

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

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GEORGE H. THOMPSON, III
Petitioner

v.

BOARD OF PROFESSIONAL
RESPONSIBILITY OF THE
SUPREME COURT OF TENNESSEE
Respondent

5079
Case No. 18-98-I

OCT 19 2018
Dav. Co. Chancery Court

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OCT 24 2018

ORDER

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Board of Professional
Responsibility

This matter came to be heard on the 12th day of October, 2018, on the Amended Petition Appeal for Judicial Review of Board Panel Decision of the Petitioner, George H. Thompson, III. After hearing the presentation and argument of Petitioner and counsel for the Board, as well as the record as a whole, this Court makes the following findings of fact and conclusions of law:

A. FINDINGS OF FACT

1. Petitioner is an attorney admitted in 1973 by the Supreme Court of Tennessee to practice law in the State of Tennessee.

2. On February 28, 2013, Petitioner filed suit on behalf of Mary Hall in the Davidson County General Sessions Court stemming from injuries she sustained in a 2012 automobile accident. The suit was subsequently transferred to the Davidson County Circuit Court and on June 24, 2014, an order of voluntary nonsuit was entered dismissing the suit without prejudice. Petitioner intended to refile the suit, but did not timely do so and Ms. Hall's cause of action is now barred by the statute of limitations.

3. Petitioner paid Ms. Hall \$5,000 to settle her claim against him for legal malpractice, but, prior to settling her claim, did not advise Ms. Hall in writing of the desirability of seeking independent legal advice. Petitioner only orally advised Ms. Hall she was free to do so.

4. The Board filed a Petition for Discipline against Petitioner on June 30, 2016. Petitioner filed an Answer on September 12, 2016.

5. Petitioner stipulated, by failing to timely refile Ms. Hall's suit, he violated RPC 1.1 (Competence) and 1.3 (Diligence). He further stipulated, by not advising Ms. Hall in writing of the desirability of seeking independent counsel, he violated RPC 1.8(h)(2) (Conflict of Interest).

6. The hearing panel, in its November 29, 2017 Findings of Fact, Conclusions of Law and Judgment, found Petitioner violated the following Rules of Professional Conduct by a preponderance of the evidence: RPC 1.1 (Competence); RPC 1.3 (Diligence); RPC 1.8(h)(2) (Conflict of Interest); and RPC 8.4(a) (Misconduct).

7. Pursuant to ABA Standard 9.22, the Board found the following aggravating factors present: (a) prior disciplinary history; (c) a pattern of misconduct; (d) multiple offenses; and (i) substantial experience in the practice of law.

8. Specifically, the hearing panel found the following prior disciplinary infractions: (1) on September 30, 1994, Petitioner received a private informal admonition for allowing the statute of limitations to expire in a personal injury matter; (2) on March 23, 1995, Petitioner received a private informal admonition for failing to act with reasonable diligence in two matters; (3) on February 25, 2000, Petitioner received a private reprimand for failing to act with reasonable diligence in a bankruptcy case; (4) on

June 29, 2000, Petitioner received a public censure for allowing the statute of limitations to expire in a personal injury matter; (5) on October 9, 2003, Petitioner was suspended for one year by the Tennessee Supreme Court, with the entire suspension to be held in abeyance during a period of probation with conditions, for failing to timely refile a personal injury matter after a voluntary dismissal; (6) on November 17, 2006, Petitioner received a private informal admonition as the result of a trust account overdraft; (7) on January 21, 2011, Petitioner received a public censure when he failed to adequately communicate with one client and when he failed to advise a potential client he was declining to represent the client prior to the expiration of the statute of limitations.

9. Pursuant to ABA Standard 9.23, the Board found the following mitigating factors present: (d) timely good faith effort to make restitution; (e) cooperative attitude toward the proceedings; and (g) character or reputation.

10. The hearing panel suspended Petitioner for one (1) year with thirty (30) days active suspension and the remainder to be served on probation. It imposed the following probation conditions: good behavior and engagement of a practice monitor.

11. Petitioner filed his Amended Petition Appeal for Judicial Review of Board Panel Decision on February 9, 2018. The Honorable Don Ash was designated by the Supreme Court to hear this matter by order dated February 22, 2018. The Board filed its Answer to Amended Petition for Review on March 7, 2018.

12. In his Amended Petition, Petitioner challenges his suspension as arbitrary or capricious and excessive. He contends the voluntary dismissal of two¹ charges—

¹ Petitioner erroneously states the allegation related to RPC 8.4(a) was also dismissed. However, the Board found “[v]iolation of the aforementioned Rules of Professional Conduct[—RPC 1.1, 1.3 and 1.8(h)(2)—] constitutes a violation of RPC 8.4(a) (Misconduct).”

violations of RPC 7.3(a) (Solicitation of Potential Clients) and RPC 8.4(c) (Misconduct)—warrants imposition of a lesser punishment, i.e. reprimand or inactive suspension. He further contends, at the conclusion of the hearing, the Board’s counsel “unduly influenced” the panel in responding to questions of punishment flexibility.

