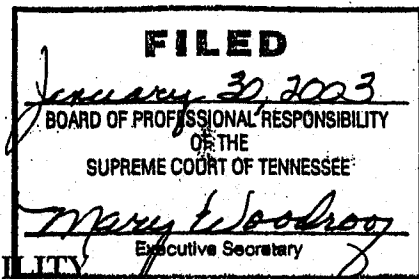


IN DISCIPLINARY DISTRICT IX  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE



IN RE: JOHN H. PARKER, BOPR #10326,  
Respondent. An Attorney Licensed  
to Practice Law in Tennessee  
(Shelby County)

FILE NO. 24997-9-JJ

CL-22631

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PUBLIC CENSURE

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A complaint alleging ethical misconduct was filed against the respondent by William S. Rhea, Esq., of Somerville, TN. The Board of Professional Responsibility considered the matter under Tennessee Supreme court Rule 9 at its December, 2002 meeting and determined that issuance of a Public Censure was appropriate.

Respondent drafted several estate planning documents and an irrevocable Family Trust Agreement for Thomas H. Fowler, grantor, in 1999. Within this Thomas H. Fowler Family Trust executed by Mr. Fowler in 1999, respondent named himself as trustee and could not be removed as trustee since the trust could not produce income given that all of its assets were in the form of life insurance. Respondent could not be involuntarily removed as trustee unless court action were commenced by the beneficiaries, and relief were obtained from the court.

While the trust allowed respondent to resign as trustee, and although the beneficiaries had demanded such resignation since the fall of 2001, respondent refused to do so until early December of 2002. Moreover, between 2000 and 2001, respondent encroached upon the corpus of the trust and paid himself the sum of \$14,006.36, which represented the amount of attorney fees unpaid by Mr. Fowler, and which was disputed by Mr. Fowler. There was no written employment contract between respondent and

the grantor, and Mr. Fowler disputes that he authorized respondent to prepare all of the estate planning documents which respondent prepared. Further, there is no provision within the trust which grants respondent the authority to encroach upon the corpus to pay himself disputed attorney fees. There was no consent by Mr. Fowler or by any beneficiaries to the encroachment, and respondent's reliance upon the general powers of trustees described in Title 50, T.C.A., in justifying his actions, is misplaced.

The Board concludes that respondent misappropriated entrusted funds of his client, and was exceedingly dilatory in resigning as trustee as requested by his client and the beneficiaries. We find somewhat mitigating respondent's belated restoration of the \$14,006.36 to the corpus of the trust in early December of 2002, and his decision to resign as trustee. Absent such mitigation, respondent's actions could warrant suspension of his law license.

Based thereon, respondent John. H. Parker has violated DR 1-102(A)(1)(4)(5)(6); DR 7-101(A)(1)(4)(c); DR 7-102 (A)(8); DR 9-102(A)(2) and Canon 9 of the Code of Professional Responsibility. Accordingly, he is hereby **PUBLICLY CENSURED** and the captioned file is hereby closed.

FOR THE BOARD:



Charles E. Carpenter, Chairman  
Board of Professional Responsibility  
of the Supreme Court of Tennessee

DATED:

