

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

FILED

2019 JUN 13 PM 4:55

BOARD OF PROFESSIONAL  
RESPONSIBILITY

*PCW*  
EXEC. SFC

**IN RE: MATTHEW DAVID DUNN,  
BPR No. 030759, Respondent,  
an Attorney Licensed to Practice  
Law in Tennessee  
(Williamson County)**

**DOCKET NO. 2018-2825-6-AW**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

These findings of fact and conclusions of law are hereby adopted and entered by the Hearing Panel.

**STATEMENT OF THE CASE**

1. This is a disciplinary proceeding against the Respondent, Matthew David Dunn, an attorney licensed to practice law in Tennessee in 2012.
2. The Petition for Discipline, Docket No. 2018-2825-6-AW, was filed February 5, 2018, and served upon Mr. Dunn.
3. On March 13, 2018, the Board notified Mr. Dunn by email that his answer to the Petition for Discipline was past due and to contact Disciplinary Counsel if he required additional time. See Exhibit 8 introduced at the Final Hearing.
4. On March 16, 2018, Mr. Dunn contacted Disciplinary Counsel and requested an additional thirty (30) days. On March 19, 2018, Disciplinary Counsel notified Mr. Dunn his answer to the Petition for Discipline was due on or before April 16, 2018. See Exhibit 8.

5. Mr. Dunn failed to file an answer to the Petition for Discipline on or before the agreed date, and on April 30, 2018, the Board filed a Motion for Default Judgment and that Charges in Petition Be Deemed Admitted.

6. On May 4, 2018, the Hearing Panel was appointed.

7. On May 9, 2018, an Order for Default Judgment was entered by the Hearing Panel and served upon Mr. Dunn.

8. On May 23, 2018, a Notice of Hearing was entered and served upon Mr. Dunn and Disciplinary Counsel setting the Final Hearing for June 1, 2018.

9. The Final Hearing was held June 1, 2018, before a duly constituted Hearing Panel consisting of Ryan Perry Durham, Joseph Ward Henry, Jr., and chaired by Dalton M. Mounger. The Board was represented by A. Russell Willis, and Mr. Dunn did not appear or participate.

10. On June 13, 2018, Mr. Dunn, represented by Winston Evans filed a Motion to Alter or Amend or in the Alternative For Rehearing seeking to rehear the motion for default judgment.

11. On August 2, 2018, the Hearing Panel entered an Order on Motion to Alter or Amend or in the Alternative for Rehearing setting aside the Default Judgment on the condition that the deposition of Jacqueline Segal be taken.

12. The deposition of Jacqueline Segal was taken, and thereafter on February 26, 2019, Winston Evans withdrew as counsel for Mr. Dunn.

13. On April 16, 2019, Disciplinary Counsel filed a Motion for Sanctions and to Renew Default Judgment on grounds that Mr. Dunn failed to appear for his depositions and failed to file an answer to the Petition for Discipline. Mr. Dunn did not respond to the Motion.

14. On May 15, 2019, the Hearing Panel entered an Order on Motion for Sanctions and to Renew Default Judgment reentering the Default Judgment.

## INTRODUCTION

15. The Petition for Discipline consists of one (1) complaint alleging Mr. Dunn (a) failed to respond to discovery requests submitted by opposing counsel in December, 2015; (b) failed to provide discovery responses to opposing counsel in compliance with the Agreed Order entered March 11, 2016; (c) failed to provide discovery responses to opposing counsel in compliance with Case Management Order No. 1 entered April 19, 2016; (d) failed to notify his client of the discovery deadlines set by the Court or potential outcome of his failure to comply with the orders of the Court; (e) failed to file a written response in opposition to the Motion to Show Cause and/or Motion to Dismiss and failed to appear for the hearing on the motion; (f) failed to notify his client of his failure to comply with the orders of the Court, the filing of the Motion to Show Cause and/or Motion to Dismiss, the setting of the motion for argument and his failure to appear for the hearing on the motion; (g) knowingly and intentionally failed to notify his client of the dismissal of her cause of action with prejudice and the taxing of costs by the Court on June 23, 2016, to his client; (h) failed to inform his client of his lack of diligent representation; (i) after June 23, 2016, knowingly and intentionally failed to return numerous phone calls from his client seeking information regarding the status of her case; (j) knowingly and intentionally attempted to settle a claim of legal malpractice with his client without advising his client in writing of the desirability of seeking independent legal advice or providing a reasonable opportunity to his client to contact independent legal counsel for such advice, and (k) falsely represented to the Board that his client had accepted \$2,500.00 in settlement of any legal malpractice claim she had and that the settlement represented ten (10) times the amount of Ms. Segal's actual medical expenses in violation of the Rules of Professional Conduct (RPC) 1.3 (diligence), 1.4 (communication), 1.8(h)(2) (conflict of

interest), 3.2 (expediting litigation), 3.4(c) and (d) (fairness to opposing party/counsel), 8.1(a) (disciplinary matters), and 8.4(a), (c), and (d) (misconduct).

