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

BOARD OF PROFESSIONAL
RESPONSIBILITY

Kew EXEC. SEC'Y

IN RE: DON W. COOPER,
BPR No. 1286, an
Attorney Licensed to
Practice Law in Tennessee
(Sullivan County)

DOCKET NO. 2016-2584-1-AW

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came to be heard for final hearing on the 24th day of October, 2016, on the Petition for Discipline filed May 20, 2016, and the Supplemental Petition for Discipline filed August 24, 2016, before Hearing Panel members Charles T. Herndon, IV; Frank A. Johnstone and Nikki C. Pierce, Panel Chair. A. Russell Willis, Disciplinary Counsel, appeared for the Board. The record reflects Mr. Cooper was given adequate notice of the final hearing; however, he did not appear at or participate in the hearing.

The Board of Professional Responsibility has submitted Proposed Findings of Fact and Conclusions of Law, which the Panel has largely adopted as the Panel's Findings of Fact and Conclusions of Law.

STATEMENT OF THE CASE

This is a disciplinary proceeding against the Respondent, Don W. Cooper, an attorney licensed to practice law in Tennessee in 1970.

1. A Petition for Discipline, Docket No. 2016-2584-1-AW, was filed on May 20, 2016, and a Supplemental Petition for Discipline was filed on August 24, 2016, and service was perfected upon Mr. Cooper pursuant to Tenn. Sup. Ct. R. 9, § 18.1.

2. Mr. Cooper did not file an answer or otherwise respond to the Petition for Discipline or the Supplemental Petition for Discipline.

3. On August 19, 2016, Disciplinary Counsel filed a Motion for Default Judgment and That Charges in Petition for Discipline be Deemed Admitted. Mr. Cooper did not file a response to the motion.

4. The Hearing Panel was appointed on August 23, 2016, and entered an Order Granting Motion for Default on September 27, 2016.

5. The Final Hearing was held October 24, 2016, in Johnson City, Tennessee.

STATEMENT OF THE FACTS

6. The Petition for Discipline is based upon the complaints of Arthur M. Fowler, Esq., Honorable E. G. Moody, Chancellor for the Second Judicial District, and Katherine Priester, Clerk and Master of the Sullivan County Courts reporting the misappropriation of approximately \$375,000.00 by Don W. Cooper while serving as co-executor and trustee of the Estate of Alva L. Frye and/or Susan C. Frye Trust in violation of Tennessee Rules of Professional Conduct (RPC) 1.15 (safekeeping property and funds); 8.1 (bar admissions and disciplinary matters); and 8.4(a), (b), (c) and (d) (misconduct).

7. The Supplemental Petition for Discipline is based upon the complaints of Kenneth D. Hale, Esq., Arthur M. Fowler, Esq., Honorable E. G. Moody, Chancellor for the Second Judicial District, and Katherine Priester, Clerk and Master of the Sullivan County Courts reporting the misappropriation of \$525,056.58 from a series of family trust accounts known as

the “Tilley Trusts” and \$52,702.79 from the Pendergrass Estate in violation of Tennessee Rules of Professional Conduct (RPC) 1.15 (safekeeping property and funds); 8.1 (bar admissions and disciplinary matters); and 8.4(a), (b), (c) and (d) (misconduct).

8. Pursuant to the granting of the default judgment and the evidence presented at the final hearing, the following facts are established:

9. Respondent, Don W. Cooper, is an attorney admitted by the Supreme Court of Tennessee in 1970 to practice law in the State of Tennessee. Mr. Cooper’s most recent office address as registered with the Board of Professional Responsibility is 100 5th Street, Suite 100, Bristol, Tennessee, 37620 and located in Disciplinary District I. Mr. Cooper’s Board of Professional Responsibility number is 001286.

10. The Petition for Discipline, governed by Tenn. Sup. Ct. R. 9 (2014), details the professional misconduct alleged in the complaints of Arthur M. Fowler, Esq., Honorable E. G. Moody and Katherine Priester and was introduced into evidence as Exhibit 1.

11. The Supplemental Petition for Discipline, governed by Tenn. Sup. Ct. R. 9 (2014), details the complaints of Kenneth D. Hale, Esq., Arthur M. Fowler, Esq., Honorable E. G. Moody and Katherine Priester and was introduced into evidence as Exhibit 2.

**File No. 44918-1-KB Complaints of Katherine Priester,
Arthur Fowler and the Honorable E. G. Moody**

12. On November 4, 2015, the Board received the complaint of Arthur M. Fowler, Esq. regarding the misappropriation of over \$200,000.00 by Don W. Cooper while serving as co-executor and trustee of the Estate of Alva L. Frye and/or Susan C. Frye Trust.

