

FILED

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

BOARD OF PROFESSIONAL
RESPONSIBILITY
Law
EXEC. SEC.

IN RE: **BOBBY DEAN DAVIS,**
BPR # 009412, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Davidson County)

DOCKET NO. 2011-2086-5-KH

JUDGMENT OF THE HEARING PANEL

This matter was heard before the Hearing Panel on August 27, 2012 upon the Board's Petition for Discipline filed against Bobby Dean Davis. Upon consideration of the pleadings, evidence, and the record as a whole, the Panel makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. A Petition for Discipline was filed on November 22, 2011.
2. The Petition was sent via certified mail to Mr. Davis' home address, as registered with the Board, of 717 Old Lebanon Dirt Rd., Hermitage, TN 37076 and was returned to the Board "Not Deliverable as Addressed, Unable to Forward".
3. The Petition was also sent via certified mail to his office address, as registered with the Board, of 101 Shepherd Hills Dr., Madison, TN 37115, and was returned to the Board "Attempted Not Known."

4. On May 30, 2012, the Board learned that Mr. Davis was represented by counsel, Bryan Lewis, in a separate criminal matter.

5. Upon contacting Mr. Lewis, Mr. Lewis conferred with Mr. Davis and agreed to accept service of the Petition on his behalf. On May 31, 2012, the Board amended its certificate of service and sent the Petition via certified mail to Bryan Lewis' office address, as registered with the Board, of 214 2nd Avenue North, Suite 103, Nashville, TN 37201. The certified return receipt was signed on June 1, 2012 and returned to the Board.

6. Mr. Davis did not file an answer to the Petition for Discipline.

7. On June 26, 2012, the Board filed a Motion for Default Judgment and That Allegations Contained in the Petition for Discipline Be Deemed Admitted.

8. On August 1, 2012, the Panel entered an Order of Default. A final hearing was thereafter set for August 27, 2012, for which a Notice of Hearing was issued on August 2, 2012.

9. Mr. Davis was provided notice of the final hearing by the Executive Secretary for the Board and by Disciplinary Counsel. Further, Disciplinary Counsel confirms that she spoke with Mr. Davis on two (2) occasions in the week prior to the hearing and that Mr. Davis was aware of the hearing date and time.

10. Despite having received notice, Mr. Davis did not appear for the final hearing.

11. As a result of the Order of Default, the allegations contained within the Petition for Discipline are deemed admitted pursuant to Tennessee Supreme Court Rule 9, Section 8.2.

12. Mr. Davis was disbarred by Order of the Tennessee Supreme Court on August 9, 2011; however, he was licensed to practice law at all times during the period relevant to the disciplinary complaints contained herein.

FILE NO. 33796-5-RW – COMPLAINANT – ROBERT VOLOVNIK

13. On February 2, 2011, the Board received a complaint filed by Robert Volovnik regarding ethical misconduct of Mr. Davis.

14. On February 3, 2011, the Board sent a copy of the complaint and a request for a response to Mr. Davis.

15. Mr. Davis has never responded to the complaint.

16. On August 4, 2010, Mr. Davis agreed to represent the Mr. Volovnik in a divorce case.

17. Mr. Volovnik paid Mr. Davis \$800.00 in legal fees.

18. On approximately August 13, 2010, Mr. Davis contacted Mr. Volovnik and asked him to come to his office and sign the divorce complaint.

19. Thereafter, Mr. Volovnik attempted to contact Mr. Davis with no success.

20. Mr. Volovnik learned that no divorce papers had been served on his wife, as Mr. Davis failed to file the complaint.

21. Mr. Volovnik continued his attempts to contact Mr. Davis, but was unable to do so.

22. Mr. Volovnik went to Mr. Davis' office, which was empty.

FILE NO. 33805-5-RW – COMPLAINANT – MICHAEL ARRINGTON

23. On February 3, 2011, the Board received a complaint filed by Michael Arrington regarding ethical misconduct of Mr. Davis.

24. On February 4, 2011, the Board sent a copy of the complaint and a request for a response to Respondent.

25. Mr. Davis has never responded to the complaint.

26. Mr. Arrington is an auctioneer who was hired by the administrator of an estate to sell a piece of property to settle the estate.

27. One of the heirs of the estate was addicted to drugs and was interfering with the sale of the property.

28. Mr. Davis was retained by the estate administrator to file appropriate documents with the court to obtain permission to sell the land despite the interference of the heir.

29. Mr. Davis filed nothing in the case, and neither his client nor Mr. Arrington was able to contact him.

FILE NO. 33906-5-PS – COMPLAINANT – JAMES JUDKINS

30. On February 28, 2011, the Board received a complaint filed by James Judkins regarding ethical misconduct of Mr. Davis.

