

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

FILED

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BOARD OF PROFESSIONAL
RESPONSIBILITY

RW

EXEC. SEC'Y

**IN RE: KEITH ALAN BLACK,
BPR No. 018546, Respondent,
an Attorney Licensed to
Practice Law in Tennessee
(Hamilton County)**

DOCKET NO. 2017-2676-3-AW

JUDGMENT OF THE HEARING PANEL

This cause came to be heard for consideration of sanctions, if any, before the Board of Professional Responsibility of the Supreme Court of Tennessee on January 18, 2018. The Respondent, Keith Alan Black, was not present at the hearing. Respondent, Keith Allen Black, was served with three Petitions for Discipline. Mr. Black did not answer the Petition for Discipline filed on January 30, 2017, the Supplemental Petition for Discipline filed on June 30, 2017, or the Second Supplemental Petition for Discipline filed on November 9, 2017. All Petitions, and Supplemental Petitions, for Discipline were submitted by A. Russell Willis, Disciplinary Counsel for the Board of Professional Responsibility. Mr. Willis appeared at the hearing. The Hearing Panel Members are Melissa Thomas Blevins, William Tyler Weiss, and Rosemarie L. Hill (Chair). The Hearing Panel Chair was granted an additional two weeks (beyond the thirty (30) days) to file this Judgment.

On October 3, 2017, an Order granting Default Judgment in the Petition for Discipline and Supplemental Petition for Discipline was entered and ruled “all allegations contained in the Petition for Discipline are hereby deemed admitted” and “all allegations contained in the Supplemental Petition for Discipline are hereby deemed admitted”. On December 28, 2017, the

Hearing Panel signed an Order Granting Default Judgment in the Second Supplemental Petition for Discipline. It also ruled that "all allegations contained in the Second Supplemental Petition for Discipline are hereby deemed admitted." And it held that a final hearing was to be set at which time the sole issue to be determined would be the appropriate sanctions, if any, to impose in this matter.

FINDINGS OF FACT:

1. The Respondent, Keith Alan Black, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee. Mr. Black's most recent address as registered with the Board of Professional Responsibility is 3628 Lamar Avenue, Chattanooga, Tennessee, 37415-4002, being in Disciplinary District III. Mr. Black was licensed to practice law in Tennessee in 1997, and his Board of Professional Responsibility number is 18546.

2. Pursuant to Tenn. Sup. Ct. R. 9, § 8.1, attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the hearing panel, hereinafter established, and the Circuit and Chancery Courts.

3. Pursuant to Tenn. Sup. Ct. R. 9, § 1, the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to act at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

4. Pursuant to Tenn. Sup. Ct. R. 9, § 11.1, acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and grounds for discipline.

5. The Respondent has failed to conduct himself in conformity with said standards

and is guilty of acts and omissions in violation of the authority cited *infra*. The Board of Professional Responsibility authorized the filing of formal charges on September 8, 2017.

File No. 47038-3-SC-Complaint of Tabitha Kellams

1. On July 11, 2016, the board of Professional Responsibility (“Board”) received a complaint from Tabitha Kellams alleging ethical misconduct on the part of her attorney, Keith Alan Black. The complaint was forwarded to Mr. Black at this registered office address for his response.

2. Having received no response from Mr. Black, the Board sent a second request to Mr. Black by letter to his registered office and home addresses and by email dated July 27, 2016, seeking a response to the disciplinary complaint.

3. Having received no response from Mr. Black, the Board sent Mr. Black a Notice of Petition for Temporary Suspension dated August 11, 2016, September 2, 2016, September 15, 2016, and September 29, 2016, notifying Mr. Black that the board would file a Petition for Temporary Suspension if he did not respond to the disciplinary complaint.

4. On November 3, 2016, the Board filed a Petition for Temporary Suspension against Mr. Black. On November 8, 2016, the Supreme Court of Tennessee entered an Order of Temporary Suspension of Mr. Black from the practice of law for failure to respond to the Board regarding a disciplinary complaint.

5. Subsequent to the entry of the Order of Temporary Suspension, the Board received a response from Mr. Black to the disciplinary complaint.

6. Keith Alan Black was retained by Ms. Kellams in or about March, 2015, and was paid a flat fee of \$2,500.00 to prosecute a divorce action.

7. A divorce complaint with numerous errors was filed by Mr. Black in the Circuit

Court of Hamilton County on April 6, 2015, and an Answer, and Counter Complaint was filed on May 27, 2015.

8. On October 11, 2015, Ms. Kellams emailed Mr. Black to complain about a lack of communication with Mr. Black concerning the progress of her divorce action.

9. Mr. Black responded and corresponded with Ms. Kellams in a series of emails dated October 12, 2015 and October 13, 2015 with a final email from Ms. Kellams on January 2, 2016, with no response from Mr. Black.