13. On November 6, 2015, the Board received the complaint of the Honorable E. G. Moody, Chancellor for the Second Judicial District, and Katherine Priester, Clerk and Master of

the Sullivan County Courts, regarding the misappropriation of approximately \$300,000.00 by Don W. Cooper while serving as co-executor and trustee of the Estate of Alva L. Frye and/or Susan C. Frye Trust.

14. By letter of November 6, 2015, the Board provided Mr. Cooper with a complete copy of the complaint and requested a response within ten (10) days.

15. On November 9, 2015, the Board received certain financial information and documentation from Katherine Priester regarding the misappropriation of approximately \$300,000.00 by Don W. Cooper from the Estate of Alva L. Frye and/or Susan C. Frye Trust.

16. On November 23, 2015, the Board sent a second letter to Mr. Cooper requesting a response to the previous letter of November 6, 2015.

17. By letter dated November 28, 2015, addressed to Disciplinary Counsel, Mr. Cooper acknowledged he inappropriately handled monies belonging to the Susan C. Frye Trust.

18. Based upon the acknowledgement of wrongdoing and the affidavit of the Clerk and Master, the Board sought an Order of Temporary Suspension of Mr. Cooper which was granted by the Supreme Court on December 4, 2015.

19. In or about October, 2014, the Clerk and Master for Sullivan County, Tennessee issued a notice to Mr. Cooper, Co-Executor for the Estate of Alva Frye, to provide the documents necessary to close the estate or a Notice of Continued Administration and set the matter for hearing on December 1, 2014.

20. Mr. Cooper failed to appear for the December 1, 2014 hearing or provide the documentation requested by the Clerk and Master.

21. A Petition to Remove Mr. Cooper as Co-Executor of the Estate of Alva Frye and the Trustee of the Susan C. Frye Trust, was filed on June 1, 2015, by Arthur Fowler, attorney for the remaining Co-Executor and beneficiaries of the Estate and set for hearing on July 10, 2015.

22. Mr. Cooper did not appear for the July 10, 2015 hearing, and the Chancellor granted the motion and relieved Mr. Cooper as Co-Executor and Trustee by Order dated July 14, 2015.

23. Pursuant to the July 14, 2015 Order, Mr. Cooper was directed to file a full, complete and detailed accountings of the receipt and disbursement of monies and assets of the Estate and the Trust within thirty (30) days of the entry of the Order.

24. On August 21, 2015, an Agreed Motion and Order to Extend Time for Co-Executor and Trustee to File an Accounting was entered which required the accountings to be filed by September 18, 2015.

25. Mr. Cooper did not file any accountings with the Chancery Court on September 18, 2015, as required by the Agreed Order of August 21, 2015.

26. A Motion to Show Cause was filed and set for hearing on October 30, 2015.

27. Mr. Cooper failed to appear for the October 30, 2015 hearing and the Chancellor authorized the issuance of an Attachment for Mr. Cooper.

28. Pursuant to the instructions of the Chancellor, the Clerk and Master contacted Mr. Cooper and instructed him to contact Mr. Fowler and resolve the accounting issue.

29. Thereafter, an agreement was reached whereby Mr. Cooper would appear before the Clerk and Master on November 2, 2015, and provide the court ordered accounting for the Estate and the Trust and pay over all funds.

30. Mr. Cooper appeared as agreed and submitted an accounting for the Trust and tendered \$16,316.94 to the Clerk and Master.

31. Mr. Cooper did not provide an accounting for the Estate or tender any money.

32. Mr. Cooper was instructed to provide the Court Ordered accounting on the Estate and represented he would do so on November 5, 2015.

33. On November 5, 2015, Mr. Cooper appeared before the Clerk and Master and provided sworn accountings for the Estate and tendered \$25,111.59 in Estate funds to the Clerk and Master.

34. By letter dated January 6, 2016, Arthur M. Fowler, Esq. reported the receipt of \$25,000.00 from Mr. Cooper as payment towards the \$400,000.00 Mr. Cooper had acknowledged owing the Susan Frye Trust.

35. On January 12, 2016, the Board forwarded Mr. Fowler's letter to Mr. Cooper and requested a response within ten days. Mr. Cooper did not provide a response to the Board in violation of Rules of Professional Conduct (RPC) 8.1.

36. Based upon a review of the documents attached to the Petition for Discipline, Mr. Cooper misappropriated \$375,000.00 from the Estate of Alva L. Frye and/or Susan C. Frye Trust while serving in the capacity of attorney, trustee and/or fiduciary.

File No. 46326-1-KB- Informant – Kenneth Hale, Esq.

