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

IN RE: CAPP PETERSON TAYLOR (BPR #25820),
 Respondent

BOARD OF PROFESSIONAL
RESPONSIBILITY
No.: 2016-2632-1-WM
RW EXEC. SEC.

JUDGMENT OF THE HEARING PANEL

This cause came to be heard on August 15, 2017 before the undersigned Hearing Panel. The Board of Professional Responsibility initially filed a Petition against Respondent on September 20, 2016 and Respondent filed a response thereto on October 19, 2016. The Board filed an Amended Petition for Discipline on January 12, 2017 and a Supplemental Petition for Discipline on March 17, 2017. A response to the Supplemental Petition was filed by the Respondent on April 7, 2017. After the hearing the parties requested to file Proposed Findings of Facts and Conclusions of Law. Both parties filed Proposed Findings of Fact and Conclusions of Law, the last of which was filed by Respondent on August 28, 2017 and received by the Hearing Panel on August 31, 2017. The following Judgment is based upon all of the pleadings filed in this cause and evidence presented at the hearing.

FINDINGS OF FACT

1. The Respondent, Capp Peterson Taylor was licensed to practice law in the State of Tennessee in 2006 and was licensed to practice law in the State of Florida in 1979.
2. For many years the Respondent's practice was limited to representing employees in Federal Employee Compensation Act ("FECA") cases.
3. In 2003 the Respondent incorporated a Florida corporation under the name Federal Employee's Advocates, Inc. (FEA). Respondent was the President of this Florida corporation and it was administratively dissolved on September 27, 2013.

4. The Respondent's daughter, Brooke Gockenbach, in 2015 formed a Tennessee corporation under the name Federal Employee's Advocates, Inc. and she was the President of that corporation.
5. Federal Law does not require an attorney to represent an employee in an FECA case.
6. FEA, the Florida corporation and the Tennessee corporation, were formed to handle FECA cases.
7. At all times relevant to this case:
 - a. The web address for FEA's website was "www.fealaw.com".
 - b. Respondent was the owner of the domain "www.fealaw.com".
 - c. The FEA website refers to FEA as "FECA Law Firm". The website also includes the phrases "Click here and an attorney will respond within two business days" and "Federal Workers Compensation Attorneys".
 - d. The website did not mention Respondent by name nor any other attorney.
8. The Respondent's letterhead included the FEA web address. The Respondent and FEA had the same telephone number and the same post office box mailing address. The Respondent's office telephone was answered by an employee of FEA.
9. On June 9, 2014 Dr. Unte Cheh, a former employee of the Nuclear Regulatory Commission, signed a Contract of Representation retaining FEA to represent him in his FECA claim. The Contract stated "it is understood and agreed FEA may engage Capp P. Taylor, Attorney as part of the representation upon the following conditions." Dr. Cheh paid a \$3,000.00 retainer to FEA, which was deposited into FEA's operating account.
10. Dr. Cheh's claim had been denied in 2006 and his pro se request for reconsideration had been denied in 2007. The Respondent prepared and filed a Request for Reconsideration

for Dr. Cheh on July 28, 2015 and it was signed as “Attorney for Unte Cheh”. Dr. Cheh terminated FEA and Respondent’s representation prior to a decision on the Request for Consideration and no part of the \$3,000.00 retainer was refunded to him.

11. The Hearing Panel finds that at least a part of the \$3,000.00 retainer paid by Dr. Cheh was an attorney fee for the Respondent.

12. On April 23, 2015 Paul Clayton signed a Contract of Representation to retain “Federal Employee’s Advocate, Inc. and Capp P. Taylor, Attorney at Law” to handle his FECA case. Mr. Clayton wrote a \$1,750.00 retainer to check to “Law Office Capp P. Taylor”, and this check was deposited into FEA’s account. Prior to conclusion of the case, Ms. Gockenbach terminated the services to Mr. Clayton and no refund was sent to him.

13. Based upon the foregoing findings of fact, this Hearing Panel finds that for all practical purposes Federal Employee’s Advocates, Inc. and Capp P. Taylor, Attorney were one in the same.

CONCLUSIONS OF LAW

Tennessee Rules of Professional Conduct (“RPC”), Rule 1.15(c) states: “A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses are incurred.” As found above, part of the fees paid by Dr. Cheh was an attorney fee for the Respondent and the entire fee paid by Mr. Clayton was payable to the Respondent and was an attorney fee. There was no contract between the Respondent and these clients providing that these fees were nonrefundable and therefore these fees should have been deposited into the Respondent’s trust account. By depositing those fees into the FEA Operating Account, the Respondent violated RPC 1.15(c). The deposit of these funds into FEA’s account also violated RPC 1.15(a).

RPC 1.16(d)(6) provides that when a lawyer is discharged by a client or withdraws from representation of a client, the lawyer shall “promptly refund any advanced payment of fees that have not been earned or expenses that have not been incurred”. It is the position of the Board that the Request for Reconsideration filed by the Respondent on behalf of Dr. Cheh was without merit and therefore, the \$3,000.00 charge to him was clearly unreasonable. The Board says that the fee should have been refunded and his failure to do so violated RPC 1.16(d)(6). The time period to file a Request for Reconsideration on a FECA case is one year from the denial of the claim. Clearly this Request for Reconsideration was not filed within this one year period. During this hearing the Respondent offered testimony that he had an argument that the Request for Reconsideration could have been accepted even though it was filed beyond the one year period; and the Board failed to offer evidence rebutting the Respondent’s argument. The Board failed to offer any evidence that the Respondent’s position was meritless; and therefore, the Board failed to prove that the Respondent violated RPC 1.16(d)(6).

