panel found multiple violations of applicable rules of professional conduct and various aggravating factors. As a result, the hearing panel entered its judgment recommending Mr. Sneed's disbarment.

STANDARD OF REVIEW

In reviewing the findings and conclusions of the hearing panel in a disciplinary proceeding, the court must be guided by Rule 9, section 1.3, of the Rules of the Supreme Court which provides in pertinent part as follows:

The Respondent-attorney (hereinafter "Respondent") or the Board may have a review of the judgment of a hearing panel in the manner provided by [Tennessee Code Annotated section] 27-9-101 et seq., except as otherwise provided herein. The review shall be on the transcript of the evidence before the hearing panel and its findings and judgment. If allegations of irregularities in the procedure before the panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The court may affirm the decision of the panel

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<sup>1</sup>Since Mr. Sneed is the petitioner in this case and was the respondent in the matter being reviewed, he will be referred to in this Memorandum as Mr. Sneed. The Board of Professional Responsibility will be referred to as the Board or BOPR.

or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record.

In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

Tenn. Sup. Ct. R. 9, §1.3 (2007).

With that standard in mind, the court has carefully reviewed the evidence that was introduced during the evidentiary hearing on August 13, 2007, and the entire record. The court's findings with regard to the allegations made by Mr. Sneed in his Amended Petition for Certiorari and Supersedeas (Amended Petition) are set forth below.

#### FINDINGS

In paragraphs 1 through 4 of Mr. Sneed's Amended Petition, he alleges the hearing panel acted unlawfully and in excess of its jurisdiction by allowing the Board to file a supplemental petition for discipline and a second supplemental petition for discipline without leave of the hearing panel as required by the Tennessee Rules of Civil Procedure.

Rule 9, section 23.3, of the Rules of the Supreme Court of Tennessee provides that "[e]xcept as otherwise provided in these Rules, the Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence apply in disciplinary cases." Rule 15.04, Tennessee Rules of Civil Procedure provides that "[u]pon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. . . . If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor." Based upon these provisions, the court agrees with Mr. Sneed that the Board should have sought and obtained leave of the hearing panel before filing its supplemental petitions for discipline.

On September 20, 2005, the Board filed a Petition for Discipline against Mr. Sneed based upon the complaints of Vickie Berry and Enrique Lopez. On October 19, 2005, the Board filed a motion for default judgment based upon Mr. Sneed's failure to answer the petition within 20 days as required by Rule 9, section 8.2, of the Rules of the Supreme Court of Tennessee. The hearing panel was appointed on November 1, 2005. Also on November 1, 2005, Mr. Sneed filed a Motion

to Extend the Time to File an Answer, his Answer to the Petition for Discipline, and a Response to the Motion for Default Judgment.

On January 13, 2006, the Board filed a supplemental petition for discipline based upon complaints of the Board, Dwaine M. Allison and Elliot Ozment. On February 14, 2006, the Board filed a motion for default judgment. On March 15, 2006, an order of default judgment was filed. On March 30, 2006, Mr. Sneed filed a motion to dismiss the supplemental petition for discipline on the ground it had been filed without leave of the hearing panel as required by Rule 15.04, Tennessee Rules of Civil Procedure. On April 27, 2006, Mr. Sneed filed an answer to the supplemental petition for discipline and a motion to alter or amend the judgment by default.

On September 19, 2006, the Board filed a second supplemental petition for discipline based upon the complaint of Sean Lewis. On October 13, 2006, the hearing panel filed a memorandum opinion stating that supplement petitions for discipline "seem appropriate in the event, as here, additional grounds for prosecution of formal charges are discovered after the filing of a petition." The hearing panel further found that "a Hearing Committee, whenever possible, should be allowed to consider all pending allegations of misconduct so that, if one or more grounds for discipline are found, an appropriate discipline can be imposed." The hearing panel went on to state that leave to file a supplemental petition for discipline was not required since the decision to file disciplinary proceedings was within the sole province of the BOPD. Based upon this finding, the hearing panel concluded that Mr. Sneed should have treated the supplemental petition for discipline as authorized and responded in a timely manner. Consequently, the motion to alter or amend the judgment by default was denied.

On October 17, 2006, the Board filed a motion for default judgment with regard to the second supplemental petition for discipline. On December 28, 2006, Mr. Sneed filed a motion to set aside the default judgment and on January 10 and 16, 2007, filed supplements to the motion to set aside the default judgment. By order filed April 24, 2007, the hearing panel set aside its previous order granting judgment by default and ordered Mr. Sneed to file his answer to the second amended petition for discipline within twenty days. This order also set the matter for hearing on August 13, 2007. On July 11, 2007, Mr. Sneed filed an answer to the second supplemental petition for discipline.

