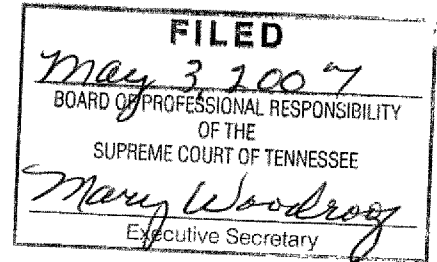


IN THE DISCIPLINARY DISTRICT
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: DAVID E. WOODY
(an Attorney Licensed and Admitted
to the Practice of Law in Tennessee)

Docket No. 2006-1618-1-TH

Respondent.

JUDGMENT OF THE HEARING PANEL

This cause came to be heard by the hearing panel of the Board of Professional Responsibility of the Supreme Court of Tennessee on April 10, 2007 at approximately 9:00 a.m. by teleconference call. Appearing on this call were panel members Regina Shepherd, Lisa White, and Clifton Corker, Chairman. Representing the Board of Professional Responsibility was Dr. William "Trip" Hunt. Prior notice had been delivered via Federal Express to Respondent David Woody, advising him that this call would occur and its time. The request, attached as *Exhibit A*, was delivered to him via Federal Express priority delivery and requested that he participate in the conference call. The Board attempted to contact him this morning at the number that he had provided the Board as a method to contact him, and the Board was unsuccessful. As a consequence, the hearing continued without the presence of the Respondent as the panel believed that he had received due notice and has chosen not to participate in this hearing.

This cause was then heard pursuant to Rule 9 of the Rules of the Tennessee Supreme Court, and as a result of this hearing, the hearing panel makes the following findings of fact and submits its judgment in this cause as follows:

I. STATEMENT OF THE CASE

1. A petition for discipline was filed on July 14, 2006 charging the Respondent with a violation of disciplinary rules in File Number 28222-1-TH. Respondent was duly served with the petition but has failed to file an answer.
2. Rule 9, Section 8.2, requires an attorney to file an answer to the petition within 20 days unless the time is extended by the hearing panel.
3. On January 12, 2007, a pretrial conference was held in which the hearing panel extended the time for the Respondent to file an answer, although he had not requested it, to no later than February 19, 2007 or “face being placed in default.”
4. No answer was filed in response to the order of the hearing panel.
5. On March 14, 2007, the Board of Professional Responsibility filed a motion for default judgment against the Respondent and served the Respondent by certified mail on the same date.
6. After appropriate notice to the parties, this matter was set for a hearing on April 10, 2007 at 9:00 a.m. by telephone conference.
7. At that hearing, the Board of Professional Responsibility requested the hearing panel to rule on the Motion for Default Judgment, and after reviewing the record as a whole, the hearing panel unanimously agreed that the Respondent is in default and so finds a default judgment against him shall be entered deeming the allegations in the Petition for Discipline to be admitted.

A. File Number 28222-1-TH, Brandy Shuttle Matter

8. The facts in this Complaint arise from the Respondent's treatment of a client who retained the Respondent to file a Chapter 7 Bankruptcy on their behalf.

9. On January 9, 2004, Ms. Brandy Shuttle and her husband, Chris Shuttle, retained the Respondent to file Chapter 7 Bankruptcy.

10. Respondent quoted his fee as a \$400.00 attorney fee and \$200.00 court costs.

11. Respondent agreed to accept \$300.00 as a retainer, which the Shuttles paid.

12. Respondent failed to place the portion of the fee that was paid for court costs in a separate trust account.

13. Respondent agreed to file the petition soon thereafter the meeting referred to in paragraph 9.

14. The Shuttles agreed to pay the remaining monies when they were notified of a court date.

15. Ms. Shuttle contacted Respondent every month after the meeting referred to in paragraph 9 to ascertain the status of their petition.

16. During each of the contacts referred to in paragraph 15, Respondent admitted he had not filed the petition yet.

17. In February 2005, the wages of Ms. Shuttle's husband Chris were garnished.

18. Upon notice of the garnishment, Ms. Shuttle called Respondent.

19. During the telephone call referred to in paragraph 18, Respondent informed them that he had not filed the petition for bankruptcy.
20. During the telephone call referred to in paragraph 18, Respondent told Ms. Shuttle he could not file the petition for another month or two.
21. Chris and Brandy Shuttle retained a new attorney, Charles Moffatt.
22. Chris and Brandy Shuttle had to pay Mr. Moffatt his retainer.
23. Since March 2005, Brandy Shuttle contacted Respondent approximately twice a week to obtain a refund of their retainer.
24. On October 6, 2005, Disciplinary Counsel mailed to Respondent a letter asking Respondent to make a refund or to explain why he is not doing so. *See Exhibit B to Petition for Discipline.*
25. Respondent responded on November 15, 2005 asking whether he should make a refund to either Chris Shuttle or Brandy Shuttle. *See Exhibit C to Petition for Discipline.*
26. Disciplinary Counsel responded on January 6, 2006 with a suggestion that Respondent refund the fee to Mr. Shuttle with 30 day notice to Ms. Shuttle or submit the matter to the Kingsport Fee Dispute Committee. Disciplinary Counsel requested a copy of any letter sent to Ms. Shuttle. *See Exhibit D to Petition for Discipline.*
27. Respondent has failed to refund the fee.
28. Respondent has previously received a public censure. *See Exhibit E attached to Petition for Discipline.*
29. The following circumstances should be considered as aggravating factors in regards to any discipline imposed in this matter: prior disciplinary offenses, refusal to

