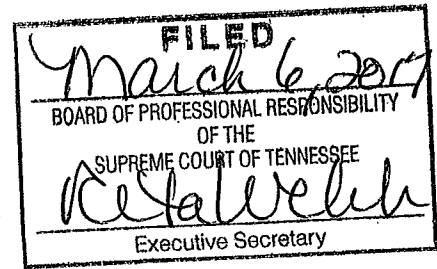


**IN DISCIPLINARY DISTRICT VI  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE**



**IN RE: JOHN WILBUR CASTLEMAN, JR.                      DOCKET NO. 2016-2570-6-WM**  
**BPR No. 23551, Respondent,**  
**An Attorney Licensed to**  
**Practice Law in Tennessee**  
**(Wayne County)**

---

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

---

This matter came on for a hearing on February 22, 2017 before a Hearing Panel consisting of Vanessa Pettigrew Bryan, Kirk Vandivort and Samuel Bradley Garner, Chair, upon an Amended Petition for Discipline. William C. Moody, Disciplinary Counsel, participated in the hearing. Mr. Castleman did not participate in the hearing despite being given notice.

**STATEMENT OF THE CASE**

The Petition for Discipline was filed April 11, 2016. An Answer to Petition for Discipline was filed June 13, 2016. A Conditional Guilty Plea was filed September 21, 2016 which included conditions. Mr. Castleman failed to comply with the conditions and the Conditional Guilty Plea became null and void. An Amended Petition for Discipline was filed October 27, 2016. Mr. Castleman failed to respond to the Amended Petition for Discipline and on November 18, 2016 the Board filed a Motion for Default Judgment. This Hearing Panel entered its Order for Default Judgment granting the Board's motion on November 28, 2016. There has been no further response from Mr. Castleman since entry of the Order for Default Judgment. A Notice of Hearing was sent to Mr. Castleman by certified mail and signed for by him on February 2, 2017. The Notice of Hearing was sent to Mr. Castleman on February 16, 2017 at the email address registered by him

with the Board. A delivery confirmation was received by the Board on February 16, 2017.

### **FINDINGS OF FACT**

Mr. Castleman was suspended by the Supreme Court on July 16, 2015, effective immediately, for noncompliance with mandatory IOLTA reporting requirements and non-payment of the annual registration fee.

On July 20, 2015, Mr. Castleman was retained by Richard McClain to represent him in a divorce. Mr. McClain paid Mr. Castleman a fee of \$575 which Mr. Castleman deposited the following day. \$75 of the \$575 fee was an earned fee for services rendered by Mr. Castleman to Mr. McClain. \$500 of the \$575 fee was an unearned retainer. Mr. McClain did not sign a written fee agreement for the \$500 fee to be nonrefundable. Mr. Castleman deposited the \$575 fee to his operating account. Because of his suspension, Mr. Castleman did not earn any portion of the \$500 fee. Mr. Castleman has not refunded the unearned portion of the fee to Mr. McClain.

Mr. Castleman was advised of his suspension by Judge Parkes on July 24, 2015. Mr. Castleman continued practicing law from the time of his suspension on July 16, 2015 until he was advised of his suspension by Judge Parkes on July 24, 2016.

On August 5, 2015, Mr. Castleman met with Mr. McClain to prepare for a hearing on a petition for order of protection.

Mr. Castleman did not notify his clients of his July 16, 2015 suspension. Because Mr. Castleman had not notified his clients of his suspension, a number of his clients appeared in the Circuit Court for Wayne County on August 6, 2015 before Judge Parkes expecting their cases to be heard and to be represented by Mr. Castleman. As a result, their cases were continued.

On or about September 3, 2015, Mr. Castleman wrote a letter to his clients in which Mr. Castleman falsely stated that his absence from his practice in the recent past was the result, in part,

of the fact that the bank where he had his IOLTA account was not approved by the Tennessee Bar Foundation when in fact the reason was his suspension for not paying the annual registration fee and not complying with IOLTA reporting requirements.

On March 24, 2016, the Board sent a request for additional information to Mr. Castleman and asked for his response within ten (10) days. Mr. Castleman failed to provide a response to the request for additional information.

Mr. Castleman previously received a one-year disciplinary suspension on July 5, 2011, retroactive to a temporary suspension on December 14, 2009.

As a result of the Order for Default Judgment, all the facts contained in the Amended Petition for Discipline, and summarized here, are deemed admitted.

#### **CONCLUSIONS OF LAW**

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 conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline.

