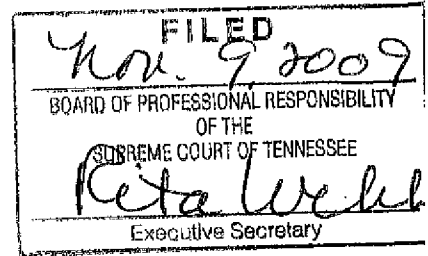


IN DISCIPLINARY DISTRICT IX
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: WILLIAM T. WINCHESTER,
BPR No. 21282

DOCKET NO. 2008-1738-9-RS

FINDINGS AND JUDGMENT

This proceeding was heard on October 14, 2009 before a hearing panel of three district committee members duly appointed by the Supreme Court of Tennessee, and based on the testimony of witnesses, exhibits admitted into evidence and the record as a whole, the Panel renders the following Findings and Judgment.

FINDINGS OF FACT

1. On March 12, 2008, the Board filed a Petition for Discipline against the Respondent.
2. On April 3, 2008, the Respondent filed an Answer.
3. By Order of the Hearing Panel on February 17, 2009, the matter was set for final hearing on April 17, 2009.
4. On April 16, 2009, one day prior to the hearing, the Respondent moved the Hearing Panel for a continuance.
5. The Hearing Panel granted that continuance by Order of May 14, 2009, and stated that "the next setting will be final absent extraordinary circumstances supported by affidavit, and, if medical in nature, documentation from a treating physician."

6. On October 13, 2009, the Respondent provided the Panel, via email, with a Motion to Continue with an attached Affidavit and Exhibits.

7. In response to that emailed Motion, the Hearing Panel Chair notified all parties of their duty to appear at the October 14, 2009 hearing, at which time the Motion for Continuance would be heard.

8. The Respondent failed to appear at the October 14, 2009 hearing, and the Motion for Continuance was denied for the reasons stated by the Panel on the record.

9. The Petition for Discipline contains six (6) complaints against the Respondent alleging violations of Rules of Professional Conduct 1.3, 1.4, 1.5, 1.16, 3.2, 8.1 and 8.4.

10. The Petition for Discipline was entered into evidence as Exhibit 2.

11. On March 28, 2007, the Respondent sent a letter to the Board detailing the number of times he changed office locations between January 13, 2006 and March 28, 2007.

12. The Respondent's March 28, 2007 letter was entered into evidence as Exhibit 1.

13. During that period of time the Respondent relocated his office three times.

14. Further, between the March 28, 2007 and the time of the hearing, the Respondent had vacated his most recent office location.

15. The Respondent has not provided another physical address to the Board or his clients.

16. Ms. Banks, Ms. Kindred and Dr. Wilson testified that Respondent failed to notify them of his office relocations during the time he represented them.

17. Ms. Banks, Ms. Kindred and Dr. Wilson each testified as to the difficulties in contacting and communicating with the Respondent.

18. With regard to the complaint filed by Patricia D. Rigg and designated as File No.

29881c-9-SG, the Complainant retained the Respondent to represent her and her husband in a legal malpractice case styled *Rigg v. Glassman*, Weakley County Circuit Court, No. 3965.

19. A copy of the Rigg complaint was entered into evidence as Exhibit A to the Petition for Discipline (Exhibit 2).

20. The certified record of that proceeding, which was entered into evidence as Exhibit 3, shows that the Respondent failed to participate in the November 2, 2006 status conference and failed to file a motion to continue that conference. These failures led to the matter being dismissed.

21. The Complainants eventually engaged a new lawyer, and the Order of Dismissal was set aside based upon “mistake, inadvertence, surprise or excusable neglect, or, alternatively, fraud of [the Complainants] previous attorney William T. Winchester.”

22. With regard to the complaint filed by Barbara Davis and designated File No. 30054-9-SG, the Complainant retained the Respondent to represent her in her divorce.

23. Specifically, the Respondent was retained to bring a contempt proceeding against the Complainant’s husband and her husband’s employer.

24. A copy of the Davis complaint was entered into evidence as Exhibit D to the Petition for Discipline (Exhibit 2).

25. Ms. Davis appeared and testified at the hearing of this matter.

26. A certified copy of the court’s record in the contempt proceeding was entered into evidence as Exhibit 6.

27. The Respondent filed the Petition but failed to bring the matter to a hearing.

28. The Respondent then voluntarily dismissed the employer from the Petition for Contempt without first obtaining his client’s consent.