acknowledge wrongful nature of conduct, substantial experience in the practice of law, and indifference to making restitution. *ABA Standards of Imposing Lawyer Sanctions* 9.2.

II. CONCLUSIONS OF LAW

30. The Board contends that the Respondent has violated the following:
- a. Rule 1.1 - requiring the lawyer to provide competent representation to the client.
 - b. Rule 1.3 - a lawyer shall act with reasonable diligence and promptness in representing the client.
 - c. Rule 1.4 - a lawyer shall keep a client reasonably informed about the status of a matter and comply with reasonable requests for information and explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
 - d. Rule 1.5 – a lawyer’s fee and charges for expenses shall be reasonable.
 - e. Rule 1.15 – a lawyer shall hold property and funds of clients or third persons that are in a lawyer’s possession in connection with a representation separate from the lawyer’s own property and funds.
 - f. Rule 1.16 – a lawyer shall decline and terminate representation under the provisions of that Rule.
 - g. Rule 8.4 – a lawyer shall not engage in professional misconduct including violating the Rules of Professional Conduct, committing any criminal acts, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, or engaging in conduct that is prejudicial to the administration of justice, et seq.

31. The Respondent has failed to file an answer to the Petition for Discipline.

He is, therefore, in default and the factual allegations contained therein are deemed admitted.

32. The Board examined the handwritten letter that was submitted to the Board with regard to the specific allegations in the petition.

33. It appears that on June 6, 2005, the Respondent advised the Board that he has offered to refund the money but has been unable to do so.

34. On October 6, 2005, the Board requested that the Respondent refund Ms. Shuttle \$300.00 as it had not been done at that point in time.

35. On November 15, 2005, the Respondent again advised the Board that he intended to refund the money but did not know to whom he should refund the money and asked the Board for clarification. *See Exhibit C to Petition for Discipline.*

36. On January 4, 2006, the Board provided a way to handle the concerns that the Respondent expressed in his previous letter. *See Exhibit D to Petition for Discipline.*

37. Since January 4, 2006, the Respondent has still not refunded their money.

38. The hearing panel believes that the Respondent has violated Rule 1.1, 1.3, 1.4, 1.5, 1.15, 1.16 and 8.4 as outlined herein.

39. Rule 1.1 requires a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. On January 9, 2004, the Respondent was retained by Ms. Brandy Shuttle and her husband, Chris Shuttle, to file a Chapter 7 Bankruptcy on their behalf. On that date, he received a \$300.00 retainer, part of which was to be for court costs. He failed to take any steps to represent the client or make any efforts to prepare a Chapter 7 petition for which he had been paid. That constitutes a violation of Rule 1.1.

40. Rule 1.3 requires a lawyer to reasonable diligence and promptness in representing a client. The Respondent, although receiving client funds, failed to take any action in this case whatsoever. The case sat for over a year on the Respondent's desk with no action being taken. After the client's wages were garnished, the clients went to another attorney and retained new counsel for their representation to file bankruptcy. Such conduct, obviously, shows a lack of reasonable diligence and promptness in representing the client.

41. Rule 1.4(a) requires a lawyer to keep a client reasonably informed about the status of a matter and comply with reasonable requests for information within a reasonable time. It appears that very little communication occurred between the client and the Respondent based on the allegations that were deemed admitted in the Petition for Discipline. Instead, the matter appears to have languished in the Respondent's office for over a year with no action being taken and no explanation given to the Board as to why that matter received no attention and no communication to the client regarding the status.¹

42. Rule 1.5 requires that a lawyer's fee and charges for expenses shall be reasonable. On its face, it appears that the amount of the fee that the Respondent was charging for preparing and filing a bankruptcy petition was reasonable had those services been provided. However, the Respondent concedes that he received a fee but took no action to represent the client. Therefore, the fee could not be considered reasonable because the Respondent did not earn it and took no action to earn the fee that he received

¹ On this issue, it would have been helpful to have the Respondent's view of the facts. However, he has chosen not to respond.

from the client. Therefore, his fees for what he did are unreasonable and constitute a violation of Rule 1.5.

