

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

**FILED**  
2013 OCT -9 PM 1:35  
BOARD OF PROFESSIONAL  
RESPONSIBILITY  
*Rew* EXEC. SEC.

**IN RE: William Alan Alder,  
BPR #23214, Respondent,  
An Attorney Licensed to  
Practice Law in Tennessee  
(Davidson County)**

**DOCKET NO. 2013-2231-5-WM**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

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This matter came on for hearing before a duly appointed Hearing Panel on September 30, 2013, upon a Petition for Discipline filed by the Board pursuant to Tennessee Supreme Court Rule 9. Present were John Franklin Floyd, Panel Chair; Samuel David Lipshie, Panel Member; Daniel Louis Clayton, Panel Member; and William C. Moody, Disciplinary Counsel. Complainants, Adam and Leslie Ward, were also present at the hearing. 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. 2013-2231-5-WM, was filed on June 25, 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 June 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 July 18, 2013, the Board filed a Motion for Default Judgment and That Allegations Contained in the Petition for Discipline Be Deemed Admitted. On August 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.

In November, 2008, Mr. Alder was retained by Adam and Leslie Ward to represent them as a result of personal injuries sustained by Ms. Ward in an automobile accident on December 10, 2007. Mr. Alder filed suit in Dickson County Circuit Court on December 9, 2008. Summonses were issued to the two defendants but Mr. Alder made no attempt to serve the defendants with these summonses. Summonses were re-issued to the defendants on June 16, 2009. Mr. Alder served one defendant but failed to return the summons to the clerk. He did not serve the other defendant. The defendants moved for summary judgment on the grounds that Mr. Alder had intentionally delayed prompt service of the summonses making the initial filing of the complaint ineffective to toll the statute of limitations. On November 6, 2009, the Circuit Court entered summary judgment dismissing the case finding that it was barred by the one-year statute of limitations. The record reflects and it is uncontroverted that the defendants in the

Dickson County suit did not contest liability to the Wards, and the Wards failed to obtain a judgment for personal injury and/or loss of consortium, solely because of Mr. Alder's failure(s) to timely serve the summonses on the defendants in that lawsuit.

Mr. Alder did not advise his clients that their case had been dismissed. Rather, for approximately two years, Mr. Alder misled the Wards to believe that their case was progressing normally. At one point, he advised them their case had been set for trial in February, 2011. He then told them their case had been settled for \$24,600 and prepared a fictitious release, as if it had been prepared by the defendants, and had his clients execute the release. He continued telling his clients that he was engaging in efforts to collect the settlement. During this time when he was misleading his clients, he was also making it very difficult for them to communicate with him by either not returning their telephone calls or returning them after a lengthy delay. In a letter to the Board sent March 14, 2013, Mr. Alder admitted that the Wards' complaints against him were true.

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 RPC 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 suspended for two (2) years on August 7, 2013 for violations of RPC 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.

## 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 RPC 1.1, Competence; 1.3, Diligence; 1.4, Communication; 1.16, Declining or Terminating Representation; and 8.4(a) and (c), Misconduct.

4. Mr. Alder violated a duty owed to his clients in violation of RPC 1.1 (competence) and 1.3 (diligence) by withholding service of process on the defendants resulting in the dismissal of their lawsuit with prejudice.

5. Mr. Alder violated a duty owed to his clients in violation of RPC 1.4 (communication) in a significant and ongoing manner by avoiding his clients' efforts to communicate with him. This willful lack of communication with his clients is the continuation of a pattern which led to his suspension for one (1) year in 2012 and for two (2) years in 2013 in other disciplinary cases involving multiple clients.

6. Mr. Alder violated a duty owed to his clients and the profession in violation of RPC 1.16 (declining or terminating representation) by failing to notify the Wards of his suspension for failing to comply with continuing legal education requirements and withdrawing from their representation.

7. Mr. Alder violated a duty owed to his clients in violation of RPC 8.4(c) (misconduct) by engaging in acts of dishonesty, fraud, deceit and misrepresentation leading them to believe their lawsuit was progressing normally rather than advising them it had been dismissed. Mr. Alder's misconduct in this regard, even without the other disciplinary violations and aggravating factors discussed herein, may well have alone provided a valid basis for the Hearing Panel's conclusion as to the disciplinary sanction imposed below.

8. The Respondent's misconduct caused actual injury to his clients.

9. 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.

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

4.41 Lack of Diligence

Disbarment is generally appropriate when:

- (b) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client...

4.51 Lack of Competence

Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.

5.11 Failure to Maintain Personal Integrity

Disbarment is generally appropriate when:

- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that

seriously adversely reflects on the lawyer's fitness to practice...

7.1 Violations of Other Duties Owed As A Professional

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

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

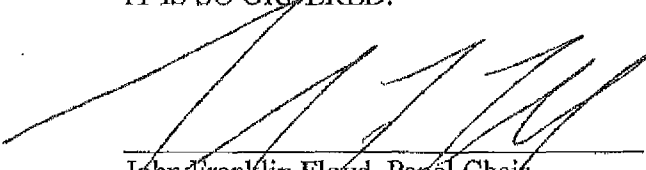
- a) prior disciplinary offenses;
- b) dishonest or selfish motive;
- c) a pattern of misconduct;
- d) multiple offenses;
- e) substantial experience in the practice of law; and
- f) indifference to making restitution.

10. There is no proof of mitigating factors.

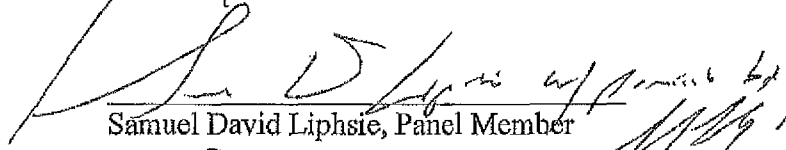
CONCLUSION

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that the Respondent should be disbarred from the practice of law pursuant to Tenn. Sup. Ct. R. 9, § 4.1.

IT IS SO ORDERED.

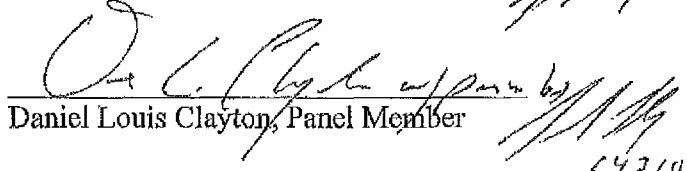


John Franklin Floyd, Panel Chair



Samuel David Lipsie, Panel Member

*MS/ 14310*



Daniel Louis Clayton, Panel Member

*14310*

**NOTICE:** This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ. See Tenn. Code Ann. § 27-8-104(a) and 27-8-106.