

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

FILED

2013 MAY 30 PM 3:01

BOARD OF PROFESSIONAL
RESPONSIBILITY

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EXEC. SEC.

**IN RE: WILLIAM ALAN ALDER,
Respondent, BPR # 23214,
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Davidson County)**

DOCKET No. 2013-2183-5-KB

JUDGMENT OF THE HEARING PANEL

This matter came on for hearing before a duly appointed Hearing Panel on May 28, 2013, upon a Petition for Discipline filed by the Board pursuant to Tennessee Supreme Court Rule 9. Present were Andrew B. Campbell, Panel Chair; Janelle A. Simmons, Panel Member; C. K. McLemore, Panel Member; and William C. Moody, Disciplinary Counsel. Respondent, William Alan Alder, was properly served with the Petition for Discipline and failed to file any responsive pleading or appear at the final hearing. Upon statements of counsel, evidence presented, and upon the entire record in this cause, the Panel makes the following findings and judgment.

STATEMENT OF THE CASE

This is a disciplinary proceeding against the Respondent, William Alan Alder, an attorney licensed to practice law in Tennessee. The Respondent was licensed to practice in 2004. His current home address is registered with the Board as 211 Clarendon Circle Franklin, Tennessee, 37069-1839. A Petition for Discipline, Docket No. 2013-2183-5-KB, was filed on January 31, 2013. The Petition was sent via certified mail to Respondent's address of 211 Clarendon Circle Franklin, Tennessee, 37069-1839, and was delivered to Respondent on

February 27, 2013. The green card was signed by the Respondent and returned to the Board.

No answer to the Petition for Discipline has been filed with the Executive Secretary of the Board and no answer has been served on Disciplinary Counsel.

On February 26, 2013, the Board filed a Motion for Default Judgment and That Allegations Contained in the Petition for Discipline Be Deemed Admitted. On March 14, 2013, the Panel entered an Order of Default. As a result of the Order of Default, the allegations contained within the Petition for Discipline are deemed admitted pursuant to Tennessee Supreme Court Rule 9, Section 8.2.

FINDINGS OF FACT

The allegations contained in the Petition for Discipline are deemed admitted and this Panel finds that the following facts have been established.

FILE NO. 35122-5-BG – Complainant – Justin Clemmons

On March 27, 2011, Mr. Alder was retained to represent Mr. Justin Clemmons in an employment dispute with his former employer. Mr. Clemmons paid Mr. Alder a \$500.00 cost retainer. Mr. Alder agreed to try and resolve Mr. Clemmons' dispute through mediation but no mediation was ever scheduled. On May 19, 2011, opposing counsel filed a Motion to Dismiss as to one of the defendants in the case but Mr. Alder failed to appear for a hearing on the Motion to Dismiss and the Motion was granted by default. On August 31, 2011, Mr. Alder was suspended administratively for failing to comply with his annual CLE obligations. Mr. Clemmons made several attempts to communicate with Mr. Alder by both telephone and e-mail but Mr. Alder failed to respond. On or about March 17, 2012, Mr. Clemmons discovered that Mr. Alder was suspended administratively and terminated his representation. Mr. Alder promised to return Mr. Clemmons' \$500.00 cost retainer to him but has failed to do so. Mr. Alder failed to withdraw properly from his representation of Mr. Clemmons.

FILE NO. 35489-5-BG – Complainant – John Van der Harst

On December 31, 2006, Mr. John Van der Harst was injured. Mr. Van der Harst initially was represented in personal injury litigation by attorney Mary Parker, but due to health issues, she referred Mr. Van der Harst to Mr. Alder in 2009. During the first three months of 2009, Mr. Alder engaged in discovery and attended Mr. Van der Harst's deposition. After that time, Mr. Alder failed to communicate adequately with Mr. Van der Harst. In May 2011, Mr. Van der Harst sent Mr. Alder a letter of termination due to the inadequacy of Mr. Alder's representation. Mr. Alder led Mr. Van der Harst to believe that his case was still active but on March 22, 2012, Mr. Van der Harst discovered that on August 26, 2009, Mr. Alder, without Mr. Van der Harst's knowledge or consent, had filed a notice of voluntary dismissal and that the case had been dismissed on September 10, 2009.