10. The case was ultimately dismissed on October 17, 2016.

11. There was no further communication from Ms. Kellams or Mr. Black from January 2, 2016.

File No. 50304-3-SC-Complaint of Tim Wilson

1. On November 30, 2016, the Board of Professional Responsibility (“Board”) received a complaint from Tim Wilson alleging ethical misconduct by Keith Alan Black. The Board forwarded the complaint to Mr. Black and requested a response.

2. By letter dated December 16, 2016, the Board received Mr. Black’s response and forwarded to Mr. Wilson.

3. By letter dated December 24, 2016, the Board received Mr. Wilson’s response and forwarded it to Mr. Black, as well as a request for additional information.

4. By letter dated January 31, 2017, the Board received Mr. Black’s response.

5. Keith Alan Black agreed to represent Tim Wilson and his spouse, Marcia Wilson, on June 27, 2013, in pursuing a personal injury claim arising out of a motor vehicle accident that occurred May 8, 2013.

6. Ms. Wilson was injured in the accident and Mr. Wilson sought damages for loss of

consortium.

7. Mr. Black filed timely suit.
8. Mr. and Mrs. Wilson terminated Mr. Black in January, 2016.
9. Mr. Black did not file a motion or take any steps to obtain leave of Court to withdraw after being terminated.
10. Mr. Black states that he was waiting to be contacted by successor counsel.
11. Mr. Black continued to communicate with his clients through May, 2016, as evidenced by emails and text message exchanges.
12. Mr. Wilson was unable to reach Mr. Black because his phone number went out of service and he did not provide another number.
13. Mr. Wilson went Mr. Black's office and it appeared that it was closed.
14. Emails sent to Mr. Black were returned as undeliverable.
15. Mr. and Mrs. Wilson did not receive any notice from Mr. Black of his new office address.
16. Robert Wilkinson was retained as successor counsel in July, 2016.
17. Mr. Wilkinson made numerous attempts to reach Mr. Black and did not receive a response.
18. In October of 2016, Mr. Wilkinson was able to obtain the case file by contacting Ripp Biggs, an attorney who formerly worked with Mr. Black.
19. When Mr. Black failed to file a motion to withdraw by November, 2016, Mr. Wilkinson filed a motion to be substituted as counsel, which was granted on November 21, 2016.
20. While in Court, Mr. Wilkinson was given notice by the Court that Mr. Black's law license had been temporarily suspended on November 8, 2016, due to his failure to respond to a

disciplinary complaint.

21. Mr. Black never sent notice of his suspension to Mr. or Mrs. Wilson.

22. Mr. Wilkinson settled Mr. Wilson's case for policy limits several months after entry of the order of substitution of counsel.

File No. 51267-3-SC- Complaint of Travis Rowlett

1. On March 9, 2017, the Board of Professional Responsibility ("Board") received a complaint from Travis Rowlett alleging unethical conduct by Keith Alan Black. On March 13, 2017, the Board forwarded the complaint to Mr. Black and requested a response.

2. By letter dated March 27, 2017, the Board sent a second letter to Mr. Black requesting his response to the initial complaint. Having received no response to its second letter, the Board sent a Notice of Petition for Temporary Suspension to Mr. Black on April 11, 2017.

3. On May 19, 2017, the Board received additional information from Mr. Rowlett, and forwarded the same to Mr. Black on May 26, 2017, for his response.

4. On June 1, 2017, the Board received additional information from Mr. Rowlett and forwarded the same to Mr. Black on June 12, 2017, for his response.

5. Mr. Black failed to provide responses to the Board's requests for information regarding Mr. Rowlett's complaints in violation of the Tennessee Rules of Professional Conduct (RPC) 8.1 (bar admission and disciplinary matters).

6. Mr. Black was retained by Mr. Rowlett in or about May, 2015, to represent him in a criminal matter involving theft, disorderly conduct, and property damage.

7. Mr. Black received a \$3,500.00 flat fee to represent Mr. Rowlett through trial or successful plea negotiation of the criminal charges.

8. After Mr. Black appeared with Mr. Rowlett on plea negotiation dockets between

March 3, 2016 and August 9, 2016, Mr. Rowlett was unable to contact Mr. Black thereafter.

9. Upon attempting to contact Mr. Black, Mr. Rowlett discovered Mr. Black had abandoned his law office and disconnected his phone.

10. Mr. Black abandoned his representation of Mr. Rowlett without notice to Mr. Rowlett and without the permission of the Court.

11. Although Mr. Black abandoned the representation and failed to provide the legal services for which he was retained, Mr. Black failed to refund all or any of the \$3,500.00 retainer fee paid by Mr. Rowlett or provide a copy of his file to Mr. Rowlett.

12. Finally, Mr. Black failed to notify Mr. Rowlett of the temporary suspension of his law license and properly withdraw as attorney of record for Mr. Rowlett in violation of the Order of Temporary Suspension entered by the Tennessee Supreme Court on November 8, 2016, and Tenn. Sup. Ct. R. 9, §28. A true and correct copy of Order of Temporary Suspension entered by the Tennessee Supreme Court on November 8, 2016.

