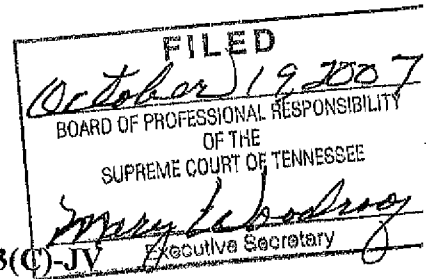


BOARD OF PROFESSIONAL RESPONSIBILITY
DISCIPLINARY DISTRICT III



IN RE: KEVIN L. FEATHERSTON, BPR #14842) No. 2007-1657-3(C)-JV
An attorney Licensed to practice law in the)
State of Tennessee (Hamilton County)) FILING DATE: October 17, 2007
)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the undersigned Hearing Committee of the Board of Professional Responsibility for hearing on September 25, 2007. After carefully considering the parties' filings and the evidence and arguments presented at the hearing, the Hearing Committee makes the following findings and issues its judgment in this matter in accordance with Section 8.3 of Rule 9 of the Tennessee Supreme Court Rules.

THE RESPONDENT

The Respondent, Kevin L. Featherston, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee. His office address as registered with the Board is Suite 102, 1612 Gunbarrel Road, Chattanooga, Tennessee, 37421, which is located in Disciplinary District III. Respondent's Board of Professional Responsibility Number is 14842.

1. On June 27, 2006, a Complaint was entered as to the Respondent after the Respondent self-reported his conduct and designated as File No. 29278-3(C)-JV. A copy of the Respondent's letter dated June 22, 2006, is attached hereto as Exhibit A.

2. The Respondent was licensed to practice law in Tennessee in 1991.

THE LAW FIRM

3. On May 1, 1997, the law firm of McKoon, Billings and Gold, P. C. (the "law firm"), was incorporated.

4. On September 1, 1998, the name of the law firm was changed to McKoon, Billings, Gold and Presley, P.C.

5. On May 18, 2001, the name of the law firm was changed to McKoon, Billings and Gold, P.C. and Gold, P.C.

6. On February 19, 2003, the name of the law firm was changed to McKoon and Gold, P.C.

7. James R. McKoon is and has been a shareholder of the law firm from May 1, 1997, to the present.

8. Barry L. Gold is and has been a shareholder of the law firm from May 1, 1997, to the present.

9. Jeffrey A. Billings was a shareholder of the law firm from May 1, 1997, through January 14, 2003.

10. Timothy R. Simonds was a shareholder of the law firm from August 26, 1998, through March 10, 2002.

11. Buddy B. Presley, Jr., was a shareholder of the law firm from August 27, 1998, through May 18, 2001.

12. Earl S. Howell, III, was a shareholder of the law firm from August 27, 1998, through May 18, 2001.

13. Bob E. Lype was a shareholder of the law firm from August 27, 1998, through October 15, 2003.

14. William R. Wayland, Jr., was a shareholder of the law firm from November 15, 2002, through February 15, 2005.

15. Thomas E. Smith was a shareholder of the law firm from November 15, 2002, through April 15, 2004.

16. On or about March 15, 1999, the Respondent became an associate of the law firm.

17. The Respondent was a shareholder of the law firm from December 2, 1999, through June 7, 2006.

TRI-STATE TITLE CO., LLC

18. On February 23, 1999, these who were shareholders of the law firm at that time formed Tri-State Title Co., LLC ("Tri-State"), a Tennessee limited liability company. Each of the shareholders in the law firm at the time of the formation of Tri-State was named a member of Tri-State.

19. Over the course of time in which Tri-State existed, some or all of the individual shareholders of the law firm were members of Tri-State, each owning an equal financial and voting interest.

20. On or about June 5, 2001, the Respondent became the Chief Manager and registered agent of Tri-State.

21. The Respondent was responsible for the daily operations of, maintained the trust and accounting records, and wrote checks and disbursed funds of Tri-State.

FIRST VOLUNTEER TITLE COMPANY, LLC

22. On November 27, 2002, First Volunteer Title Company, LLC ("First Volunteer Title"), was formed as a joint venture by Tri-State and First Volunteer Bank (the "Bank"), each owning 50% financial and voting interest.

23. The initial board of directors of First Volunteer Title consisted of the Respondent, as a representative of Tri-State, and two directors representing the Bank.

24. By resolution of the Board dated December 3, 2002, the Respondent was named the Chief Manager of First Volunteer Title.

25. As Chief Manager the Respondent was responsible for the daily operations, the trust and accounting records, and disbursement of funds of First Volunteer Title.