37. On February 25, 2016, the Board of Professional Responsibility received an email from Kenneth D. Hale, Esquire from The Hale Law Firm in Bristol, Tennessee, reporting the unethical conduct of Don W. Cooper. Attached to the email was a complaint styled Kenneth D. Hale, Trustee, etc. v. Don W. Cooper, Case No. 16-CB-25436c, filed in the Chancery Court for Sullivan County, Tennessee, alleging Mr. Cooper misappropriated client funds from a series of

family trust accounts, hereto referred to as the "Tilley Trusts." By letter dated February 26, 2016, Disciplinary Counsel forwarded a copy of the complaint to Mr. Cooper for a response.

38. On March 21, 2016, Mr. Cooper sent an email to Disciplinary Counsel requesting a complete copy of the complaint be sent to him by email. As requested, Board staff provided a complete copy of the disciplinary complaint to Mr. Cooper by email dated March 21, 2016.

39. Mr. Cooper failed to respond to the Board's request for information in violation of Rules of Professional Conduct (RPC) 8.1(b).

40. Since approximately 2006, Mr. Cooper served as a co-trustee of several trusts funds known collectively as the Tilley Trusts and assumed the responsibility of disbursing agent of the Tilley Trusts.

41. Mr. Cooper maintained sole possession of the financial records and checkbooks for the Tilley Trusts.

42. Between 2009 and 2011, trustee fee payments to other co-trustees other than Mr. Cooper became sporadic, and Mr. Cooper ceased making such disbursements in 2011. Thereafter, demand was made upon Mr. Cooper by other co-trustees for an explanation of the change on the trustee payments.

43. Mr. Cooper failed to provide a reasonable explanation for his actions.

44. On December 4, 2015, Mr. Cooper was temporarily suspended for misappropriating trust funds in a separate disciplinary matter.

45. Upon the suspension of Mr. Cooper, demand was made upon Mr. Cooper to provide a complete accounting of each Tilley Trust, including a ten (10) year history of checks written from the Tilley Trust accounts.

46. Demand was also made upon Mr. Cooper to resign as trustee of the Tilley Trusts.

47. On December 14, 2015, Mr. Cooper surrendered the checkbooks for the Tilley Trusts and certain select records to Mr. Hale and the other co-trustees.

48. On February 17, 2016, Mr. Cooper resigned as a trustee of the Tilley Trusts.

49. After Mr. Cooper failed to surrender all of the financial records for the Tilley Trusts, Mr. Hale obtained a ten (10) year record of the Tilley Trust disbursements.

50. A review of the Tilley Trusts records obtained from Fidelity reflects Mr. Cooper withdrew \$525,056.58 from the various Tilley Trusts.

51. Thereafter, demand was made upon Mr. Cooper to account for the disbursements made to himself; however, Mr. Cooper provided no explanation for the disbursements.

52. On February 25, 2016, an action for conversion was filed on behalf of the Tilley Trusts against Mr. Cooper in the Chancery Court for Sullivan County.

53. Based upon a review of the documents attached to the Supplemental Petition for Discipline, Mr. Cooper misappropriated \$525,056.58 from the Tilley Trusts while serving in the capacity of attorney, trustee and/or fiduciary.

**File No. 46327-1-KB Complaints of Katherine Priester, Arthur Fowler and the
Honorable E. G. Moody**

54. By email dated February 23, 2016, Katherine Priester, Sullivan County Clerk and Master, forwarded a letter from Ms. Priester and Chancellor E. G. Moody to Disciplinary Counsel, dated February 23, 2016, alleging misconduct by Mr. Cooper as Administrator CTA of the Estate of Phyllis Pendergrass, Sullivan County Probate Number P-04-14008.

55. By letter dated February 26, 2016, Disciplinary Counsel forwarded a copy of Ms. Priester and Chancellor E. G. Moody's letter to Mr. Cooper for his response.

56. On March 21, 2016, Mr. Cooper sent an email to Disciplinary Counsel requesting a complete copy of the complaint be sent to him by email. As requested, Board staff provided a complete copy of the disciplinary complaint to Mr. Cooper by email dated March 21, 2016.

57. Mr. Cooper failed to respond to the Board's request for information in violation of Rules of Professional Conduct (RPC) 8.1(b).

58. On February 19, 2016, a hearing was held in the Sullivan County Chancery Court, at which Mr. Cooper provided an accounting to the Court of the Estate of Phyllis Pendergrass.

59. Based upon Mr. Cooper's sworn accounting, Chancellor Moody concluded Mr. Cooper had misappropriated \$52,702.79 from the Pendergrass Estate.

60. A review of the sworn accounting provided to the Court reflects Mr. Cooper made a payment to himself on December 1, 2008, in the amount of \$30,000.00 and a final payment on November 13, 2009, in the amount of \$23,702.79, closing out the trust account to a zero balance.