While, in the opinion of this court, the hearing panel erroneously concluded in its order filed October 13, 2006, that a supplement petition for discipline could be filed without leave of the hearing panel, the order clearly approved the filing of the supplemental petition. Had this case been determined upon the basis of the judgment by default, Mr. Sneed would be entitled to relief since the order did not specify the time within which to file a response as required by Rule 15.04 of the Tennessee Rules of Civil Procedure. Since the default judgment was set aside, Mr. Sneed did file his answer to the supplemental petition and the case went to hearing on the supplemental petition based upon the merits, this court is of the opinion that the hearing panel's action was not based upon unlawful procedure or in excess of its powers. Similarly, the October 13, 2006, memorandum opinion of the hearing panel, coupled with its April 24, 2007 order granting Mr. Sneed twenty days

within which to file an answer to the second supplemental petition for discipline is sufficient to put Mr. Sneed on notice the hearing panel had approved the filing of the second supplemental petition and that he was required to file an answer to the allegations it contained. In the opinion of the court, Mr. Sneed is entitled to no relief based upon the ruling of the hearing panel that it was not required to grant the Board leave to file the supplemental petitions.

In the fifth paragraph of his Amended Petition, Mr. Sneed alleges the hearing panel violated Rule 9, Rules of the Supreme Court of Tennessee, by failing to hold a mandatory pre-trial conference. Section 13.6 of that rule provides as follows:

A pre-hearing conference shall be held within sixty (60) days of the filing date of any petition commencing a formal proceeding. The pre-hearing conference shall be conducted by the chair of the assigned hearing panel and at least one other member of the panel, but it may be conducted via telephone or video conference. In the pre-hearing conference, the panel *shall* schedule deadlines for discovery, the filing of motions, and the exchange of witness and exhibit lists, and it also *shall* set the trial date. The panel *may* discuss with and accept from the parties stipulations of fact and/or stipulations regarding the authenticity of documents and exhibits, *may* narrow the issues presented by the pleadings, and *may* address any other matter the panel deems appropriate in the management of the proceeding. Subsequent pre-hearing conferences may be held in the discretion of the panel, acting on its own initiative or upon motion of a party. Within five (5) days of each pre-hearing conference, the chair of the hearing panel shall file an order reciting the actions taken by the panel during the conference, including any deadlines imposed and the date set for trial. (emphasis added).

The Board responds that the Tennessee Supreme Court amended section 13.6 of Rule 9 to require pre-trial hearing conferences on April 25, 2006, and the original petition for discipline was filed by the Board on September 20, 2005. The Board's argument fails to take into account the fact that a supplemental petition for discipline was filed September 19, 2006, after the amendment to section 13.6. Moreover, the Tennessee Supreme Court has recently stated that rules promulgated by that court that are "considered remedial or procedural in nature apply retroactively, not only to causes of action arising before such acts become law, but also to *all actions pending when the law took effect*, unless a contrary intention is indicated or immediate application would produce an unjust result. Bd. of Prof. Resp. v. Love, 256 S.W.3d 644, 652 (Tenn.2008) (citations omitted) (emphasis in original). In the opinion of the court, the amended section 13.6 was both procedural and remedial and should have been applied retroactively by the hearing panel.<sup>2</sup>

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<sup>2</sup>The record reflects that on June 9, 2006, the Executive Secretary of the Board filed a notice that a pre-hearing management conference was required. On August 27, 2007, Mr. Sneed filed a motion to set a pre-hearing conference. This motion, however, was filed after the hearing in this cause had begun.

According to Rule 9, section 1.3, Rules of the Supreme Court of Tennessee, this court may modify or reverse a decision of the hearing panel only "if the rights of the petitioner have been prejudiced because the panel's findings, inferences, conclusions or decisions are . . . made upon unlawful procedure. Mr. Sneed has not shown that he was prejudiced by the failure of the hearing panel to schedule the required pre-trial conference. In his Amended Petition, he states he "was denied his right to present certain procedural issues and the substantial issues that are present in this litigation, which have been ignored by the Hearing Panel." Rule 9, section 13.6 only requires, however, that the hearing panel 1) schedule deadlines for discovery, the filing of motions, and the exchange of witness and exhibit lists; and 2) set the trial date. Since there were no deadlines for discovery and the filing of motions, Mr. Sneed was allowed and did continue to file motions up to the date of the hearing and thereafter. There is no evidence in the record that the Board filed any motions after the April 24, 2007, order of the hearing panel setting the matter for hearing. Mr. Sneed has not suggested he was prejudiced by there being no requirement for the exchange of witness and exhibit lists. While the hearing panel may consider other matters at a pre-trial hearing conference, there appears to be no requirement that they do so, and Mr. Sneed has not alleged specifically what matters he would have presented to the hearing panel at such a conference. It is the opinion of the court, Mr. Sneed is not entitled to relief based upon the failure of the hearing panel to hold a pre-trial conference.