26. Mr. Barry Gold testified that the Respondent's management of First Volunteer Title was his primary contribution to the law firm and the primary basis of his shareholder compensation. The Respondent denied this testimony. The Hearing Committee has concluded that the Respondent's management of and performance of duties for First Volunteer Title were at least a substantial contribution to the law firm and a substantial basis of his shareholder compensation. The resolution of this conflicting testimony is not definitive in its conclusions in this case.

27. Financial reports of First Volunteer Title were to be prepared monthly, beginning July 1, 2003, and to be distributed to: 1) the Bank via directors from the Bank and the Bank controller; 2) First Volunteer Title, to attention of the Respondent; and 3) Tri-State, via the Respondent.

28. Although the Respondent apparently provided to his fellow law firm shareholders annual reports of the operations of First Volunteer Title, and although the records of the operations of Tri-State, First Volunteer Title, which later became River City Title were apparently accessible to all members of those LLC's, Respondent took no affirmative action to provide those records to the members, who were simultaneously Respondent's fellow shareholders in his law firm. Furthermore, in spite of requests, although not necessarily made formally, that the Respondent provide to the law firm the financial records of First Volunteer Title, the Respondent failed to provide those records.

29. In October, 2003, the Board of First Volunteer Title approved paying a salary or management fee of \$2,000.00 per month to the Respondent. This was a payment for non-legal related services. The Respondent intentionally did not advise his fellow law firm shareholders, who indirectly owned financial interests in First Volunteer Title through their individual member interests in Tri-State, of this decision, and thus no shareholder of the law firm, other than the Respondent, was made aware of the decision of the Board of First Volunteer Title that First Volunteer Title would pay \$2,000.00 per month to the Respondent.

30. The Respondent received the \$2,000.00 per month payment for 27 months, from November 2003, until sometime in 2006. Final shareholder income for the law firm shareholders was determined at the end of each of 2003 and 2004. During the process in which the shareholders engaged for determining that income at the end of 2003, the Respondent did not advise his fellow law firm shareholders that he had received the \$2,000 monthly payment from First Volunteer Title during November and December 2003, nor did he advise them that he would continue receiving those monthly payments during 2004. The Respondent also did not make these disclosures at the end of 2004 when the shareholders determined their final income for 2004.

31. The shareholders of the law firm did not become aware of the \$2,000.00 monthly payments to the Respondent until the late evening of June 6, 2006, when Mr. McKoon and Mr. Gold confronted the Respondent about the monthly payments he had been receiving.

32. On December 8, 2003, Tri-State assigned its 50% interest in First Volunteer Title to the law firm, thereby making the Bank and the law firm each a 50% owner of the financial interests, with the law firm having one representative on the Board and the Bank having two representatives on the Board.

33. On August 19, 2005, Tri-State was administratively dissolved by the Tennessee Secretary of State.

34. On December 30, 2005, First Volunteer Bank surrendered its membership interest in First Volunteer Title to First Volunteer Title. As a result, First Volunteer Title became wholly-owned by the law firm.

35. On December 30, 2005, First Volunteer Title was re-named River City Title Title Co., LLC ("River City Title Title").

DISBURSEMENTS FROM TRI-STATE AND FIRST VOLUNTEER TITLE

36. On May 5, 2004, the Respondent made a contribution in the amount of \$250.00 to Jasper Elementary School from First Volunteer Title's administrative account.

37. The Respondent did not advise nor have authority of the law firm or law firm shareholders to make the \$250.00 contribution to the school. The Respondent took the position that he made this payment in the ordinary course of business and that no authorization from nor disclosure to the law firm or its shareholders was required.

38. On February 8, 2005, the Respondent withdrew \$600.00 from Tri-State's escrow account and deposited same into his personal checking account.

39. Respondent took the position with regard to the \$600.00 he paid himself from Tri-State on February 8, 2005, long after Tri-State had ceased operations, that he had authority as a member of the LLC, as did any other member, and as Chief Manager to take draws at his desire.

40. The Respondent characterized the \$600.00 withdrawal as a "bonus." However, the Respondent did not report this payment on his federal income tax return.

41. The Respondent did not have the permission or authority of the law firm or Tri-State to make the withdrawal in the amount of \$600.00.

42. The Respondent converted the \$600.00 he withdrew from Tri-State to his own personal use and benefit and to the detriment of Tri-State and the owners of its financial interests.

43. On March 30, 2005, the Respondent made a withdrawal in the amount of \$800.00 from Tri-State's escrow account, cashed the escrow account check, and made personal use of said funds.

