

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

FILED

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BOARD OF PROFESSIONAL
RESPONSIBILITY

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EXEC. SEC.

**IN RE: WESLEY LYNN HATMAKER,
BPR# 14880, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Campbell County)**

DOCKET NO. 2016-2641-2-WM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for a hearing on April 25, 2017 before a Hearing Panel consisting of Karen Goforth Crutchfield, Gordon Keith Alley and Kenneth Francis Irvine, Jr., Chair, upon a Petition for Discipline and Supplemental Petition for Discipline. William C. Moody, Disciplinary Counsel, participated in the hearing. Mr. Hatmaker did not participate in the hearing despite being given notice.

STATEMENT OF THE CASE

The Petition for Discipline was filed October 26, 2016. Mr. Hatmaker failed to respond to the Petition for Discipline and on November 29, 2016 the Board filed a Motion for Default Judgment. This Hearing Panel entered its Order for Default Judgment granting the Board's motion on December 27, 2016. A Supplemental Petition for Discipline was filed January 4, 2017. Mr. Hatmaker failed to respond to the Supplemental Petition for Discipline and on January 31, 2017 the Board filed a Motion for Default Judgment. This Hearing Panel entered its Order for Default Judgment granting the Board's motion on February 13, 2017. There has been no further response from Mr. Hatmaker since entry of the Order for Default Judgment.

FINDINGS OF FACT

File No. 46107-2-KB – Complainant – Willie Dilbeck

Mr. Dilbeck retained Mr. Hatmaker to file a civil suit on his behalf for which Mr. Dilbeck paid Mr. Hatmaker a fee of \$1,000. Mr. Hatmaker never filed the lawsuit. Thereafter, on multiple occasions, Mr. Hatmaker made misrepresentations to Mr. Dilbeck intended to make him believe that the lawsuit had been filed and was progressing normally. Eventually, Mr. Hatmaker ceased responding to Mr. Dilbeck's efforts to communicate with him. Mr. Hatmaker failed to perform the work for which he was retained, abandoned his representation of Mr. Dilbeck, failed to properly terminate their relationship and failed to refund the \$1,000 fee paid to him for work he did not perform. Mr. Hatmaker did not provide the Board a response to Mr. Dilbeck's complaint when requested to do so.

File No. 46521-2-KB – Informant – William Blaylock, Esq.

Mr. Hatmaker was temporarily suspended by the Tennessee Supreme Court on January 29, 2016. Despite his suspension, on February 29, 2016, Mr. Hatmaker appeared as the attorney of record representing Friends of Campbell County Animals in an unemployment compensation hearing before the Tennessee Department of Labor.

File No. 46704-2-KB – Complainant – Larry Skeen

Mr. Skeen retained Mr. Hatmaker to file a divorce on behalf of his son, Andrew Skeen, for which Mr. Skeen paid Mr. Hatmaker a fee of \$1,900 on July 27, 2015. Mr. Hatmaker never filed the divorce. Mr. Skeen also retained Mr. Hatmaker to represent his son against charges of driving under the influence for which Mr. Skeen paid Mr. Hatmaker a fee of \$700 on November 20, 2015. The DUI case was set for trial on April 7, 2016, after the date of Mr. Hatmaker's temporary suspension. Mr. Hatmaker failed to notify Mr. Skeen or his son of his suspension. Mr. Hatmaker failed to perform the work for which he was retained, abandoned his representation of Mr. Skeen,

failed to properly terminate their relationship and failed to refund the \$2,600 fees paid to him for work he did not perform. After providing an initial response to Mr. Skeen's complaint, the Board requested that Mr. Hatmaker provide additional information but he failed to do so.

