

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

FILED

2016 OCT -3 PM 3: 55
BOARD OF PROFESSIONAL
RESPONSIBILITY


EXEC. SEC'Y

**IN RE: ROBERT LAWSON CHEEK, JR., DOCKET NO. 2016-2569-2-AJ
BPR No. 15407, an
Attorney Licensed to
Practice Law in Tennessee
(Knox County)**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came to be heard on August 19, 2016, at 1:00 p. m. (Eastern) for final hearing on the Board's Petition for Discipline before Hearing Panel Members Christopher Hall, Mary Ann Stackhouse and Eric Morrison. Alan D. Johnson, Disciplinary Counsel, appeared for the Board. The Hearing Panel waited until 1:15 p. m. to begin the proceeding, and Mr. Cheek did not appear.

STATEMENT OF THE CASE

A Petition for Discipline was filed against Mr. Cheek on April 5, 2016. Mr. Cheek did not file a response or otherwise answer the Petition, and a Default Judgment was entered against him on July 20, 2016. Pursuant to the Default Judgment, all allegations contained in the Petition for Discipline are deemed admitted.

STATEMENT OF THE FACTS
FILE NO. 45554c-2-PS – COMPLAINANT – ADA KOHO

Mr. Cheek misappropriated \$111,570.00 from Ms. Koho. On July 22, 2010, Ms. Koho executed a Durable Power of Attorney naming Mr. Cheek as her attorney-in-fact. In the years

2010, 2011, and 2012, Mr. Cheek had a power of attorney for all of Ms. Koho's business, financial, health, and personal matters. During that time, Mr. Cheek systematically withdrew \$53,500 from Ms. Koho's retirement accounts without Ms. Koho's knowledge or consent. In August of 2010, Mr. Cheek set up a reverse mortgage in Ms. Koho's name without her knowledge in the amount of almost \$60,000. The day after the funds were deposited into Ms. Koho's bank account, Mr. Cheek withdrew \$58,070. Mr. Cheek did not respond to Disciplinary Counsel's correspondence requesting information about the investigation.

CONCLUSIONS OF LAW

Pursuant to Tenn. S. 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 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 (hereinafter "RPC") of the State of Tennessee shall constitute misconduct and be grounds for discipline.

Mr. Cheek was disbarred from the practice of law on May 15, 2014, and on August 12, 2015. In both instances, Mr. Cheek was disbarred for misappropriating funds. Mr. Cheek's previous disbarments do not deprive the Court and this Hearing Panel of jurisdiction. Tenn. Sup. Ct. R. 9, § 8.1 provides in relevant part as follows:

Any attorney admitted to practice law in this State, including any formerly admitted attorney with respect to acts committed prior to surrender of a law license, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of this Rule or of the Rules of Professional Conduct, ... is subject to the disciplinary jurisdiction of the Court, the Board, panels, the district committees and hearing panels herein established, and the circuit and chancery courts of this State.

Based upon the admitted allegations in the Petition for Discipline, the Hearing Panel concludes that Mr. Cheek violated Tennessee Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property and funds), 8.1 (bar and disciplinary matters) and 8.4 (a - d) (misconduct).

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 15.4, Rule 9 of the Rules of the Supreme Court.

The following ABA Standards apply in this matter:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.41 Disbarment is generally appropriate when:
 - (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
 - (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
 - (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.
- 4.51 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 Disbarment is generally appropriate when:
 - (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

- (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.

Aggravating Factors

Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

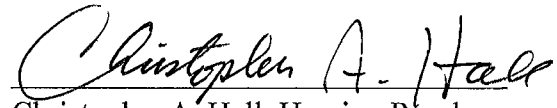
- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law; and,
- (k) illegal conduct, including that involving the use of controlled substances.

CONCLUSION

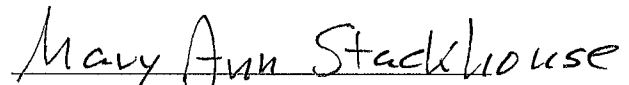
Based on these findings of fact and conclusions of law, it is the judgment of the Hearing Panel that Mr. Cheek shall be disbarred pursuant to Tenn. Sup. Ct. R. 9, § 12.1. As a condition of reinstatement to the practice of law, Mr. Cheek shall pay restitution to Ada Koho in the amount of \$111,570.00. In the event restitution is made by the Tennessee Lawyer's Fund for Client Protection ("TLFCP"), Mr. Cheek will be responsible for reimbursement to the TLFCP of the same amount.

The costs of this cause will be taxed to Mr. Cheek following entry of this judgment pursuant to the procedures established in Tenn. Sup. Ct. R. 9, § 31.3 (a).

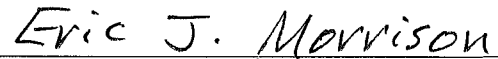
IT IS SO ORDERED,



Christopher A. Hall, Hearing Panel
Chair



Mary Ann Stackhouse, Hearing Panel Member,
(signed with permission by Christopher A. Hall)

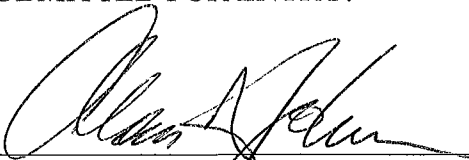


Eric J. Morrison, Hearing Panel Member
(signed with permission by Christopher A. Hall)

NOTICE TO RESPONDENT

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 3.3.

SUBMITTED FOR ENTRY:



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