

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

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BOARD OF PROFESSIONAL
RESPONSIBILITY
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EXEC. SFC

IN RE CHARLES MICHAEL CLIFFORD
BPR No. 001544, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Blount County)

DOCKET NO. 2017-2737-2-AJ

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This matter came before the hearing panel for a final hearing in this matter on December 20, 2017. Krisann Hodges, Deputy Chief Disciplinary Counsel, represented the Board. Mr. Clifford did not appear for the final hearing. Notice of the date, time, and telephone number for the final hearing was provided to Mr. Clifford in advance of the hearing.

A Petition for Discipline was filed against Mr. Clifford on June 28, 2017. Mr. Clifford did not file a response or otherwise answer the Petition, and a Default Judgment was entered against him on November 15, 2017. Pursuant to the Default Judgment, all allegations contained in the Petition for Discipline are deemed admitted.

At the final hearing, the Board introduced the following exhibits into evidence:

- Ex 1 February 21 and March 10, 2017 Letters from Board to Mr. Clifford
- Ex 2 Motion to Dismiss
- Ex 3 Notice of Voluntary Nonsuit and Order
- Ex 4 Private Informal Admonition issued October 22, 2004
- Ex 5 Public Censure of Charles M. Clifford, Order filed June 24, 2006

Ex 6 Private Reprimand of Charles Michael Clifford, filed June 12, 2009

Ex 7 Public Censure of Charles M. Clifford, filed October 19, 2009

Ex 8 Public Censure of Charles M. Clifford, filed January 21, 2011

Ex 9 Suspension of Charles M. Clifford, Order filed November 25, 2014

Ex 10 Suspension of Charles M. Clifford, Order filed March 10, 2017

Upon due consideration of the pleadings, argument, and evidence introduced in this case, the hearing panel makes the following findings of fact, conclusions of law, and judgment.

FINDINGS OF FACT

FILE NO. 48428c-2-KB—COMPLAINANT—FRED JONES

1. On February 21, and March 10, 2017, the Board sent a copy of the complaint received from Fred Jones to Mr. Clifford requesting his response. Mr. Clifford never responded to the complaint.

2. Mr. Jones and his wife retained Mr. Clifford to represent them in a personal injury auto accident claim.

3. On November 22, 2010, Mr. Clifford filed a lawsuit for Mr. Jones.

4. In an effort to move the case forward, the opposing counsel, Zach Tenry, filed a Motion for Pre-Trial Conference which was scheduled for September 2013.

5. On that date, Mr. Clifford announced an agreement to have Mr. Jones's wife provide authorization for Mr. Tenry to obtain her social security records which were relevant to her injuries.

6. Mr. Tenry made several attempts thereafter to obtain the necessary authorization but Mr. Clifford failed to respond to him.

7. In February 2014, Mr. Tenry filed another Motion for Pre-Trial Conference which

was set for March 7, 2014.

8. On that date, neither Mr. Clifford nor his clients appeared for the hearing.

9. The court ordered Mr. Jones's wife to execute the authorization for Mr. Tenry to obtain her social security records within 15 days.

10. The authorization was never provided and Mr. Tenry noticed Mr. Jones and his wife for depositions to be held May 14, 2014.

11. On that date, neither Mr. Clifford nor his clients appeared for the depositions.

12. On May 27, 2014, Mr. Tenry filed a Motion to Dismiss for all of the aforementioned reasons.

13. Before the motion could be heard, Mr. Clifford filed a Notice of Voluntary Nonsuit on June 6, 2014, which included a proposed Order.

14. The Order was filed with the court on June 18, 2014.

15. Neither the Motion nor the proposed Order included Mr. Jones in the certificates of service.

16. Mr. Jones was unable to contact Mr. Clifford and was not informed by Mr. Clifford about the status of his case.

17. In June 2016, Mr. Jones met with an attorney who investigated the case and advised Mr. Jones that it had been voluntarily dismissed in June 2014, and that the one (1) year period in which to re-file the case had passed.

18. As evidenced by Exhibits 4-10, Mr. Clifford has a lengthy disciplinary history. The prior disciplinary sanctions include misconduct which is the same or substantially similar to the misconduct of this complaint.

19. Finally, Mr. Clifford was licensed to practice in 1974.

CONCLUSIONS OF LAW

1. The allegations in the Petition for Discipline have been deemed admitted pursuant to the Order for Default Judgement. The hearing panel concludes that the Board has demonstrated disciplinary misconduct, as described below, by a preponderance of the evidence.

