

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
10/03/2023
Clerk of the
Appellate Courts

IN RE: SAMUEL ERVIN WHITE, BPR #029973
An Attorney Licensed to Practice Law in Tennessee
(Sullivan County)

No. M2023-00960-SC-BAR-BP
BOPR No. 2023-3336-1-AW-12.3

**ORDER GRANTING APPLICATION FOR DISSOLUTION OR
MODIFICATION OF ORDER OF TEMPORARY SUSPENSION**

On June 30, 2023, this Court entered an Order of Temporary Suspension pursuant to Tenn. Sup. Ct. R. 9, § 12.3, suspending the law license of Samuel Ervin White for misappropriating funds for his personal use and posing a threat of substantial harm to the public. On or about July 5, 2023, Mr. White filed a Response to Petition for Temporary Suspension and Respondent's Application for Dissolution or Modification of the Order of Temporary Suspension. On August 31, 2023, a hearing was held before a three-member panel of the Board of Professional Responsibility. On September 27, 2023, the Panel entered its Report and Recommendation of Hearing Panel recommending the dissolution of Mr. White's temporary suspension with conditions. A copy of the Report and Recommendation of Hearing Panel is attached and incorporated herein by reference.

From all of which, the Court approves the Report and Recommendation of Hearing Panel with conditions and adopts the same as this Court's Order.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED BY THE COURT THAT:

1. The Report and Recommendation of Hearing Panel is approved as the Court's Order, and the Order of Temporary Suspension entered June 30, 2023, is hereby dissolved subject to Mr. White's full compliance with the following conditions:

- (a) Mr. White shall attend and complete the Board of Professional Responsibility Trust Account Management Workshop in 2023.
- (b) Mr. White, in accordance with Tenn. Sup. Ct. R. 9, § 12.9, shall immediately engage a Practice Monitor and a Certified Public Accountant to review his trust account and accounting practices and reconcile the trust account to ensure all client funds are and were appropriately maintained in trust in compliance with the Rules of

Professional Conduct. The period of review of the trust account will be at the discretion of the Practice Monitor; however, the review and reconciliation shall include the period of time Mr. White represented Mr. Bowen. The Practice Monitor shall, within ninety (90) days of the entry of this order, report in writing to the Board the result of the review and reconciliation of Mr. White's trust account and any professional practice management policies or procedures needed to ensure future compliance with the Rules of Professional Conduct.

- c. Mr. White shall, within ten (10) days of the entry of this order, contact the Tennessee Lawyer Assistance Program (TLAP) for evaluation and cooperate fully with TLAP to complete any recommended evaluation process in a timely manner. In the event TLAP determines a monitoring agreement is appropriate, Mr. White shall immediately execute said monitoring agreement and thereafter comply with the terms and conditions of the TLAP monitoring agreement.

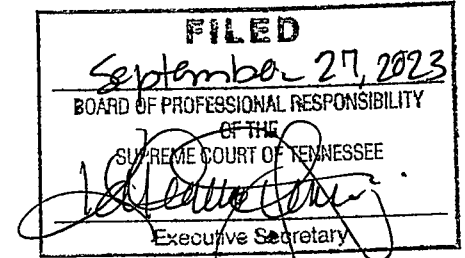
2. Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.

3. Mr. White shall pay to the Clerk of this Court the costs incurred herein, for all of which execution shall issue if necessary.

4. The Board of Professional Responsibility shall cause notice of this Order to be published as required by Tenn. Sup. Ct. R. 9, § 28.11.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: SAMUEL ERVIN WHITE
BPR NO. 029973,
an Attorney Licensed to Practice
Law in Tennessee
(Sullivan County)

DOCKET NO. 2023-3336-1-AW-12.3

REPORT AND RECOMMENDATION OF HEARING PANEL

This matter came to be heard on the 31st day of August, 2023, before the Hearing Panel consisting of Ginger Wilson Buchanan, Esquire, Chair, R. Culver Schmid Esquire., and William O. Shults, Esquire, upon the Application for Dissolution or Modification of the Order of Temporary Suspension filed herein by Samuel Ervin White. Those present for the hearing were the three Hearing Panel Members, Samuel Ervin White, Russell Willis, Disciplinary Counsel, and Sam White, the father of Samuel Ervin White.

