



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

**IN RE: Inez Beatrice Warner  
BPR No. 028289, Respondent,  
an Attorney Licensed to Practice  
Law in Tennessee  
(Shelby County)**

**DOCKET NO. 2018-2832-9-AJ**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

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This matter came for a hearing on December 15, 2020 before a Hearing Panel consisting of Andre Wharton, Panel Chair; Margaret Chesney, Panel Member; and Harriett Halmon, Panel Member. The Board of Professional Responsibility (the "Board") was represented by Brittany Lavallo. Ms. Warner (the Respondent) was represented by Mr. Terrell Tooten. Testimony was given by Ms. Warner, Ms. Maria Hernandez ("Hernandez"), Ms. Sharon Dumas ("Dumas"), and Mr. Elgen McFerren, Sr. ("McFerren"). The hearing took place via Zoom and Exhibits 1-27 were stipulated to by both parties and admitted. Upon the testimony of the party and witnesses, statements of counsel, and review of the appropriate statutory provisions, the Panel finds as follows:

**FINDINGS OF FACT**

1. Ms. Warner is a licensed attorney who has been licensed in Tennessee since 2009.
2. The Petition included complaints relating to four (4) prior clients, namely Hernandez, Dumas, McFerren, and Tierney Keaton and all said complaints were all dated within a twelve (12) month period of time which corresponded with the time that Ms.

Warner's father passed away.

**[Hernandez]**

3. The first complaint addressed in the hearing involved Ms. Warner's client, Hernandez. Ms. Warner and Hernandez's business relationship related to a post-divorce matter in which Hernandez sought to enforce a California divorce decree which gave Hernandez custody of her child, who Ms. Hernandez believed was residing with Hernandez's ex-husband at an unknown address either in Arizona or in Mexico.

4. Ms. Warner and Hernandez had a written fee arrangement and said arrangement was that Hernandez paid Ms. Warner a non-refundable retainer in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00).

5. Ms. Warner did perform some work in Hernandez's case which included Ms. Warner taking a trip to Arizona between November 7, 2015 through November 10, 2015, in an attempt to locate the child. Ms. Warner also testified that while in Arizona, she went to the Maricopa County courthouse where she obtained a traffic ticket matching the name of Ms. Hernandez ex-husband. Because Ms. Hernandez' husband has a common name. Ms. Warner was never able to determine whether the person named on the traffic ticket was actually Ms. Hernandez' ex-husband.

6. Ms. Warner was not licensed to practice law in Arizona.

7. Ms. Warner testified that she spoke with Ms. Hernandez' prior divorce attorney, but was not able to obtain divorce documents form him. Throughout her representation of Hernandez, Ms. Warner never obtained the divorce decree or the custody agreement.

8. Ms. Warner resided with a friend while on the trip to Arizona and admits that she did other things in Arizona beside her work on the Hernandez case. Her billing breakdown

reflects that she is entitled to payment for every hour of the four days between November 7 and November 10, 2015.

9. The work performed by Ms. Warner did not lead to the return of Hernandez's son to Hernandez's custody. Hernandez's son was ultimately returned to Hernandez's custody, by other means than the work performed by Ms. Warner.

10. As of the date of the hearing before this Panel, Ms. Warner had not refunded any of the fee paid by Hernandez; however, Ms. Warner testified she would refund any portion of the fee paid by Hernandez as determined by this Panel.

11. Ms. Warner admitted that, during the course of her representation of Hernandez, she moved offices without contacting Hernandez to notify her of her new office address and contact information.

[Dumas]

12. The second complaint addressed during the hearing concerned Ms. Warner's client, Dumas. Ms. Warner and Dumas's business relationship related to a pending divorce matter that had been filed by Dumas' estranged husband.

13. Ms. Warner and Dumas did not have a written fee arrangement; however, the oral fee agreement was that Dumas would pay Ms. Warner One Thousand Five Hundred Dollars (\$1,500.00) as a non-refundable retainer. In fact, Dumas paid One Thousand Dollars (\$1,000.00) to Ms. Warner.

14. While Ms. Warner performed some work in Dumas's case, she did not file an answer or a countercomplaint.

15. Dumas expressed dissatisfaction with her ability to contact Ms. Warner. Ms. Warner admitted that, during the course of her representation of Dumas, she moved

offices without contacting Dumas to notify her of her new office address and contact information.

16. Dumas hired another attorney for a fee of One Thousand Seven Hundred Dollars (\$1,700.00) and was able to obtain a divorce.

17. As of the date of the hearing before this Panel, Ms. Warner had not refunded any of the fee paid by Dumas even though the two (2) did engage in negotiations about a refund. Ms. Warner testified she would refund any portion of the fee paid by Hernandez as determined by this Panel.

**[McFerren]**

18. The third complaint addressed in the hearing concerned Ms. Warner's client, McFerren. Ms. Warner and McFerren's business relationship related to McFerren's desire to obtain an uncontested divorce from his wife. Mr. McFerren and Ms. Warner were known to each other prior to this representation as Mr. McFerren is the brother of Ms. Warner's former law partner.