44. The Respondent characterized this \$800.00 payment as a "bonus" for his work at Tri-State. However, the Respondent did not report this payment on his federal income tax return.

45. The Respondent did not have the permission or authority of the law firm or Tri-State to make the \$800.00 withdrawal.

46. The Respondent converted the \$800.00 to his own personal use and benefit.

47. On May 17, 2005, the Respondent made a withdrawal in the amount of \$105.00 from Tri-State's escrow account to pay for personal credit card charges.

48. The Respondent characterized this \$105.00 withdrawal as a "bonus" for his work for Tri-State. However, the Respondent did not report this payment on his federal income tax return.

49. The Respondent did not have the permission or authority of the law firm or Tri-State to make the \$105.00 withdrawal.

50. The Respondent converted the \$105.00 payment to his own personal use and benefit.

51. On May 31, 2005, the Respondent made a contribution in the amount of \$500.00 to his children's private school from First Volunteer Title's administrative account.

52. The Respondent did not advise nor have authority of the law firm or law firm shareholders to make the \$500.00 contribution.

53. On September 22, 2005, the Respondent made a contribution in the amount of \$500.00 to his church, for Katrina relief, from First Volunteer Title's administrative account. This contribution was apparently authorized by the Board of First Volunteer Title.

54. The Respondent did not advise nor have authority of the law firm or the law firm shareholders to make the \$500.00 contribution.

55. The Respondent made personal charges to First Volunteer Title's Visa credit card over a period of several months. He then caused those charges to be paid by First Volunteer Title check no. 1680, dated December 31, 2005, in the amount of \$4,738.56.

56. The Respondent thereby converted the \$4,738.56 payment to his own personal use and benefit. The Respondent contended that he took this payment as an advance on his salary, but he did not give that explanation to the First Volunteer Title employee who he instructed to make this payment.

57. On December 23, 2005, the Respondent charged First Volunteer Title reimbursement in the amount of \$875.00 for "mileage/ seminar".

58. The Respondent paid to himself the \$875.00 reimbursement for the "mileage/seminar" from First Volunteer Title's administrative account.

59. The Respondent intercepted and personally cashed River City Title's State of Tennessee employment tax refund for the period ending December 31, 2005, in the form of a check to the LLC dated April 11, 2006.

60. The Respondent did not have permission or authority of River City Title or the law firm to receive or cash the \$595.29 tax refund. The Respondent contended that he took this money as a "bonus" for his work as Chief Manager of River City Title. However, the Respondent did not report this payment on his federal income tax return.

61. The Respondent converted the \$595.29 tax refund check to his own use and benefit.

62. On June 1, 2006, the Respondent made a contribution in the amount of \$488.00 to his children's private school from First Volunteer Title's administrative account.

63. The Respondent did not advise nor have authority of the law firm or First Volunteer Title to make the \$488.00 contribution.

RESTITUTION

64. The Respondent entered into a withdrawal and termination agreement with the firm dated June 7, 2006, wherein he agreed to repay \$54,000.00 in salary, \$6,000.00 personal expenses, and \$5,000.00 interest, a total of \$65,000.00.

65. The Respondent paid the firm \$65,000.00.

66. No authorization from the law firm was required by the Operating Agreement of First Volunteer Title or by law for the \$2,000.00 monthly salary/management fee to be approved.

67. Respondent took the position that, as Chief Manager of the LLC, he had the authority to make any and all charges to the credit card described above and that no authority from nor disclosure to the firm was required by the Operating Agreement or by law. The Respondent took the position that all charges and payments were reviewed by and accepted by the Board. The Hearing Committee does not base any of its conclusions or determinations on the making of the credit charges, but does note that the Respondent's decision to direct the payment of those personal charges by First Volunteer Title was not approved by the Board, or by the members of the LLC or the shareholders of the law firm.

AGGRAVATING FACTORS

68. Section 9.2 of the ABA Standards enumerates several factors that may be considered to be aggravating factors in determining any sanction levied against an attorney for violation of the Rules of Professional Conduct, and the following are applicable in this case:

- a. The Respondent has substantial experience in the practice of law, being licensed in Tennessee since 1991.
- b. Respondent's actions constituted multiple offenses.
- c. Respondent's failures constituted or contributed to a pattern of misconduct, incompetence, or negligence.

