

FILED

2016 JUN 20 PM 3:02

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

BOARD OF PROFESSIONAL
RESPONSIBILITY

RW
EXEC. STAFF

IN RE: PAUL JULIUS WALWYN,
BPR# 18263, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Davidson County)

DOCKET NO. 2015-2491-5-WM

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
AMENDED JUDGMENT OF THE HEARING PANEL

This matter came on to be heard on May 17, 2016, before a Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee, consisting of Matthew Thompson Harris, Aaron T. Raney, and Gary Roy Wilkinson, Chair, upon a Petition for Discipline. Upon the evidence, testimony, exhibits, arguments of counsel and the entire record in the cause, the Panel submits the following proposed Findings of Fact and Conclusions of Law and renders the following Judgment in this cause.

PRELIMINARY MATTERS

Prior to the hearing, Respondent, by and through counsel, filed the following:

1. Motion to Disqualify Hearing Panel as Incompetent;
2. General Objection to the Proceeding on Constitutional and Statutory Grounds;
3. Motion to Incorporate the Testimony and Hearing Panel Findings Regarding the Character and Credibility of Witnesses of the Prior Proceeding.

The Board filed responses to same.

Prior to hearing evidence on the Petition against the Respondent, these matters were taken up. Based upon the Respondent's Motions and Objections, the Board's responses, the arguments of counsel, and the entire record in the cause, the panel ruled as follows:

1. Motion to Disqualify Hearing Panel as Incompetent – **DENIED**
2. General Objection to the Proceeding on Constitutional and Statutory Grounds – **OVERRULED/DENIED**
3. Motion to Incorporate the Testimony and Hearing Panel Findings Regarding the Character and Credibility of Witnesses of the Prior Proceeding – **GRANTED IN PART AND DENIED IN PART – the panel will consider the testimony in the prior proceeding but will make its own determination as to character and credibility of said witnesses**

FINDINGS OF FACT

1. The Respondent, Paul Julius Walwyn, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee in 1996. He practices primarily in the area of criminal defense. His office, and the majority of his practice, is in Nashville, Davidson County, Tennessee.
2. On January 22, 2015, the Board received a complaint of misconduct from Jonathan Gutierrez alleging ethical misconduct on the part of Mr. Walwyn.
3. Mr. Walwyn was retained to represent Mr. Gutierrez on criminal charges in the Davidson County Criminal Court, case number 2008-A-505. The charges were all felonies, including murder and four (4) aggravated assaults.

4. The criminal case of Mr. Gutierrez was tried before a jury in January of 2011. Mr. Gutierrez was convicted of first degree murder and four (4) aggravated assaults and sentenced to life in prison on the murder conviction and 4 year sentences on each of the aggravated assaults, to be served consecutively, for a total effective sentence of life plus 16 years.

5. Mr. Walwyn filed a Motion for New Trial on behalf of Mr. Gutierrez. That motion was denied by order entered September 30, 2011.

6. Mr. Walwyn was appointed by the trial court to represent Mr. Gutierrez on appeal.

7. Mr. Walwyn advised Mr. Gutierrez of his intention to appeal and advised him of the date when the appeal would need to be filed.

8. In criminal cases, a Notice of Appeal or Waiver of Appeal must be filed within thirty (30) days following denial of a motion for new trial.

9. Mr. Walwyn did not file a Notice of Appeal or a Waiver of Appeal within 30 days following the denial of the Motion for New Trial.

10. Mr. Walwyn did not ever file a Notice of Appeal nor a Waiver of Appeal following the denial of the Motion for New Trial.

11. Mr. Walwyn realized in November or December of 2011 that he had missed the time for filing the Notice of Appeal. Once the thirty (30) day deadline is missed, it is always missed.

12. Mr. Walwyn admitted that an appeal, if filed within 30 days, is of right and that the granting of a Motion to Accept Delayed Filed Notice of Appeal is not absolute. He testified that he was not aware of any motions for late appeal being denied on the basis that a notice of appeal had not been filed within 30 days.

