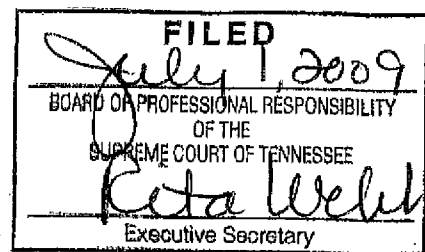


**IN DISCIPLINARY DISTRICT I
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



IN RE: THOMAS EWING COWAN, Respondent	2004-1439-1-TH
BPR No. 2026, An Attorney	2006-1571-1-TH
Licensed to Practice Law	2008-1776-1-KH
in Tennessee	
(Carter County)	

JUDGMENT OF THE HEARING PANEL

This cause came to be heard by the designated Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee on April 20th and 21st, 2009, in Johnson City, Tennessee and adjourned to May 6, 2009, at which time the hearing was concluded upon the filing by both parties of Proposed Findings of Fact and Conclusions of Law. The cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court.

Present before the Hearing Panel were Krisann Hodges, Disciplinary Counsel for the Board of Professional Responsibility, Thomas Cowan, Respondent, and Collins Landstreet, Attorney for Respondent. Based upon the pleadings filed in this cause, the testimony of witnesses, the evidence submitted, statements of counsel and the entire record in this cause, the Hearing Panel of the Board makes the following findings of fact and submits its Judgment in this cause as follows:

STATEMENT OF THE CASE

1. The Board filed a Petition for Discipline (Docket No. 2004-1439-1-TH) against Respondent on April 23, 2004. Respondent filed an Answer to the Petition on May 19, 2004. The Board filed a Supplemental Petition for Discipline on October 13, 2004 which Respondent

answered on December 6, 2004. A Second Supplemental Petition for Discipline was filed on June 7, 2005 and a Fourth¹ Supplemental Petition was filed on October 31, 2006. Respondent did not file Answers to the Second and Fourth Supplemental Petitions.

2. On January 9, 2006, a Petition for Discipline (Docket No. 2006-1571-1-TH) was filed. This case (2006-1571-1-TH) was consolidated with the other Petitions (2004-1439-1-TH) on September 26, 2006.

3. A Motion for Partial Summary Judgment was filed by the Board on January 3, 2007. The Board agreed to strike this Motion prior to the hearing.

4. Respondent tendered a Conditional Guilty Plea on June 26, 2007. The Hearing Panel approved the Conditional Guilty Plea on August 8, 2007, however, the Plea was rejected by the Supreme Court on May 13, 2008 and remanded for further proceedings. The Panel entered a Scheduling Order on July 7, 2008 setting forth a new trial schedule.

5. On September 8, 2008, the Board filed a Petition for Discipline (Docket No. 2008-1776-1-KH). On October 6, 2008, the Board filed a Supplemental Petition containing a new complaint which was authorized for formal proceedings in the Board's September 2008 meeting.

6. The Board filed a Motion to Consolidate all outstanding complaints on September 15, 2008, which was granted by the Hearing Panel in an Order entered on October 17, 2008. The Respondent filed a Motion to Dismiss on September 15, 2008 which was denied by the Hearing Panel in the same Order dated October 17, 2008.

7. Additionally, the Order entered on October 17, 2008 found that it was appropriate to set forth a new trial schedule including a deadline for pre-trial motions (December 12, 2008)

¹ The title "Fourth" Supplemental Petition appears to be in error. This Petition is actually the third one filed under Docket Number 2004-1439-1-TH, although it is the fourth Petition filed in the entire matter after consolidation.

and responses to pre-trial motions (December 23, 2008). The new scheduled provided that the hearing would be held on January 20-23, 2009, with pre-trial briefs and witness and exhibit lists to be filed by January 9, 2009.

8. The Board filed a Motion for Default Judgment on November 25, 2008 requesting that the allegations contained within the 2008 petitions be deemed admitted due to Respondent's failure to answer. Respondent did not file a response to the Motion for Default.

9. On January 5, 2009, the Panel held a pre-trial conference in accordance with the October 17, 2008 Order. Also on January 5, 2009, Respondent filed a Motion to Extend the Time for Answer which was accompanied by an Answer to the 2009 Petitions. After hearing from the parties, the Panel entered an Order granting the Board's Motion for Default on January 5, 2009 for the reasons outlined in the Order itself. The Chairman of the Board denied a request by the Respondent to file an answer subsequent to this order because the Hearing Panel had already granted the Board's Motion for Default.

10. On Friday, January 16, 2009, Respondent filed a Motion for Relief from Order on Motion for Default, and Motion to Continue Present Trial Setting or Alternatively to Strike Petitioner's Witness and Exhibit List and Pre-Trial Brief and Prohibit Use Thereof at Trial of This Case. Since the hearing was set for the following week, the Panel and parties convened for a conference call on January 16, 2009 to discuss Respondent's Motion. The Panel agreed to set aside the default judgment and permitted Respondent another opportunity to request permission to file a late answer from the Board Chairman. The hearing was reset to April 20-21, 2009. The Panel declined to set aside the Board's timely filed pre-trial brief and witness and exhibit list. Notably, Respondent had not filed his own pre-trial brief and witness and exhibit list. The Panel

provided Respondent another opportunity to file a pre-trial brief and witness and exhibit list, due on April 9, 2009.

11. On April 2, 2009, Respondent requested permission to file an answer to the 2008 petitions. The Board Chair granted his request. Respondent did not file a witness and exhibit list or pre-trial brief.

FINDINGS OF FACT

General

12. The Respondent was licensed to practice in 1968. His current address is registered with the Board as 111 South Main Street, Elizabethton, Tennessee, 37643-4516. He has maintained this office address for twenty-eight (28) years.

13. Respondent shares an office with Collins Landstreet, Esquire. He employs his son, Skylar Cowan, as a general office manager who performs administrative duties.

14. Respondent admits that he has not paid annual registration fees to the Board of Professional Responsibility this year. The fees were due on March 1, 2009. Respondent acknowledges receipt of a Notice of Summary Suspension sent by the Board on March 30, 2009 which informed him that he must pay the annual registration fee within thirty (30) days of receipt of the notice or else an Order will be entered by the Supreme Court summarily suspending him from the practice of law. (Ex. 2)

15. Respondent admits that he was summarily suspended from the practice of law on August 29, 2007 for failure to pay annual registration fees to the Board. Respondent admits that he received a Notice of Delinquency and Summary Suspension on May 14, 2007 informing him that had failed to pay the fees for 2007 and that he had thirty (30) days to pay the annual fee or an Order would be entered by the Supreme Court summarily suspending him from the practice of

law. (Ex. 3 & 4)

16. Respondent admits that he was summarily suspended from the practice of law on September 20, 2004 for failure to pay annual registration fees to the Board. (Ex. 5)

17. Respondent admits that on March 17, 2009, Chief Judge Curtis Collier suspended the Respondent from practicing in the U.S. District Court, Eastern District, all divisions and units, for six (6) months. Following the expiration of the six (6) month suspension, the Court ordered Respondent to serve one (1) year probation during which he must file a written report with the Court explaining steps he has taken to correct the deficiencies in his law office management; further, he was ordered to cooperate with the Court and the Board in any disciplinary action that may be pursued. (Ex. 6)

18. Respondent was suspended by the U. S. District Court for engaging in unethical conduct and violating the Tennessee Rules of Professional Conduct. (Ex. 6)

19. Respondent was admonished by the Judges of the 1st Judicial District in an Order entered on August 31, 2000 which declared that he “has shown a protracted pattern of not submitting orders to the judge for signing for months after the court’s ruling. Attorney Cowan has been guilty of this conduct more than any other attorney practicing in this district. Such conduct on his part evinces disrespect for the courts, and more importantly, a conscious disregard for the interest of his clients.” (Ex. 7)

20. As a result of the August 31, 2000 Order, Respondent was ordered to file all required orders and judgments reflecting court actions within thirty (30) days of oral announcement by the judge. (Ex. 7)

21. On August 22, 2008, Chancellor G. Richard Johnson suspended the Respondent from the practice of law in the Chancery Court of the 1st Judicial District and further restricted

him from filing or defending any new cases until further notice. The Chancellor entered this Order after finding that Respondent misrepresented his status as an active attorney when he was actually on suspension for failing to pay registration fees. (Ex. 14)