MITIGATING FACTORS

69. Section 9.3 of the ABA Standards enumerates several factors that may be considered in support of mitigating any sanction levied against an attorney for violation of the Rules of Professional Conduct, and the following are applicable in this case:

- a. The Respondent cooperated with the law firm after he was confronted regarding the \$2,000.00 salary/management fee he had been receiving from First Volunteer Title.
- b. The Respondent self-reported his conduct to the Board of Professional Responsibility and cooperated with Disciplinary Counsel, albeit after he was confronted by fellow law firm shareholders concerning his conduct.
- c. The Respondent executed an agreement with the law firm, First Volunteer Title and Tri-State pursuant to which he paid an agreed upon amount, which can be considered restitution.
- d. No prior disciplinary action has been taken against the Respondent.
- e. The Respondent has demonstrated good character by being a contributing member of his church being active in certain community organizations.

CONCLUSIONS OF LAW

1. Pursuant to Section 1 of Rule 9 of the Rules of Professional Conduct (“RPC”), 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, and the Circuit and Chancery Courts.

2. Pursuant to Section 3, Supreme Court Rule 9, 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. Acts or omissions by an attorney that violate the Rules of Professional Conduct (Supreme Court Rule 8) of the State of Tennessee shall constitute misconduct and be grounds for discipline.

3. With respect to certain actions and failures to act, the Respondent has failed to conduct himself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited.

4. The Respondent owed fiduciary duties to the law firm and shareholders of the law firm. See Board of Professional Responsibility of the Supreme Court of Tennessee v. Maddux, 148 S.W.3d 37, 41 (Tenn. 2004).

5. Respondent took the position that the expenditures of \$500.00 to his children’s school, \$500.00 to the Respondent’s church for hurricane Katrina relief (which was approved by the Board), \$875.00 for a seminar, and \$488.00 to the private school attended by his children were made in the ordinary course of business and that no authority from nor disclosure to the firm was required by the Operating Agreement or by law. The Hearing Committee finds that that the Board of Professional Responsibility has not met its burden to prove that these expenditures constitute a violation of any Rule of Professional Conduct.

6. Two principal sets of facts stand out to this Hearing Panel, both of which warrant discipline:

A. Respondent's disbursement to himself, or conversion of funds from Tri-State on Three Occasions.

Although the Respondent's fellow law firm shareholders were members of Tri-State (or owned financial interests indirectly through the law firm's membership in Tri-State), the Respondent never advised his fellow shareholders that he was taking the funds. The Respondent personally took \$600.00, \$500.00 and \$105.00 from Tri-State. Tri-State was no longer operating at the time the Respondent took each of these payments that he characterized as a "bonus." Thus, the funds the Respondent appropriated to his own use clearly belonged to his fellow shareholders (and there was no proof at the hearing to the contrary) and would have been subject to disbursement among all the shareholders. The conversion of this property, which the Respondent knew did not belong to him, constitutes criminal conduct. The Respondent had no right or authority to determine for himself that he should be entitled to receive those funds. Not only did the Respondent wrongfully convert those funds to his own use and fail to advise his fellow law firm shareholders that he had taken the funds, he failed to report the receipt of those funds on his federal income tax return, and provided no excuse at the hearing for such failure to report.

In addition, the Respondent caused First Volunteer Title to pay his personal charges on First Volunteer Title's credit card in the amount of \$4,758.56. Although the Respondent testified that he took this money as a salary advance, he did not give that explanation to the employee when he instructed her to make the payment, nor did he obtain authority from the Board of First Volunteer Title to make that payment. He certainly did not advise his fellow law firm shareholders that he was administering the funds of First Volunteer Title in that fashion.

The proof was not clear at the hearing whether the Respondent actually failed to take his salary/management fee of \$2,000.00 per month during any part of 2006 in order to reimburse First Volunteer Title for the payment he caused the company to make of his personal credit card charges. As a result, the Hearing Committee cannot conclude that the Respondent actually misappropriated those funds in the final analysis. Nonetheless, the Hearing Committee finds that the Respondent's actions in administering the funds of First Volunteer Title so as to pay his personal credit card charges violated the fiduciary duty he owed to his fellow law firm shareholders because it certainly affected the operating cash flow of the title company and made less funds available for distribution among the law firm shareholders in circumstances in which the Respondent had not made full disclosure to his fellow law firm shareholders to whom he owed a fiduciary duty.

In April 2006, the Respondent wrongfully converted to his own use River City Title's employment tax refund check in the amount of \$595.29. Although the Respondent characterized this payment as a "bonus," he did not ask authorization from any member of River City Title; nor did he report it on his federal income tax return.

B. The failure of the Respondent to report to his fellow law firm shareholders his receipt of the \$2,000.00 monthly salary /management fee from First Volunteer Title.

