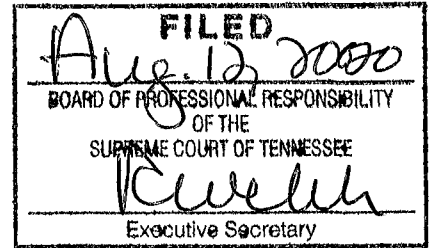


**IN DISCIPLINARY DISTRICT VI
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



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

DOCKET NO. 2019-3066-6-TL

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These proposed findings of fact and conclusion of law are submitted on behalf of the Board of Professional Responsibility (hereinafter "the Board") pursuant to the request of 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. A Petition for Discipline containing one (1) complaint from Kelly Rogers (File No. 61387-6-KB) was filed January 14, 2020. The Petition for Discipline was served upon Mr. Dunn by personal service on April 3, 2020.
3. Mr. Dunn did not file an Answer to Petition for Discipline and the Hearing Panel entered an Order of Default on June 1, 2020.
4. The final hearing was held on August 4, 2020 telephonically. Notice of the Final Hearing was sent to and received by Mr. Dunn, but he failed to appear.
5. After the Board presented its case in chief, the Hearing Panel requested that Disciplinary Counsel submit proposed findings of fact and conclusions of law.

INTRODUCTION

This is a disciplinary proceeding against the Respondent, Matthew David Dunn, a Tennessee attorney licensed in 2012. The disciplinary action consists of one disciplinary action of Kelly Rogers. The complaint is set forth in the Petition for Discipline which was introduced as Exhibit 1. All of the acts of professional misconduct by Mr. Dunn were deemed admitted by his default pursuant to Tenn. Sup. Ct. R. 9, §15.2(b) (2019), and the Hearing Panel makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

6. Mr. Dunn was associated as an approved attorney with MRC Group, LLC (hereinafter “MRC Group”).
7. MRC Group is a brokering agency for individuals that seek to terminate timeshare obligations but is not listed as an intermediary organization that has properly registered with the Board of Professional Responsibility.
8. MRC Group collects attorney fees from individuals, and then forwards said fee along with the client file to the approved attorney.
9. On April 25, 2018, Ms. Rogers paid MRC Group Five Thousand Nine Hundred Ninety-Five Dollars (\$5,995.00) to assist with the cancellation of their timeshare.
10. MRC Group transferred Ms. Rogers’ file and fee to Mr. Dunn.
11. On or about October 25, 2018, MRC Group sent a letter to Ms. Rogers to clarify the role of MRC Group as a broker, affirming that it sent her file and fee to Mr. Dunn and to make certain that Ms. Rogers had the correct contact information of Mr. Dunn and the Dunn Law Firm.
12. On or about February 14, 2019, Mr. Dunn’s law license was temporarily suspended.

13. On or about February 25, 2019, Ms. Rogers sent a letter to Mr. Dunn seeking a response from Mr. Dunn.

14. Mr. Dunn failed to respond to Ms. Roger's letter or communicate with Ms. Rogers in any manner.

15. Mr. Dunn failed to comply with the court order related to his Temporary Suspension as it pertains to notifying clients, including Ms. Rogers that his law license has been suspended.

16. Mr. Dunn did not perform any legal services on behalf of Ms. Rogers.

17. Mr. Dunn abandoned Ms. Rogers and her case.

18. Mr. Dunn did not act with reasonable diligence and promptness in representing Ms. Rogers; failed to communicate to her about her case in any manner, including informing her of his suspension from the practice of law; collected an unreasonable fee or an unreasonable amount for expenses and provided no services for the fee collected; accepted a referral and legal fee with an intermediary organization not registered with Board of Professional Responsibility; and knowingly failed to respond to a lawful demand for information from the Board of Professional Responsibility.