16. The testimony and evidence presented to the Hearing Panel established the following facts:

#### **FINDINGS OF FACTS**

17. On October 6, 2014, Ms. Segal retained Mr. Dunn to represent her in a claim for personal injuries caused by her slipping and falling while debarking from an airplane at the Metropolitan Nashville Airport on September 2, 2014. On September 2, 2015, Mr. Dunn filed a civil action for damages in the Circuit Court for Davidson County. An Answer was filed by opposing counsel, William Godbold, on November 20, 2015, and written discovery requests were sent to Mr. Dunn on December 21, 2015.

18. Mr. Godbold, having failed to receive discovery responses or other communication from Mr. Dunn, filed a Motion to Compel Discovery on February 24, 2016, with the requisite Certification of Counsel, and set the motion for a hearing on March 11, 2016. On March 11, 2016, an associate in Mr. Dunn's firm met Mr. Godbold prior to the hearing and executed an Agreed Order providing for discovery responses to be delivered by Mr. Dunn within 15 days from the date of the order. Mr. Dunn did not provide discovery responses to Mr. Godbold in compliance with the Agreed Order entered March 11, 2016. See Exhibit 1, Petition for Discipline.

19. A Case Management Conference was held on April 6, 2016, and thereafter, Case Management Order No. 1 was entered April 19, 2016. Pursuant to Case Management Order No. 1, full and complete discovery responses were to be delivered by Mr. Dunn on or before April 13, 2016. Case Management Order No. 1 further provided that failure to comply with the April 13, 2016 deadline would foreclose plaintiff from participating in the written discovery process. Mr.

Dunn did not provide discovery responses to Mr. Godbold in compliance with Case Management Order No. 1. Mr. Dunn did not timely notify his client of the discovery deadlines set by the Court, or potential outcome of his failure to comply with the orders of the Court. See Exhibit 1, Petition for Discipline.

20. Mr. Godbold, having received no discovery responses from Mr. Dunn as ordered, filed a Motion to Show Cause and/or Motion to Dismiss on May 23, 2016, seeking a dismissal of the action with prejudice, and set the motion for hearing on June 10, 2016. Mr. Dunn did not timely notify his client of the filing of the Motion to Show Cause and/or Motion to Dismiss, the setting of the Motion for argument, or his failure to comply with the orders of the Court. Mr. Dunn failed to file a written response in opposition to the Motion to Show Cause and/or Motion to Dismiss and failed to appear for the hearing. Mr. Dunn did not timely notify his client he would not file a written response in opposition to the Motion or appear for the hearing. See Exhibit 1, Petition for Discipline.

21. On June 23, 2016, the Court entered an Order dismissing the action with prejudice and taxed costs to Ms. Segal. Mr. Dunn did not timely notify his client of the dismissal of her cause of action with prejudice or the taxing of costs by the Court. Mr. Dunn received a copy of the June 23, 2016 Order shortly after its entry by the Court and knowingly and intentionally failed to inform Ms. Segal of his lack of diligent representation. See Exhibit 1, Petition for Discipline.

22. In August, 2016, Mr. Dunn was personally informed of the entry of the June 23, 2016 Order dismissing Ms. Segal's case with prejudice. Thereafter, Mr. Dunn took no action to seek relief from the June 23, 2016 Order. Mr. Dunn knowingly and intentionally failed to promptly inform Ms. Segal of the entry of the June 23, 2016 Order and the dismissal of her case with prejudice. See Exhibit 1, Petition for Discipline.

23. Over the course of several months after the entry of the June 23, 2016 Order, Mr. Dunn received numerous calls from Ms. Segal requesting information about the status of her case. Mr. Dunn failed to promptly return Ms. Segal's calls or otherwise reasonably communicate with Ms. Segal regarding the dismissal of her case with prejudice. See Exhibit 1, Petition for Discipline.