13. Mr. Walwyn felt that Mr. Gutierrez needed to be represented by a very good appellate attorney on his appeal. In the spring of 2012, Mr. Walwyn began to speak with other attorneys that he felt were appropriate prospects for that work, including Richard Strong, Esq., a former member of the Public Defender's office. Mr. Strong was ultimately appointed to represent Mr. Gutierrez on appeal.

13. Mr. Walwyn felt that, as time passed, there could be a change in the law with regard to the use of media in court, which could benefit Mr. Gutierrez on appeal.

14. Mr. Walwyn held informal discussions with members of the District Attorney's office about his plans for the handling of the case in filing the motion for delayed notice of appeal and the appointment of new appellate counsel.

15. In 2009, before the trial, Mr. Gutierrez gave a video taped interview to persons related to a documentary television show called "Gangland". There was a pre-arranged agreement with Mr. Walwyn, Mr. Gutierrez and the interviewers that the interview would not relate to the subject of the pending case against Mr. Gutierrez. Despite that agreement, toward the end of the interview, Mr. Gutierrez was asked questions that clearly related to the subject of the pending case and he gave responses that were damaging to his defense of the case. Mr. Walwyn was present during the interview. The episode of the television show including the interview of Mr. Gutierrez was aired in August 2009, before the trial. The damaging parts of the interview were not aired.

16. The prosecution sought the release of all of the recordings done during the interview. Following a protracted dispute with the entities who produced "Gangland", the prosecution was provided all of the uncut footage of the interview, including the incriminating statements made by Mr. Gutierrez. The prosecution was allowed to use the video of the incriminating statements during the trial.

17. As Mr. Walwyn had been present at and a witness to the taping of the interview with Mr. Gutierrez, he was concerned about his role as appellate counsel and the potential that he would be a witness with regard to any appellate issues relating to the video and its use.

18. The incident that formed the basis of the charges against Mr. Gutierrez occurred in 2007. He was arrested in 2008. Mr. Gutierrez was incarcerated from the time of his arrest in 2008 until today. At some point after his conviction and sentencing, Mr. Gutierrez was moved to a prison in West Tennessee.

19. Mr. Walwyn communicated only very sporadically, and apparently ineffectively, with Mr. Gutierrez and his family as to Mr. Walwyn's plan for handling of the case. Mr. Walwyn testified that he spoke with Mr. Gutierrez perhaps 2 or 3 times over the 3.5 years between the denial of the Motion for New Trial and the filing of the Motion to Accept Delayed Filed Notice of Appeal and to Appoint New Counsel.

20. Mr. Walwyn speaks English and Spanish.

21. Mr. Walwyn has known Mr. Gutierrez since Mr. Gutierrez was thirteen (13) years old. Mr. Walwyn has represented Mr. Gutierrez in other cases.

22. Mr. Gutierrez could have requested that a different attorney be appointed to represent him, but did not.

23. On May 8, 2015, Mr. Walwyn filed a Motion to Accept Delayed Filed Notice of Appeal and to Appoint New Counsel. The trial court granted the motion by order entered June 3, 2015. The order allowed the filing of a Notice of Appeal and appointed Richard Strong, Esq., to represent Mr. Gutierrez.

24. Based on conversation with Mr. Strong, Mr. Walwyn testified that there were no issues that were not preserved for appeal due to the delay in filing the Notice of Appeal.

32. Mr. Walwyn enjoys a good reputation in the legal community and is a respected attorney. The testimony in Mr. Walwyn's prior case provided by attorneys and judges in the Davidson County legal community reflect that Mr. Walwyn is competent, cooperative, candid and truthful.

33. Mr. Walwyn was forthcoming and candid in his testimony before this Panel.

CONCLUSIONS OF LAW

1. Pursuant to Tenn. Sup. Ct. R. 9, § 3, the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline.

2. The preponderance of the evidence establishes that Mr. Walwyn has committed the following violations of the Rules of Professional Conduct.

3. Mr. Walwyn violated RPC 1.1 (Competence) by not providing competent representation to Mr. Gutierrez. Mr. Walwyn did not exhibit the skill, thoroughness or preparation reasonably necessary for the representation of Mr. Gutierrez after Mr. Walwyn was appointed to represent Mr. Gutierrez on appeal.