43. Rule 1.15 requires that a lawyer hold property and funds of clients that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds. It appears from the Petition that part of the \$300.00 fee was court costs to file the Chapter 7 Bankruptcy. The Respondent did not deposit that money in a separate account from his own funds. Instead, it appears that he simply used those funds for his own private use. Therefore, the hearing panel finds that he is violation of this rule as well.

44. Rule 1.16 requires that a lawyer not represent a client under specific circumstances. The Respondent should have advised his clients that he was not able to represent them and terminated any representation of them and given them a reasonable warning that he was not going to file a Chapter 7 Bankruptcy. Instead, Mr. Shuttle had his wages garnished when he believed at the time that he was represented by the Respondent. Therefore, the Respondent is in violation of Rule 1.16.

45. Finally, Rule 8.4 prohibits a lawyer to engage in professional misconduct and includes engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. The hearing panel finds that there is a level of dishonesty, deceit, or misrepresentation in the conduct as outlined in the Petition for Discipline engaged in by the Respondent. He misrepresented to his clients that he was going to file a Chapter 7 Bankruptcy, and he failed to do so. He also represented to the Board that he intended to refund the fee and court costs that he had received from the clients, and he has failed to do so.

III. FACT FINDING OF AGGRAVATING AND MITIGATING CIRCUMSTANCES

46. The hearing panel finds that the Respondent's substantial experience in the practice of law and the victims in this case are aggravating circumstances.

47. The hearing panel finds that the Respondent's indifference to making restitution evidenced by the fact that he did not respond to the letters by the Board of Professional Responsibility to refund the court costs and attorney's fee that he received from the clients after given an opportunity to do so, and in fact, after telling the Board by way of a handwritten letter that he was going to do it but that he did not know to whom to send the money to, is an aggravating circumstance.

48. The hearing panel finds that the Respondent's failure to respond to the Petition and to answer the Petition, to participate in any of these proceedings, and to permit a default judgment to be entered against him evinces a disdain for the process, which is an aggravating circumstance.

49. The hearing panel finds that prior discipline by a public censure of the Respondent is an aggravating circumstance as demonstrated by *Exhibit E* in the Petition for Discipline.

50. The hearing panel finds that on a previous occasion the Respondent practiced law in the Eastern District of Tennessee Federal Court but was not admitted into that court to practice law is an aggravating circumstance.

51. The hearing panel finds that on February 16, 2000 the Respondent's law license was suspended for noncompliance with CLE is an aggravating circumstance.

52. The hearing panel finds that on September 24, 2003 the Respondent received another suspension for noncompliance of CLE. This is also an aggravating circumstance.

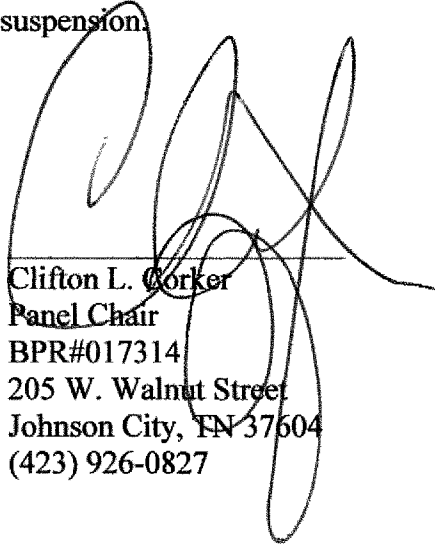
53. The hearing panel finds that the fact that the Respondent continued to practice law after his law license was suspended for noncompliance of CLE since September 24, 2003 is an aggravating circumstance.

IV. JUDGMENT

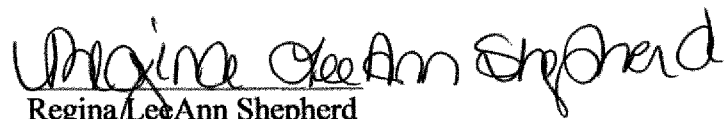
It is, therefore, by the hearing panel as follows:

1. That the Respondent, David E. Woody, be SUSPENDED from the the practice of law for a period of one (1) year from the date of this Order;
2. Further, that the Respondent be SUSPENDED for an indefinite consecutive period of time ending upon his compliance with the following conditions:
 - (a) That the Respondent make restitution to Chris Shuttle in the amount of \$300.00 and submit proof of such complete restitution by affidavit, receipt, or other satisfactory proof;
 - (b) That he shall properly petition the Supreme Court of Tennessee for his license to be reinstated after serving this suspension.

This the 30th day of April, 2007.



Clifton L. Corker
Panel Chair
BPR#017314
205 W. Walnut Street
Johnson City, TN 37604
(423) 926-0827



Regina Lee Ann Shepherd

Panel Member

BPR#019867

116 S. Main Street

Elizabethton, TN 37643

(423) 542-0081



Lisa Crockett White

Panel Member

BPR#017319

340 Edgemont Avenue, Suite 500

Bristol, TN 37620

(423) 989-7228

c:\office files\misc\woody, david\judgment 4-10-07