FINDING OF FACT

The Hearing Panel makes the following finding of fact:

- A. On June 28, 2023, the Board of Professional Responsibility filed the Petition for Temporary Suspension of Samuel Ervin White from the practice of law in Tennessee due to misappropriation of client funds pursuant to Tenn. Sup. Ct. R. 9 § 12.3.
- B. On June 30, 2023, the Tennessee Supreme Court entered an Order of Temporary Suspension temporarily suspending Samuel Ervin White from the practice of law pursuant to Tenn. Sup. Ct. R. 9 § 12.3.
- C. On July 5, 2023, Samuel Ervin White filed an Application for Dissolution or Modification of the Order of Temporary Suspension.

Exhibit A

- D. On July 10, 2023, the Tennessee Supreme Court granted Samuel Ervin White an additional thirty (30) days to provide the notices of notices on withdrawal required by Tenn. Sup Ct. R. 9, § 12.3.
- E. Further, the Tennessee Supreme Court Order entered July 10, 2023, provided that the Petition for Dissolution or Modification of the Order of Temporary Suspension be set for immediate hearing before the Board or a Panel and resolved “with the utmost speed consistent with due process” as required by Tenn. Sup. Ct. R. 9, § 12.3.
- F. On August 7, 2023, the Board of Professional Responsibility appointed Ginger Wilson Buchanan, R. Culver Schmid, and William O. Shults as a Hearing Panel.
- G. On August 7, 2023, the Board of Professional Responsibility filed a Notice of the Appointment of said Hearing Panel members.
- H. On August 15, 2023, the Hearing Panel held a telephonic scheduling conference whereby this matter was set for hearing on August 31, 2023, to be held at the Old Knox County Courthouse, 300 West Main Street, Knoxville, TN.
- I. On August 17, 2023, a Scheduling Order for this matter was entered.
- J. Samuel Ervin White was retained to represent Michael S. Bowen in a post-divorce matter relating to his military pension. This arose from a Final Decree of Divorce entered in Washington County Chancery Court in 1995 whereby Mr. Bowen was ordered to pay his former spouse, Susan Osborne, fifty percent (50%) of his military retirement upon commencement of the military pension benefit.
- K. Samuel Ervin White charged his client a fixed flat fee of Two Hundred and Fifty Dollars (\$250.00) to research and determine if he could assist him with any modification of the 1995 Final Decree of the Washington County Chancery Court.
- L. After Samuel Ervin White determined that there was no likelihood of modification of the Final Decree of Divorce, he charged Mr. Bowen a flat fee of Five Hundred Dollars (\$500) to assist him with negotiations and coordination of payments with Richard Spivey, the attorney for the ex-spouse.
- M. In April of 2021, Mr. Bowen paid the sum of Four Thousand Dollars (\$4,000.00) to Samuel Ervin White which was deposited into the office IOLTA Trust account.

- Mr. White hand delivered a check drawn on the office IOLTA Trust account in the same amount to Mr. Spivey's office.
- N. In January of 2022, Mr. Bowen made another payment of Four Thousand Dollars (\$4,000.00) to Samuel Ervin White which was deposited into the office IOLTA Trust . Account. Mr. White hand delivered a check drawn on the office IOLTA Trust account in the same amount to Mr. Spivey's office.
- O. On December 9, 2022, Mr. Bowen paid Seven Thousand Dollars (\$7,000.00) to Samuel Ervin White. Instead of this check being deposited into his office IOLTA Trust account, this check from Mr. Bowen was deposited into Mr. White's office operating account. These are the monies at issue in this case.
- P. Mr. White testified that he remitted check #561 from this IOLTA Trust account to Mr. Spivey in the amount of Seven Thousand Dollard (\$7,000.00) which was mailed to the office of Mr. Spivey.
- Q. Check #561 was never received by Mr. Spivey nor did the mailing containing said check ever returned to Mr. White's office. Nonetheless, Mr. White admitted this check would have been returned for insufficient funds if it had been negotiated by Mr. Spivey as there were not sufficient funds in Mr. White's office IOLTA Trust account since he had deposited Mr. Bowen's check into the office operating account.
- R. On February 15, 2023, Mr. Bowen contacted Mr. White by telephone to inquire why his former spouse had not received \$7,000.00 payment. Mr. White testified that Mr. Bowen initially told him that his former wife had not received earlier payments totaling \$11,000.
- S. Mr. White determined the last payment of \$7,000.00 was the only payment which had not been remitted, and he discovered the mistake of the deposit being made into the wrong office account after being contracted by Mr. Bowen on February 15th.
- T. On February 24, 2023, Mr. White remitted the sum of One Thousand Five Hundred Dollars (\$1,500.00) to Mr. Spivey towards Mr. Bowen's support obligation.