22. Concerning prior disciplinary actions, the Respondent had a Public Censure on November 28, 1991, for three complaints consisting of the following misconduct: charging an excessive fee; neglecting a child support case; and failing to pay two doctors' deposition fees from settlement proceeds. In each of the above matters, he failed to respond to the complaint until the day before he was provided notice of intent to suspend his law license. (Ex. 8)

23. He had a second Public Censure on June 22, 1995, for being found in contempt of the Carter County Chancery Court in regard to the case of Karen Wilson v. Robyn Wilson. (Ex. 8)

24. He had a third Public Censure on February 12, 2000, for failing to have an internal diary system which caused him to neglect a client's case. He did not respond timely to the complaint which is part of a pattern of delay by Respondent. (Ex. 8)

25. Respondent was suspended from the practice of law for thirty (30) days on December 15, 2002, for a pattern of failing to timely submit divorce judgments for signature and of failing to timely file said judgment in divorce matters. This discipline arose from an Order entered on September 8, 2000 by Judge Thomas Seeley finding Respondent in contempt. Mr. Cowan was fined and ordered to serve two days in jail. (Ex. 8)

26. Respondent has also received fifteen (15) private informal admonitions dating from 1983 to 1999. The violations primarily consist of neglect, failure to communicate, failure to respond to disciplinary complaints, delaying the administration of justice, etc. (Ex. 8)

File No. 31136-1-TH – Sue Anne Meade case
(2008-1776-1-KH Supplemental Petition)

27. On May 29, 2008, the Board notified Respondent of a disciplinary complaint filed by Frank Santore, Jr., Esquire, regarding the Sue Anne Meade case. (Ex. 9)

28. Respondent failed to provide a timely response to the Board's inquiry. On June 26, 2008, the Board sent a notice to Respondent warning him of temporary suspension if he failed to submit a response. (Ex. 10)

29. Respondent represented Sue Anne Meade in a termination of parental rights case in the Chancery Court for the 1st Judicial District. Chancellor Richard Johnson presided.

30. A trial was held for three days beginning on September 5, 2007 and concluding on September 7, 2007.

31. On September 7, 2007, the Chancellor halted the proceedings upon receiving a call from his office advising him that the Respondent was suspended from the practice of law due to his failure to pay registration fees due to the Board of Professional Responsibility. The Chancellor immediately called Respondent to his chambers and advised the Respondent of the situation and further inquired into the matter. When asked whether he had been suspended, Respondent informed him that the fees had been "taken care of." Based upon the Respondent's representations to the Court, the Court resumed hearing the matter to its conclusion, and the Court terminated the parental rights of Respondent's client, Sue Ann Meade.

32. Chancellor Johnson testified in this disciplinary proceeding that when he questioned the Respondent about his suspension, he was clearly referring to the annual registration fees due to the Board.

33. Respondent testified that he was delinquent in paying the Board fees, CLE fees, and possibly the professional privilege tax for that year. He further testified that when he told the Chancellor that the fees had been "taken care of," he was referring to CLE fees.

34. Respondent knew that he had not paid the annual registration fees for 2007 when he had the conversation with Chancellor Johnson.

35. Respondent was on notice prior September 7, 2007 that his license would be suspended for failure to pay the annual registration fees. A Notice of Delinquency and Summary Suspension was sent via certified mail to his office on May 10, 2007, and received by his office on May 14, 2007. (Ex. 3)

36. Respondent did not pay the annual registration fees as directed in the Notice until September 7, 2007.

37. Respondent did not provide any reason for failing to pay the annual registration fees following receipt of either the regular notice from the Board or the Notice of Delinquency.

38. Respondent did not send payment of his registration fees to the Board until September 7, 2007, following his conversation with Chancellor Johnson. The Board acknowledged receipt of the fees, in the amount of \$135.00 plus a delinquency penalty, on September 10, 2007. (Ex. 12 & 13)

39. On September 10, 2007, Respondent received a copy of the Order of Summary Suspension that he had been warned about in the Board's May 2007 Notice.

40. Due to Respondent's failure to pay the registration fee prior to Ms. Meade's trial, he was suspended from the practice of law during his representation of her at the trial.

41. As a result of Respondent's actions, Ms. Meade filed a Rule 60 Motion seeking to set aside the Court's termination of her parental rights to two (2) minor children. At a hearing on

the Rule 60 Motion held on July 18, 2008, the Court found that Respondent's actions required the trial to be set aside. Further, the Chancellor suspended Respondent from his Court until further order. (Ex. 14)

42. Chancellor Johnson testified before the Hearing Panel that Respondent lied to him in chambers by claiming to have "taken care of" the annual registration fees on September 7, 2007, and then again when Respondent testified before him at the hearing on Ms. Meade's motion to set the termination of parental rights aside.

43. At the hearing of Ms. Meade's motion, Respondent testified that he had no notice of the suspension when he clearly had notice that he would be suspended for failure to pay the fees. (Ex. 14)

44. At the hearing of Ms. Meade's motion, Respondent testified before Chancellor Johnson that once he learned of the suspension on September 10, 2007, he had a friend hand-deliver the fees to the Board. (Ex. 14)

45. Respondent's testimony in this hearing, however, is that he had a friend hand-deliver fees in early August, although he could not remember which fees he was paying.

46. Further, as demonstrated in Exhibit 12, Respondent mailed a payment of the registration fees to the Board, including a penalty amount, on September 7, 2007, prior to receiving the Order alerting him to the suspension and not on September 10th as he told Chancellor Johnson.

47. Respondent testified in this disciplinary hearing that he has been an attorney for forty (40) years and that he understood that registration fees are due by March 1st every year.

48. Further, Respondent experienced the process of summary suspension for failure to pay registration fees prior to 2007 in that he was summarily suspended in 2004 for the same

reason.

49. As a result of Respondent's failure to pay registration fees and heed the warning the Board provided months earlier, all parties in the Meade case were adversely affected when the case was set aside including the opposing party, the children, the prospective adoptive parents, the guardian ad litem, and the Court.

File Nos. 30773-1-TH, 30386-1-TH, 30964-1-TH – Circuit Judge Jean Stanley
(2008-1776-1-KH Petition for Discipline)
and
File No. 26904-1-TH – Circuit Judge Jean Stanley
(2004-1439-1-TH Supplemental Petition for Discipline)

50. Judge Jean Stanley, Circuit Court Judge, filed three complaints that were incorporated into the Board's 2008 Petition for Discipline. The specific cases involved were Roark v. Roark, Peters v. Blevins, and Hawkins v. 31W Insulation.

51. Respondent represented the plaintiff in the Peters v. Blevins case, a personal injury matter. Mr. Bradley Griffith represented the defendant.

52. The parties settled the Peters case at a mediation held on June 14, 2007. Mr. Griffith sent a settlement check, a Release of All Claims, and a proposed Order of Dismissal to Respondent on June 22, 2007.

53. Respondent cashed the settlement check, but never returned the Release or proposed Order of Dismissal to Mr. Griffith.

54. Mr. Griffith made numerous attempts to call Respondent to ascertain the status of the Release and Order of Dismissal, but to no avail.

55. Because he had not received the documents or any indication from Respondent that the matter could be finalized, Mr. Griffith filed a Motion to Dismiss. Mr. Griffith also filed a Notice that was mailed to Respondent informing him that the Motion to Dismiss would be

heard on November 19, 2007. These documents were filed on October 12, 2007, one month prior to the anticipated hearing. (Ex. 20)

56. Respondent admits that he did not communicate with Mr. Griffith. Rather, he testified that he did not see the need to inform Mr. Griffith of his agreement with the Order of Dismissal.

57. Respondent admits that he did not appear on November 19, 2007 for the hearing on Mr. Griffith's Motion to Dismiss. He did not file a response or provide any communication regarding his agreement with the dismissal.

