

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

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BOARD OF PROFESSIONAL
RESPONSIBILITY
Rew EXEC. SECY

IN RE: CHARLES MICHAEL CLIFFORD Docket # 2106-2600-2-AJ
BPR # 1544
Attorney Licensed to
Practice Law in Tennessee
(Blount County)

JUDGMENT OF THE HEARING PANEL

This cause came to be heard pursuant to Rule 9 of the Rules of the Tennessee Supreme Court, via telephone hearing before this Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee on October 18, 2016 at 2:00 p.m. EDT. This Hearing Panel, consisting of Clint J. Woodfin, chair, Broderick Young and Gene Gaby, after considering the entire file in this matter, exhibits and arguments presented to this panel, and after thorough deliberations, makes the following findings of fact, conclusions of law and renders its judgment in this cause:

SECTION 1- BACKGROUND

Respondent Charles Michael Clifford is licensed to practice law in Tennessee. His Board of Professional Responsibility Number is 1544. A petition for discipline was filed against Mr. Clifford on June 27, 2016. Mr. Clifford did not respond to the petition and a default judgment was entered against him by this panel. A hearing notice was sent to the last known address of Mr. Clifford to which no response was received by the panel prior to the hearing.

SECTION 2- FINDINGS OF FACT

1. On January 5 and January 25 2016, the Board sent a copy of the complaint received from Kyle Gonzalez to Mr. Clifford requesting his response. Mr. Clifford never responded to the

complaint, and as a result on March 9, 2016, he was temporarily suspended from the practice of law pursuant to Tennessee Supreme Court Rule 9, § 12.3.

2. Prior to consulting Mr. Clifford, Mr. Gonzalez had earlier consented to give temporary custody of his son to the son's maternal grandparents by order from the Blount County Juvenile Court dated February 3, 2005. Mr. Gonzalez met with Mr. Clifford to discuss regaining custody in 2012. Mr. Clifford accepted a \$1,500.00 fee from Mr. Gonzales and filed a petition for custody on May 25, 2012.

3. On March 12, 2013, the parties to the Juvenile Court matter appeared for mediation and agreed that the mother and Mr. Gonzalez would participate in a trial basis custody plan for 3 months with the mother having visitation during the week, and Mr. Gonzalez having visitation on the weekend. The parties were to return to mediation after 3 months had passed. On April 30, 2013, opposing counsel forwarded to the Juvenile Court a temporary agreed order which he signed for Mr. Clifford with permission. The agreed order stated that the custody would remain with the paternal grandparents with visitation to continue with Mr. Gonzalez and the mother.

4. In December 2013, the Juvenile Court, asserting jurisdiction over this matter, had not heard further from Mr. Clifford and set the matter for docket call. Opposing counsel voiced problems communicating with Mr. Clifford. On July 7, 2014, opposing counsel set the matter for a final hearing on November 10, 2014 and sent a notice of the hearing to Mr. Clifford. Neither Mr. Clifford nor Mr. Gonzalez appeared in court on November 10, 2014.

5. At the conclusion of the final hearing the Court directed opposing counsel to submit the permanent parenting plan based upon his ruling which was later approved by the court. Mr. Gonzalez later discovered that the matter was set for a final hearing without his knowledge and Mr. Clifford made no appearance in the case. Mr. Gonzalez obtained new counsel to negotiate an amended permanent parenting plan and did not hear any further from Mr. Clifford.

6. Mr. Clifford received a disciplinary suspension on November 25, 2014 and did not communicate further with Mr. Gonzalez. The current disciplinary complaint was filed against Mr. Clifford. The petition for discipline was properly filed by the Board and served upon Mr. Clifford on June 27, 2016. Mr. Clifford was given the required notice to plead. No response was received from Mr. Clifford and a proper motion for default was filed. A judgment for default was entered by this panel on September 19, 2016. In that order, all allegations contained in the petition for discipline were admitted by Mr. Clifford.

7. The notice of the telephonic hearing was filed September 20, 2016 with notice given to both Mr. Clifford and the disciplinary counsel Allen Johnson.

8. The respondent Charles Michael Clifford is an attorney admitted by the Supreme Court of Tennessee to practice law in the state of Tennessee in 1974. Mr. Clifford's most recent address is registered with the Board of Professional Responsibility as 819 Camellia, Trace Maryville, Tennessee 37801-3571. Mr. Clifford's Board of Professional Responsibility is 1544 and he resides in Disciplinary District 2. Mr. Clifford has a prior history of discipline consisting of the following:

- a) One (1) year suspension (thirty (30) days active – November 25, 2014 for failing to pursue clients' cases and improper withdrawal;
- b) Public Censure – January 21, 2011 – failing to take action on behalf of a client in a custody matter and failing to return client's calls;
- c) Public Censure – October 19, 2009 – failing to follow through with a client's case and misrepresentation to clients about setting the case for trial;
- d) Private reprimand – June 12, 2009 – failing to preform work after being paid;
- e) Public Censure – July 24, 2006 – failing to timely file an appellate brief that resulted in dismissal of the appeal and failing to respond to disciplinary counsel.