29. By the time the Respondent finally brought the Petition for Contempt against the Complainant's husband to a hearing, the husband was no longer employed and the Complainant's recovery was reduced.

30. The Respondent neglected the Complainant's case, failed to communicate with the Complainant and failed to timely provide Complainant's new counsel with the Complainant's file.

31. With regard to the complaint filed by Dr. Nathaniel Wilson and designated as File No. 30055-9-SG, the Respondent represented the Complainant in his divorce.

32. A copy of the Wilson complaint was entered into evidence as Exhibit E to the Petition for Discipline (Exhibit 2).

33. Dr. Wilson appeared and testified at the Hearing of this matter.

34. The Respondent failed to respond to the Complainant's calls and requests for information regarding his case and failed to timely provide Complainant's new counsel with the Complainant's file, even after being ordered to so by the Court.

35. The Complainant terminated the Respondent by email on March 12, 2007 and demanded his file.

36. Copies of the emails sent to the Respondent, including hand-written notes by the Complainant, were entered into evidence as Exhibit 8.

37. The Respondent failed to provide the Complainant with his file or to adequately respond to the Complainant's efforts to simply pick up the file.

38. On April 20, 2007, the Court ordered the Respondent to immediately turn over the Complainant's file.

39. A copy of that Order is attached to the Petition for Discipline (Exhibit 2) as

Exhibit F.

40. The Respondent failed to comply with this Order, not surrendering the file until June of 2007.

41. With regard to the complaint filed by Mary Kindred and designated as File No. 30195-9-SG, the Complainant retained the Respondent to represent her in a medical malpractice case and a breach of contract case against FedEx Express Trade Networks.

42. A copy of the Kindred complaint was entered into evidence as Exhibit G to the Petition for Discipline (Exhibit 2).

43. Respondent failed to obtain service of process of the defendant in Ms. Kindred's medical malpractice lawsuit. Respondent also failed to obtain service of process in a General Sessions lawsuit filed for Ms. Kindred against FedEx Express Trade Networks.

44. The Complainant attempted on numerous occasions to contact the Respondent in order to recover her file and documents; including medical records and x-rays. However, the Respondent has abandoned his office location in Memphis and the Complainant cannot locate him.

45. The Respondent neglected the Complainant's case, failed to communicate with the Complainant and failed to respond to her inquiries.

46. The Hearing Panel also heard the testimony of Attorney Jason Whitworth, who occupies an office in the same building as the Respondent's most recent office at 202 South Cooper Street in Memphis.

47. Mr. Whitworth stated that he had not seen the Respondent in his office since August of 2008, and that it appeared that the Respondent had, apparently overnight or on a weekend, removed all his files from that office.

48. Mr. Whitworth further testified that more than eight (8) clients of the Respondent have inquired as to the whereabouts of the Respondent, of their file, and into the status of their cases. Mr. Whitworth attempted to assist some of these clients by contacting Mr. Winchester by phone to determine if he could be substituted as counsel. Mr. Winchester did not cooperate in accomplishing the substitution.

49. With regard to the complaint filed by Mousalla Sherman and designated as File No. 30438c-9-SG, the Complainant retained the Respondent to represent her in a child support case on October 22, 2006 and paid the Respondent \$600.00.

50. A copy of the Sherman complainant was entered into evidence as Exhibit H to the Petition for Discipline (Exhibit 2).

51. The Respondent was retained to file a Motion for Ms. Sherman, and he failed to file the Motion.

52. Due to this failure the Respondent agreed to refund Ms. Sherman the legal fee she paid him.

53. A copy of the Respondent's letter to the Board acknowledging this agreement and documenting the refund was entered into evidence as Exhibit 9.

54. The Respondent failed to communicate with Ms. Sherman, leading to the complaint in this matter.

55. With regard to the complaint filed by Maggie L. Banks and designated as File No. 30584c-9-SG, the Respondent represented the Complainant in a medical malpractice case styled *Banks v. Sanford, et al*, in the Circuit Court for Shelby County.

56. A copy of the Banks complainant was entered into evidence as Exhibit I to the Petition for Discipline (Exhibit 2).

57. The two defendants filed Motions for Summary Judgment, which were denied in order to allow the Complainant thirty days to obtain an expert witness.

