

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

FILED

2019 FEB 26 PM 3: 32

BOARD OF PROFESSIONAL
RESPONSIBILITY

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EXEC. SEC.

**IN RE: SCOTT DAVID JOHANNESSEN,
BPR# 26767, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Davidson County)**

DOCKET NO. 2018-2844-5-WM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for hearing on December 12, 2018 before a Hearing Panel consisting of Christopher B. Fowler, Panel Member; Jennifer L. Sheppard, Panel Member; and Rebekah L. Shulman, Panel Chair. The Board of Professional Responsibility (the "Board") was represented by William C. Moody. Mr. Johannessen was present for the hearing and represented himself.

FINDINGS OF FACT

1. William Kantz sued the Federal Home Loan Mortgage Corporation in the United States District Court ("Kantz I") alleging the wrongful foreclosure of his home.
2. The Federal Home Loan Mortgage Corporation filed a detainer warrant against William Kantz in the General Sessions Court for Davidson County ("Kantz II") seeking possession of the home. That case was removed to the United States District Court.
3. Kantz I was dismissed and Mr. Kantz appealed to the United States Circuit Court of Appeals where Jim Roberts was his attorney of record.
4. Between October 3 and 10, 2015, Mr. Johannessen prepared the brief filed by Mr. Roberts on behalf of Mr. Kantz in the United States Circuit Court of Appeals.

5. Mr. Johannessen billed Mr. Kantz \$3,000.00 for preparing the brief. On the invoice, Mr. Johannessen referred to Mr. Kantz as "client." Mr. Kantz paid the invoice.

6. On September 19, 2016, Mr. Johannessen filed a pleading in Kantz II on behalf of Flex Yield Investments, LLC ("FYI"), in which Mr. Johannessen objected to Mr. Kantz's discovery.

7. On October 8, 2016, Mr. Johannessen filed a second pleading in Kantz II on behalf of FYI styled Notice of Retention of Settlement Counsel. In this second pleading, Mr. Johannessen alleged that Mr. Kantz had "engage[d] in further objectionable and costly case disruptions."

8. Mr. Kantz did not give written informed consent for Mr. Johannessen to file pleadings on behalf of FYI in the detainer suit.

9. Mr. Johannessen has been practicing law since 1987.

10. Mr. Johannessen received a public censure in 2013 for practicing while suspended for non-payment of the professional privilege tax in violation of RPC 5.5(a) (Unauthorized Practice of Law).

CONCLUSIONS OF LAW

1. 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.

2. By preparing Mr. Kantz's appellate brief in Kantz I, Mr. Kantz represented Mr. Kantz.

3. Kantz I and Kantz II were substantially related matters.

4. By filing the pleadings in Kantz II, Mr. Johannessen represented FYI with interests materially adverse to Mr. Kantz.

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

- a. Mr. Johannessen violated RPC 1.9(a) (Duties to Former Client).
- b. Violation of the aforementioned Rule of Professional Conduct constitutes a violation of RPC 8.4(a) (Misconduct).

8. The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has carried its burden and proven the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence.

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

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

- 4.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

11. Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

- a. A prior disciplinary offense.
 - i. Substantial experience in the practice of law.

12. Based upon the evidence and admissions in this matter, the Panel finds that public censure is the appropriate discipline.

JUDGMENT

After Mr. Johannessen represented Mr. Kantz, he represented another client with interests materially adverse to Mr. Kantz in a substantially related matter. His misconduct had the potential to cause injury to Mr. Kantz. 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. Johannessen should be publicly censured.

IT IS SO ORDERED.

Rebekah L. Shulman

Rebekah L. Shulman, Panel Chair

Christopher B. Fowler *on behalf of panel*

Christopher B. Fowler, Panel Member *by permission*

Jennifer L. Sheppard


Jennifer L. Sheppard, Panel Member *by permission*

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, Scott David Johannessen, 424 Church Street, Suite 2000, Nashville, TN 37219, via U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 26th day of February, 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.