File No. 47698-2-KB – Informant – Hon. Amanda Sammons

A November 9, 2015 divorce decree of the General Sessions Court of Campbell County ordered Jeffrey Anderson to pay \$40,000 to his ex-wife, Amie Anderson, within sixty days. On November 17, 2015, Mr. Anderson gave Mr. Hatmaker a check in the amount of \$40,000 representing the funds he was ordered to pay to his ex-wife. Mr. Hatmaker negotiated the check in a split-deposit by depositing \$10,000 to his operating account and \$30,000 to his trust account. Mr. Hatmaker agreed to hold the \$40,000 in trust and pay it to Ms. Anderson within the sixty-day time period established by the divorce decree. Mr. Hatmaker did not pay the \$40,000 to Ms. Anderson. Mr. Hatmaker misappropriated the \$40,000. Mr. Hatmaker failed to respond to numerous efforts by Mr. Anderson to communicate with him regarding the status of the \$40,000.

File No. 48734-2-KB – Complainant – Mary Jane Partin

Mary Jane Partin was the mother of Melissa Ann Albright. Ms. Albright was the aunt of Shelby Jane Davis, a minor. Ms. Partin is the grandmother of Miss Davis. Ms. Albright died in February, 2014. Ms. Albright bequeathed \$104,361.77 to Miss Davis. In March, 2014, Ms. Partin retained Mr. Hatmaker to prepare a trust for the benefit of Miss Davis for which she paid him a fee of \$500. On March 7, 2014, Ms. Partin gave Mr. Hatmaker a check in the amount of \$30,000 to be held in trust for Miss Davis. Mr. Hatmaker deposited the \$30,000 to his trust account. On June 17, 2014, Ms. Partin gave Mr. Hatmaker a check in the amount of \$72,361.77 to be held in trust for Miss Davis. Mr. Hatmaker deposited the \$72,361.77 to his trust account. Mr. Hatmaker did not prepare the trust. Mr. Hatmaker misappropriated the \$104,361.77 paid to him in trust for Miss Davis. Mr. Hatmaker failed to perform the work for which he was retained, abandoned his

representation of Ms. Partin, failed to properly terminate their relationship and failed to refund the \$500 fee paid to him for work he did not perform. In January 2016, Ms. Partin heard reports that Mr. Hatmaker had misappropriated funds from other clients. She telephoned Mr. Hatmaker to determine if he had misappropriated the funds held in trust for Miss Davis. Mr. Hatmaker falsely told her that the funds were still being held in trust by him. Mr. Hatmaker later admitted to Ms. Partin that he had misappropriated the funds.

SUPPLEMENTAL PETITION

File No. 47715-2-KB – Complainant – Terry Cosby

Mr. Cosby retained Mr. Hatmaker to file a civil suit on his behalf for which Mr. Cosby paid Mr. Hatmaker a fee of \$1,200. Mr. Hatmaker filed the lawsuit on September 8, 2016. Mr. Hatmaker obtained the issuance of summonses but never attempted to obtain service on the defendants. Since filing the lawsuit, Mr. Hatmaker has taken no action to prosecute the case. The cause of action is now time-barred. On multiple occasions, Mr. Hatmaker made misrepresentations to Mr. Cosby intended to make him believe that the lawsuit was progressing normally. Eventually, Mr. Hatmaker ceased responding to Mr. Cosby's efforts to communicate with him. Mr. Hatmaker failed to perform the work for which he was retained, abandoned his representation of Mr. Cosby, failed to properly terminate their relationship and failed to refund the \$1,200 fee paid to him for work he did not perform. When provided the complaint made by Mr. Cosby and requested that he provide the Board a response, Mr. Hatmaker did not do so.

As a result of the Orders for Default Judgment, all the facts contained in the Petition for Discipline and Supplemental Petition for Discipline are deemed admitted.

CONCLUSIONS OF LAW

Pursuant to Tenn. Sup. Ct. R. 9, § 1, 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 which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline.

The preponderance of the evidence establishes that Mr. Hatmaker has committed the following violations of the Rules of Professional Conduct.

PETITION

File No. 46107-2-KB – Complainant – Willie Dilbeck

By failing to file the lawsuit for Mr. Dilbeck, Mr. Hatmaker failed to perform the work for which he was retained in violation of RPC 1.3 (Diligence). By failing to respond to Mr. Dilbeck's efforts to communicate with him, Mr. Hatmaker violated RPC 1.4(a) (Communication). By failing to properly terminate their relationship and refund the unearned fee, Mr. Hatmaker violated RPC 1.16(d) (Declining and Terminating Representation). By failing to respond to the Board's request for information, Mr. Hatmaker violated RPC 8.1(b) (Bar Admission and Disciplinary Matters). By making misrepresentations to Mr. Dilbeck regarding the status of the matter, Mr. Hatmaker violated RPC 8.4(c) (Misconduct).