58. As a result of his failure to appear on November 19, 2007, Judge Jean Stanley entered a Show Cause Order demanding that Respondent appear before the Court on December 13, 2007. The Order states that Respondent has failed to respond to phone calls, correspondence, and to enter an Order properly complying with a settlement agreement, and failed to appear before the Court after receiving proper notice. (Ex. 20)

59. Despite having two other cases on the same docket, Respondent failed to appear for the Show Cause hearing on December 13, 2007. (Ex. 47). He was actually present at court on that day but left prior to the Court calling the show cause order to be heard.

60. Judge Stanley issued an attachment for Respondent's arrest. He was arrested and paid a bond of \$2,500 to secure his release.

61. The Show Cause hearing was finally held on February 25, 2008. Respondent was represented by Attorney Collins Landstreet. Respondent testified at the hearing before Judge Stanley.

62. Respondent testified on February 25, 2008 that he was not aware of the December hearing because the clerk sent notice to him in a hand-written envelope.

63. Respondent testified in this disciplinary hearing that he does not open hand-written envelopes in a timely manner because he deems them to be less important than one that is typed. He testified that he believed that it may have contained a refund of court costs or something similar and was on no great importance.

64. Respondent testified that he was not in contempt because he did not have actual knowledge of the December 2007 hearing due to his practice of not opening hand-written envelopes. However, interestingly, the case was on the docket for that day.

65. Mr. Griffith testified that it is common to receive correspondence from the Court in hand-written envelopes.

66. Respondent admits that he received the notice from the Court approximately three and one half weeks prior to the December court date, and that it went unopened for that entire period of time.

67. At the February 25, 2008 court date, Respondent testified that it was his practice to always secure his client's signature on a Release of Claims prior to issuing the settlement payment. However, he could not provide a copy of the Release on that date.

68. Respondent states that the reason he could not find the Release was because it was filed in another file. He testified that "the whole thing came up because the files were confused".

69. Upon request, Respondent provided a signed Release to the Hearing Panel. (Ex. 55)

70. Respondent did not provide a copy of this Release to Mr. Griffith or the Board prior to the disciplinary hearing on April 21, 2009. He did not provide it to Judge Stanley in order to support his testimony in her court, either.

71. Mr. Griffith's clients were adversely affected by this matter in that they bore the expense of Mr. Griffith's efforts to finalize their case.

72. The Roark matter was a divorce proceeding held in Judge Stanley's court. Respondent represented Mark Roark and Janice Russell, Esquire, represented Jacqueline Roark.

73. Judge Stanley sent a complaint to the Board on July 5, 2007 regarding the Roark case following a July 2, 2007 hearing at which Ms. Russell's contempt petition was heard. (Ex. 45)

74. Judge Stanley testified that Mr. Roark appeared before her court and testified that he had been unable to contact Respondent despite making numerous phone calls and sending correspondence. Mr. Roark testified that he had no knowledge of a letter written by Janice Russell requesting that he provide a motorcycle key and that he pay property taxes. At the time of the July 2, 2007 hearing, Mr. Roark had secured new counsel, Jason Creech, to represent him.

75. The Judge determined that Mr. Roark's testimony was credible based upon her prior experience with Respondent's past conduct.

76. Respondent testified that he did not know that Mr. Roark had fired him and replaced him with new counsel until they met in front of the courthouse on July 2, 2007.

77. On November 27, 2007, Judge Stanley sent a complaint to the Board alleging that Respondent had failed to respond to Defendant's interrogatories in Hawkins v. 31-W Insulation Co. (Ex. 46)

78. In the Hawkins matter, Respondent failed to respond to interrogatories for approximately eight (8) months. Opposing counsel in the case, Christopher Owens, propounded the discovery request to Respondent in February 2007. On October 30, 2007, Mr. Owens filed a

Motion to Compel. The hearing on the Motion to Compel was set for November 19, 2007. (Ex. 22 & 46)

79. Judge Stanley reported to the Board that Respondent did not appear for the November 19, 2007 Hawkins hearing. (Ex. 46)

80. Respondent testified that he was having some difficulty responding to the discovery, however, he did not request an extension or make any other type of objection in the eight (8) months between receiving the discovery request and the Motion to Compel.

81. On October 30, 2003, Judge Stanley sent a copy of a Show Cause Order entered in the Barnette v. Barnette case. (Ex. 44)

82. Judge Stanley entered the Order due to Respondent's failure to appear at a status hearing on October 27, 2003. (Ex. 44)

83. In her letter, Judge Stanley stated "[T]he problem continues." (Ex. 44)

84. Judge Stanley testified that she was referring to Respondent's ongoing practice of negligence in her court.

85. Judge Stanley further testified that she now recuses herself in any cases involving Respondent.

File No. 26905-1-TH – Amy Tester Matter
(2004-1439-1-TH Supplemental Petition for Discipline)

86. Respondent admits in his Answer to the Supplemental Petition for Discipline (2004-1439-1-TH) that on December 29, 2003, a disciplinary complaint was filed with the Board against Respondent regarding his conduct in the divorce of Tester v. Tester.

87. Respondent further admits in his Answer that he did not file a response to the Board's inquiry until February 14, 2004 wherein he asked for an extension until February 24, 2004. No other response was provided.

88. Respondent represented Amy Tester in the divorce. Ms. Janice Russell, Esquire, represented Mr. Tester.

89. A hearing was held on April 7, 2003 at which the parties announced an agreement. The Court granted the divorce on that date.

90. Ms. Russell mailed a proposed Final Decree of Divorce and Quitclaim Deed to Respondent on May 23, 2003. (Ex. 50)

91. Having received no response from Respondent, Ms. Russell sent another letter to Respondent on July 2, 2003 which included another copy of the proposed Decree and a Quitclaim Deed. (Ex. 50)

92. Again, having received no response, Ms. Russell sent another letter to Respondent on August 4, 2003. In her letter, Ms. Russell notes that she has not heard from Respondent. Further, she stated that she would submit the Decree for the Judge's signature within ten (10) days if she did not hear from Respondent. (Ex. 50)

93. On August 15, 2003, Ms. Russell submitted the Decree to the Court. It was entered without Respondent's signature. (Ex. 50)

94. Ms. Russell testified that throughout this period of correspondence she never heard from Respondent.

95. Respondent testified that the language in the proposed decree was not acceptable because it did not contain language that the property had to be refinanced within 60 to 90 days.

96. Respondent admits that he did not file an objection to the proposed Decree nor did he inform Ms. Russell that the proposed Decree was acceptable.

97. Ms. Russell testified that entering the Decree in an expedient manner would have been a benefit to his client's parents because then there would be an enforceable obligation.

Additionally, Respondent never advised Ms. Russell of any problems that were preventing him from signing the Decree or preventing him from obtaining his client's signature on the deed. In each letter, she advised him to contact her if there were any problems. (Ex. 50)

File No. 30503c-1-TT – Complaint by Aaron Guinn
(2008-1776-1-KH Petition for Discipline)

98. On June 25, 2007, the Board received a complaint alleging ethical misconduct against Respondent submitted by Aaron Guinn. The matter was referred to the Consumer Assistance Program (hereinafter "CAP") and Respondent was notified of the complaint. The complaint was not successfully resolved through CAP and ultimately referred to Disciplinary Counsel. (Ex. 17 & 49)

99. Respondent did not respond to CAP in a timely manner. Further, Respondent failed to respond to Disciplinary Counsel's inquiry and a Notice of Petition for Temporary Suspension was mailed to Respondent on October 12, 2007. (Ex. 17)

100. On October 16, 2007, Respondent replied with his explanation regarding Mr. Guinn's complaint. Included with his response was a letter drafted to Mr. and Mrs. Guinn offering a full refund of \$1,000.00. (Ex. 18)

101. Mr. Guinn and his wife hired Respondent in December 2001 to handle the estate of Georgia Booth, Mr. Guinn's mother-in-law. At the time of her death in 2001, Mr. Guinn's wife and Ms. Booth's husband, James Booth, were heirs to the estate along with a few other family members. Mr. James Booth passed away several years after Mr. Guinn hired Respondent to handle the estate.

102. Mr. Guinn testified that Respondent advised that a waiver by Mr. Booth would be needed in order to transfer real property to Mrs. Guinn.

103. In between the date he was hired by the Guinns' and the date of Mr. Booth's death, Respondent had been unable to obtain the waiver.