61. Based upon a review of the documents attached to the Supplemental Petition for Discipline, Mr. Cooper misappropriated \$52,702.79 from the Estate of Phyllis Pendergrass while serving in the capacity of attorney, trustee and/or fiduciary. Mr. Cooper misappropriated funds or assets in violation of RPC 1.15 and 8.4.

62. Based upon the evidence presented without objection at the final hearing, the Hearing Panel finds that Mr. Cooper knowingly misappropriated \$375,000.00 from the Estate of Alva L. Frye and/or Susan C. Frye Trust in violation of RPC 1.15(a) and (d) and 8.4 (a), (b), (c) and (d).

63. Based upon evidence presented without objection at the final hearing, the Hearing Panel finds that Mr. Cooper knowingly misappropriated \$525,056.58 from the Tilley Trusts in violation of RPC 1.15(a) and (d) and 8.4 (a), (b), (c) and (d).

64. Based upon evidence presented without objection at the final hearing, the Hearing Panel finds that Mr. Cooper knowingly misappropriated \$52,702.79 from the Estate of Phyllis Pendergrass in violation of RPC 1.15(a) and (d) and 8.4 (a), (b), (c) and (d).

65. Based upon the evidence presented without objection, the Hearing Panel finds that Mr. Cooper knowingly misappropriated a total of \$952,759.37 from clients while serving in the capacity of attorney, trustee and/or fiduciary.

66. The Hearing Panel further finds that Mr. Cooper knowingly failed to respond to the Board regarding his disciplinary complaints and served as the basis for the entry of the default judgment in this disciplinary action on September 27, 2016.

CONCLUSIONS OF LAW

67. Pursuant to Tenn. Sup. Ct. R. 9, § 8 (2014), attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts.

68. Pursuant to Tenn. Sup. Ct. R. 9, § 1 (2014), 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.

69. Pursuant to Tenn. Sup. Ct. R. 9, § 11 (2014), acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct of the Supreme Court of Tennessee shall constitute misconduct and are grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

70. Mr. Cooper failed to conduct himself in conformity with the standards required of ethical attorneys practicing law in Tennessee, and the Hearing Panel finds, by a preponderance of the evidence, Mr. Cooper violated Tennessee Rules of Professional Conduct (RPC) 1.15 (safekeeping property and funds); 8.1 (bar admissions and disciplinary matters) and 8.4(a), (b), (c) and (d) (misconduct).

71. Pursuant to Tenn. Sup. Ct. R. 9, § 15.4, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, (“ABA Standards”). The Panel finds the following ABA Standards applicable in this matter:

5.51 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes misappropriation, or theft 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.

72. Pursuant to ABA Standard 9.1, the Hearing Panel may consider aggravating and mitigating circumstances in determining the appropriate disciplinary sanction to impose.

73. The Hearing Panel finds the following aggravating factors applicable in this matter:

- (a) dishonest or selfish motive;
- (b) a pattern of misconduct;
- (c) multiple offenses;
- (d) intentional failure to respond to or comply with the rules or orders of the Board of Professional Responsibility; and
- (e) substantial experience in the practice of law.

74. The Hearing Panel finds no mitigating factors applicable in this matter.

JUDGMENT


Based on these findings of fact and conclusions of law, the presence of aggravating circumstances, and the absence of mitigating circumstances, Don W. Cooper is disbarred pursuant to Tenn. Sup. Ct. R. 9, § 12.1 (2014) and shall pay restitution in the amount of \$375,000.00 to the Estate of Alva L. Frye and/or Susan C. Frye Trust, \$525,056.58 to the Tilley Trusts and \$52,702.79 to the Estate of Phyllis Pendergrass.

In addition to all other requirements and obligations of disbarred attorneys set forth in Tenn. Sup. Ct. R. 9, payment of restitution and all costs assessed in this matter, payment of all registration fees due and owing, payment of all professional privilege taxes due and owing, and compliance with all CLE requirements are conditions precedent to the reinstatement of Don W. Cooper to the practice of law in Tennessee.

IT IS SO ORDERED.



Nikki C. Pierce, Panel Chair *by permission*



Charles T. Herndon, IV Panel Member *by permission*



Frank A. Johnstone, Panel Member

NOTICE TO RESPONDENT

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a Petition for Review in the Circuit or Chancery court within sixty (60) days of the date of entry of the hearing panel's judgment.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Don W. Cooper Esq., by U.S. First Class Mail to 100 5th Street, Suite 100, Bristol, TN 37620; 300 Royal Oak Dr., Blountville, TN 37617-5517 and cooperdon@earthlink.net, on this day of November, 2016.