File No. 46521-2-KB – Informant – William Blaylock, Esq.

By his appearance in the Department of Labor hearing while temporarily suspended, Mr. Hatmaker committed the unauthorized practice of law in violation of RPC 5.5(a) (Unauthorized Practice of Law) and he failed to comply with the order temporarily suspending him in violation of RPC 8.4(g) (Misconduct).

File No. 46704-2-KB – Complainant – Larry Skeen

By failing to perform the work for which he was retained, Mr. Hatmaker violated RPC 1.3 (Diligence). By failing to notify Mr. Skeen or his son of his suspension, Mr. Hatmaker violated RPC 1.4(a) (Communication) and RPC 8.4(g) (Misconduct). By failing to properly terminate their

relationship and refund the unearned fees, Mr. Hatmaker violated RPC 1.16(d) (Declining and Terminating Representation). By failing to respond to the Board's request for information, Mr. Hatmaker violated RPC 8.1(b) (Bar Admission and Disciplinary Matters).

File No. 47698-2-KB – Informant – Hon. Amanda Sammons

By failing to communicate with Mr. Anderson, Mr. Hatmaker violated RPC 1.4(a) (Communication). By depositing a portion of the \$40,000 to his operating account, Mr. Hatmaker violated RPC 1.15(a) (Safekeeping Property and Funds). By misappropriating the \$40,000, Mr. Hatmaker violated RPC 1.15(d) (Safekeeping Property and Funds) and 8.4(b) and (c) (Misconduct).

File No. 48734-2-KB – Complainant – Mary Jane Partin

By failing to prepare the trust for which he had been retained, Mr. Hatmaker violated RPC 1.3 (Diligence). By misappropriating the \$104,361.77 paid to him in trust for Miss Davis, Mr. Hatmaker violated RPC 1.15(d) (Safekeeping Property and Funds) and 8.4(b) and (c) (Misconduct). By failing to properly terminate their relationship and refund the unearned fee, Mr. Hatmaker violated RPC 1.16(d) (Declining and Terminating Representation). By failing to respond to the Board's request for information, Mr. Hatmaker violated RPC 8.1(b) (Bar Admission and Disciplinary Matters). By making misrepresentations to Ms. Albright regarding the status of the \$104,361.77 paid to him in trust for Miss Davis, Mr. Hatmaker violated RPC 8.4(c) (Misconduct).

SUPPLEMENTAL PETITION FOR DISCIPLINE

File No. 47715-2-KB – Complainant – Terry Cosby

By failing to obtain issuance of the summonses and service on the defendants, Mr. Hatmaker violated RPC 1.3 (Diligence). By failing to respond to Mr. Cosby's efforts to communicate with him, Mr. Hatmaker violated RPC 1.4(a) (Communication). By failing to properly terminate their relationship and refund the unearned fee, Mr. Hatmaker violated RPC

1.16(d) (Declining and Terminating Representation). By failing to respond to the Board's request for information, Mr. Hatmaker violated RPC 8.1(b) (Bar Admission and Disciplinary Matters). By making misrepresentations to Mr. Cosby regarding the status of the matter, Mr. Hatmaker violated RPC 8.4(c) (Misconduct).

Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a), Misconduct.

APPLICATION OF ABA STANDARDS

Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

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

Mr. Hatmaker knowingly converted \$40,000.00 from Mr. Anderson and \$104,361.77 from Miss Davis.

- 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.

Mr. Hatmaker lied to Mr. Dilbeck and Mr. Cosby about the status of their matters. He lied to Ms. Partin about the status of the funds he had misappropriated from Miss Davis.

- 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.