CONCLUSION:

Based on the foregoing acts and omissions, Mr. Black has engaged in unethical conduct in violation of the Tennessee Rules of Professional Conduct and more specifically set forth hereinafter:

RULE 1.1 COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Rule 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.5: FEES

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
 - (8) whether the fee is fixed or contingent;
 - (9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
 - (10) whether the fee agreement is in writing.

RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

- (d) A lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client's interests. Depending on the circumstances, protecting the client's interests may include:
- (1) giving reasonable notice to the client;
 - (2) allowing time for the employment of other counsel;
 - (3) cooperating with any successor counsel engaged by the client;

- (4) promptly surrendering papers and property to which the client is entitled and any work product prepared by the lawyer for the client and for which the lawyer has been compensated;
- (5) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse affect on the client with respect to the subject matter of the representation.

RULE 3.2: EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation.

RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

- (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

RULE 8.1: BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by RPC 1.6.

RULE 8.4: MISCONDUCT

- (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;
- (g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

19. After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanctions to impose pursuant to ABA Standards 9.22.

20. Mr. Black's prior disciplinary offenses including, but not limited to the imposition of (a) Public Censure on October 12, 2006, for unauthorized practice of law while suspended; (b) Public Censure on May 5, 2009, for lack of diligence and communication and (c) Public Censure on July 16, 2015, for lack of diligence and prejudice to the administration of justice, are aggravating circumstances justifying an increase in the discipline to be imposed.

21. Mr. Black's pattern of misconduct is an aggravating circumstance justifying an increase in discipline to be imposed.

22. Mr. Black's multiple offenses are an aggravating circumstance justifying an increase in discipline to be imposed.

23. Mr. Black's substantial experience in the practice of law, having been licensed in Tennessee in 1997, is an aggravating circumstance justifying an increase in discipline.

JUDGMENT:

After considering the admitted allegations contained in the Petition for Discipline; Supplemental Petition for Discipline and Second Supplemental Petition for Discipline, the history of this matter, the Respondent's failure to the Petitions or to appear at this sanction consideration hearing, and the aggravating and mitigating factors, it is the opinion of this Hearing Panel that, pursuant to Rule 9, section 12.2, Respondent shall be suspended from the practice of law for a period of three (3) years.

In support of his judgment, the Panel finds that Mr. Black failed to communicate properly with the parties and/or respond to the three claims and failed to provide appropriate notice of his suspension.

The Panel finds insufficient evidence of damages to Ms. Kellams to return all, or part, of the flat fee she remitted to Mr. Black based on the lack of proof presented. It is undisputed that Ms. Kellams paid Mr. Black a flat fee of \$2500.00. It further appears from the record that though she gave Mr. Black a check for filing fees, it was never deposited. Regardless, the Complaint for divorce was filed. It is unclear from the proof who paid the court costs. The record evidences that an Answer and Counter-Complaint was filed by Ms. Kellams' spouse. Therefore, the allegation that a Complaint was not filed is not supported by proof. The file indicates communication with the client, opposing counsel, filing various documents and at least one court appearance. Though we do find that Mr. Black's conduct rose to the level of misconduct, which was taken into consideration for his suspension, we fail to find the return of all, or part, of the flat fee to be warranted.

The Panel finds insufficient evidence of damages to Mr. Wilson as his case was resolved for policy limits. The Panel does find that Mr. Black did not diligently represent Mr. Wilson and takes his action into consideration in the decision to suspend Mr. Black for a period of three (3) years.

The Panel finds that Mr. Black's representation of Mr. Travis Rowlett also rose to the level of misconduct. Although Respondent did appear in court twice for Mr. Rowlett, he then returned no calls, and did not appear after those appearances. He abandoned his representation of Mr. Rowlett without notice to him and without permission of the court. Therefore, Mr. Black is ordered to return as restitution \$2,250.00 of the \$3,500.00 fee he accepted from Mr. Travis Rowlett. Payment of this restitution is a condition precedent to any possible reinstatement of Respondent's license to practice law.

IT IS SO ORDERED.

/s/ Melissa Thomas Blevins / signed with permission
Melissa Thomas Blevins

/s/ William Tyler Weiss / signed with permission
William Tyler Weiss



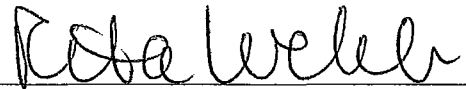
Rosemarie L. Hill (Chair) March 7, 2018

NOTICE TO RESPONDENT

The 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.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Keith Alan Black, 3628 Lamar Avenue, Red Bank, TN 37415, via U.S. First Class Mail, and hand-delivered to Disciplinary Counsel, A. Russell Willis, this the 8th day of March, 2018.

A handwritten signature in black ink, appearing to read "Rita Webb", written over a horizontal line.

Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.