104. After Mr. Booth's death, Respondent informed Mr. Guinn that it would be necessary for Mr. Booth's heirs (his parents) to sign waivers of claim against the estate.

105. As of approximately June 2007, Respondent had neither located Mr. Booth's parents nor advised Mr. Guinn of other options to obtaining the waivers.

106. Respondent testified that the Guinn's file lay "dormant" during the five years between Ms. Booth's death and June 2006. Respondent testified that he looked at the file in June 2006 following a phone call from Mrs. Guinn.

107. Mr. Guinn testified that Respondent promised to hire a private detective to find them, but that Respondent never followed through. Further, Mr. Guinn testified that in or around June 2006 he was able to locate Mr. Booth's parents on the internet. Mr. Guinn provided the address to Respondent.

108. Mr. Guinn testified that he always spoke directly with Respondent about the case including several phone calls occurring prior to June 2006 which is when Respondent states that he first looked at the file.

109. Respondent states that he did not learn that his secretary had not been able to locate Mr. Booth's parents until Mrs. Guinn contacted him in 2006, three years after the death of his secretary.

110. Respondent states that his secretary had the responsibility for handling the Guinn's case.

111. Mr. Guinn told Respondent in a phone conversation in early 2007 that he wanted the case to be finished or else he wanted a full refund from Respondent.

112. By June 22, 2007, Respondent had neither completed the case nor refunded his fee to Mr. Guinn. Mr. Guinn wrote Respondent again complaining of his inaction on the case and requesting that the matter be brought to conclusion or else that a refund be issued. Specifically, Mr. Guinn stated that he provided Respondent with Mr. Booth's parents' address one year earlier and that no activity had yet occurred on the case. (Ex. 49)

113. A total of six (6) years elapsed on the Guinn's case with no activity by Respondent.

114. Respondent states that he refunded the money since Mr. Guinn indicated that he wanted to find new counsel. However, Respondent did not refund the \$1,000.00 until October 2007, four months after Mr. Guinn filed a Board complaint and after Respondent had been warned of temporary suspension for his failure to respond to the Board. (Ex. 17 & 18)

File No. 28923-1-TH -- Complaint by Johnny Dale Benfield
(2004-1439-1-TH Fourth Supplemental Petition for Discipline)

115. On February 16, 2006, Johnny Benfield filed a disciplinary complaint with the Board against Respondent. This complaint was incorporated into the Fourth Supplemental Petition (2004-1439-1-TH). Respondent did not file an Answer or response with the Board.

116. Respondent represented Mr. Benfield in a child custody matter.

117. On July 7, 2005, the Court awarded Mr. Benfield custody of his minor child following a contested hearing. The Court also awarded child support to Mr. Benfield and specified visitation for the mother. (Ex. 31)

118. Respondent did not enter the Order until February 2006 following repeated requests by Mr. Benfield to enter it. (Ex. 31)

119. Without the Order, Mr. Benfield would not have been able to enforce child support, which Respondent admits that the mother was not paying.

120. The allegations are deemed admitted as the Respondent failed to file an answer.

File No. 30944-1-TH – Complaint by Tina Ward
(2008-1776-1-KH Petition for Discipline)

121. On February 20, 2008, Ms. Ward sent a complaint alleging ethical misconduct by Respondent to the Board. (Ex. 27)

122. The Board forwarded the complaint to Respondent on March 24, 2008 requesting a reply within ten (10) days. (Ex. 26)

123. Having received no response from Respondent, the Board mailed a Notice of Petition for Temporary Suspension to Respondent on May 2, 2008. (Ex. 28)

124. Respondent sent a letter to the Board's inquiry on May 15, 2008. This letter includes Respondent's accounting of the settlement proceeds. (Ex. 29)

125. Respondent was retained by Nora Wright Ornduff, Ms. Ward's mother, to handle a personal injury case in Carter County, Tennessee. Ms. Ornduff died on June 18, 2004, prior to the resolution of the personal injury matter.

126. On April 25, 2005, Respondent filed a Petition for Probate of Will and Granting Letters Testamentary requesting that an administrator be appointed for the purpose of continuation of the personal injury case. An Order was entered on the same date.

127. The Respondent knew at the time of filing the Petition for Probate of Will and Granting Letters Testamentary that Ms. Ornduff had two (2) adult children who would be the beneficiaries of any settlement or award in the personal injury matter. The children were Ms. Ward and her brother, Carl "Todd" Wright.

128. During a period between February 2007 to April, 2007, Respondent spoke with Ms. Ward by phone to discuss distribution of settlement proceeds. Ms. Ward provided her

current address and phone number. Ms. Ward located the address of her brother, as well. Respondent acknowledges receiving this information.

129. Respondent has never distributed these proceeds to Ms. Ward. Mr. Wright died in June 2007.

130. Respondent testified that he sent an affidavit or other document to Mr. Wright that he was to sign and then forward to Ms. Ward. Respondent also states that he did not know her whereabouts. No documents were produced by the Respondent to support his claim.

131. Ms. Ward stated that prior to her brother's death in June 2007, they spoke on a regular basis and he never indicated that Respondent sent a document to him.

132. Although Ms. Ward moved to a new address around the same period of time, she kept Respondent informed as to her current address. Further, all mail was forwarded to her new address.

133. Ms. Ward had family members in Elizabethton, one of whom is an attorney, who were known to Respondent.

134. The Respondent testified that as of the date of this hearing, the proceeds of the settlement remain in Respondent's trust account.

File No. 26198-1-TH – Celmer Taylor Complaint
(2004-1439-1-TH Petition for Discipline)

135. On April 25, 2003, Ms. Celmer Taylor filed a disciplinary complaint with the Board against Respondent. The Board forwarded a copy of the complaint along with a request for Respondent's response on April 28, 2003. (Ex. 32)

136. Having received no response for almost six (6) months, the Board sent another letter to Respondent on September 26, 2003 requesting an immediate response. (Ex. 34)

137. Respondent provided a response on October 3, 2003. (Ex. 33)

138. Ms. Taylor lived for several years with Mr. Denver Campbell. When Ms. Taylor and Mr. Campbell decided to separate, they needed legal assistance to prepare various deeds to transfer title of some real property.

139. Ms. Taylor had formerly been a client of Respondent for other similar matters.

140. Respondent admits that in this case, Mr. Campbell is the party who hired him to prepare the deeds transferring the property.

141. On or around April 2, 2003, Ms. Taylor and Mr. Campbell went to Respondent's office to discuss the deeds.

142. When Mr. Campbell began questioning whether Ms. Taylor would be responsible for paying the remainder of a loan on one piece of property, she informed Respondent and Mr. Campbell that she had a life insurance policy that covered the amount of the loan in the event of her death.

143. Ms. Taylor testified that Respondent said "(M)aybe she will die or you can shoot her" to Mr. Campbell.

144. Respondent claims that he was trying to warn Ms. Taylor of Mr. Campbell's propensity for obstinacy and that he "wouldn't want him mad at me."

145. Respondent does not admit that he said "(M)aybe she will die or you can shoot her", however, he admits that he "tried to illustrate in a polite but humorous way my observations through cautioning Ms. Taylor that, in this mood, with this background, if Mr. Campbell felt jeopardized he might take some irrational action against her, knowing that she had life insurance to discharge the loan on his home."

146. Respondent did not advise Ms. Taylor or Mr. Campbell that he may have a conflict in proceeding with the matter given the clear adversarial relationship between them.

Respondent did not ask Ms. Taylor if she would agree to waive any conflict of interest since she had been a former client.

147. Respondent testified that he did not view this as a “case” with a “client” because it was not a “win or lose” situation. Therefore, he did not think this case warranted a conflict check.

148. Following this meeting where Respondent made the imprudent comment to Ms. Taylor in Mr. Campbell’s presence, she returned to sign the documents Respondent had prepared.

149. Ms. Taylor had not authorized Respondent to serve as trustee as stated in the Deed of Trust prepared by Respondent. She did not understand why Respondent made himself trustee and refused to sign the document. (Ex. 35)

150. Following the meeting with Respondent where she refused to sign the deed, Mr. Campbell threatened Ms. Taylor with a gun and threatened to kill her and was charged criminally.