13. In his Appeal Brief, Petitioner states he “opposes suspension in this case not because he claims innocence, but because, due to a recent change in Supreme Court Rule 9, Section 12, any suspension must have an active component of at least 30 days[.]” He asserts, “[i]n light of [his] age and specific personal and practice circumstances, the mandatory active component of any suspension would likely be fatal to his practice and would force [him] into involuntary retirement; within less than two years from the time he would be able to transition his practice to his son.” He suggests “[a] better, more just result for all would be for a public censure coupled with whatever limitations, practice conditions, and monitoring the Hearing Panel feels appropriate.” In sum, he “wants to be able to retire on his own timeline and on his own terms” and “asks the Hearing Panel to exercise [its] flexibility[.]” Additionally, he argues additional mitigating factors—(a) absence of any dishonest or selfish motive and (c) personal problems—justify a reduction in the degree of discipline imposed.

B. CONCLUSIONS OF LAW

1. Having made the aforementioned findings of fact, this court makes the following conclusions of law. First, Tennessee Supreme Court Rule 9, section 33.1(b), states the standard of review for this matter, in pertinent part:

(b) 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 hearing panel are made, the trial court is authorized

to take such additional proof as may be necessary to resolve such allegations. The trial court may, in its discretion, permit discovery on appeals limited only to allegations of irregularities in the proceeding. The court may affirm the decision of the hearing panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the party filing the Petition for Review have been prejudiced because the hearing Panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the hearing 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 Hearing Panel as to the weight of the evidence on questions of fact.

2. “In its broadest sense, the standard[s in (4) and (5)] require[] the court to determine whether the administrative agency has made a clear error in judgment. An arbitrary [or capricious] decision is one that is not based on any course of reasoning or exercise of judgment, or one that disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.” *Hughes v. Bd. of Prof'l Responsibility*, 259 S.W.3d 631, 641 (Tenn. 2008) (quoting *City of Memphis v. Civil Serv. Comm'n of Memphis*, 216 S.W.3d 311, 316 (Tenn. 2007)) (emphasis in original).

3. “If the hearing panel finds one or more grounds for discipline of the respondent attorney, the hearing panel’s judgment shall specify the type of discipline imposed: disbarment (Section 12.1), suspension (Section 12.2), or public censure (Section 12.4). . . . In determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions.” Tenn. Sup. Ct. R. 9, § 15.4(a).

4. The ABA Standards for Imposing Lawyer Sanctions provide for “Lack of Competence:”

Absent aggravating or mitigating circumstances[:] . . .

Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

Reprimand is generally appropriate when a lawyer:

- (a) Demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
- (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

ABA Stds. Law. Sanct. 4.5.

5. The ABA Standards for Imposing Lawyer Sanctions provide for “Lack of Diligence:”

Absent aggravating or mitigating circumstances[:] . . .

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect [and] causes injury or potential injury to a client.

Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

Stds. Imp. Law. Sanct. 4.4

6. The ABA Standards for Imposing Lawyer Sanctions provide for “Failure to Avoid Conflicts of Interest[:]”

Absent aggravating or mitigating circumstances[:] . . .

Suspension is generally appropriate when a lawyer knows a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer’s own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

7. “In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors: (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 Stds. Law. Sanct. 3.0.

C. RULING

1. As noted above, Petitioner challenges the level of discipline imposed by the hearing panel as arbitrary and capricious. Citing detriment to his solo practice from an active suspension, he seeks to modify the punishment to public censure. However, detriment to a lawyer’s practice is not a mitigating factor included in the ABA Standards for Lawyer Sanctions. This Court finds the panel appropriately reviewed and applied mitigating and aggravating factors in determining the punishment of Petitioner.

2. Insofar as Petitioner advocates for the application of additional mitigating factors—unidentified personal problems and absence of dishonest or selfish motive—he fails to explain how the panel’s failure to apply such factors was arbitrary and capricious.

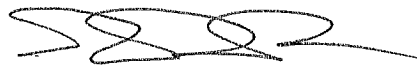
In any event, given Petitioner's lengthy disciplinary history, application of these factors would not warrant a reduction in punishment.

3. In review of the hearing panel's decision, this Court does not find the panel's findings, inferences, conclusions or decisions are arbitrary or capricious. The Court finds the hearing panel's findings of fact and conclusions of law are fully supported by the evidence presented in this matter and reversal or modification of the hearing panel's decision is not warranted.

4. Petitioner failed to demonstrate the hearing panel's decision was arbitrary and capricious. Petitioner's suspension is fully supported by the facts and this Court must not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

5. This Court AFFIRMS the decision of the hearing panel and assesses costs to Petitioner.

IT IS SO ORDERED, this the 16 day of October, 2018.



DON R. ASH, JUDGE

CERTIFICATE OF SERVICE

I hereby certify the foregoing has been served upon the following by U.S. Mail on
this the 19 day of October, 2018:

George H. Thompson, III
1326 Rosa L. Parks Blvd.
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William C. Moody
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Vicki Bailey
CLERK