Paragraphs 6 through 9 of the Amended Petition allege the hearing panel erred by denying Mr. Sneed the right to present evidence. He alleges the hearing panel refused to allow him to call, as witnesses, the disciplinary counsel in the proceeding, Sandy Garrett, and the Executive Secretary of the Board, Mary Woodruff.

It appears from the record that Mr. Sneed sought to call Disciplinary Counsel Sandy Garrett as a witness on the ground that she answered certain interrogatories submitted to the Board by Mr. Sneed. When that request was refused by the hearing panel, he sought to have her testify as part of an offer of proof. Mr. Sneed first argued to the hearing panel that he needed to call Ms. Garrett, the opposing counsel, to get the contents of her responses to his interrogatories introduced as an exhibit. Ms. Garrett agreed to make those responses an exhibit and they were introduced during the hearing of this cause as Exhibit 47. While they are couched in terms of "state all the facts that support your assertion," the answers refer to documents attached to the response as exhibits. These documents include the memorandum of complaint signed by Vickie K. Berry; a copy of the court file in Vickie Berry v. Houchen's Market of Tennessee, Inc., Davidson County No. 04C-2245; a letter to Mr. Sneed from Joy Williams, the office billing manager for Advanced Foot & Ankle Care Centers, PC; the response of Mr. Sneed to the complaint of Vickie Berry; the memorandum of complaint filed by Enrique Lopez; and the response of Mr. Sneed to the complaint of Enrique Lopez.

It does not appear that Ms. Garrett had any personal knowledge of the facts related to the complaints against Mr. Sneed other than the contents of these documents. Mr. Sneed admitted before the hearing panel that all Ms. Garrett's responses related to documentation. On that basis, the Board's objection to calling her as a witness was sustained. This court cannot find the action of the

hearing panel was improper nor that Mr. Sneed was in anyway prejudiced by the hearing panel failing to allow Ms. Garrett to testify.

It also appears Mr. Sneed called Mary Woodruff, the Executive Secretary of the BOPD, as a witness. The record indicates someone was dispatched to determine whether she was in the building. While this was happening, the chairman of the hearing panel inquired about the substance of her testimony. Mr. Sneed responded that he had caused a subpoena to be issued which was served on Ms. Woodruff on August 16, 2007, for her to be deposed August 23, 2007. On that date, the Board filed a motion to quash the subpoena which, at the time of the hearing, was still pending in a Davidson County court. Ms. Woodruff did not attend the deposition. After this recital, the parties stipulated to those facts. The chairman inquired, "Does that take care of Ms. Woodruff's testimony?" Mr. Sneed responded, "That satisfies me, Your Honor." No further request was made of the hearing panel. In the opinion of this court, there was no ruling excluding the testimony of Ms. Woodruff. Moreover, Rule 103, Tennessee Rules of Evidence provides that "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . [i]n case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context." Because there was neither a specific ruling nor an offer of proof, this court is unable to find error on part of the hearing panel and this issue is without merit.

In paragraph 10 of his Amended Petition, Mr. Sneed alleges he was denied the right to review public records relating to the performance of the hearing panel members in prior cases. He asserts that he filed a subpoena for those records and the disciplinary counsel filed a motion to quash the subpoena in the Chancery Court for Davidson County before Chancellor Dinkins. The motion to quash was apparently granted but Chancellor Dinkins indicated the subpoenaed documents were public records to which Mr. Sneed had access. While these facts do not appear in the record before this court other than the Amended Petition and brief filed by Mr. Sneed, there is no evidence Mr. Sneed sought to appeal Chancellor Dinkins' ruling, ever made a public records request pursuant to Tennessee Code Annotated section 10-7-503, or sought to enforce his right to access public records by bringing an action pursuant to Tennessee Code Annotated, section 10-7-505. This issue is without merit.

In paragraph 11 of Mr. Sneed's Amended Petition, he alleges the members of the hearing panel were biased against him. While the hearing panel did make many rulings against Mr. Sneed on procedural issues they also made many rulings in his favor. Having reviewed the record in this case, the court does not find the evidence supports the contention of bias made by Mr. Sneed.