CONCLUSIONS OF LAW

Introduction

The jurisdiction and authority of this Panel is derived from Tenn. Sup. Ct. R. 9, and the specific provisions prescribed therein. 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. (Tenn. Sup. Ct. R. 9, § 8 (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. (Tenn. Sup. Ct. R. 9, § 1 (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. (Tenn. Sup. Ct. R. 9, § 11 (2014)).

Tenn. Sup. Ct. R. 9, § 15.2 provides the Respondent shall serve an answer upon Disciplinary Counsel and file the original with the Board within thirty (30) days after service of the Petition, unless such time is extended by the agreement of Disciplinary Counsel or the Chair of the Board. In the event the Respondent fails to answer, the charges shall be deemed admitted and Disciplinary Counsel may move for default judgment.

Violations of Rules of Professional Responsibility

RULE 1.3 DILIGENCE

19. RPC 1.3 provides that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.”

20. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence that Matthew David Dunn did not act with reasonable diligence and promptness in representing Kelly Rogers and abandoned his law practice in violation of RPC 1.3.

RULE 1.4 COMMUNICATION

21. RPC 1.4 provides that lawyer shall: (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent; (2) reasonably

consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

22. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence that Matthew David Dunn did not promptly comply with reasonable requests for information from Ms. Rogers nor keep her informed about the status of the matter in violation of RPC 1.4.

**RULE 1.5
FEES**

23. RPC 1.5(a) provides that a "lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

24. Pursuant to RPC 1.5(a)(4) one factor to be considered in determining the reasonableness of a fee includes "the amount involved, and the results obtained."

25. Mr. Dunn accepted a fee from Ms. Rogers in the amount of Five Thousand Nine Hundred Ninety-five Dollars (\$5,995.00) to represent her in cancelling her time share but did not perform any legal services for her.

26. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence that Matthew David Dunn violated RPC 1.5 by accepting an unreasonable fee for the amount involved and the results obtained.

**RULE 7.6
INTERMEDIARY ORGANIZATIONS**

27. RPC 7.6(b)(1)(iv) provides that a lawyer shall not seek or accept a referral of client or compensation for representing a client from an intermediary organization if the lawyer knows or reasonably should know that the organization has not registered with the Board of Professional Responsibility.

28. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence that Matthew David Dunn received a referral and fee from MRC Group, LLC and knew or should have reasonably known that MRC Group, LLC was not registered with the Board of Professional Responsibility in violation of RPC 7.6.

RULE 8.1
BAR ADMISSION AND DISCIPLINARY MATTERS

29. RPC 8.1(b) provides that a lawyer in connection with a disciplinary matter shall not “knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except this rule does not require disclosure of information otherwise protected by RPC 1.6.”

30. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence that Matthew David Dunn knowingly failed to respond to the Board’s lawful request for information regarding a disciplinary complaint in violation of RPC 8.1.

APPLICATION OF THE ABA STANDARDS

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”). Pursuant to Tenn. Sup. Ct. R. 9, § 15.4(a), “[i]f the hearing panel finds one or more grounds for discipline of the respondent attorney, the hearing panel’s judgment shall specify the type of discipline

imposed: disbarment (Section 12.1), suspension (Section 12.2), or public censure (Section 12.4).” In imposing a sanction after a finding of lawyer misconduct, the Panel should consider the following factors: (a) the duty violated; (b) the lawyer’s mental state; (c) the actual or potential injury caused by the lawyer’s misconduct; and d) the existence of aggravating or mitigating factors. (ABA Standard 3.0). Under the ABA Standards, intent is defined as “the conscious objective or purpose to accomplish a particular result” and knowledge is defined as “the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.”