File No. 26227-1-TH – Complaint by Tim Peresada
(2004-1439-1-TH Petition for Discipline)

151. On May 9, 2003, Tim Peresada filed a disciplinary complaint with the Board against Respondent. (Ex. 54)

152. Respondent admits in his Answer to the Petition that he did not respond to the Board until December 5, 2003.

153. Respondent represented Mr. Peresada in an appeal of a divorce matter.

154. On November 22, 2002, the Court of Appeals issued an opinion adverse to Mr. Peresada.

155. Mr. Peresada testified that he learned of this decision in February 2003 from another attorney.

156. Mr. Peresada testified that Respondent did not alert him of the decision by the appellate court. Further, after Mr. Peresada learned of the adverse decision in February 2003, he called Respondent to inquire about the status of the case. According to Mr. Peresada, that was the first conversation he had with Respondent about the outcome of the appeal.

157. Mr. Peresada was upset to learn that by February 2003, he no longer had an opportunity to file an appeal to the Tennessee Supreme Court of the adverse decision.

158. Further, Mr. Peresada testified that Respondent advised him not to pay the judgment until he was contacted by opposing counsel.

159. As a result of this advice, the opposing party attempted to foreclose upon his house to satisfy the judgment.

160. Respondent claimed that he did in fact advise him of the opinion before Christmas 2002. However, he produced no documents supporting his claim.

File No. 30914C-1-TH – Complaint by Pamela Lyons Fink
(2004-1439-1-TH Petition for Discipline)

161. On November 5, 2007, Complainant Pamela Lyons-Fink sent a complaint to the Board regarding her dissatisfaction with Respondent's legal services and alleging that he failed to adequately inform her about a Power of Attorney that was incorporated into a fee agreement. (Ex. 52 & 53)

162. Respondent admits in his Answer to the Petition that he failed to respond to the Board's inquiry in a timely manner. On December 17, 2007, the Director of CAP sent a letter to Respondent advising him that he had failed to respond to the complaint and requesting a

response within five (5) days of the letter. Respondent provided a response to the Board's inquiry on January 4, 2008.

163. On or around November 22, 2006, Ms. Fink engaged Respondent for legal services in the matter of a divorce and in the matter of a criminal complaint. The criminal complaint was satisfactorily resolved although Ms. Fink testified that Respondent did not fully explain the consequences of entering into a diversion agreement. The criminal complaint was resolved prior to October 8, 2007.

164. On or around October 8, 2007, Respondent prepared a written fee agreement entitled "Attorney's Employment Contract" for Ms. Fink to sign. Respondent dated the agreement "November 22, 2006" which was not the date it was being presented to Ms. Fink. (Ex. 41 & 53)

165. According to Ms. Fink, Respondent hid the first page of the document by folding it over so that all she could see was the signature page.

166. Respondent had previously worked with Ms. Fink's brother. He was renting an apartment from Respondent. Further, Ms. Fink has had family in the local area for many years.

167. After she left Respondent's office, Ms. Fink realized that the "Attorney's Employment Contract" contained a Power of Attorney that gave Respondent full authority, among other things, to settle her case in his individual capacity.

168. Ms. Fink testified that Respondent did not explain the contract to her before signing it. She later revoked the Power of Attorney after obtaining new counsel.

169. Ms. Fink testified that she and Respondent had previously arranged that her legal fees would be deducted from money or an account that Respondent had with her brother.

170. Respondent testified that he wanted Ms. Fink to sign the contract because he needed authority to handle her case in the event that she disappeared. He relied upon Formal Ethics Opinion 85-F-90 to support his contention that he is permitted to use the Power of Attorney.

171. Ms. Fink testified that she did not understand the document and that Respondent did not explain it to her.

172. Ms. Fink testified that Respondent did not provide her with an itemized billing statement. She has not paid the Respondent anything for his services.

File No. 26903-1-TH – Complaint by Hon. Richard Johnson
(2004-1439-1-TH Supplemental Petition for Discipline)

173. On December 29, 2003, a disciplinary complaint was filed with the Board regarding Respondent's conduct in post-divorce proceedings in Schilling v. Schilling. Respondent did not respond to the Board until February 14, 2004.

174. Respondent represented Denise Schilling in the divorce. He filed the divorce on behalf of Ms. Schilling. The divorce was granted on January 20, 1994, however, due to Respondent's failure to prepare the final Decree, defense counsel prepared a Decree and submitted it to Respondent for signature. Respondent never signed the final Decree and it was entered without his signature on April 12, 1994. (Ex. 16)

175. On November 27, 2001, the parties appeared before court to announce a revised visitation schedule and parenting plan. Chancellor Johnson orally approved the settlement.

176. Respondent failed to respond to reasonable attempts by opposing counsel, Anita Leger, to sign the Order and parenting plan memorializing the agreement. Ms. Leger submitted an Order and parenting plan to the Court. Neither Respondent nor Ms. Schilling signed those documents. The Court approved the Order and plan on April 1, 2003. (Ex. 25)

177. On December 4, 2003, a hearing was held before Chancellor Johnson at which Ms. Schilling testified that Respondent did not communicate with her about the revised parenting plan and that she was not aware a plan had been approved by the Court on April 1, 2003. She testified that she made numerous phone calls to Respondent but that he did not return her calls. (Ex. 24). Ms. Leger testified that she had sent the Parenting Plan to both the Respondent and to Ms. Shilling.

178. As a result of Ms. Schilling's testimony on December 4, 2003, the Court permitted the parties an opportunity to develop a new parenting plan. A new plan was submitted to the Court on January 13, 2004 signed by both parties. (Ex. 51)

File No. 27414c-1-TH – Complaint by Herman and Carmen Geidel
(2004-1439-1-TH Second Supplemental Petition for Discipline)

179. On August 5, 2004, Herman and Carmen Geidel filed a disciplinary complaint with the Board. Respondent admits that he never provided a response to this complaint.

180. The Geidels' paid Respondent \$1,500 to assist them in the prosecution of a trespass/property suit they filed in General Sessions Court. They had filed a criminal trespass warrant against the offending party. The Geidels' were seeking to take action against a neighbor whose horses kept coming on to their property. Although they filed the warrant *pro se*, they retained the Respondent for legal assistance. Mr. Geidel is 81 years old and was unfamiliar with what had to be done to have this problem addressed.

181. Mr. Geidel testified that Respondent appeared with them in General Sessions court where they had to wait for approximately seven (7) hours for the case to be resolved. The District Attorney's office reviewed the matter and determined that it was a civil matter and not a criminal matter. They decided to dismiss the case.

182. Other than the court appearance, Mr. Geidel testified that Respondent took no other action to help them resolve their problem.

183. After their unsuccessful appearance in General Sessions, Mr. Geidel sought a refund from Respondent. Mr. Geidel sent inquiries to Respondent by certified mail but never received a response from Respondent. Mr. Geidel testified that he filed a complaint with the Board because he was receiving no communication from Respondent.

184. Mr. Geidel ultimately sued Respondent for the legal fees, but the case was dismissed. The Respondent testified that he was retained to privately prosecute the criminal case. However, the District Attorney's office dismissed the action. He did not.

185. Due to Respondent's failure to adequately communicate with Mr. Geidel, Mr. Geidel remained confused about the status of his case.

File No. 27950-1-TH – Complaint by Sherri Bowers
(2006-1571-1-TH Petition for Discipline)

186. On February 9, 2005, Sherri Bowers filed a disciplinary complaint with the Board against Respondent. The Board sent two letters advising Respondent that he had failed to respond to the initial disciplinary complaint dated May 18, 2005 and October 18, 2005. Respondent admits that he did not respond to the Board. (Ex. 36)

187. In September 2003, Ms. Bowers hired Respondent to represent her in a child custody matter for a fee of \$1,000.00. The father of the child is Mark Anderson.

188. Respondent filed a Petition to modify child support in November 2003. (Ex. 43)

189. Ms. Bowers testified that Respondent never served Mr. Anderson with a copy of the Petition. Rather, Respondent told Ms. Bowers to arrange to have Mr. Anderson served, which she did. According to her complaint, Ms. Bowers provided the paperwork to Respondent but he took no action to advance the case.