In paragraph 12 of the Amended Petition, Mr. Sneed asserts the hearing panel considered evidence outside the proceedings. In the Amended Petition, he states:

"The hearing panel concluded that [Mr. Sneed] had aided the unauthorized practice of law by prosecuting and obtaining a default judgment in the General Sessions Court on behalf of Rodolfo Gonzalez. There was no testimony from any witness that the

promissory note which was sued upon by [Mr. Sneed], was written by a non-lawyer. This conclusion by the hearing panel is evidence that the hearing panel was considering evidence outside of the hearing.”

In paragraph 24 of the supplemental petition for discipline, the Board alleges, “Non-attorney Carman Ceja and/or non-attorney employees of Ceja Enterprises refer clients to [Mr. Sneed].” In his answer to the supplemental petition for discipline, Mr. Sneed admitted the allegations of this paragraph. During his testimony, Rodolfo Gonzalez testified that the note was written by Carman Ceja. The court concludes there was substantial and material evidence presented to the hearing panel or included in the record from which they could have found the note was written by a non-lawyer. This issue is without merit.

Mr. Sneed also alleges in paragraph 20 of his Amended Petition that the fact the note was written by a non-lawyer is not evidence that the petitioner aided in the unauthorized practice of law. The court would agree if that were the only evidence he aided in the unauthorized practice of law. The hearing panel, however, considered as evidence the fact Mr. Sneed maintained an office at Ceja Enterprises without separate signage until shortly before the hearing; the testimony of Margarita Kennen-Sanchez that Carman Ceja had given her legal advice concerning her immigration status and had prepared paperwork that was forwarded to the immigration authorities on her behalf. Mr. Sneed then accompanied Ms. Kennen-Sanchez to the hearing before the immigration authorities. Not only did Ms. Ceja prepare the promissory note for Mr. Gonzalez, but a Ceja Enterprises employee, Maria Gonzalez, advised him to file a General Sessions warrant on the note and solicited and collected the \$62.50 filing fee which was paid to Ceja Enterprises. The warrant was filed by Mr. Sneed. The court is of the opinion there was substantial and material evidence to support the finding of the hearing panel that Mr. Sneed aided in the unauthorized practice of law.

In paragraph 13 of the Amended Petition, Mr. Sneed alleges the hearing panel erred by allowing the Board to put into evidence copies of his trust account bank records on the ground they were not properly authenticated. Rule 803 (6), Tennessee Rules of Evidence provides that a “memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses made at or near the time by or from information transmitted by a person with knowledge and a business duty to record or transmit if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness or by certification that complies with Rule 902(11) or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.” Rule 902 (11) provides that the “original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by an affidavit of its custodian or other qualified person certifying that the record:

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of and a business duty to record or transmit those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.”

In this case, the bank records were accompanied by a certificate that satisfies the requirements of Rule 902 (11), Tennessee Rules of Evidence. In his brief, Mr. Sneed alleges that he was not given the required written notice by the Board of its intent to use this evidence. At the hearing, however, Mr. Sneed’s objection was as follows:

MR. SNEED: Your Honor, I’m going to object to that. Those are hearsay documents. We need to have somebody here to authenticate the documents. As it is, we don’t know where those records came from. I would object.

Based upon this objection, the chairman of the hearing panel ruled the records admissible pursuant to Rule 902 (11). Rule 103 (a) of the Tennessee Rules of Evidence provides that “[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . [i]n case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection if the specific ground was not apparent from the context. . . .” The allegation that he had not received written notice as required by Rule 902 (11) was not made known to the hearing panel and was not apparent from the context of the objection. Accordingly, error cannot be predicated upon that ground. Moreover, Mr. Sneed has not challenged, in any way, the accuracy of the documents and, in the opinion of the court, was not unfairly prejudiced by their admission.

In paragraphs 14 and 17 of the Amended Petition, Mr. Sneed challenges the finding of the hearing panel that he had a conflict of interest by representing three separate claimants to monies seized by the Metropolitan Davidson County Police and forfeited by the Federal Government.<sup>3</sup> Mr. Sneed characterizes the forfeiture proceeding as one “in rem” and asserts that representing multiple claimants would not, therefore, amount to a conflict of interest.

Initially, the court would note that Mr. Sneed’s characterization of the proceeding as one “in rem” is immaterial to the issue before the hearing panel. The issue is whether the claimants laid claim to the same money or Mr. Sneed’s representation of one may be materially limited by his responsibilities to the other claimants.

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<sup>3</sup>Mr. Sneed testified that Mr. Lopez related he was taking some money back to Mexico for two of his friends and that some of the money belonged to him. He, therefore, filed a claim for all three individuals.