4. Mr. Walwyn violated RPC 1.3 (Diligence) by not acting with reasonable diligence and promptness in representing Mr. Gutierrez by failing to file a timely Notice of Appeal or Waiver of Appeal and for the 3.5 year delay in filing the Motion to Accept Delayed Filed Notice of Appeal and to Appoint New Counsel.

25. Mr. Walwyn did not abandon his representation of Mr. Gutierrez. Mr. Walwyn testified that he never stopped thinking about this case and his plan for handling same.

26. During the time of his representation of the Complainant, Jonathan Gutierrez, in 2011 and 2012, Mr. Walwyn had a case load of 400 to 450 files at any one time. At the time of the hearing, Mr. Walwyn carries a case load of 200 to 250 files of which approximately 30 are in Criminal Court, 100 are simple return cases in General Sessions and the remainder are in active status in General Sessions Criminal Court. He no longer handles appellate matters. The reduction in Mr. Walwyn's case load and his discontinuance of appellate work was voluntary in order to be able to better manage his practice.

27. During the time of his representation of the Complainant, Jonathan Gutierrez, in 2011 and 2012, Mr. Walwyn used calendars but had no formal tickler or diary system. He testified that he "sometimes" wrote things on calendars and kept notes in his files. At the time of the hearing, Mr. Walwyn employs a three (3) calendar system and a tickler system so as to avoid missing any court dates or other important dates. This includes a system with regular analysis of the Courts' electronic dockets and comparison to the office's calendars.

28. During the time of his representation of the Complainant, Jonathan Gutierrez, Mr. Walwyn's father suffered from a long illness and ultimately passed away in 2012. Mr. Walwyn was close to his father and contributed to his care.

29. As a consequence of a prior disciplinary action, Mr. Walwyn took a class in 2006 that emphasized the importance of putting deadlines on the calendar.

30. Mr. Walwyn generally spends 2 to 3 hours per day in the office on Monday through Thursday of each week. He also is in the office on Sundays, at which time he meets with clients.

31. Mr. Walwyn is in court every day, Monday through Friday.

5. Mr. Walwyn violated RPC 1.4 (Communication) by failing to regularly communicate with Mr. Gutierrez. Mr. Walwyn failed to keep Mr. Gutierrez informed of the means by which his objectives were to be accomplished and failed to keep him reasonably informed about the status of the matter. By his own admission, Mr. Walwyn communicated with Mr. Gutierrez only sporadically during the 3.5 year delay in the case.

6. Mr. Walwyn violated RPC 8.4 (Misconduct) in that he violated the Rules of Professional Conduct and engaged in conduct that is prejudicial to the administration of justice based on the violations of RPC 1.1, 1.3 and 1.4 above.

7. The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has carried its burden and proved the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence.

8. Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

9. Pursuant to ABA Standard 9.22, aggravating factors are present in this case:

a. Mr. Walwyn has a prior disciplinary history, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

b. Mr. Walwyn has shown a pattern of misconduct, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

c. Mr. Walwyn has committed multiple offenses, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

d. The vulnerability of Mr. Walwyn's client is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

e. Mr. Walwyn has substantial experience in the practice of law, having been licensed in Tennessee since 1996, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

10. Pursuant to ABA Standard 9.32, mitigating factors are present in this case:

a. The absence of a dishonest or selfish motive is a mitigating circumstance justifying a reduction in the degree of discipline to be imposed against him.

b. Mr. Walwyn's personal or emotional problem is a mitigating circumstance justifying a reduction in the degree of discipline to be imposed against him.

c. Mr. Walwyn's full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings is a mitigating circumstance justifying a reduction in the degree of discipline to be imposed against him.

d. Mr. Walwyn's character and reputation are mitigating circumstances justifying a reduction in the degree of discipline to be imposed against him.

11. Mr. Walwyn has undertaken changes to the management of his law practice which should alleviate future problems of the kind that formed the basis for the current Petition for Discipline as well as for prior disciplinary actions.

12. Based upon the evidence and admissions in this matter, the appropriate discipline is a public censure.

JUDGMENT

In light of the Findings of Fact and Conclusions of Law and the aggravating and mitigating factors set forth above, the Hearing Panel hereby finds that Mr. Walwyn should receive a public censure.