190. After a couple of years, Ms. Bowers was frustrated with the lack of progress on the case and hired new counsel. Approximately one year after retaining Respondent, Ms. Bowers asked Respondent to represent her in a DUI so that the legal fees she had previously paid would somehow be used to her benefit.

191. On or around March 2005, Ms. Bowers retained Randy Fallin, Esquire, to represent her in the child support modification matter. The Court file indicates that Mr. Fallin issued a Summons for Mr. Anderson which was served by the Deputy Sheriff on March 26, 2005.

192. Ms. Bowers testified that Mr. Anderson would intentionally reduce his income periodically in order to escape an increase in child support. At the time she hired Respondent, it would have been an advantageous time to seek a modification.

193. During her testimony, Ms. Bowers revealed that Respondent had also represented her husband (Mr. Bowers) by filing a petition for divorce against her. Respondent did not discuss the potential conflict with her.

File No. 30324-1-TH -- Complaint by Melinda Bentulan
(2008-1776-1-KH Petition for Discipline)

194. On May 23, 2007, the Board received a complaint alleging ethical misconduct against Respondent submitted by Melinda Bentulan. The matter was referred to CAP and Respondent was notified of the complaint. Receiving no response, CAP sent another letter dated June 12, 2007, to Respondent requesting his response to the complaint. Again, receiving no response, the matter was referred to Disciplinary Counsel. The Board sent a letter on July 5, 2007, to Respondent requesting a response within ten (10) days. Finally, the Board sent a Notice of Petition for Temporary Suspension, via certified mail, which was received by Respondent on

August 22, 2007. On August 29, 2007, Respondent provided a response to the complaint. (Ex. 37-40)

195. No witnesses were called to support this petition. The Hearing Panel finds no facts to support any ethical violations.

File No. 28507-1-TH – Complaint by Sammy Richardson and
File No. 28972-1-TH – Complaint by Annalise Stanley
(2004-1439-1-TH Fourth Supplemental Petition for Discipline)

196. Respondent admits that he did not file a response to the Board or an Answer to the Fourth Supplemental Petition in response to the Board's allegations.

File No. 27285-1-TH – Complaint by Eddie Shell
(2004-1493-1-TH Second Supplemental Petition for Discipline)

197. As previously stated in the Trial Memorandum filed by Disciplinary Counsel William Hunt and in the notice of Voluntary Dismissal filed by Mr. Hunt, the Board did not submit proof relative to this complaint.

CONCLUSIONS OF LAW

198. Pursuant to Section 1, Rule 9 of the Rules of the Supreme Court, 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 Chancery Courts. 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") or former Disciplinary Rules (hereinafter "DR") of the State of Tennessee shall constitute misconduct and be grounds for discipline.

199. Pursuant to Section 8.2, Rule 9 of the Rules of the Supreme Court, the Board must prove that a disciplinary violation has occurred by a preponderance of the evidence. Preponderance of the evidence has been commonly defined as evidence that as a whole shows that the existence of the contested fact is more probable than its non-existence.

200. When disciplinary violations have been determined, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court.

201. After a full review of the pleadings, evidence and testimony presented before the Hearing Panel, this Panel finds that the Board has shown by a preponderance of the evidence that Respondent has violated Disciplinary Rules and the Tennessee Rules of Professional Conduct as alleged in each pending Petition. The specific violations are discussed in detail below.

Conduct Prejudicial to the Administration of Justice and Misrepresentation

202. Comment 8 of RPC 8.4 states that “[i]n both their professional and personal activities, lawyers have special obligations to demonstrate respect for the law and legal institutions.” In both the Sue Anne Meade case and in the *Peters v. Blevins* case, Respondent engaged in conduct that is prejudicial to the administration of justice. In the *Meade* case, Respondent engaged in misrepresentation to the Chancery Court.

203. The primary issue in the *Sue Anne Meade* case is Respondent’s failure to pay annual registration fees and his subsequent misrepresentation to the Chancery Court regarding his status as a lawyer. The law requires that attorneys pay annual registration fees to the Board by March 1st every year. Tennessee Supreme Court Rule 9, Section 20.1 states that attorneys “shall pay to the Board of Professional Responsibility on or before March 1 of each year an annual fee for each year beginning in 1976...” Respondent, like all other attorneys in Tennessee, is responsible for knowing the rules regarding admission and licensure. Notwithstanding his

responsibility for knowing the rules, the delinquency notices he received from the Board clearly recited the applicable rules. Section 20.3 states that “[a]ny attorney who fails to timely pay the fee required under 20.1 above shall be summarily suspended...” There is no ambiguity as to the consequences of failing to pay the registration fee. Respondent’s failure to pay the fee demonstrates disrespect for the law governing attorney responsibility and the legal institutions.

204. But what gives the hearing panel great concern is Respondent’s misrepresentation to the Chancery Court regarding his status as an active attorney in the middle of a trial. Respondent contends that he did not misrepresent his status to the Court because he mistakenly believed that the Chancellor was referring to late CLE fees. Chancellor Johnson testified that he clearly referred to the annual registration fees due to the Board of Professional Responsibility when he spoke to Respondent in his chambers. The Hearing Panel finds that Respondent’s testimony in this regard as not credible. He testified before Chancellor Johnson that he had no notice of the suspension. While it is true that he had not yet received the Order of Summary Suspension, he was well aware that he would be suspended for failure to pay annual registration fees. The delinquency notice clearly set forth the consequences of failure to pay the fees within thirty (30) days. Respondent knew he had not paid the annual registration fees. In fact, Respondent is the only party who could have known whether or not the fees were paid by the deadline. At any time following the deadline for payment of the fees, Respondent must be held responsible for knowing whether or not he was suspended. The ABA Standards define “knowledge” as follows:

“Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

205. Under this definition, the proof shows that Respondent had knowledge sufficient to establish a violation of RPC 3.3(a) and 8.4(c). Respondent knew he was late paying fees, including the Board fees. Respondent knew enough of the “attendant circumstances”, i.e. the penalty of summary suspension, to understand what failure to pay the fees could mean, especially in light of his history in this regard.

206. In addition, the Respondent, after having that discussion with the Chancellor, went back to his office and called the Board, whereupon he testified he learned he had, in fact, not paid his registration dues. That very day he mailed in his check. He knew, at that moment, that what he had told the Court was, in fact, false. Yet, he did not remedy that situation. Instead, he let it alone, hoping that it would not come to light.

207. Respondent was subject to summary suspension at any time following the deadline provided in the Notice of Delinquency. At the very least, Respondent’s actions were reckless. For the parties involved in Ms. Meade’s case, Respondent’s actions caused a termination of parental rights trial to be set aside. The parties, the children, the guardian *ad litem* and the Court were severely prejudiced by Respondent’s actions by virtue of the fact that the case had to be retried.

208. The Hearing Panel finds remarkable that Respondent at the hearing argued that it was the Chancellor’s responsibility to know whether or not Respondent had paid the annual registration fees and was a licensed attorney. Chancellor Johnson took immediate action when he learned of the suspension by calling Respondent into chambers to question him about it. The Respondent argued that the Chancellor had the duty to verify that Respondent was telling the truth. Simply put, as a practicing attorney in Tennessee, Respondent bears the responsibility for paying fees associated with his licensure on a timely basis, year after year. Blaming the Court

for anything in this regard strikes the Hearing Panel as incredible. Indeed, the Chancellor testified that he took immediate steps to determine the Respondent's status and made the error of believing the Respondent.

209. In the *Peters v. Blevins* matter, Respondent clearly failed to follow a court order directing him to appear on December 13, 2007 to show cause for failing to appear at the November 19, 2007 court date. The Respondent testified that he did not know about his obligation to appear because the order arrived at his office in a handwritten envelope. Thus, it was not, in his judgment, an important communication from the court. Indeed, he believed it may have contained a refund of court costs or something else that was relatively unimportant. The Hearing Panel finds such an explanation an unreasonable justification for failing to appear for the hearing. It also speaks volumes to a recurring theme in this case: Respondent's extremely negligent office management. Respondent's failure to appear before the Court on November 19, 2007 and December 13, 2007 demonstrate disrespect for the law and the Court.