Although the Board of First Volunteer Title approved that monthly payment, First Volunteer Title did not, and would not have had the authority to, approve the Respondent's failure to report that payment to his fellow law firm shareholders. The Respondent failed to report that monthly payment to the law firm shareholders despite the fact that the Respondent well knew that in the process of determining the Respondent's share of income distribution from the law firm the shareholders considered the Respondent's work for Tri-State and for First Volunteer to constitute at least a substantial portion of the Respondent's contribution to the law firm. Mr. Gold and Mr.

McKoon testified that had the shareholders known that the Respondent was receiving the monthly payment from the title company, the Respondent's share of firm income would have been adjusted accordingly. We find that the Respondent knew such would be the case and that he intentionally and dishonestly withheld the monthly payment information from his fellow shareholders in order to profit personally. In doing so, the Respondent breached his fiduciary duty to his shareholders, acted dishonestly and with deceit in his relationships with his law firm shareholders.

7. The Respondent's principal argument with regard to the payments he made to himself from Tri-State, the payment that he caused First Volunteer Title to make of his personal credit card charges, and his appropriation of River City Title's tax refund check was that no provision of the Operating Agreement or applicable law prevented him as Chief Manager from disbursing or authorizing funds from the respective LLC's, and that as Chief Manager he had the authority by virtue of that office to make those disbursements and withdrawals. The Hearing Committee does not agree that this argument constitutes a defense to the charges presented by the Board because those charges relate more specifically to the Respondent's relationships with his fellow law firm shareholders, to whom he owed a fiduciary duty. Whether the Respondent was not prohibited by the Operating Agreement of each of the title company's from making the disbursements or withdrawals does not address the Respondent's fiduciary duty to his fellow law firm shareholders.

8. The acts and omissions by the Respondent as described in these findings constitute violations of RPC 1.15 and RPC 8.4(b) and (c). The Hearing Committee further finds that the Respondent's misconduct seriously adversely reflects on the Respondent's fitness to practice law.

9. Respondent contended that pursuant to RPC 5.7 the actions complained of were not related to the practice of law and thus were not covered by the Rules of Professional Conduct and

that therefore the Petition failed to state a claim upon which relief can be granted. The Hearing Committee disagrees with the Respondent's contention and finds that the Complaint does state a claim upon which relief can be granted. See RPC 8.4(b) and (c) and discussion in Paragraphs 6 and 7 above.

DISCIPLINARY ACTION

Having found that the Respondent's acts and omissions constitute violations of RPC 1.15 and RPC 8.4(b) and (c), the Hearing Committee considers the degree of discipline to be imposed. In doing so, the Hearing Committee concludes, prior to considering aggravating and mitigating circumstances, that the appropriate disciplinary standard applicable here is Section 5.12, which provides:

Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely affects the lawyer's fitness to practice law.

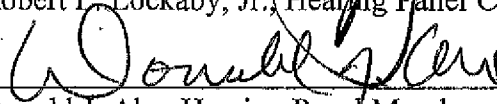
ABA Standard 5.12 (Am. Bar Ass'n ed., 1986). The Hearing Committee further finds that, while the Respondent's misconduct is serious, it does not meet the standard for disbarment set forth in Standard 5.11 of the ABA Standards. However, the Hearing Committee finds that a period of suspension is warranted.

In considering the period of suspension appropriate in this case, the Hearing Committee has carefully considered the mitigating and aggravating factors that were proved at the hearing and are set forth above. In light of this consideration, the Panel finds that the appropriate period of suspension is thirty days. The Hearing Committee will enter a judgment in this matter in

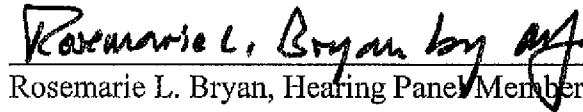
accordance with Section 8.3 of Rule 9 of the Supreme Court Rules. This period of suspension should commence ninety days from the date of the judgment in this matter.



Robert L. Lockaby, Jr. (Hearing Panel Chair)



Donald J. Aho, Hearing Panel Member



Rosemarie L. Bryan by *af* w/express permission

Rosemarie L. Bryan, Hearing Panel Member

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this FINDINGS OF FACTS AND CONCLUSIONS OF LAW has been served upon the following, by deposit in the U.S. Mail with sufficient postage thereon to ensure prompt delivery:

James A. Vick, Esq.
1101 Kermit Drive, Suite 730
Nashville, Tennessee 37217

Kevin L. Featherston, Esq.
1612 Gunbarrel Road, Suite 102
Chattanooga, Tennessee 37421

This 17th day of October, 2007.

By: 

Robert L. Lockaby, Jr.