SECTION 3 - CONCLUSIONS OF LAW

9. Pursuant to Tennessee Supreme Court Rule 9, § 8.1, any attorney admitted to practice law in Tennessee is subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the hearing committee hereinafter established, and the Circuit and or Chancery Courts.

10. Pursuant to Tennessee Supreme Court Rule 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 of the privilege to practice law. Acts or omissions by the attorney which violate the Rules of Professional Conduct in the state of Tennessee shall constitute misconduct and be grounds for discipline.

11. Mr. Clifford has failed to conduct himself in conformity with said standards and is guilty of acts and omissions in violations of RPC 1.3 (diligence), 1.4(Communication), 8.1(b), (Disciplinary Matters) and 8.4(a) (Misconduct)

12. Mr. Clifford's actions in the proceeding where he represented Mr. Gonzales violated RPC 1.3. Specifically, under Rule 1.3, a lawyer shall act with reasonable diligence and promptness in representing a client. His failure to appear at hearings and respond to opposing counsel as outlined above violates this rule.

13. Mr. Clifford's actions also violate RPC 1.4, whereby;

(a), a lawyer shall: (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent as defined in RPC 1.0(e) as required by these Rules;(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3). Keep the client reasonably informed about the status of the matter; (4) Promptly comply with reasonable requests for information; and, (5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Mr. Clifford's failure to inform his client of the final hearing is a clear violation of this rule.

14. Pursuant to RPC 8.1, (in relevant part) ... a lawyer in connection to the Bar admissions 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 protected by RPC 1.6. Mr. Clifford's failure to respond to the discipline petition violates this rule.

15. Pursuant to RPC 8.4, it is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct knowingly or assist or induce another to do so or do so through acts of another. Mr. Clifford has violated the Rules of Professional Conduct as set forth above.

16. Mr. Clifford's substantial experience in the practice of law is an aggravating circumstance that justifies an increase in discipline to be imposed. Mr. Clifford's prior disciplinary offenses are an aggravating circumstance justifying an increase in discipline to be imposed.

17. Mr. Clifford's bad faith obstruction of the disciplinary proceeding by intentionally failing to respond to disciplinary counsel concerning complaints of misconduct is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

18. The vulnerability of Mr. Clifford's client is an additional aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

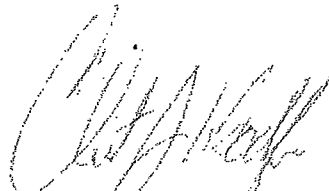
19. Mr. Clifford's compliance with seeking assistance from TLAP regarding previous Orders of the Tennessee Supreme Court is a mitigating factor. This Panel recognizes that such an Order is indicative of Mr. Clifford's need for professional and personal assistance.

SECTION 4 - JUDGMENT

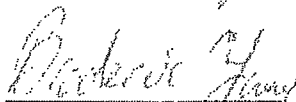
Based on the findings of fact and conclusions of law and the presence of aggravating and mitigating circumstances, Mr. Clifford's license to practice law should be suspended for a period of ONE (1) YEAR pursuant to Tennessee Supreme Court Rule 9, § 12.2. The one year suspension will commence upon entry of this Order and the time allowed for appeal pursuant to Tennessee Supreme Court Rule 9, § 15.3(b) . Mr. Clifford shall also pay restitution to Mr. Gonzalez in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) pursuant to Tennessee Supreme Court Rule 9, § 12.7. Payment of all restitution ordered shall be a condition precedent to reinstatement. The cost of this proceeding shall be taxed to Mr. Clifford, upon petition pursuant to Tennessee Supreme Court Rule 9, § 15.3(a) for payment of fees filed by Disciplinary Council and approved by this panel. IT IS SO ORDERED.

NOTICE – The findings and judgment of this panel may be appealed pursuant to Tennessee Supreme Court Rule 9, § 33.

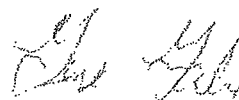
Entered this 15th day of March, 2016.



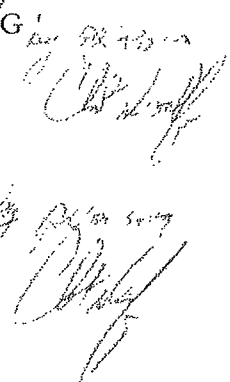
CLINT J. WOODFIN *Panel Chair,*



BRODERICK YOUNG
Panel Member,



GENE GABY
Panel Member



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