Lack of Diligence and Inadequate Communication with the Courts and Opposing Counsel

210. As noted in the Order entered by the Circuit and Chancery Courts of the 1st Judicial District in 2000, Respondent has "a protracted pattern of not submitting orders to the judge for signing for months after the court's ruling. Attorney Cowan has been guilty of this conduct more than any other attorney practicing in this district. Such conduct on his part evinces disrespect for the courts, and more importantly, a conscious disregard for the interest of his clients."

211. The Panel finds that this pattern of neglect has continued with respect to entering orders and complying with discovery requests. In the *Peters v. Blevins* matter, Respondent failed

to exercise reasonable diligence by failing to respond to Mr. Griffith's proposed Order and Release of Claims. Respondent failed to expedite the conclusion of the settlement by failing to adequately communicate with Mr. Griffith. Further, Respondent provided no reason for his inaction other than he did not believe that he needed to respond to Mr. Griffith because he did not oppose the relief which Mr. Griffith sought. Despite receiving notice of a hearing on Mr. Griffith's Motion to Dismiss, Respondent still did not contact Mr. Griffith to either consent or object to the Order. Respondent's actions adversely affected his client's interests in that Mr. Griffith was permitted to charge Respondent's client with costs. As stated above, the entire *Peters* matter is a classic example of Respondent's negligent office management which, in this case, led to his arrest on his failure to appear at the show cause hearing.

212. Respondent was able to produce a signed Release on the second day of this disciplinary hearing. Despite the suspicious circumstances regarding the sudden appearance of this release, no evidence has been produced that it is not authentic. However, he never produced it to Mr. Griffith or the Court despite the exceedingly adversarial position he found himself in due to the show cause Order and the Court's increasing annoyance with him. As explanation, Respondent states that it was misfiled in another client's record.

213. In *Schilling v. Schilling* case, Respondent's conduct led to a parenting plan being set aside in that he failed to sign or approve an agreed parenting plan for more than two years after the parties announced the agreement to the Court. Respondent did not enter or sign the *Schilling* divorce decree despite the fact that his client was the Petitioner. In the *Tester* case, Respondent allowed a final Decree to be entered without his signature despite repeated efforts by Janice Russell to secure his approval. His failure to sign or indicate approval was injurious to his client's parents. In the *Benfield* matter, Respondent failed to timely prepare and submit a critical

custody Order in his client's favor. His client was the petitioner. It took Respondent six (6) months to prepare an Order demonstrating that his client was now the legal custodian of the child. Further, without the Order, Mr. Benfield was unable to enforce the child support obligation. In the *Hawkins* matter, Respondent failed to respond in any manner to a discovery request for over seven (7) months. This inaction by Respondent led to an Order to Compel.

214. The impact of this pattern is obvious. When Respondent ignores requests by opposing counsel for approval of proposed Orders, which govern the relationships of the parties to the lawsuit, neither the Court, opposing counsel, nor the opposing party has assurance that the Respondent has reviewed the Order or communicated the provisions of the Order to his client. Further, the entire process is placed on hold while opposing counsel and the Courts try to ascertain whether his silence is an objection or agreement to the entry of the Order. Counsel and the Court are forced to enter agreements that have previously been announced without the Respondent's signature. This often happens many months past the court date because attorneys are trying to secure his approval to no avail. In this disciplinary hearing, Respondent offered various reasons for not signing proposed Orders that were submitted to him for approval. However, Respondent admitted that he never filed objections or his own proposed draft. His actions affect the expediency with which the Court and litigants can finalize simple matters. Finally, his actions demonstrate that he is not in compliance with the 2000 Order entered by all the judges of the 1st Judicial District.

215. Based on the foregoing, the Panel finds that Respondent has violated RPCs 1.3, Diligence; 3.2, Expediting Litigation; and 8.4(a) and (d), Misconduct.

Lack of Diligence and Inadequate Communication with Clients and Third Parties; Conflict of Interest

216. In the Guinn complaint, Respondent failed to expedite the conclusion of the estate matter. For five (5) years, Respondent failed to do anything calculated to close the estate. His reason for the delay was that relatives would need to sign a release. If not for Mr. Guinn's intervention and work on the case, these relatives may never have been contacted. Even after Mr. Guinn found the relatives, Respondent still did no work on the case. Respondent testified that his secretary was responsible for handling the matter, with no supervision from him, and that after she died, the case lay dormant. He states that he knew nothing about the status of the case until he was contacted by the Guinns in 2006. If that is true, it demonstrates that Respondent allowed a client's matter to remain inactive for five (5) years. After he did become involved in the matter, he still took no action to finalize the case. It is notable that Respondent refunded the fee four (4) months after Mr. Guinn reported him to the Board.

217. The Ward complaint contains similar facts. He failed to take action so that the settlement proceeds could be distributed in a timely manner. Ms. Ward contacted Respondent directly after learning of her mother's settlement proceeds from another source. However, as of the date of this hearing, he has still taken no action. Specifically, in his response to the Board, Respondent promised to write Ms. Ward with specific details about the matter. Respondent has not contacted Ms. Ward since making this promise. Respondent testified that the settlement proceeds are still in his trust account.

218. The Panel finds that Respondent has not been diligent in both the Guinn and Ward matters after so much time had elapsed in these cases. Even if Respondent determined that he

simply could not bring the cases to conclusion, he should have communicated with the Guinns and Ms. Ornduff's heirs.

219. In the Peresada case, Respondent failed to notify his client of an adverse decision by the Court of Appeals. Mr. Peresada was clearly interested in seeking advice about a possible appeal to the next court. Unfortunately, Mr. Peresada only learned of the decision from another attorney three months after the entry of the opinion. As a result, he was delinquent in the payment of a judgment, and he was prevented from filing an appeal if he chose to do so.

220. In the Schilling case and the Roark case, complications arose as a result of Respondent's failure to adequately communicate with his clients. In both of those cases, the respective Courts heard testimony from Respondent's clients indicating that they were unaware of their obligations due to the Respondent's failure to communicate. With the Schilling case in particular, Respondent did not sign or approve the Order and parenting plan submitted to him by Anita Leger. The Court's specific finding that Ms. Schilling had no notice of the parenting plan prior to its entry is credible in light of all the evidence in this matter. That the Respondent contends that Ms. Leger sent that plan to his client does not change the Hearing Panel's conclusion. Indeed, it is not common practice for opposing counsel to send to opposing party's notice of court filings. That is the responsibility of the attorney.

221. In the Bowers case, Respondent failed to serve Mr. Anderson for over a year. Ms. Bowers testified that Respondent did very little to progress her case and the delay may have caused her to lose an advantageous position with respect to child support.

222. In the Geidel case, it is clear to this Panel that Respondent failed to communicate with the Geidels regarding the scope of representation and the status of their matter. Mr. Geidel, who is 81 years old and unfamiliar with the legal process, went to the Respondent for assistance

with his legal problem he had with his neighbor. He had filed a criminal warrant in the General Sessions court. That case was dismissed, not by the Respondent, but by the District Attorney's office. Mr. Geidel wrote to Respondent by certified mail after the conclusion of the General Sessions case, however, Respondent did not respond. The Respondent failed to properly define the scope of his employment with the Geidels.

223. In the Fink case, Respondent failed to adequately explain the employment agreement he presented to Ms. Fink. She had been his client for over a year when Respondent asked her to sign the agreement. According to Ms. Fink, Respondent did not disclose the entire contents of the document to her. Later, when she read the document, she realized that it included a broad Power of Attorney authorizing Respondent to act in an individual capacity to settle her case. Respondent testified that although he did not need for Ms. Fink to sign this document, he uses it on a routine basis because he needs authority to act in the event that she disappears pursuant to Formal Ethics Opinion 85-F-90. The Ethics Opinion presumes that the attorney has a power of attorney to act on the client's behalf and addresses the propriety of placing the settlement proceeds in an interest bearing account for the client.

