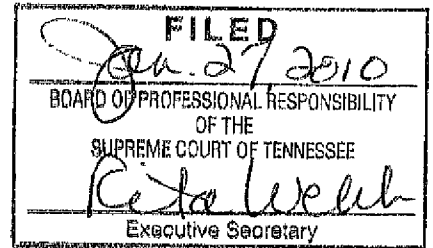


**IN DISCIPLINARY DISTRICT IX  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE**



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**IN RE:            MARK D. TALLEY,  
                      BPR #11152, Respondent, An  
                      Attorney Licensed to Practice  
                      Law in Tennessee  
                      (Shelby County)**

**Docket No. 2005-1560-9-LC**

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**FINDINGS AND RECOMMENDATION OF THE  
HEARING PANEL**

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This cause came on to be heard by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee (the "Panel") on January 15, 2010, upon the pleadings, argument of counsel representing the State of Tennessee and the Respondent, testimony of the Respondent, Mark D. Talley, and the entire record, including the following stipulated exhibits:

1.        Certified copy of Order of Enforcement, In Re: Mark D. Talley, BPR Docket No. 2001-1265-9-LC, filed November 7, 2005 in the Supreme Court of Tennessee;
2.        Certified copy of Conditional Guilty Plea, In Re: Mark D. Talley, BPR Docket No. 2001-1265-9-LC, filed July 28, 2005 in the Supreme Court of Tennessee;
3.        Certified copy of Petition for Discipline, In Re: Mark D. Talley, BPR Docket No. 2001-1265-9-LC, filed October 29, 2001 in the Supreme Court of Tennessee;
4.        Email from Kemper Durand to Laura Chastain dated August 29, 2005;

5. Certified copy of Indictment in State of Tennessee v. Mark Talley, Docket No. 05-06002, in the Criminal Court of Tennessee for the Thirtieth Judicial District at Memphis; and,

6. Certified copy of Order on Guilty Plea and Judgment in State of Tennessee v. Mark D. Talley, Docket No. 05-06002, in the Criminal Court of Tennessee for the Thirtieth Judicial District at Memphis

From all of which the following findings of fact and conclusions of law were unanimously determined by the Panel:

### **FINDINGS OF FACT**

In this matter, it was admitted that the Respondent acted as counsel for Allstate Financial Services. On or about August 25, 2005, an indictment was handed down (Exhibit 5) charging the principals of Allstate Financial Corporation, including Respondent, with, among other things, conspiracy to commit theft of property over \$60,000.00, unlawfully and knowingly, directly or indirectly, employing "a device, scheme or artifice to defraud investors in connection with the offer, sale or purchase of a security, to wit: investments/reinvestments in Allstate Financial Corporation, in violation of T.C.A. § 48-2-121, . . .", unlawfully and knowingly, directly or indirectly, making "an untrue statement of material fact or omit(ing) to state a material fact necessary in order to make the statements made not misleading in connection with the offer, sale or purchase of a security, to wit: investments/reinvestments in Allstate Financial Corporation, in violation of T.C.A. § 48-2-121, . . .", and unlawfully or knowingly, directly or indirectly, engaging "in an act, practice, or course of business which operates or would operate as a fraud or deceit upon investors in connection with the offer, sale or purchase of a security, to wit: investments/reinvestments in Allstate Financial Corporation, in violation of T.C.A. § 48-2-121. . .".

On Monday, August 29, 2005, Kemper Durand, acting as attorney for Respondent, self-reported the indictment to Laura Chastain of the Board of Professional Responsibility of the State of Tennessee (Exhibit 4). On December 12, 2007, Respondent filed a petition for waiver of trial by jury and request for acceptance of plea of guilty (Exhibit 6) to the offense of facilitation (T.C.A. § 39-11-403), violation of the Securities Act, the same constituting a misdemeanor, and was sentenced to 11 months 29 days, said sentence being suspended and was placed on probation for the same period, effective December 12, 2007, fined the sum of \$500.00 plus costs and required to provide 100 hours of unpaid community service. It appears to the Panel that Respondent has completed his probation with regard to the above-described offense. The Panel finds, as a matter of fact, that Mr. Talley, by pleading guilty to the crime above-described, has admitted to the following:

A person is criminally responsible for the facilitation of a felony, if, knowing that another intends to commit a specific felony, but without the intent required for criminal responsibility under § 39-11-402(2) the person knowingly furnishes substantial assistance in the commission of the felony. (T.C.A. § 39-11-403)

In the instant matter, the felony which Respondent plead guilty to facilitating specifically involved the employment of a device, scheme or artifice to defraud investors in connection with the offer, sale or purchase of a security in violation of T.C.A. § 48-2-121. The Panel further finds, pursuant to the stipulated documents, that on July 28, 2005, the Respondent filed a Conditional Guilty Plea in BPR Docket No. 2001-1265-9-LC admitting his violation of the following Disciplinary Rules of the Code of Professional Responsibility: DR1-102(A)(1) and (A)(6) and DR9-102(A) and (B).