The preponderance of the evidence establishes that Mr. Castleman has committed the following violations of the Rules of Professional Conduct.

By failing to deposit the unearned \$500 retainer to his trust account, Mr. Castleman violated RPC 1.15(c) (Safekeeping Property and Funds).

By failing to refund the unearned \$500 retainer to Mr. McClain, Mr. Castleman violated RPC 1.16(d)(6) (Declining and Terminating Representation).

By failing to respond to the request for additional information, Mr. Castleman violated RPC

8.1(b) (Bar Admission and Disciplinary Matters).

By continuing to engage in the practice of law after the time of his suspension, Mr. Castleman violated RPC 5.5(a) (Unauthorized Practice of Law) and 8.4(g) (Misconduct).

By failing to adequately communicate with his clients by advising them of his suspension, Mr. Castleman violated RPC 1.4(a) (Communication).

By his false and misleading statements in the letter to his clients, Mr. Castleman violated RPC 8.4(c) (Misconduct).

### **APPLICATION OF ABA STANDARDS**

Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

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.

Mr. Castleman knowingly failed to advise his clients of his suspension.

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

Mr. Castleman violated a duty to the profession by practicing while suspended. Mr. Castleman violated his duty to refund the unearned \$500 retainer to Mr. McClain. Mr. Castleman also violated his duty to respond to a request for information from the Board.

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

Mr. Castleman deceived the clients he wrote about his absence from the office by telling them it was due to a problem with his bank rather than his suspension.

Pursuant to ABA Standard 9.22, aggravating factors are present in this case. The following aggravating circumstances justify an increase in the degree of discipline to be imposed against Mr. Castleman:

1. Prior disciplinary offenses: On July 5, 2011, Mr. Castleman was suspended for one year, retroactive to his temporary suspension on December 14, 2009. He was reinstated from the suspension on August 4, 2014.
2. Dishonest or selfish motive: Mr. Castleman had a dishonest and selfish motive for concealing from his clients the fact that he had been suspended.
3. Multiple offenses: Mr. Castleman violated RPC 1.4(a), 1.15(c), 1.16(d)(6), 5.5(a), 8.1(b) and 8.4(a), (c) and (g).
4. Respondent's substantial experience in the practice of law: Mr. Castleman was licensed to practice law in 2004.

There are no mitigating circumstances.

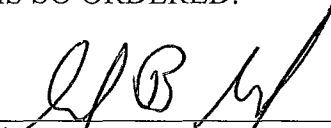
Based upon the evidence and admissions in this matter, the appropriate discipline is a suspension from the practice of law for one year and one day. In addition, pursuant to Tenn. Sup. Ct. R. 9, 12.7, Mr. Castleman shall be required to make restitution to Richard McClain in the amount of \$500.00. In the event restitution is paid by the Tennessee Lawyers Fund for Client Protection (TLFCP), Mr. Castleman shall reimburse TLFCP the amount so paid. Full payment of restitution by Mr. Castleman should be a condition precedent to reinstatement. Additionally, Mr. Castleman shall be required to contact the Tennessee Lawyers Assistance Program (TLAP) for evaluation within thirty days of the effective dates of this suspension. If TLAP determines that a


monitoring agreement is appropriate, and as a condition precedent to reinstatement, Mr. Castleman shall comply with the terms and conditions of the TLAP monitoring agreement.


**JUDGMENT**

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Mr. Castleman should be suspended from the practice of law for one year and one day; shall make restitution to Richard McClain in the amount of \$500.00 within thirty days of the effective date of this suspension; shall contact TLAP for evaluation within thirty days of the effective date of this suspension; and, if TLAP determines that a monitoring agreement is appropriate, Mr. Castleman shall comply with the terms and conditions of the TLAP monitoring agreement.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Samuel Bradley Garner, Panel Chair

  
\_\_\_\_\_  
Vanessa Pettigrew Bryan, Panel Member

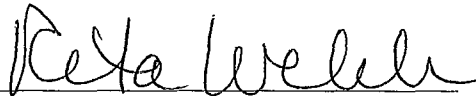
  
\_\_\_\_\_  
Kirk Vandivort, Panel Member

**NOTICE TO RESPONDENT**

**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 .**

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Findings of Fact, Conclusions of Law and Judgment, has been sent to Respondent, John Wilbur Castleman, Jr., 224 West Hollis Street, Waynesboro, TN 38485, by U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 7th day of March, 2017.

  
\_\_\_\_\_  
Rita Webb  
Executive Secretary