19. Ms. Warner and McFerren did not have a written fee arrangement; however, the oral fee agreement was that McFerren would pay Ms. Warner Nine Hundred Fifty Dollars (\$950.00) as a non-refundable retainer. In fact, McFerren paid Nine Hundred Fifty Dollars (\$950.00) to Ms. Warner.

20. Ms. Warner performed some work in McFerren's case; however, that work did not result in a Complaint for Divorce being filed or in McFerren obtaining a divorce from his Wife. McFerren hired another attorney for a fee of One Thousand Five Hundred Dollars (\$1,500.00) to obtain the divorce from his Wife.

21. McFerren expressed dissatisfaction with his ability to contact Ms. Warner during

the scope of the representation.

22. Ms. Warner admitted that, during the course of her representation of McFerren, she moved offices without contacting McFerren to notify him of her new office address and contact information.

23. As of the date of the hearing before this Panel, Ms. Warner had not refunded any of the fee paid by McFerren; however, Ms. Warner testified she would refund any portion of the fee paid by McFerren as determined by this Panel.

[Keaton]

24. The fourth complaint addressed during the hearing concerned Ms. Warner's client, Keaton. Ms. Warner and Keaton's business relationship involved a personal injury matter where the case was settled for Ten Thousand Dollars (\$10,000.00) in 2016.

25. Ms. Warner took a fee of Thirty-Three and One Third Percent (33 1/3 %) of the settlement funds; Ms. Keaton received a portion; and there were also outstanding liens resulting from medical bills.

26. Ms. Warner has failed to distribute the funds to pay these medical expenses; although, she maintains that the money for the expenses remains in her trust account. Ms. Warner admits that the outstanding medical bills could have a negative impact on Ms. Keaton. She also admits that it would be appropriate to distribute the proceeds of the settlement and resolve all outstanding liens.

#### CONCLUSIONS OF LAW

Pursuant to Tenn. Sup. Ct. R. 9, § 8 (2014), attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the

Circuit and Chancery Courts. Pursuant to Tenn. Sup. Ct. R. 9, § 1 (2014), 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. Pursuant to Tenn. Sup. Ct. R. 9, § 11 (2014), acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct ("RPC") of the State of Tennessee constitute misconduct and grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Board has alleged that Ms. Warner violated RPC 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.15 (safekeeping property), and 8.4 (a) (misconduct).

#### **RULE 1.1: COMPETENCE**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Ms. Warner's decisions in the four (4) cases before the Panel do not rise to the level of incompetent representation. While some of the choices made by Ms. Warner may appear ill-advised, those choices involved a legal strategy that was discussed with and approved by the client. The Panel cannot conclude by a preponderance of the evidence that Ms. Warner was incompetent in her representation of Hernandez.

#### **RULE 1.3: DILIGENCE**

A lawyer shall act with reasonable diligence and promptness in representing a client.

Ms. Warner's legal strategy in the Hernandez case does not rise to the level

of a failure to obtain relevant information and research effectively and does not constitute a violation of RPC 1.3. In the Dumas and McFerren matters, the Panel concludes by a preponderance of the evidence that Ms. Warner failed to maintain contact to proceed with the case in violation of RPC 1.3. In Ms. Keaton's matter, the Panel concludes by a preponderance of the evidence that Ms. Warner's failure to satisfy the medical liens years after receiving the settlement constitutes a violation of RPC 1.3.

#### **RULE 1.4: COMMUNICATION**

- (a) A lawyer shall:
  - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these Rules;
  - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished.
  - (3) keep the client reasonably informed about the status of the matter.
  - (4) promptly comply with reasonable requests for information; and
  - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The Panel concludes by a preponderance of the evidence that Ms. Warner's failure to communicate with clients violated RPC 1.4. Ms. Warner also violated RPC 1.4 when she relocated her office without giving appropriate notice clients

which, at minimum, would require a letter with the new office and phone number.

#### **RULE 1.5: FEES**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) the fee customarily charged in the locality for similar legal services.
- (4) the amount involved and the results obtained.
- (5) the time limitations imposed by the client or by the circumstances.
- (6) the nature and length of the professional relationship with the client.
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) whether the fee is fixed or contingent.
- (9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
- (10) whether the fee agreement is in writing.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.



(f) A fee that is nonrefundable in whole or in part shall be agreed to in a writing, signed by the client, that explains the intent of the parties as to the nature and amount of the nonrefundable fee.

The Panel concludes by a preponderance of the evidence that Ms. Warner violated RPC 1.5 in the Hernandez, Dumas and McFerren matters. Ms. Warner violated RPC 1.5 in the Hernandez matter due to the unreasonable nature of her fees. In the Dumas matter, Ms. Warner charged a non-refundable retainer without a written fee agreement in violation of RPC 1.5. In the McFerren case, Mr. McFerren paid a fee and did not receive communication or service making the fee unreasonable in violation of RPC 1.5.