Mr. Hatmaker knowingly failed to file Mr. Dilbeck's lawsuit. He knowingly failed to file the divorce for Mr. Skeen's son. He knowingly failed to obtain issuance and service of process in the Cosby matter. He knowingly failed to prepare the trust for Miss Davis. His failure to perform these services resulted in serious injuries to his clients and establishes a pattern of neglect.

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.

Mr. Hatmaker violated the Supreme Court order temporarily suspending him when he appeared before the Department of Labor. He also violated the order by failing to notify clients of his suspension.

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

Mr. Hatmaker repeatedly ignored the Board's requests for responses to the complaints.

Pursuant to ABA Standard 9.22, aggravating factors are present in this case. The following aggravating circumstances justify an increase in the degree of discipline to be imposed against Mr. Hatmaker:

1. Prior disciplinary offenses: Mr. Hatmaker was disbarred on October 3, 2016.
2. Dishonest or selfish motive: Mr. Hatmaker had a dishonest and selfish motive in misappropriating funds from two clients.
3. Pattern of Misconduct: Mr. Hatmaker displayed patterns of misconduct by misappropriating from two different clients and failing to perform work for four clients.
4. Multiple offenses: Mr. Hatmaker committed violations of RPC 1.3, 1.4(a), 1.15(a) and (d), 1.16(d), 5.5(a), 8.1(b) and 8.4(a), (b), (c) and (g).

5. Vulnerability of Victims: Mr. Hatmaker's victims were vulnerable, particularly young Miss Davis from whom he stole her entire inheritance.

6. Respondent's substantial experience in the practice of law: Mr. Hatmaker was licensed to practice law in 1991.

7. Illegal conduct: Mr. Hatmaker's misappropriations constitute the illegal conduct of theft.

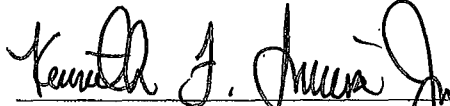
There are no mitigating circumstances.

Based upon the evidence and admissions in this matter, the appropriate discipline is a disbarment from the practice of law. In addition, pursuant to Tenn. Sup. Ct. R. 9, 12.7, Mr. Hatmaker shall be required to make restitution to Willie Dilbeck in the amount of \$1,000.00, Larry Skeen in the amount of \$2,600.00, Jeffrey Anderson in the amount of \$40,000.00, Mary Jane Partin in trust for the use and benefit of Miss Davis in the amount of \$104,361.77 and Terry Cosby in the amount of \$1,200.00. In the event restitution is paid by the Tennessee Lawyers Fund for Client Protection (TLFCP), Mr. Hatmaker shall reimburse TLFCP the amount so paid. Full payment of restitution by Mr. Hatmaker should be a condition precedent to reinstatement.

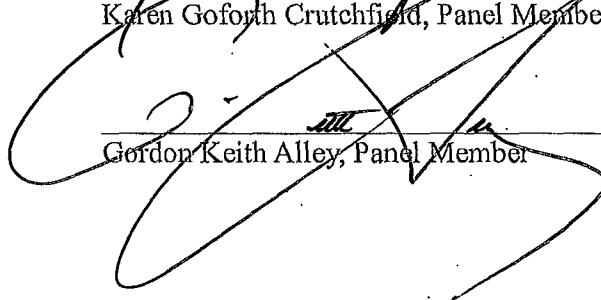
JUDGMENT

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Mr. Hatmaker should be disbarred from the practice of law. As a condition of reinstatement, Mr. Hatmaker shall make restitution as set forth above.

IT IS SO ORDERED.


Kenneth Francis Irvine, Jr., Panel Chair


Karen Goforth Crutchfield, Panel Member

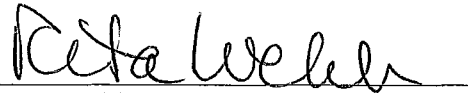

Gordon Keith Alley, Panel Member

NOTICE TO RESPONDENT

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.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Wesley Lynn Hatmaker, 5305 Riverbriar Road, Knoxville, TN 37919, by U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 26th day of April, 2017.

A handwritten signature in cursive script, appearing to read "Rita Webb", written over a horizontal line.

Rita Webb
Executive Secretary