Prior Disciplinary Offense

On December 28, 2012, Mr. Alder's law license was suspended by the Tennessee Supreme Court for a period of one (1) year for violations of R.P.C. 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property), 8.1(b) (failure to respond to disciplinary authority), and 8.4(a) and (d) (misconduct). Mr. Alder was also ordered to pay restitution to a former client and undergo an assessment with T.L.A.P. as conditions precedent to reinstatement. See Order of Enforcement (filed December 28, 2012), Hearing Exhibit 1.

CONCLUSIONS OF LAW

1. The Respondent has failed to conduct himself in conformity with the Rules of Professional Conduct and is guilty of acts and omissions in violation of the authorities cited within the Petition for Discipline.

2. As noted above, Respondent has failed to answer the Board's Petition for Discipline. The Hearing Panel already has entered an Order of Default and, therefore, pursuant

to Tenn. S. Ct. R. 9, Section 8.2 the charges are deemed admitted.

3. A preponderance of the evidence demonstrates that the acts and omissions by the Respondent constitute ethical misconduct in violation of Rules of Professional Conduct 1.2, Scope of Representation and Allocation of Authority between Client and Lawyer; 1.3, Diligence; 1.4, Communication; 1.15, Safekeeping Property and Funds; 1.16(d), Declining and Terminating Representation; 3.2, Expediting Litigation; 8.1(b), Bar Admission and Disciplinary Matters; and 8.4(a), (c) and (d), Misconduct.

4. The main offenses in these matters involve neglect of client matters and deliberate misrepresentations to one client, Mr. Van der Harst. In both cases, the Respondent failed to act with appropriate diligence in the representation of these clients.

5. The Respondent failed to fulfill reasonable client expectations for communication and timely action on their cases.

6. The Respondent's neglect caused actual and potential injury to his clients.

7. When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, ("ABA Standards") pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court.

8. The Panel concludes that suspension is the appropriate discipline in this matter pursuant to the following ABA Standards:

4.4 Lack of Diligence

4.42 Suspension is generally appropriate when:

- (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.

4.6 Lack of Candor

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

7.0 Violations of Duties Owed to the Profession

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation to the duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system.

9. Pursuant to ABA Standard 9.22, a number of aggravating factors are present in this case and are listed below.

- a) prior disciplinary offenses;
- b) dishonest or selfish motive
- c) a pattern of misconduct;
- d) multiple offenses.
- E) substantial experience in the practice of law

CONCLUSION

Based on the above mentioned precedent and existing aggravating factors, it is the judgment of this Panel that the Respondent should be suspended from the practice of law for two (2) years, to run consecutively with his December 28, 2012 suspension.


Pursuant to Tenn. Sup. Ct. R. 9, § 4.7, Mr. Alder shall be required to make restitution to Justin Clemmons in the amount of \$500. Payment of restitution is a condition precedent to reinstatement. In the event restitution is made by the Tennessee Lawyer's Fund for Client Protection ("TLFCP"), Mr. Alder will be responsible for reimbursement to the TLFCP of the same amount.

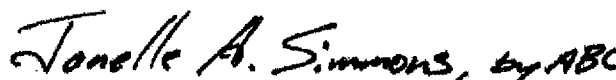
Mr. Alder shall contact the Tennessee Lawyers Assistance Program ("TLAP") for evaluation. If TLAP determines that a monitoring agreement is appropriate, Mr. Alder shall


comply with the terms and conditions of the TLAP monitoring agreement.

Mr. Alder shall comply in all aspects with Tenn. Sup. Ct. R. 9 §§ 18 and 19 regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

Entered this 30th day of May, 2013.


Andrew B. Campbell, Esq.


Janelle Anne Simmons, Esq. *by ABC w/ perm.*


C.K. McLemore, Esq. *by ABC w/ perm.*

NOTICE TO RESPONDENT

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 by filing a petition for writ of certiorari, which shall be made under oath or affirmation and which shall state that it is the first application for the writ.