31. On March 9, 2011, the Board sent a copy of the complaint and a request for a response to Respondent.

32. Mr. Davis has never responded to the complaint.

33. In July of 2009, Mr. Judkins retained Mr. Davis to assist him with a claim he had filed against the estate of James Stevens.

34. The main issue between Mr. Judkins and the Stevens estate was a dispute about properties he and Mr. Stevens jointly owned and their respective liabilities for paying the notes on the properties.

35. A tangential matter involved Mr. Judkins' purchase of a Cadillac, which was funded by Mr. Stevens, with Mr. Judkins' property on Kentucky Lake serving as collateral.

36. Mr. Judkins did not pay Mr. Davis a fee to handle this case; instead, he agreed to pay the advertising costs of an auction of Mr. Davis' own property, which amounted to

approximately \$2,500.00.

37. Mr. Judkins authorized Mr. Davis to negotiate an agreement trading his property on Kentucky Lake for the Cadillac, but Mr. Davis never informed him he had entered into an agreed order to that effect.

38. More importantly, although Mr. Davis was present at a hearing in late 2009, he failed to inform Mr. Judkins of the hearing or that a default judgment had been entered against him for over \$100,000.00.

39. Mr. Judkins knew nothing about a judgment against him until he was contacted by the attorney for the estate stating that his property on Kentucky Lake was about to be foreclosed upon to satisfy the judgment.

40. Mr. Judkins contacted the attorney for the estate who informed him that he had sent Mr. Davis a quitclaim deed and closing statement in April of 2010, but that Mr. Davis had never responded.

41. Therefore, the estate was pursuing foreclosure of Mr. Judkins' property.

42. Mr. Judkins contacted Mr. Davis to inquire about the judgment against him.

43. Mr. Davis incorrectly informed Mr. Judkins that there was no judgment.

44. Mr. Judkins testified that Mr. Davis never sought permission to agree to the terms of the default judgment, although he later learned that Mr. Davis had participated in resolving the matter.

45. Mr. Davis has never returned Mr. Judkins' files and paperwork.

FILE NO. 33926-5-PS -- COMPLAINANT -- THERESSA WRIGHT

46. On March 9, 2011, the Board received a complaint filed by Theresa Wright regarding ethical misconduct of Mr. Davis.

47. On March 16, 2011, the Board sent a copy of the complaint and a request for a response to Mr. Davis.

48. Mr. Davis has never responded to the complaint.

49. In August of 2008, Ms. Wright retained Mr. Davis to represent her in a lawsuit against one of her siblings who refused to consent to sell a piece of property they owned jointly with their other two siblings.

50. Ms. Wright provided Mr. Davis with a check for \$267.50 to pay the filing fee on November 14, 2008.

51. On March 17, 2009, Mr. Davis called Ms. Wright and informed her that the case had gone to court and that she was now free to sell the property in question.

52. Ms. Wright never received any documentation to this effect or a bill from Mr. Davis.

53. Ms. Wright scheduled an auction of the property for July of 2009, only to have Mr. Davis inform her that the property could not yet be sold because the judge was delaying entry of an order.

54. For the next year, Ms. Wright received no new information from Mr. Davis.

55. In August of 2010, Mr. Davis's telephone was disconnected and his office closed.

56. Ms. Wright discovered that he had never filed a lawsuit.

FILE NO. 34176c-5-PS – COMPLAINANT – PEGGY RAMSEY-CLYMER

57. On May 11, 2011, the Board received a complaint filed by Peggy Ramsey-Clymer regarding ethical misconduct of Mr. Davis.

58. On June 10, 2011, the Board sent a copy of the complaint and a request for a response to Mr. Davis.

59. Mr. Davis has never responded to the complaint.

60. Ms. Ramsey-Clymer retained Mr. Davis to represent her in a divorce case, paying him a total of \$550.00.

61. According to the court clerk's office, Mr. Davis filed the divorce complaint, but he did not request a court date.

62. Thus, no further progress was made in the case.

63. Ms. Ramsey-Clymer has been unable to contact Mr. Davis since November of 2010.

64. His office has closed and his telephone has been disconnected.

65. She has requested a refund of her money; however, he has never provided a refund.

CONCLUSIONS OF LAW

66. As noted above, Mr. Davis has failed to answer the Petition for Discipline. This Hearing Panel has already entered an Order of Default and, therefore, pursuant to Tenn. S. Ct. R. 9, Section 8.2 the charges are deemed admitted.