224. In the Celmer Taylor case, Respondent cannot clearly explain exactly who his client was. However, it is clear that Ms. Taylor had been a former client. Further, it is clear that Mr. Campbell and Ms. Taylor's interests were not the same as they began discussing the division of their property. According to Ms. Taylor, Respondent made the statement "(M)aybe she will die or you can shoot her" to Mr. Campbell. After Ms. Taylor refused to sign the Deed of Trust appointing Respondent as trustee, Mr. Campbell did exactly that; he assaulted her with a gun. Respondent's intemperate statement certainly frightened Ms. Taylor and was unprofessional even if said in a joking manner. Equally unprofessional, however, was his failure to recognize

that he had an obligation to this former client to refrain from acting against her interest by acceding to Mr. Campbell's instructions without communicating his potential conflict of interest.

225. There is a preponderance of evidence demonstrating that Respondent violated Disciplinary Rule 1-102², Misconduct; DR 7-101, Representing a Client Zealously; Tennessee Rules of Professional Conduct (TRPC) 1.2, Scope of Representation; 1.3, Diligence; 1.4, Communication; 1.15, Safekeeping Property; 1.16, Declining and Terminating Representation; 3.2, Expediting Litigation; and 8.4, Misconduct.

Failure to Respond to Disciplinary Complaints

226. The Panel finds that Respondent has demonstrated a persistent pattern of failing to respond to disciplinary complaints pursuant to RPC 8.1. There are eighteen (18) complaints before the Panel in this matter. In four (4) of them, Respondent never responded to the Board's inquiries (Benfield, Geidel, Richardson, Stanley). In the same four (4), he did not file an Answer to the Petitions.³ In another four (4) of the complaints, he was months late in providing a response to the Board and only did so after receiving notice that he could be temporarily suspended (Meade, Guinn, Ward, Bentulan). In six (6) of the complaints, he responded several months late (Tester, Taylor, Peresada, Fink, Schilling, Bowers). Rule of Professional Conduct 8.1 (hereinafter "RPC") states that:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a)....

2 The Hearing Panel notes that on March 1, 2003 the Tennessee Supreme Court adopted the Tennessee Model Rules of Professional Conduct based on the ABA Model Rules with modifications made specific to Tennessee. Prior to that time, the Disciplinary Rules ("DR") and Ethical Considerations of the Tennessee's Code of Professional Responsibility governed attorney misconduct. Since some of those DRs were in effect at the time of the conduct at issue in this case, those are hereby referenced.

³ These complaints are included in Docket No. 2004-1439-1-TH (Second Supplemental Petition and Fourth Supplemental Petition) and Docket No. 2006-1571-1-TH.

(b) fail to disclose a fact necessary to correct a misapprehension of material fact 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 otherwise protected by Rule 1.6. (emphasis added)

227. Further, Tennessee Supreme Court Rule 9, Section 5.5 grants to the Board the authority to adopt guidelines regarding the efficient and timely resolution of disciplinary complaints and to establish procedures accordingly.

228. Respondent has been practicing law since 1968. He certainly understands the impact of failing to answer a petition or respond to a disciplinary complaint. In all cases presented to this Panel, Respondent admitted receiving notice of the Board's letter requesting an explanation to the complaint. Respondent's prior disciplinary history also demonstrates that he has exhibited a persistent pattern of failing to respond to disciplinary complaints dating from 1989 to present. This is significant because Respondent attributes his negligence in running a law practice to the death of his secretary in 2003. He received many disciplinary sanctions prior to her death for failure to communicate with clients, failure to respond to the Board, and other similar violations. Further, six (6) years after her death, he has not made sufficient effort to improve the efficiency of his office.

Aggravating Factors

229. Pursuant to ABA Standard 9.22, a number of aggravating factors are present in this case and are listed below. With the exception of one enumerated aggravating factor, all of the aggravating factors set out in the ABA Standards are present in this case:

- a) prior disciplinary offenses;
- b) dishonest or selfish motives;
- c) a pattern of misconduct;

- d) multiple offenses;
- e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- f) ...
- g) refusal to acknowledge wrongful nature of conduct;
- h) vulnerability of victim;
- i) substantial experience in the practice of law; and
- j) indifference to making restitution.

230. Respondent has had an incredibly lengthy disciplinary history. Respondent has four (4) prior public disciplinary sanctions including a suspension. Respondent has also received fifteen (15) private informal admonitions dating from 1983 to 1999. Many of these were issued for precisely the type of violation presented to this Panel: neglect, failure to communicate, delaying the administration of justice, etc. Further, he has been suspended from the U.S. District Court for the Eastern District of Tennessee for disciplinary violations. He has been suspended by Chancellor Johnson from the Chancery Court of the 1st Judicial District. Judge Stanley recuses herself from all of his cases. Finally, he was admonished for a pattern of failing to enter orders in 2000 by the Circuit and Chancery Judges of the 1st Judicial District.

231. Further, Respondent contends that his agreement to enter into a Guilty Plea is proof of his willingness to admit to the wrongful nature of his conduct. His conduct has belied his position. He points to others to explain his own misconduct. In the Meade matter, he argued that Chancellor Johnson bears the responsibility for monitoring Respondent's payment of annual registration fees. In the Peters matter, Respondent suggests that Mr. Griffith could have simply just submitted the Order rather than schedule a hearing at which Respondent would not appear.

According to Respondent, it was the Court's fault that he did not appear on December 13, 2007, despite having two other cases on the docket sheet, because the Show Cause Order was delivered in a hand-written envelope. Respondent testified that he did not fail to secure a signed Release of Claims in the Peters matter; it was simply misfiled and he saw no reason to produce a copy prior to the disciplinary hearing. In the Guinn matter, Respondent contends that his secretary had responsibility for handling the file, not him. When he did learn of the Guinns' case, Respondent contends that he could not do anything without the waiver of Mr. Booth's parents, however he took no action to secure it. In the Tester matter, Respondent contends that he was waiting on Ms. Russell's client to take action, however, entry of the divorce decree would have benefitted his client. Further, he never filed an objection or communicated with Ms. Russell despite her diligent efforts to finalize the matter. In the Fink and Geidel matters, Respondent contends that they just did not understand their own cases. Respondent has similar claims for each of these complaints.

232. Further, Respondent's own letter to clients in December 2007 belies his assertion that he is accepting the wrongful nature of his conduct. He blames unsatisfied clients for his predicament and promotes the suspension as a well earned vacation.

233. The Hearing Panel found the existence of no mitigation factors.

Appropriate Disciplinary Sanction

234. Based upon our findings of fact and conclusions as stated above, this Panel finds that the proof establishes by a preponderance of the evidence that a THREE YEAR SUSPENSION is the appropriate sanction in this case. This conclusion is based upon application of the ABA Standards for Imposing Lawyer Sanctions. The specific sections are cited below:

4.4 Lack of Diligence

4.42 Suspension is generally appropriate when:

- (a) A lawyer knowingly fails to perform services for a client and causes 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.

4.6 Lack of Candor

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

6.1 False Statements, Fraud, Misrepresentation

6.12 Suspension is generally appropriate when a lawyer knows that the false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.2 Abuse of the Legal Process

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 potentially injury to a party or causes interference or potential interference with a legal proceeding

7.0 Violations of Duties Owed to the Profession

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

8.0 Prior Disciplinary Orders

8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

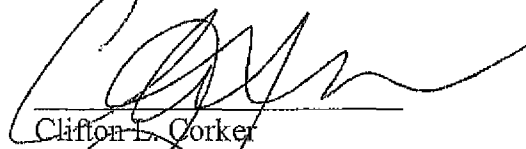
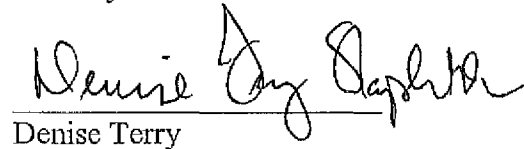
The cumulative effect of all of these complaints and aggravating factors cited above and a complete lack of the presence of mitigating factors justifies a THREE YEAR SUSPENSION from the practice of law in Tennessee.

The Panel also finds that restitution is an appropriate sanction in the Geidel matter.

JUDGMENT

Based on the above findings of fact and conclusions of law, the Hearing Panel finds that the Respondent should be suspended from the practice of law for three (3) years.

Respectfully submitted,


Clifton L. Corker
Paul Frye
Denise Terry

c:\office files\misc\cowan\cowan judgment 5-13-09