The Hearing Panel finds that Mr. Walwyn should be under the supervision of a practice monitor for a period of one (1) year. The duties and responsibilities of the practice monitor shall

be the same as set forth in the Judgment of the Hearing Panel entered on December 16, 2013, as follows:

1. Supervision of Mr. Walwyn
2. Review/Implementation of office management procedures to include:
 - A. Ensuring Respondent's Contracts set forth, in part, the following:
 1. The subject matter and nature of Mr. Walwyn's representation including providing the client with a written description of such representation, the fee to be paid, and the agreed billing arrangements.
 2. A new client's consent to the subject matter and nature of Respondent's representation, the fee to be paid, and the agreed billing arrangements.
 - B. If Mr. Walwyn withdraws from a matter, protocol regarding documentation of nonrepresentation and providing a copy of such documentation to the client with a copy retained in the file.
 - C. A docket/work control system which tracks, at a minimum, statutory and self imposed deadlines as well as adequate reminders of approaching deadlines.
 - D. A written step by step procedure for using the firm's docket/work control system.
 - E. Documentation that Mr. Walwyn's staff has been trained in the procedures for using the docket/work control system.
 - F. Respondent's docket/work control system that prominently marks all final deadlines so as to draw immediate attention to them.
 - G. At least one identical, complete back up for Mr. Walwyn's docket/work control system.
 - H. One person who is designated to oversee the docket/work control system for Mr. Walwyn.
 - I. A docket/work control system that insures that deadlines are caught when Respondent or responsible staff member is absent.

J. Matters needing docketing are entered into Mr. Walwyn's docket/work control system in a regular and timely manner.

The beginning of the period to be supervised by a practice monitor established by this Judgment shall begin immediately following the end of Mr. Walwyn's probation in Case number 2012-2156-5-KH as affirmed by the Supreme Court of Tennessee in Paul J. Walwyn v. Board of Professional Responsibility of the Supreme Court of Tennessee, 481 S.W. 3d 151 (Tenn. 2015).

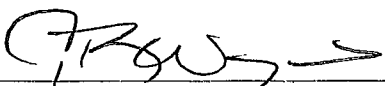
The practice monitor shall be selected in accordance with the provisions of Tenn. Sup. Ct. R. 9 section 12.9 (c). Once selected, the practice monitor shall report to the Board every 30 days as to whether Mr. Walwyn is in compliance.

Mr. Walwyn shall pay a reasonable fee for the practice monitor.

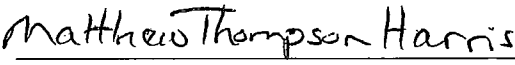
Additionally, for 2016, Mr. Walwyn is required to complete six (6) hours of continuing legal education on subjects related to the management of a law practice and/or client communication, in addition to the mandatory fifteen (15) hours required by the Tennessee Commission on Continuing Legal Education.

Mr. Walwyn shall be responsible for the costs of this proceeding.

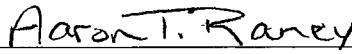
IT IS, THEREFORE, SO ORDERED.



Gary R. Wilkinson, Panel Chair



Matthew Thompson Harris, Panel Member / per authority
by GRW



Aaron T. Raney, Panel Member / per authority
by GRW

NOTICE TO RESPONDENT

**THIS JUDGMENT MAY BE APPEALED PURSUANT TO TENN. SUP. CT. RULE 9,
SECTION 33 BY FILING A PETITION FOR REVIEW IN THE CIRCUIT OR
CHANCERY COURT OF THE COUNTY IN WHICH THE OFFICE OF THE
RESPONDENT OR PETITIONING ATTORNEY WAS LOCATED AT THE TIME THE
CHARGES WERE FILED WITH THE BOARD.**

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Findings of Fact, Conclusions of Law and Amended Judgment of the Hearing Panel has been sent to Respondent, Paul J. Walwyn, PO Box 1277, Madison, TN 37166-1277, and to his Counsel, Connie Reguli, 1646 Westgate Circle, Suite 101, Brentwood, TN 37027, both by U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 20th day of June, 2016.



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.