

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
PCW

IN RE: **JAMES LESTER KENNEDY,** **DOCKET NO. 2019-2964-2-AW**
BPR# 005453, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Knox County)

**HEARING PANEL'S FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT**

This matter came on for hearing on July 18, 2019 before a Hearing Panel consisting of David Alan Draper (Panel Chair), Hanson R. Tipton, and Virginia L Couch. The Board of Professional Responsibility (the "Board") was represented by A. Russell Willis. Mr. Kennedy was duly noticed to the hearing, but he did not appear, nor was he represented by counsel.

STATEMENT OF THE CASE

This is a disciplinary proceeding against Respondent, James Lester Kennedy, an attorney licensed to practice law in Tennessee in 1977. On February 15, 2019, the Board filed a Petition for Discipline against Mr. Kennedy. Mr. Kennedy was personally served with the Petition on April 15, 2019. Mr. Kennedy failed to file an answer to the Petition, and on May 23, 2019, the Board filed a Motion for Default Judgment and That Charges in Petition for Discipline be Deemed Admitted. The Hearing Panel was duly appointed on June 6, 2019, and the Board's Motion for Default was granted by Order of the Panel entered June 20, 2019.

The Petition for Discipline consists of one (1) complaint alleging Mr. Kennedy (a) engaged in the unauthorized practice of law; (b) knowingly engaged in conduct involving misrepresentations and deceit in dealings with opposing counsel, third parties and his client; (c) knowingly failed to comply with the Order of Enforcement entered by the Supreme Court on July

20, 2017 and (d) knowingly failing to remove the indicia of attorney, lawyer, and counselor at law or similar title in his correspondence with counsel, the Administratrix and third parties, in violation of the Rules of Professional Conduct (RPC) 3.4 (fairness to opposing party and counsel), 4.1 (truthfulness in statements to others), 5.5 (unauthorized practice of law), 8.1(b) (disciplinary matters), and 8.4(a), (c), (d) and (g) (misconduct).

FINDINGS OF FACTS

The evidence presented to the Hearing Panel established the following facts:

File No. 58337-2-ES – William D. Edwards, Esq.

1. On July 20, 2017, the Supreme Court of Tennessee suspended James Lester Kennedy from the practice of law for a period of one (1) year, and Mr. Kennedy has not been reinstated from that suspension by the Tennessee Supreme Court as of July 18, 2019, the date of this final disciplinary hearing. Exhibit 3.

2. Pursuant to the Order of Enforcement entered July 20, 2017, Mr. Kennedy was required to comply with Tenn. Sup. Ct. R. 9, § 28. Exhibit 3.

3. Pursuant to Sup. Ct. R. 9, §§ 28.7 and 28.2, Mr. Kennedy 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 the same upon opposing counsel or unrepresented parties and (2) notify by registered or certified mail, return receipt requested, (a) all clients represented in pending matters; (b) all co-counsel in pending matters; (3) all opposing counsel or unrepresented parties in pending matters of the order suspending the attorney and the effective date of the suspension.

4. Pursuant to Sup. Ct. R. 9, § 28.8, Mr. Kennedy was prohibited from undertaking any new representation on or after the effective date of the Order of Enforcement suspending him from the practice of law and was required to remove any indicia of attorney, lawyer, and counselor at law or similar title.

5. On or about April 19, 2018, subsequent to the entry of the Order of Enforcement suspending Mr. Kennedy from the practice of law, Mr. Kennedy contacted Knoxville TVA Employees Credit Union requesting information related to a creditor claim filed against the Estate of Charles S. Christenberry pending before the Probate Division of the Chancery Court for Knox County. Exhibit 1.

6. Mr. Kennedy did represent himself as an attorney and provided the email address “jlkatty@bellsouth.net.” Exhibit 1.

7. On or about May 24, 2018, Mr. Kennedy approached William D. Edwards, Esq., outside of the Probate Court, inquired if Mr. Edwards represented Knoxville TVA Employees Credit Union and requested a business card. Exhibit 1.

8. In July, 2018, Mr. Kennedy contacted Mr. Edwards and represented himself as an attorney and requested information on behalf of the Estate of Charles S. Christenberry. Exhibit 1.

9. Mr. Edwards agreed to provide the requested information to Mr. Kennedy as soon as he entered his appearance as attorney of record for the Estate. Exhibit 1.

10. On or about July 25, 2018, Mr. Kennedy contacted Mr. Edwards and requested a continuance on behalf of the Estate for the hearing set for August 2, 2018. Exhibit 1.

11. Mr. Edwards, believing Mr. Kennedy was the attorney representing the Estate of Charles S. Christenberry, prepared an Agreed Order and emailed the Agreed Order with a cover letter to Mr. Kennedy at “jlkatty@bellsouth.net.” Exhibit 1.

12. On August 1, 2018, Mr. Kennedy contacted Mr. Edwards and disclosed that (a) his license to practice law was suspended for one (1) year and (b) that his suspension period was up but he had a few matters to handle before his license would be reinstated. Exhibit 1.

13. During this telephone conversation, Mr. Kennedy requested Mr. Edwards allow the Administratrix of the Estate to sign the Agreed Order continuing the hearing. Exhibit 1.