24. In or about March, 2017, Ms. Segal discovered her case had been dismissed with prejudice in June, 2016. Ms. Segal filed a disciplinary complaint with the Board on March 31, 2017. Immediately thereafter, Mr. Dunn's wife traveled to Ms. Segal's home in April, 2017, to deliver a copy of the client file to Ms. Segal. During the April, 2017 meeting, Ms. Dunn conveyed, or otherwise implied, to Ms. Segal that the disciplinary complaint against her husband received by the Board on March 31, 2017, would negatively impact her and her children, and requested Ms. Segal meet with her husband to discuss the matter. See Exhibit 1, Petition for Discipline.

25. In or about early May, 2017, Mr. Dunn met with Ms. Segal at her home. At the time of the May, 2017 meeting, Ms. Segal was approximately 82 years of age and suffered from poor health. During the May, 2017 meeting, Mr. Dunn pressured Ms. Segal to accept \$2,500.00 in settlement of any legal malpractice claim Ms. Segal possessed. In settling or attempting to settle the legal malpractice claim of Ms. Segal, Mr. Dunn failed to advise Ms. Segal in writing of the desirability of Ms. Segal seeking the advice of independent legal counsel or provide her with a reasonable opportunity to contact independent legal counsel for such advice. See Exhibit 1, Petition for Discipline.

26. During the investigation of the disciplinary complaint, Mr. Dunn represented to the Board that Ms. Segal accepted \$2,500.00 in settlement of her legal malpractice claim which represented ten (10) times the amount of Ms. Segal's actual medical expenses. When contacted by Disciplinary Counsel during the investigation, Ms. Segal confirmed the offer of \$2,500.00 was

made by Mr. Dunn but the same was rejected by Ms. Segal. The investigation by Disciplinary Counsel further revealed that Ms. Segal incurred approximately \$3,700.00 in medical expenses related to her slip and fall. See Exhibit 1, Petition for Discipline.

### CONCLUSIONS OF LAW

27. The Respondent, Matthew David Dunn, is an attorney admitted by the Supreme Court of Tennessee in 2012 to practice law in the State of Tennessee. Mr. Dunn's most recent address as registered with the Board of Professional Responsibility is 240 Wilson Pike Circle, Suite 200, Brentwood, Tennessee 37027-3269, being in Disciplinary District VI. Mr. Dunn's Board of Professional Responsibility number is 030759.

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

29. Pursuant to Tenn. Sup. Ct. R. 9, § 1 (2014), the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

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

31. The Rules of Professional Conduct (RPC) require lawyers to act with reasonable diligence and promptness in their representation of clients (RPC 1.3) and make reasonable efforts

to expedite litigation. (RPC 3.2). Reasonable is defined as the conduct of a reasonably prudent and competent lawyer (RPC 1.0(f)) and taken together, the rules required Mr. Dunn to pursue Ms. Segal's legal matter with commitment, dedication and zeal despite personal inconvenience, opposition, or obstructions. (RPC 1.3, Comment1).

32. Based upon the evidence presented, the Hearing Panel finds by a preponderance of the evidence that Matthew David Dunn knowingly and intentionally failed to make any reasonably diligent effort to respond to discovery requests from opposing counsel, failed to respond to motions filed by opposing counsel, failed to comply with discovery obligations set forth in the Rules of Civil Procedure, failed to appear for scheduled court hearings, and failed to take any action to set aside the dismissal of Ms. Segal's action in violation of RPC 1.3 (diligence) and 3.4(c) and (d) (fairness to opposing party and counsel).

33. Based upon the evidence presented, the Hearing Panel finds by a preponderance of the evidence that Matthew David Dunn failed to reasonably expedite Ms. Segal's personal injury action resulting in the dismissal of her case with prejudice in violation of RPC 1.3 (diligence) and 3.2 (expediting litigation).

34. RPC 1.4 required Mr. Dunn: (1) to promptly inform Ms. Segal of any decision or circumstance with respect to which the client's informed consent is required by the Rules of Professional Conduct; (2) to reasonably consult with Ms. Segal about the means by which Ms. Segal's objectives would be accomplished; (3) to keep Ms. Segal reasonably informed about the status of her matter; (4) to promptly comply with reasonable requests for information; and (5) to explain matters to the extent reasonably necessary to permit Ms. Segal to make informed decisions regarding her representation.



