

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

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BOARD OF PROFESSIONAL
RESPONSIBILITY
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IN RE: JAMES LESTER KENNEDY
BPR No. 005453, Respondent,
An Attorney Licensed to Practice
Law in Tennessee
(Knox County)

DOCKET No. 2018-2906-2-AW

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came to be heard on Friday February 1, 2019, at 2:00 pm for Hearing on the Petition for Discipline before Chris Cone, Hearing Panel Chair, Hugh Ward, Hearing Panel Member, and Kevin Teeters, Hearing Panel Member. Respondent James Kennedy appeared *pro se*, and Russell Willis appeared on behalf of the Board of Professional Responsibility.

STATEMENT OF THE CASE

1. A Petition for Discipline was filed against Mr. Kennedy on August 27, 2018.
2. Mr. Kennedy did not file a response or otherwise answer the Petition.
3. A Motion for Default Judgment was filed on December 11, 2018.
4. The Motion for Default Judgment was GRANTED by the Hearing Panel on December 28, 2018, as such, all allegations contained in the Petition for Discipline were deemed ADMITTED.
5. A Final Hearing was set for February 1, 2019, at which the sole issue to be determined, was the discipline to be imposed in this matter.

6. Disciplinary Counsel presented the Board's proof which consisted primarily of the facts in the Petition for Discipline deemed admitted.
7. Respondent testified by giving his version of the facts presented by Disciplinary Counsel.

FINDINGS OF FACT

The Findings of Fact consist of the admitted allegations in the Petition for Discipline along with the testimony of the Respondent. The Petition for Discipline and all attached exhibits are hereby incorporated into our findings by reference.

FILE No. 54906-2-ES – Farrell Levy, Esq.

1. On November 15, 2017 a complaint was filed by Farrell Levy, Esq., alleging professional misconduct by the Respondent relating to his personal representation of the estate of Jacquelyn Marlene Wyroba.
2. At the time of the allegation, the Respondent had been SUSPENDED from the practice of law, effective on July 20, 2017, in Docket No. 2016-2618-2-AJ.
3. The complaint was forwarded to the Respondent on November 20, 2017, for response within (10) days.
4. The Board notified the Respondent on December 6, 2017, that he had failed to respond to the Board's letter and requested a response from Respondent with seven (7) days.
5. On December 18, 2017, the Board received a written response from the Respondent.

6. On April 5, 2018, Disciplinary Counsel requested specific documentation from Respondent be provided within ten (10) days.
7. On May 4, 2018, Disciplinary Counsel sent a second request to the Respondent to produce the requested documentation within seven (7) days.
8. The Respondent failed to respond to either letter, and Disciplinary Counsel mailed a Notice of Petition for Temporary Suspension to Respondent on May 15, 2018.
9. On May 25, 2018, the Board received a response from the Respondent, which did not directly respond to any of the specific documentation requested by the Board.
10. The Respondent knowingly failed to provide direct and substantive responses to the Board's lawful demands.
11. On February 10, 2015, Edward J. Wyroba petitioned the Chancery Court of Knox County, Tennessee, to appoint James Lester Kennedy, Esq., as the successor personal representative of the Estate.
12. The Motion was granted on March 4, 2015, and the Respondent became the successor personal representative of the Estate of Jacquelyn Marlene Wyroba.
13. Thereafter, the Respondent, in his capacity as successor personal representative, executed pleadings in the capacity of attorney and successor personal representative.
14. On July 20, 2017, the Supreme Court suspended James Lester Kennedy from the practice of law for a period of one (1) year.
15. Pursuant to the Order of Enforcement entered July 20, 2017, Respondent was required to comply with Tenn. Sup. Ct. R. 9, § 28.
16. Pursuant to Tenn. Sup. Ct. R. 9, § 28.7 and 28.2, Respondent was required to: 1) file a motion for leave to withdraw or a motion or agreed order to substitute counsel in all

- pending matters and serve upon opposing counsel or unrepresented parties the same, and 2) notify all clients represented in pending matters, all co-counsel in pending matters, and all opposing counsel or unrepresented parties in pending matters.
17. Pursuant to Tenn. Sup. Ct. R. 9, § 28.8 the Respondent was prohibited from undertaking any new representation on or after July 20, 2017.
 18. The Respondent took no substantive action to file the required pleadings to remove himself from any pending matters.
 19. On October 11, 2017, the Probate Court issued a Notice to Attorney James L. Kennedy and Notice to Administrator James L. Kennedy to appear and settle the Wyroba Estate.
 20. Respondent took no substantive action to inform the Probate Court to remove him as attorney of record, or any other indicia of continuing to serve as attorney, lawyer, and counselor at law or similar title.
 21. On October 11, 2017, Respondent appeared before the Knox County Chancery Court and, due to his continuing failure to disclose his suspension, misled the Probate Court, and opposing counsel regarding his status as an active licensed attorney.
 22. As a consequence of his misrepresentation by omission, the Respondent was directed to draft the Order of the Probate Court authorizing the payment of funeral expenses.
 23. On November 7, 2017, while suspended from the practice of law, Respondent entered his appearance in the Surrogates Court for the County of Jefferson, New York, as co-counsel for the Wyroba Estate.
 24. Thereafter, Respondent failed to file the required pleadings removing himself from any representative capacity in the matter in New York.