#### **RULE 1.15: SAFEKEEPING PROPERTY AND FUNDS**

(d) 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.

The Panel concludes by a preponderance of the evidence that Ms. Warner violated RPC 1.15 in the Keaton matter by failing to maintain adequate records concerning the distribution of funds and failing to distribute settlement proceeds towards medical liens.

#### **RULE 8.4: MISCONDUCT**

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist, or induce another to do so, or do so through the acts of another.

The Panel concludes by a preponderance of the evidence that the aforementioned actions of Ms. Warner in violation of the Rules of Professional Conduct constitute a violation of RPC 8.4.

#### APPLICATION OF THE ABA STANDARDS

Once disciplinary violations have been established, the Panel is to consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions. In imposing a sanction after a finding of lawyer misconduct, the court or board shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions.

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) the existence of any aggravating or mitigating factors.

In the instant case, the Panel finds that Ms. Warner violated a duty owed to four (4) clients. There are no findings of violations of duty to the public, to the system or to the profession. While it is debatable whether Ms. Warner's actions and omission serve to undermine the public's confidence in the profession, her conduct appears to be isolated to these incidents and the coincidental time of death in her family. Moreover, Ms. Warner's did not act intentionally, knowingly, or negligently. While Ms. Warner violated the ethical

provisions as cited herein including the failure to exercise diligence and communication, it does not appear that this was done intentionally, knowingly or negligently.

The proof demonstrates that there was some actual or potential injury to her clients caused by Ms. Warner's actions, however, those injuries are not significant and not permanent. Based on these considerations, the Panel finds that the ABA Standards indicate a presumptive sanction of Public Reprimand. Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, a sanction of reprimand is generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

#### **AGGRAVATING AND MITIGATING FACTORS**

The final step in the analysis under the ABA Sanctions is to consider aggravating and mitigating factors that justify a departure from the baseline sanction. ABA Standards Section 3.0. A list of factors which may be considered in aggravation and mitigation are set out at ABA Standards 9.2 and 9.3.

Pursuant to ABA Standard 9.22, the Panel finds the following aggravating factor:

1. Ms. Warner's multiple offenses constitute an aggravating circumstance.

Pursuant to ABA Standard 9.3, the Panel finds the following mitigating factors:

1. Absence of prior disciplinary record.
2. Emotional distress resulting from the death of her father during the period of most of the misconduct.
3. Willingness to make amends and pay restitution to the former client-victims.

The Panel finds that the aggravating and mitigating factors above are offsetting and do not support a departure from the baseline sanction of reprimand.

### **RESTITUTION**

Whenever possible, the disciplinary process should facilitate restitution to the victims of the respondent's misconduct without requiring victims to institute separate proceedings at their own expense. If the value of the client's loss resulting from the respondent's misconduct is established, the respondent should be ordered to make restitution in that amount as promptly as circumstances permit. The entitlement to and value of restitution have been established in this case.

Based upon the evidence and admissions in this matter, the ABA standards, and the aggravating and mitigating factors, the Panel finds that public reprimand and restitution constitute the appropriate discipline in this case.

### **JUDGMENT**

Based upon the facts in this case; the application of the Rules of Professional Conduct and considering the ABA Standards, the Hearing Panel finds by a preponderance of the evidence that Ms. Warner committed disciplinary misconduct and should receive a public reprimand and pay restitution as set forth. Ms. Warner shall be given credit for Four and One Half (4 ½) hours of work at One Hundred Fifty Dollars (\$150.00) per hour on the Hernandez matter and shall pay Six Thousand Eight Hundred Twenty Five Dollars (\$6,825.00) in restitution to Hernandez; Ms. Warner shall pay One Thousand Dollars (\$1,000.00) in restitution to Dumas due to the failure to have a written contract for legal services with Dumas; and Ms. Warner shall pay Nine Hundred Fifty (\$950.00) in restitution to McFerren due to the failure to have a contract for legal services

with McFerren. Ms. Warner shall also distribute any remaining funds in the Keaton case to the appropriate medical lien holders and forward any remaining balance to Ms. Keaton. Ms. Warner shall have Ninety (90) days from the issuance of this Order to make restitution and to distribute the remaining funds in the Keaton case.

IT IS SO ORDERED.



Andre Wharton, Panel Chair



Margaret Chesney, Panel Member



Harriett Halmon, Panel Member

**NOTICE TO RESPONDENT**

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to Respondent, Inez Beatrice Warner, PO Box 398, Cordova, TN 38088-0398, and to her counsel, Terrell Tooten, 1160 Vickery Lane, Suite 2, Cordova, TN 38016, via U.S. First Class Mail, and hand-delivered to Doug Bergeron, Disciplinary Counsel, on this the 19<sup>th</sup> day of April 2021.



Rita Webb  
Executive Secretary

**NOTICE**

**This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.**