35. RPC 1.4 further required Mr. Dunn to provide sufficient information to Ms. Segal to allow Ms. Segal to participate intelligently in decisions concerning the objectives of the representation and the means by which the objectives are to be accomplished. (RPC 1.4, Comment 5). Mr. Dunn had a duty to inform Ms. Segal of actions Mr. Dunn had taken on behalf of Ms. Segal and apprise her of developments affecting the timing or substance of the representation. (RPC 1.4, Comment 3). Mr. Dunn was also obligated to promptly respond to Ms. Segal's request for information or have his staff advise Ms. Segal when a response from Mr. Dunn could be expected. (RPC 1.4, Comment 4). Finally, RPC 1.4 does not allow Mr. Dunn to withhold information from Ms. Segal to serve the interests or convenience of Mr. Dunn. (RPC 1.4, Comment 7).

36. Mr. Dunn knowingly and intentionally failed to disclose to Ms. Segal that her action had been dismissed with prejudice, that Mr. Dunn failed to respond to discovery, that motions to compel were filed by opposing counsel, that Mr. Dunn failed to file written responses in opposition to the motions, that hearings on the motions were scheduled by the court, that Mr. Dunn failed to appear at the scheduled hearings, that Mr. Dunn failed to notify Ms. Segal he would not seek to set aside the dismissal of her action, that Mr. Dunn failed to inform Ms. Segal of legal options available to her to respond to the dismissal of her action, and failed to respond to Ms. Segal's numerous phone calls seeking information about the status of her case in violation of RPC 1.4 (communication).

37. Based upon the evidence presented, the Hearing Panel finds by a preponderance of the evidence that Matthew David Dunn knowingly and intentionally took advantage of his professional relationship with Ms. Segal and her personal circumstances in May, 2017, in an effort to overreach and leverage Ms. Segal to settle her legal malpractice claim and/or compromise the disciplinary complaint. Mr. Dunn did not advise Ms. Segal, 82 years of age and in poor health, in

writing of the advisability of her seeking independent legal advice and did not afford her a reasonable opportunity to seek such advice from independent counsel in violation of RPC 1.8(h)(2) (conflict of interest).

38. Thereafter, Mr. Dunn attempted to mislead the Board to believe Mr. Dunn had reached a settlement with Ms. Segal to compensate her for the loss of her action and agreed to pay her an amount which was ten (10) times the medical expenses she incurred. Further, Mr. Dunn, through his wife, played to Ms. Segal's sympathies in an attempt to dissuade Ms. Segal from pursuing her disciplinary complaint with the Board. Mr. Dunn's actions and omissions violated RPC 8.1(a) and 8.4(a), (c) and (d) (misconduct).

39. Mr. Dunn's violations of RPC 1.3, 1.4, 1.8, 3.2 and/or 8.1 also constitute a violation of 8.4(a).

40. In addition, Mr. Dunn's dilatory practice brings the administration of justice into disrepute and is prejudicial to the administration of justice in violation of RPC 8.4(d). (RPC 3.2, Comment 1).

#### **APPLICATION OF THE ABA STANDARDS**

41. Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, ("ABA Standards").

42. The Board introduced ABA Standards 4.41(Exhibit 2), 4.42 (Exhibit 3), 4.31 and 4.32 (Exhibit 4), 6.21 and 6.22 (Exhibit 5), 5.11 (Exhibit 6) and 7.1 (Exhibit 7).

43. Based upon the facts and misconduct previously cited, the Hearing Panel finds the following ABA Standards applicable and relevant to its determination of the appropriate discipline to be imposed against Mr. Dunn:

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or ....
- 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, 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.
- 4.42 Suspension is generally appropriate when:
- (a) a lawyer knowingly fails to perform services for a client and causes injury 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.
- 5.11 Disbarment is generally appropriate when:
- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
  - (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
- 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially

serious interference with a legal proceeding.

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

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional 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.

#### **AGGRAVATING AND MITIGATING CIRCUMSTANCES**

44. Pursuant to ABA Standard 9.22, the Hearing Panel finds the following aggravating factors present and applicable to determining the appropriate discipline to be imposed against Mr. Dunn:

(a) Mr. Dunn's multiple offenses are an aggravating circumstance justifying an increase in discipline.

(b) Mr. Dunn's refusal to acknowledge the wrongful nature of his conduct is an aggravating circumstance justifying an increase in discipline.