58. A copy of that order was entered into evidence as Exhibit 12.

59. The Respondent provided no documentation reflecting efforts on his part to locate an expert witness.

60. The defendants' Motions for Summary Judgment were eventually granted.

61. A copy of that order was entered into evidence as Exhibit 13.

62. The Respondent failed to adequately communicate with the Complainant after oral argument at the Court of Appeals, failed to respond to her inquiries and failed to provide her with her file.

CONCLUSIONS OF LAW

63. The Respondent has exhibited a pattern of failing to diligently represent his clients and failing to communicate with his clients.

64. Rule 1.3 of the Tennessee Rules of Professional Conduct requires that a lawyer "act with reasonable diligence and promptness when representing a client."

65. The Respondent's failures in the Rigg, Davis, Wilson, Kindred, Sherman and Banks cases, as set forth above, constitute violations of his duty to provide his clients with diligent representation.

66. Rule 1.4 of the Tennessee Rules of Professional Conduct require that a lawyer "keep a client reasonably informed about the status of a matter and comply with reasonable requests for information within a reasonable time" and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

67. The Respondent failed this duty in each of the six cases in the Petition.

68. Complainants Wilson, Kindred and Banks testified as to their frustration with reaching the Respondent and obtaining information regarding the status of their individual cases.

69. Wilson, Kindred and Banks each remained confused and uninformed throughout the Respondent's representation as to the status and direction of their cases.

70. The Respondent violated his ethical duty to keep his clients reasonably informed.

71. Tennessee Rule of Professional Conduct 1.16 requires an attorney to surrender papers, property, work product and any unearned fee to the client upon termination of representation.

72. Rule 1.16 also requires that the attorney give reasonable notice of the termination of representation.

73. The Respondent failed to provide Dr. Wilson his file in a timely manner and continues to withhold files from Ms. Banks and Ms. Kindred.

74. These failures constitute a violation of the Respondent's duties to his clients when representation is terminated.

75. Rule of Professional Conduct Rule 3.2 requires a lawyer to "make reasonable efforts to expedite litigation."

76. Respondent violated RPC 3.2 when he failed to participate in crucial portions of the Rigg lawsuit, failed to properly serve and then set a hearing in the Davis complaint, failed to timely produce Dr. Wilson's file, failed to obtain service or take any action to move Ms. Kindred's two lawsuits forward and by failing to file the appropriate motion in the Sherman matter.

77. Respondent's actions violated section 8.4(a). RPC 8.4(a) provides that it is

professional misconduct of 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;

...

(d) engage in conduct that is prejudicial to the administration of justice;

...

78. Respondent's actions constitute misconduct in violation of RPC 8.4(a).

79. Respondent's failures in diligently representing his clients and in improperly terminating his representation of them have been prejudicial to the administration of justice.

80. The Supreme Court has adopted the American Bar Association Center for Professional Responsibility Standards for Imposing Lawyer Sanctions (ABA Standards).

81. Section 4.42 of the ABA Standards states:

Suspension is generally appropriate:

(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.

82. Section 9.2 of the ABA Standards sets forth several factors that may act to increase the level of discipline imposed.

83. Three aggravating factors apply in this case:

Respondent's conduct evidences a pattern of misconduct;

There are multiple offenses;

Respondent has refused to acknowledge the wrongful nature of his conduct.

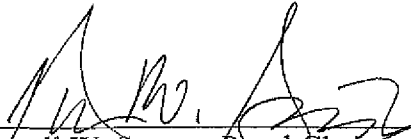
84. There are no mitigating factors.

85. Based on these Findings of Fact and Conclusions of Law, the Panel finds that Respondent should be suspended from the practice of law for a period of two (2) years and that

he should be required to pay the expenses of these disciplinary proceedings.

IT IS SO ORDERED.

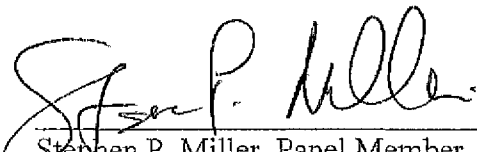
ENTERED this 2nd day of November, 2009.



Russell W. Savory, Panel Chair



Kimela W. Cox, Panel Member



Stephen P. Miller, Panel Member