- U. Mr. White testified that he attempted to borrow funds to pay the deficiency in the amount of Five Thousand Five Hundred Dollars (\$5,500.00) from the bank with whom he did business, Citizens Bank, but he was unsuccessful in his attempt to obtain a business loan. He also attempted to receive a loan with a loan company in Elizabethton; however, this institution offered him a business credit card, but never provided the card.
- V. In the interim from this time until the Petition for Suspension was filed, Mr. White did not make any payments toward the amount misappropriated further payments on the balance of \$5,500 wrongfully placed in this office operating account rather than in his IOLTA account.
- W. Upon the Petition for Suspension being served upon Mr. White, he went immediately to Eastman Credit Union which approved a loan him in the amount of the Five Thousand Five Hundred Dollars (\$5,500.00).
- X. On July 5, 2023, Mr. White delivered a check to Richard Spivey in the amount of Five Thousand Five Hundred Dollars (\$5,500.00), representing the balance of the obligation his client, Michael Bowen, owed to his former spouse and which has been delivered to Mr. White by Mr. Bowen in December, 2022.
- Y. Mr. White's practice of law consists, to the largest extent, of court appointed criminal cases.
- Z. Mr. White experienced a number of departures of staff in his office prior to December of 2022. Specifically, two associate attorneys in 2022 left the practice leaving additional cases for Mr. White to handle. Further, his secretary left his office in October 2022 leaving no staff members except for Mr. White.
- AA. Mr. White failed to utilize management practices such as monthly reconciliation of bank statements except on an occasional basis.
- BB. Mr. White admitted that he made three (3) missteps with handling the payment from Mr. Bowen. First, he deposited the funds into his office operating account rather than into the office IOLTA trust account. Second, he mailed the check to Mr. Spivey instead of hand-delivering the check as he had done with the past payments from Mr. Bowen. Finally, he failed to monitor his bank accounts to assure the check had been negotiated.

- CC. In May of 2021, Mr. White and his spouse both contracted Covid-19 virus and, he was placed in an intensive care unit. Mr. White has continued to experience lingering issues of brain fog which he attributes to Covid-19.
- DD. Mr. White admitted that he had experienced some period of depression for which he took medication for a brief period of time until he felt the symptoms of depression had subsided.
- EE. Mr. White had voluntarily contacted the Tennessee Lawyer's Assistance Program (TLAP); however, he did not pursue the services of TLAP as he was told that he would need to obtain mental evaluation. When Mr. White priced the cost of a mental evaluation in his community, and he was informed the cost of such was Two Thousand Two Hundred Dollars (\$2,000.00).
- FF. Mr. White's father, Sam White, testified, and his testimony was found to be both genuine and creditable. Basically, Mr, White testified that his son had never been accused of being dishonest, and that he would have been dealt with sternly at home if he had ever been dishonest.
- GG. Sam White testified that his son had been the valedictorian of his high school graduating class and his son had also won numerous awards as a student at the University of Virginia at Charlottesville.
- HH. Further, Sam White testified that he had observed his son gaining seventy-five (75) pounds and exhibit signs of depression since his son's with the Covid-19 virus. In addition to this, Mr. White had seen a personality change in his son.
- II. Mr. White is thirty-nine (39) years old, and he has practiced law for eleven (11) years.

STANDARD FOR REINSTATEMENT

Tenn. Sup. Ct. R, 9 §12.3 provides, in part,

The attorney may for good cause request a dissolution or amendment of any such order of temporary suspension.

CONCLUSIONS

In reaching our decision in this case, the Panel does not discount the seriousness of an allegation of misappropriation of a client's funds. The investigation and processing of this complaint was warranted. However, having said that, the Panel agrees with counsel for the Board that this was an erroneous act on the part of Mr. White.