(c) Mr. Dunn's effort to overreach and leverage his client, dissuade her from pursuing her disciplinary complaint, and mislead the Board reflects a dishonest or selfish motive and is an aggravating circumstance justifying an increase in discipline.

(d) Mr. Dunn's submission of false and misleading statements to the Board during the investigation is an aggravating circumstance justifying an increase in discipline.

(e) The vulnerability of Mr. Dunn's victim is an aggravating circumstance justifying an increase in discipline.

(f) Mr. Dunn's substantial experience in the practice of law is an aggravating circumstance justifying an increase in discipline.

45. Pursuant to ABA Standard 9.32, the Hearing Panel finds the following mitigating factors present and applicable to determining the appropriate discipline to be imposed against Mr. Dunn:

(a) Mr. Dunn's absence of prior disciplinary record is a mitigating factor justifying a decrease in the degree of discipline to be imposed.

46. The Panel concludes that the appropriate baseline sanction is suspension.

47. The Panel concludes that the aggravating factors outweigh the mitigating factors.

### **JUDGMENT**

Based upon the facts in this case, the application of the Rules of Professional Conduct, consideration of the cited ABA Standards and consideration of the referenced aggravating and mitigating factors, the Hearing Panel finds by a preponderance of the evidence that Mr. Dunn committed disciplinary misconduct and should be suspended from the practice of law, pursuant to Tenn. Sup. Ct. R. 9, § 12.2, for a period of five (5) years with a minimum of three (3) years to be served as an active suspension and the remainder, upon reinstatement by the Supreme Court, to be served on probation, pursuant Tenn. Sup. Ct. R. 9, § 14.1. The grant of probation is further conditioned upon (a) the appointment of a Practice Monitor in accordance with Tenn. Sup. Ct. R. 9, § 12.9 to review the office management practices of Mr. Dunn and address any deficiencies of Mr. Dunn related to (i) reasonable, timely and meaningful communications with clients, (ii) timely preparation and filing of pleadings with the appropriate tribunal or agency, and (iii) reasonable and timely instigation and resolution of litigation cases; (b) Mr. Dunn obtaining ten (10) hours of additional ethics CLE over and above the fifteen (15) hours required each year during his five (5) year suspension; (c) Mr. Dunn contacting the Tennessee Lawyers Assistance Program (TLAP) within thirty (30) days of the effective date of his suspension for evaluation, entering into any

monitoring agreement recommended by TLAP, and completing the monitoring agreement to the satisfaction of TLAP, and (d) Mr. Dunn not incurring any new complaints of misconduct relating to conduct occurring during the period of suspension and probation and which results in a recommendation by the Board that discipline be imposed.

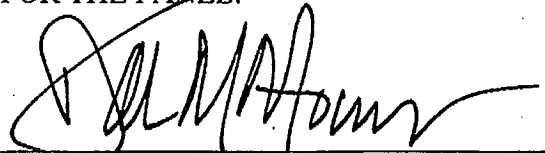
In the event that Respondent violates or otherwise fails to meet any condition of probation which results in the revocation of probation, it is the intention of the Hearing Panel that Mr. Dunn be required to actively serve the entirety of the five (5) year suspension.

**NOTICE**

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

Entered on this 13<sup>th</sup> day of June, 2019.

FOR THE PANEL:

A handwritten signature in black ink, appearing to read "Dalton M. Mounger", written over a horizontal line.

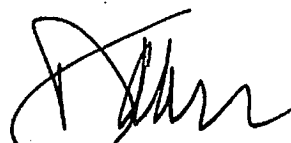
Dalton M. Mounger, Chair

**CERTIFICATE OF SERVICE**

I, Dalton M. Mounger, hereby certify that I have this 13<sup>th</sup> day of June, 2019, mailed a copy of the foregoing Findings of Fact and Conclusions of Law to:

Mr. A. Russell Willis  
Disciplinary Counsel  
Board of Professional Responsibility  
10 Cadillac Drive, Suite 220  
Brentwood, TN 37027

Matthew David Dunn  
The Dunn Law Firm  
701 Murfreesboro Rd.  
Franklin, TN 37064



---

Dalton M. Mounger

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to Respondent, Matthew David Dunn, 701 Murfreesboro Road, Franklin, TN 37064, via U.S. First Class Mail, and hand-delivered to Russell Willis, Disciplinary Counsel, on this the 13<sup>th</sup> day of June, 2019.



Rita Webb  
Executive Secretary

**NOTICE**

**This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.**