ABA Standards for Imposing Lawyer Sanctions are guideposts for determining the appropriate level of discipline for attorney misconduct. *Lockett v. Bd. of Prof'l Responsibility*, 380 S.W.3d 19, 26 (Tenn.2012). The ABA Standards are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct, and a hearing panel may consider the full panoply of sanctions applicable to lawyer misconduct even if a particular ABA Standard does not explicitly describe the fact pattern in question. *Bd. of Prof'l Responsibility v. Daniel*, 549 S.W.3d 90, 100 (Tenn. 2018). In cases where lawyer misconduct seems to fall between presumptive sanctions or within multiple ABA Standards identifying different presumptive sanctions, hearing panels and the Supreme Court are able and authorized to make an ultimate determination on the appropriate sanction. *Id.* at * 102. Under such circumstances, hearing panels should identify all relevant ABA Standards and then determine a sanction within the range of the presumptive sanctions identified in the relevant ABA Standards. *Id.* The ABA Standards suggest the appropriate baseline sanction, and aggravating and mitigating factors provide a basis for increasing or reducing the sanction imposed. ABA Standard 3.0. See also *Hancock v. Bd. of Prof'l Responsibility*, 447 S.W.3d 844, 857 (Tenn. 2014) (length of an attorney’s suspension, however,

depends in large part on the aggravating and mitigating circumstances).

31. 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 upon Mr. Dunn:

- 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.
- 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.
- 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.
- 5.11 (b) Disbarment is generally appropriate when:
 - 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.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

Having determined disbarment is the appropriate baseline sanction, the Panel must consider the existence of any aggravating or mitigating factors and their applicability to this disciplinary matter. Pursuant to ABA Standard 9.22, the following aggravating factors were considered by the Hearing Panel to determine the appropriate discipline to be imposed against Mr. Dunn:

Prior Discipline:

(a) Mr. Dunn received a Private Informal Admonition on April 2, 2019 for failing failure to deliver funds to a third party. (Trial Exhibit 5).

(b) Mr. Dunn was suspended for five (5) years on October 8, 2019. (Trial Exhibit 6)

(c) Mr. Dunn was disbarred from the practice of law on June 10, 2020. (Trial Exhibit 7).

Pattern of Misconduct

Mr. Dunn's pattern of misconduct is an aggravating circumstance justifying an increase in discipline to be imposed. Mr. Dunn has displayed a pattern of not providing legal services for clients after receiving a fee and not refunding the fee nor withdrawing timely and properly from their cases.

Indifference to Make Restitution

Mr. Dunn's indifference to make restitution is an aggravating circumstance justifying an increase in discipline to be imposed.

Multiple Offenses:

Mr. Dunn's multiple offenses and instances are an aggravating circumstance justifying an increase in the degree of discipline to be imposed.

Dishonest or Selfish Motive

Mr. Dunn's dishonest and selfish motive is an aggravating circumstance justifying an increase in discipline to be imposed.

Refusal to Acknowledge Wrongful Nature of the Conduct

Mr. Dunn's failure to acknowledge the wrongful nature of his conduct is an aggravating circumstance justifying an increase in discipline to be imposed.

Substantial Experience:

Mr. Dunn's substantial experience, having been licensed in Tennessee in 1984, is an aggravating circumstance.

Pursuant to ABA Standard 9.32, the Hearing Panel finds no mitigating factors applicable in this disciplinary matter.

JUDGMENT

Based upon the facts deemed admitted in this action, the application of the Rules of Professional Conduct and considering the ABA Standards, the Hearing Panel finds by a preponderance of the evidence that Mr. Dunn committed disciplinary misconduct and should be disbarred from the practice of law pursuant to Tenn. Sup. Ct. R. 9, § 12.1. The Hearing Panel further finds that Mr. Dunn shall make restitution to the following pursuant to Tenn. Sup. Ct. R. 9, § 12.7:

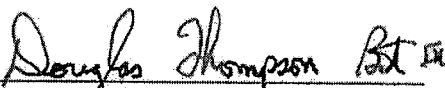
Kelly Rogers

\$ 5,995


THE 11 DAY OF August, 2020.



Clinton L. Kelly, Panel Chair



Douglas M. Bates, III, Panel Member



Jeffrey K. Walker, Panel Member

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 Joseph K. Byrd, Disciplinary Counsel, on this the 12th day of August, 2020.



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.