

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

FILED

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BOARD OF PROFESSIONAL  
RESPONSIBILITY

*RW* EXEC. SEC.

IN RE: Marvin D. Himmelberg, BPR NO. 15199  
Respondent, an attorney licensed  
to practice law in Tennessee  
(Davidson County)

FILE NO. 33727-5-KB

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PUBLIC CENSURE

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The above complaint was filed against Marvin D. Himmelberg, an attorney licensed to practice law in Tennessee, alleging certain acts of misconduct. Pursuant to Supreme Court Rule 9, the Board of Professional Responsibility considered this matter at its meeting on September 9, 2011.

On January 20, 2010, Complainant received a five (5) day suspension and a demotion at her place of employment. Complainant hired Respondent to perfect the appeal to the Civil Service Commission (CSC) within 15 calendar days of the date of notification. Complainant called Respondent's office several times to check on the appeal and Respondent assured her that the appeal had been filed.

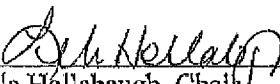
Respondent had instructed his paralegal to type and mail the appeal letter. The paralegal assured him it had been mailed. After later firing his paralegal for performance failures, Respondent discovered the un-mailed letter for Complainant's appeal. Respondent learned that the appeal was not perfected on March 8, 2010, and immediately sent a letter to the CSC requesting an appeal on Complainant's behalf. Complainant continued to request a status report on her appeal.

Respondent submitted an undated letter requesting an appeal which was received by the CSC on April 29, 2010. This was ninety-nine (99) days after the notification of Complainant's suspension and demotion and almost two months after discovering the appeal had not been perfected. The Administrative Law Judge dismissed the Complainant's appeal as time-barred. Complainant called Respondent's office and was told that Respondent's former paralegal had failed to file the appeal.

Respondent failed to act with reasonable diligence and promptness in representing Complainant, failed to keep the Complainant reasonably informed or comply with requests for information and failed to reasonably supervise his paralegal.

By the aforementioned acts, Marvin D. Himmelberg has violated Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), and 5.3 (responsibilities regarding nonlawyer assistants), and is hereby Publicly Censured for these violations.

FOR THE BOARD OF  
PROFESSIONAL RESPONSIBILITY

  
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Lola Hollabaugh, Chair

October 19, 2011  
\_\_\_\_\_  
Date