The Panel further finds, as a matter of fact, that the Petition for Discipline and Supplemental Petition for Discipline filed as Docket No. 2001-1265-9-LC alleging misconduct on the part of Respondent set forth acts and conduct similar in nature to the wrongful conduct

alleged by the Board of Professional Responsibility in BPR Docket No. 2005-1560-9-LC. The Panel further finds that despite his Conditional Guilty Plea, in BPR Docket No. 2001-1265-9-LC and his guilty plea in the Criminal Court of Shelby County, Tennessee in Docket No. 05-06002, Respondent failed to admit any guilt in testimony before the Panel and showed little, if any, remorse with regard to his conduct. Respondent testified that he pled guilty in both instances in order to avoid the “hazards of litigation” and that he did not believe that he had done anything criminally wrong in the matter before the Panel.

### CONCLUSIONS OF LAW

The Panel concludes that Respondent violated the following ethical rules as established by the Tennessee Supreme Court. First, the Panel recognizes that the conduct in question occurred prior to the adoption of the Rules of Professional Conduct. The Panel recognizes that the Disciplinary Rules of the Code of Professional Responsibility were in effect at the time of Respondent’s conduct. Accordingly, the Panel takes judicial notice of the prior Code of Conduct pursuant to Tennessee Rules of Evidence 202(a) and (b). DR-1-102 provides as follows:

(A) A lawyer shall not

1. Violate a Disciplinary Rule.
2. Circumvent a Disciplinary Rule through actions of another.
3. Engage in illegal conduct involving moral turpitude.
4. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
5. Engage in conduct that is prejudicial to the administration of justice.
6. Engage in any other conduct that adversely reflects on his fitness to practice law.
7. Willfully refuse to comply with a court order entered in a case in which the lawyer is a party.

The Panel finds that the Respondent's guilty plea to the charge of facilitation of a violation of the Securities Act in violation of T.C.A. § 48-2-121 constituted an admission of violation of DR-1-102(A)(1), (3), (4), (5) and (6).

Counsel for Respondent argues that the offense to which Respondent pled guilty was not a "serious crime" within the meaning of the ABA Standards for Imposing Lawyer Sanctions as approved February 1986 and amended February 1992 (the "Standards"). The Panel disagrees. In this matter, the Respondent has pled guilty to the facilitation of a fraud. The conduct in question caused not only injury to the individuals whose funds were wrongfully taken from them but also to the profession. The injury in question was reasonably foreseeable at the time of the misconduct. Section 5.1 of the Standards states:

Absent aggravating or mitigating circumstances, . . . , the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit or misrepresentation:

5.11 Disbarment is generally appropriate when

(a) A lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; . . . or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) A lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

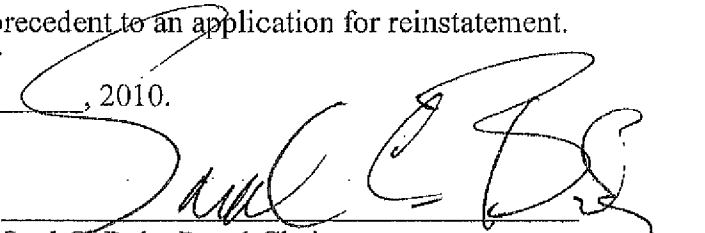
In this instance, the Panel unanimously finds that Respondent has engaged in conduct violative of Section 5.11(b) of the Standards for Imposing Lawyer Sanctions of the American Bar Association.

The Panel has further found that as aggravating factors, the Respondent is an experienced lawyer, the Respondent has had a prior disciplinary offense arising out of a similar factual pattern (BPR Docket No. 2001-1265-9-LC) and shows little, if any, remorse or willingness to admit his own misconduct for the prior violation or the current criminal offense despite his guilty pleas.


**RECOMMENDATION**

For all of the foregoing reasons, the Panel unanimously recommends to the Supreme Court that the Respondent should be disbarred. It is the further finding of this Panel that if the Lawyers Fund for Client Protection should suffer any loss due to Respondent's misdeeds, then the repayment of that sum shall also be a condition precedent to an application for reinstatement.

Entered this 22 day of JAN, 2010.

  
Saul C. Belz, Panel Chairman

  
Kevin Gafford Ritz, Panel Member

  
David M. Cook, Panel Member