25. On March 5, 2018, the Respondent faxed a Memorandum to Judge Madelyn S. Fudman, Berks County Court of Common Pleas, Pennsylvania requesting the Court reset the hearing scheduled for March 5, 2018.
26. In the Memorandum, Respondent misrepresented himself as an attorney.
27. Under Pennsylvania law, only a properly licensed attorney admitted to practice law may represent the Wyroba Estate.
28. On May 4, 2018, the Respondent used his law office stationary to correspond with opposing counsel to deliver a Full and Complete Release of the funeral bill in the Wyroba Estate action.
29. The Respondent in his testimony on February 1, 2109, attempted to convince the Hearing Panel that all of the actions he undertook in these matters where in his capacity as successor personal representative, and not in any capacity as an attorney.
30. Additionally, Respondent did not deny that he took the alleged actions in either Tennessee, New York, or Pennsylvania. In fact, Respondent admitted that he had done most of the actions that were alleged.
31. Respondent argued that since the actions were in his capacity a successor personal representative and not an attorney, the Rules of Professional Conduct did not apply to these actions.

CONCLUSIONS OF LAW

1. A Default Judgment was entered on December 28, 2018, and as such, all allegations in the Petition for Discipline are deemed ADMITTED pursuant to Rule 9 § 15.02(b), Tenn. Sup. Ct. R.


2. The Respondent violated **RPC 3.3: Candor Towards a Tribunal** and **RPC 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law**, for his actions in the Probate Court of Knox County, Tennessee; the Chancery Court of Knox County, Tennessee; the Surrogates Court for the County of Jefferson, New York; and the Berks County Court of Common Pleas, Pennsylvania, by failing to disclose that he had been suspended from the practice of law by the Supreme Court of the State of Tennessee effective July 20, 2017.
3. The Respondent violated **RPC 8.1: Bar Admission and Disciplinary Matters** by knowingly failing to respond to a lawful demand for information from a disciplinary authority.
4. The Respondent violated **Rule 8.4: Misconduct** by (a) violating the Rules of Professional Conduct; (c) engaging in conduct involving misrepresentation, (d) engaging in conduct that is prejudicial to the administration of justice, and (g) knowingly failing to comply with a final court order entered in a proceeding in which the lawyer is a party.
5. The Respondent attempted to argue that he was only acting in his capacity as successor personal representative and not as an attorney, and therefore not held to the Rules of Professional Conduct. This was also an argument Respondent made in his prior disciplinary proceeding, Docket No. 2016-2618-2-AJ. That Hearing Panel found no merit in Respondent's argument, and neither do we. As such, The Respondent was ON NOTICE that the Rules of Professional Conduct did apply to him in the matter of the Wyroba Estate, no matter what capacity he thought he was acting under.


6. The Hearing Panel finds the following Aggravating Factors giving rise to an increase in discipline:
 7. The Respondent's refusal to acknowledge the wrongful nature of his conduct
 8. The Respondent's selfish motive,
 9. The Respondent's pattern of misconduct,
 10. The Respondent's multiple offenses,
 11. The Respondent's substantial experience in the practice of law,
 12. The Respondent's bad faith obstruction of the disciplinary process by failing to respond to the Board's lawful request for information.
13. The Hearing Panel finds no Mitigating Factors.

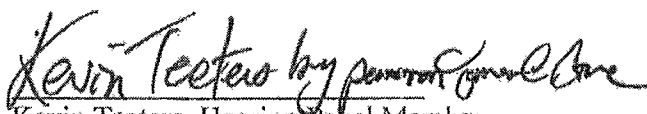
JUDGMENT

The Hearing Panel recommends that the Respondent be suspended from the practice of law for a period of three (3) years.

IT IS SO ORDERED, this 25th of February, 2019


Chris Cone, Hearing Panel Chair


Hugh Ward, Hearing Panel Member


Kevin Teeters, Hearing Panel Member

NOTICE TO RESPONDENT

This Judgment may be appealed pursuant to Tenn Sup. Ct. R. 9, § 3.3.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent the Respondent, James Lester Kennedy, 3100 Alcoa Drive, Knoxville, TN, 37920, by U.S. First Class Mail, and hand-delivered to Russell Willis, Disciplinary Counsel, on this the 20th day of Feb., 2019.



Rita Webb
Executive Secretary