The proof is clear that during the 2021 to 2023 period, Mr. White experienced several severe difficulties which impacted his professional life. For example, both he and his wife contracted Covid 19, for which they were hospitalized in an intensive care unit. Subsequently, Mr. White contracted Covid 19 a second time. While the long-term effects of Covid 19 are not yet known, Mr. White testified that he had experienced brain fogging on occasion and had been prescribed antidepressants by his primary care provider.

Additionally, during this same period, Mr. White's two young associate attorneys moved on to other practices and, perhaps most importantly, he lost his administrative assistant. (Mr. White testified that he has now contacted an experienced legal secretary who will join his practice if his suspension is lifted.)

Indeed, Exhibit 6, a letter to the Board dated March 18, 2023, dealing with an unrelated, non-financial complaint regarding Mr. White, confirms our conclusion that this lawyer was struggling because of the aforementioned factors.

The proof further shows that when he was notified by his client that client's ex-wife had not received the \$7,000 ordered by the Washington County Chancery Court, he made efforts to borrow funds to make full payment of the misplaced and subsequently misappropriated funds, albeit perhaps without the urgency that he should have exercised. (The proof is also present that in 2021 and 2022, a dispute arose between Mr. White and Mr. Spivey, the attorney for Mr. White's client's ex-wife, concerning whether a separate payment owed to Mr. Spivey's client was in the amount of \$8,000 or \$11,000. Mr. White was able to establish that \$8,000 was owed and was delivered via two \$4,000 checks.)

By July 5, 2023, after applying for loans at several institutions, Mr. White obtained the necessary monies to correct this situation from a well-known credit union in Kingsport, and Mr. Spivey's client was made whole.

Of course, this is a serious situation, but the Panel is of the opinion that Mr. White, a solo practitioner, was overwhelmed by the factors set out above. This resulted in a mistake we are

convinced was not intentional but rather a negligent deposit into the wrong bank account by a severely stressed lawyer. We do believe Mr. White will not repeat this mistake if he abides by the recommendations we make below. The Panel made it clear to Mr. White that this sort of mistake must never again be made during the course of what is hopefully a long and distinguished legal career.

RECOMMENDATION

The Hearing Panel unanimously reports and recommends that the temporary suspension under Rule 9 §12.3 of Samuel Ervin White be dissolved or modified pending final adjudication on the disciplinary action filed based upon the foregoing. However, the Hearing Panel recommends this dissolution or modification be contingent and conditioned upon, the following:

- Mr. White’s attendance at the Board of Professional Responsibility Trust Workshop;
- Mr. White’s acceptance of only court appointed cases in the interim unless and until he has a practice monitor in place or has worked with a financial consultant to establish appropriate accounting practices in place for handling of client monies to allow Mr. White to create funds to pay for costs of business management training and costs related to TLAP; and
- Mr. White contacts the Tennessee Lawyer’s Assistance Program within seven (7) days after notice from the Court to engage services available to him and that he reports that such contact and engagement has been made to the Board of Professional Responsibility.

This 27th day of September, 2023.

Ginger Wilson Buchanan
Ginger Wilson Buchanan, Chair of Panel

R. Culver Schmid By Ginger Wilson Buchanan
R. Culver Schmid, Panel Member

William Shults By Ginger Wilson Buchanan
William Shults, Panel Member

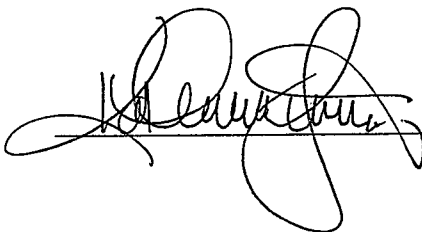
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Report and Recommendation of Hearing Panel has been served via First Class U.S. Mail and/or by email upon the following:

Samuel Ervin White,
220 Broad Street, Suite 203B
Kingsport, TN 37660-4245
samuel.tricitieslawfirm@outlook.com

A. Russell Willis
Deputy Chief Disciplinary Counsel
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027
rwillis@tbpr.org

on this 27th day of September, 2023.



A handwritten signature in black ink, appearing to read "A. Russell Willis", is written over a horizontal line.