Rule 1.7 of the Rules of Professional Conduct provides, in pertinent part, as follows:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client consents in writing after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents in writing after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The hearing panel did not find Mr. Sneed had a conflict of interest. It found that there was a possibility his representation of multiple claimants could have materially limited his responsibilities to the others and he should have, at least, undertaken the steps required by Rule 1.7 (b). In the opinion of the court this finding was supported by evidence that was both substantial and material.

In paragraph 16 of the Amended Petition,<sup>4</sup> Mr. Sneed objects to the finding of the hearing panel relating to the complaint of Vicky Berry to the effect he failed to keep her informed about her case. The basis for the objection is that Ms. Berry testified that "she was aware of the status of her case and that she felt that [Mr. Sneed] was handling her case in a proper manner." Ms. Berry testified that Mr. Sneed had been representing her in a personal injury case for six years. She stated, "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." She mailed him a certified letter complaining that he would not see her when she came to his office and would not answer his phone. She testified that she got no "feedback" from Mr. Sneed, could not reach him at the office, could not contact him by phone and did not receive copies of pleadings filed in her behalf. In the opinion of the court, the finding of the hearing panel was supported by substantial and material evidence.

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<sup>4</sup>Paragraph 15 of the Amended Petition did not allege error on part of the hearing panel.

In paragraph 18 of the Amended Petition, Mr. Sneed objects to the finding of the hearing panel relating to his failure to withhold monies owed to Dr. Dwaine Allison from funds collected in the settlement of a personal injury case filed in behalf of Jesus Mendez and Jose Marmot. The hearing panel found that Mr. Sneed knew that his clients had signed liens in favor of Dr. Allison and there is evidence in the record to support that conclusion. The panel also found that Mr. Sneed represented to Dr. Allison on several occasions that he would protect his liens when the case was settled. Dr. Allison testified to those facts. Mr. Sneed, however, did not withhold the funds from the settlement proceeds. The hearing panel found Mr. Sneed violated Rule 1.15 of the Rules of Professional conduct by failing to safeguard funds in his possession in which a third party had an interest of which he was aware.<sup>5</sup> The court is of the opinion this finding of the hearing panel was supported by substantial and material evidence.

In paragraph 19 of the Amended Petition, Mr. Sneed expresses his objection to the finding of the hearing panel that he violated Rule 1.15 by failing to safeguard monies in his trust account belonging to his clients. The basis of this objection was that three checks presented against non-sufficient funds were ultimately honored by the bank. During the hearing, Mr. Sneed admitted that three checks drawn upon his trust account were presented to the bank drawn against non-sufficient funds. In a letter to the Board, Mr. Sneed explained the checks had been written on the wrong account. Mr. Sneed was then asked for copies of his bank records relating to his trust account. When he failed to respond, the Board subpoenaed these records and discovered thirteen checks payable to cash and twenty-four debits, all without indication of client names or case numbers. When the Board requested information with regard to these checks and debits, Mr. Sneed failed to respond. In the opinion of the court, the finding of the hearing panel with regard to this violation of the Rules of Professional Responsibility was supported by substantial and material evidence.

Finally, in paragraph 20 of the Amended Petition, Mr. Sneed alleges the judgment of the hearing panel is void because it merely "recommends" his disbarment. Rule 9, section 8.4, of the Rules of the Supreme Court of Tennessee provides, however, that in cases which do not reach the Supreme Court by appeal, a copy of the judgment is to be forwarded to them and the "Court shall review the recommended punishment provided in such judgment or settlement with a view to attaining uniformity of punishment throughout the state and appropriateness of punishment under the circumstances of each particular case." The court is of the opinion that the recommendation of disbarment was appropriate and the judgment of the hearing panel is neither void nor voidable.

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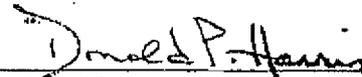
<sup>5</sup>Rule 1.15(b) of the Rules of Professional Conduct provides as follows:

Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such funds or other property. If a dispute arises between the client and a third person with respect to their respective interests in the funds or property held by the lawyer, the portion in dispute shall be kept separate and safeguarded by the lawyer until the dispute is resolved.

In his post-hearing brief, Mr. Sneed has raised additional grounds for relief that were not raised in his petition or amended petition. The court does not deem it appropriate to address issues that were not raised in the pleadings filed in this case.

#### CONCLUSION

The judgement of the hearing panel is affirmed in all respects. This memorandum shall be filed of record but shall not be spread onto the minutes of the court. Counsel for the Board will prepare an appropriate order in accordance with the memorandum taxing the costs to Michael H. Sneed.



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Donald P. Harris, Senior Judge  
Sitting by designation of the  
Tennessee Supreme Court

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