RPC 3.1 states in part:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.

It is the Board’s position that that the Respondent violated this Rule because he filed a meritless Request for Reconsideration on Dr. Cheh’s FECA claim. As discussed above, the Hearing Panel found that the Board failed to prove that the Respondent’s Request for Reconsideration was meritless and therefore, the Hearing Panel finds that the Respondent did not violate RPC 3.1.

RPC 5.4(a) generally states that a lawyer or law firm shall not share legal fees with a non-lawyer. RPC 5.4(b) provides “a lawyer shall not form a partnership with a non-lawyer if any of

the activities of the partnership consist of the practice of law.” The fees paid by Dr. Cheh and Mr. Clayton, at least in part, were attorney’s fees for the Respondent. Both of these fees were deposited into the General Operating Account of FEA. Therefore, these fees were clearly shared between the Respondent and FEA in violation of RPC 5.4(a).

Based upon the website of FEA and the connections between the Respondent and FEA, as recited above, either FEA and the Respondent were basically one and the same or at a minimum, there were an implied partnership. The Panel finds that this arrangement between Respondent and FEA violated RPC 5.4(b).

RPC 7.1 provides that:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

RPC 7.2(d) provides that “except for communications by registered intermediary organizations, any advertisement [by a lawyer] shall include the name and office address of at least one lawyer or law firm assuming responsibility for that communication.”

Comment 1 to RPC 7.1 says that the communication discussed in that rule includes advertising. The FEA website refers to FEA as a “law firm” and has the phrase “Federal Workers Compensation Attorneys”. The Panel finds that this FEA website was in fact advertising for the Respondent. The Panel has previously found that there was a substantial relationship between FEA and the Respondent, but this is not disclosed on the website. Based upon this finding, the Panel finds that the Respondent violated RPC 7.1. Since it has been found that this website was in fact advertising for the Respondent, it violates RPC 7.2(d) because it fails to include the Respondent’s name and office address.

The Respondent has violated RPC 8.4 because of the foregoing findings of violations of the *Rules of Professional Conduct*.

APPROPRIATE DISCIPLINE TO BE IMPOSED

In determining the appropriate discipline to be imposed a Hearing Panel must consider ABA Standards for imposing lawyer sanctions (“ABA Standards”).

See *Tennessee Supreme Court Rule 9, Section 8.4 and Hyman vs. Board of Professional Responsibility, 436 S.W.3d 435 (Tenn. 2014)*. ABA Standards 3.0 provides that in imposing sanctions the following factors should be considered:

- 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.

The Hearing Panel finds that the Respondent violated a duty to his clients and to the legal system and that the Respondent’s conduct was done knowingly. The Panel further finds the existence of aggravating factors set forth below and one mitigating factor. The Panel finds that the following ABA Standards are relevant to the discipline to be imposed in this case:

4.12 Suspension is generally appropriate when a lawyer knows or should know that the is dealing improperly with client property and causes injury or potential injury to a client (The Respondent acted improperly by failing to deposit nonrefundable retainer fees into his Trust Account.).

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system (The Respondent shared legal fees with a non-lawyer and engaged in misleading advertising).

The Hearing Panel finds the following aggravating and mitigating circumstances exist in this case:

9.22(c) On more than one occasion the Respondent shared fees with a non-lawyer and failed to deposit nonrefundable retainer fees into his Trust Account. For a period of years the Respondent engaged in misleading advertising through the FEA website.

9.22(d) For the foregoing reasons the Respondent engaged in multiple offenses.

9.22(g) At the hearing of this cause the Respondent failed and refused to acknowledge that he had committed any wrongful act. Instead the Respondent attacked the Board, contending that the Board's motivation in filing these Petitions was the Board's attempt to prevent non-lawyers from handling FECA cases.

9.22(h) The Respondent has been licensed to practice law for 38 years and has been licensed in the State of Tennessee for 11 years.

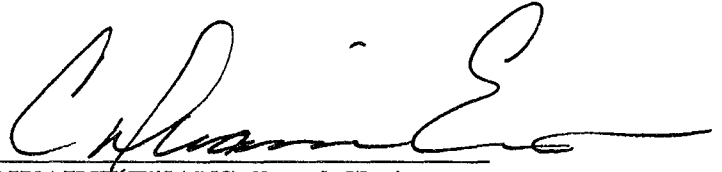
9.32(a) The Respondent apparently has no prior disciplinary record and this is a mitigating factor.

Based upon all of the foregoing, the Hearing Panel does hereby order and adjudge as follows:

1. The Respondent, Capp Peterson Taylor, shall be suspended from the practice of law in the State of Tennessee for a period of six (6) months.

2. The Board's request that the Respondent be ordered to make restitution to Dr. Unte Cheh is denied.

Dated: September 14, 2017.



C. DWAIN EVANS, Panel Chair

Julie Rhea Canter

by Dwaine Evans with permission

JULIE RHEA CANTER, Panel Member

Fred Braxton Terry

by Dwaine Evans with permission

FRED BRAXTON TERRY, Panel Member

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Capp Peterson Taylor, PO Box 1770, Dandridge, TN 37725, by U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 15th day of September, 2017.

A handwritten signature in cursive script, appearing to read "Rita Webb", written over a horizontal line.

Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a Petition for Review in the Circuit or Chancery court within sixty (60) days of the date of entry of the hearing panel's judgment.