2. Mr. Clifford violated RPC 1.2 (scope of representation) by dismissing Mr. Jones' case without first obtaining authority to do so.

3. Mr. Clifford violated RPC 1.3 (diligence) by failing to act with diligence and promptness in his representation of Mr. Jones.

4. Mr. Clifford violated RPC 1.4 (communication) by failing to communicate with Mr. Jones about his case.

5. Mr. Clifford violated RPC 3.2 (expediting litigation) by failing to expedite Mr. Jones' case.

6. Mr. Clifford violated RPC 8.1(b) (disciplinary matters) by failing to respond to Mr. Jones' complaint.

7. Mr. Clifford's conduct was prejudicial to the administration of justice in violation of RPC 8.4(d).

8. Mr. Clifford violated RPC 8.4(a) by violating the aforementioned Rules of Professional Conduct.

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

10. The hearing panel has concluded that the following ABA Standards apply in this

matter:

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.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

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.

8.1 Disbarment is generally appropriate when a lawyer:

- (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
- (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

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

- (a) prior disciplinary 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; and
- (i) substantial experience in the practice of law

12. On March 10, 2017, Mr. Clifford was suspended from the practice of law for one (1) year retroactive to the date of his temporary suspension on March 9, 2016, for failing to respond to the Board.

13. On November 25, 2014, Mr. Clifford was suspended from the practice of law for one (1) year, with thirty (30) days to be served as an active suspension and the remainder on probation. Mr. Clifford has not sought reinstatement.

14. Mr. Clifford has been sanctioned several times for conduct similar to that in the present case. The hearing panel finds the prior disciplinary history to be especially aggravating circumstances in this matter. Additionally, Mr. Clifford did not respond to the complaint filed against him in this case and he did not make an appearance in these formal proceedings.

17. The Board provided information to the hearing panel regarding Mr. Clifford's prior involvement with the Tennessee Lawyer's Assistance Program ("TLAP"). Mr. Clifford met with TLAP in March 2015. At that time, TLAP did not recommend further monitoring.

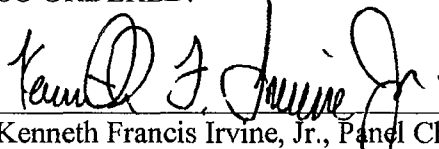
16. Nevertheless, Mr. Clifford was suspended for disciplinary misconduct again in 2017. This hearing panel finds that Mr. Clifford has not benefitted from prior discipline and the opportunities afforded to him as a result of that prior discipline. See *Sneed v. Bd. of Prof'l Responsibility of Supreme Court*, 301 S.W.3d 603, 617 (Tenn. 2010) (Tennessee Supreme Court held that the hearing panel properly found that Sneed "has not benefitted from prior discipline and that the public would be endangered and the legal profession and administration of justice would be disserved if [Sneed] were permitted to continue the practice of law.")


JUDGMENT

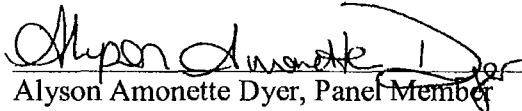
Upon consideration of the findings of facts and conclusions of law, including applicable ABA Standards and all aggravating factors, the hearing panel finds that Mr. Clifford should be disbarred.

The hearing panel finds that Mr. Clifford shall contact the Tennessee Lawyers Assistance Program ("TLAP") for evaluation. If TLAP determines that a monitoring agreement is appropriate, Mr. Clifford shall comply with the terms and conditions of the TLAP monitoring agreement. Proof of compliance with TLAP is a condition of reinstatement. Payment of any outstanding restitution and Board costs shall also be a condition of reinstatement.

SO ORDERED.


Kenneth Francis Irvine, Jr., Panel Chair


Karen Goforth Crutchfield, Panel Member *w/ perm. by KFI*


Alyson Amonette Dyer, Panel Member

NOTICE OF APPEAL

The findings and judgment of the hearing panel may be appealed pursuant to Tenn. Sup. Ct. R. 9, Section 33. See also Tenn. Sup. Ct. R. 9, Section 31(a).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Charles Michael Clifford, 819 Camellia Trace, Maryville, TN 37801-3571, by U.S. First Class Mail, and hand-delivered to Alan D. Johnson, Disciplinary Counsel, and Krisann Hodges, Deputy Chief Disciplinary Counsel, on this the 24th day of January, 2018.

A handwritten signature in cursive script, appearing to read "Rita Webb", written in black ink.

Rita Webb
Executive Secretary