67. The Panel finds by a preponderance of the evidence that Mr. Davis has violated Rules of Professional Conduct 1.1, Competence; 1.3, Diligence; 1.4, Communication; 1.5(a), Fees; 1.16(d), Declining and Terminating Representation; 3.2, Expediting Litigation; 8.1(b), Bar Admission and Disciplinary Matters; and 8.4(a) and (d), Misconduct.

68. Therefore, once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions. See *Tenn. S. Ct. Rule 9, Section 8.4*.

69. Based upon the evidence and admissions in this matter, the Panel finds that disbarment is the appropriate discipline in this matter. Further, restitution is also appropriate.

70. The evidence shows that Mr. Davis converted client funds for his own use by accepting fees from Robert Volovnik and Theresa Wright and then failing to perform any legal work for his clients.

71. The Panel finds that Mr. Davis converted client funds for his own use by failing to perform adequate legal services for James Wayne Judkins and Peggy Ramsey-Clymer; however, the Panel will allow Mr. Davis no more than thirty (30) days to rebut this finding by providing evidence that, in Mr. Davis' opinion, tends to show that he provided services (e.g., time diary, billing records, affidavit) for these clients to Disciplinary Counsel. In the event Mr. Davis provides such information to Disciplinary Counsel, the Panel will reconvene to consider whether or not Mr. Davis converted client funds in those cases. If he does not provide any information within thirty (30) days for consideration by this Panel, then it is the conclusion of this Panel that Mr. Davis converted client funds in the Judkins and Ramsey-Clymer matters as well.

72. Further, the evidence shows that Mr. Davis failed to properly communicate with any of the complainants and that serious injury or potentially serious injury resulted from his misconduct.

73. Finally, Mr. Davis failed to return Mr. Judkins' client file.

74. Mr. Davis' abandonment of practice, lack of diligence, competence and communication provides further justification that disbarment is the appropriate discipline.

75. The following ABA Standards apply in this case:

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

- 4.41 Disbarment is generally appropriate when:
- a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
 - b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
 - c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.
- 4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.
- 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes injury or potential injury to the client.
- 7.1 Disbarment is generally appropriate when a lawyer knowingly engaged in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

76. Pursuant to ABA Standard 9.22, a number of aggravating factors are present in this case:

- a. Mr. Davis' actions evidenced a dishonest and selfish motive;
- b. Mr. Davis' conduct evidences a pattern of misconduct;
- c. Mr. Davis has engaged in multiple offenses;
- d. Mr. Davis has refused to acknowledge the wrongful nature of his conduct;
- e. Mr. Davis' victims were particularly vulnerable in that they were his clients and relied on him to represent and care for their interest;
- f. Mr. Davis has demonstrated a bad faith obstruction of the disciplinary

proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

- g. Mr. Davis has substantial experience in the practice of law; and
- h. Mr. Davis has evidenced an indifference to making restitution.

77. Additionally, Mr. Davis has a prior disciplinary history consisting of a disbarment and a private informal admonition.

78. There is no proof of mitigating factors.

JUDGMENT

1. In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Bobby Dean Davis should be disbarred.

2. Mr. Davis shall be ordered to return to his clients, including Mr. Judkins, his files to the extent Mr. Davis still has them within ten (10) business days of the date of the final order of enforcement.

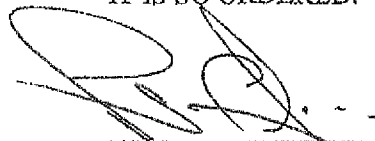
3. Further, as a condition precedent to any subsequent reinstatement to the practice of law, the Hearing Panel further finds that the Respondent should be required to pay restitution to the following individuals, or to the Lawyer's Fund for Client Protection if appropriate, and to show proof that restitution has been paid, as follows:

- a) Robert Volovnik - \$800.00
- b) Theresa Wright - \$267.50
- c) James Wayne Judkins - \$2,500.00 in the event that Mr. Davis does not provide additional information within thirty (30) days as described above;

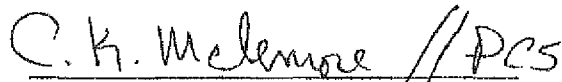
d) Peggy Ramsey-Clymer - \$550.00 in the event that Mr. Davis does not provide additional information within thirty (30) days as described above.

4. Finally, Mr. Davis shall be ordered to pay the costs of these proceedings pursuant to Tenn. Sup. Ct. R. 9, § 24.3.

IT IS SO ORDERED.



Peter C. Sales, Panel Chair



C.K. McLemore, III., Panel Member



Kimberly Stagg, Panel Member

NOTICE

This Judgment may be appealed pursuant to Section 1.3 of Supreme Court Rule 9 by filing a petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the writ. See Tenn. Code Ann. 27-8-104(a) and 27-8-106.