14. Thereafter, Mr. Edwards revised the Agreed Order to reflect the signature of the Administratrix and the same was submitted to the Court. Exhibit 1.

15. Not only did Mr. Kennedy represent to Mr. Edwards and TVA Employees Credit Union that he was the attorney for the Estate of Charles S. Christenberry, Mr. Kennedy also made similar representations to the Administratrix of the Estate and third-parties. Exhibit 1.

16. On May 4, 2018, Mr. Kennedy wrote PennyMac Loan Services, LLC in Ohio and California to notify them that the Estate was insolvent and would not be providing home insurance on the real property securing the mortgage loan. Exhibit 1.

17. Mr. Kennedy's letter of May 4, 2018, to PennyMac Loan Services, LLC was written on his professional letterhead and reflects a copy being provided to Elizabeth S. Hamilton, Administratrix of the Estate. Exhibit 1.

18. Mr. Kennedy's correspondence to PennyMac Loan Services, LLC, was a representation by Mr. Kennedy that he was an attorney, lawyer, or counselor at law. Exhibit 1.

19. Mr. Kennedy also failed to respond to the Board's request for information related to this disciplinary complaint, failed to file an answer to the Petition for Discipline and failed to participate in the final hearing.

20. In addition to the one (1) year suspension from the practice of law imposed upon Mr. Kennedy by Order of Enforcement entered July 20, 2017, Mr. Kennedy was suspended from the practice of law for ninety (90) days by Order of Enforcement entered July 12, 2005, for engaging in the unauthorized practice of law, failing to act with reasonable diligence and failing to reasonably communicate with his client. Exhibit 2.

21. On June 5, 2019, an Order of Enforcement was entered by the Tennessee Supreme Court suspending Mr. Kennedy from the practice of law for three (3) years for engaging in the unauthorized practice of law, misleading courts and opposing counsel regarding his suspension and failing to respond to the Board's request for information. Exhibit 4.

CONCLUSIONS OF LAW

22. The Respondent, James Lester Kennedy, is an attorney admitted by the Supreme Court of Tennessee in 1977 to practice law in the State of Tennessee. Mr. Kennedy's most recent address as registered with the Board of Professional Responsibility is 3100 Alcoa Highway, Knoxville, TN 37920, being in Disciplinary District II. Mr. Kennedy's Board of Professional Responsibility number is 005453.

23. Pursuant to Tenn. Sup. Ct. R. 9, § 8 (2014), attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts.

24. Pursuant to Tenn. Sup. Ct. R. 9, § 1 (2014), 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.

25. Pursuant to Tenn. Sup. Ct. R. 9, § 11 (2014), acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

26. Based upon the evidence presented, the Hearing Panel finds by a preponderance of the evidence that James Lester Kennedy knowingly and intentionally engaged in the

unauthorized practice of law; (b) knowingly engaged in conduct involving misrepresentations and deceit in dealings with opposing counsel, third parties and his client; (c) knowingly failed to comply with the Order of Enforcement entered by of the Supreme Court on July 20, 2017, and (d) knowingly failed to remove the indicia of attorney, lawyer, and counselor at law or similar title in his correspondence with counsel, the Administratrix and third parties in violation of Tenn. Sup. Ct. R. 9, § 28.

27. The Hearing Panel further finds by a preponderance of the evidence that Mr. Kennedy knowingly and intentionally failed to respond to the Board's request for information related to this disciplinary complaint, failed to file an answer to the Petition for Discipline and failed to participate in the final hearing.

28. The Hearing Panel finds by a preponderance of the evidence that James Lester Kennedy knowingly and intentionally violated Rules of Professional Conduct (RPC) 3.4 (fairness to opposing party and counsel, 4.1 (truthfulness in statements to others), 5.5 (unauthorized practice of law), 8.1(b) (disciplinary matters), and 8.4(a), (c), (d) and (g) (misconduct).

APPLICATION OF THE ABA STANDARDS

29. Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, ("ABA Standards").

30. Based upon the facts and misconduct previously cited, the Hearing Panel finds the following ABA Standards applicable and relevant to its determination of the appropriate discipline to be imposed against Mr. Kennedy:

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client.

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of

justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

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.

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

AGGRAVATING AND MITIGATING CIRCUMSTANCES

31. Pursuant to ABA Standard 9.22, the Hearing Panel finds the following aggravating factors present and applicable to determining the appropriate discipline to be imposed against Mr. Kennedy:

(a) Mr. Kennedy's multiple offenses are an aggravating circumstance justifying an increase in discipline.

(b) Mr. Kennedy's failure to acknowledge the wrongful nature of his conduct is an aggravating circumstance justifying an increase in discipline.

(c) Mr. Kennedy's substantial experience in the practice of law is an aggravating circumstance justifying an increase in discipline.

(d) Mr. Kennedy's pattern of misconduct is an aggravating circumstance justifying an increase in discipline.

32. Pursuant to ABA Standard 9.32, the Hearing Panel finds no mitigating factors present and applicable to determining the appropriate discipline to be imposed against Mr. Kennedy:

33. The Panel concludes that the appropriate baseline sanction is suspension.

JUDGMENT

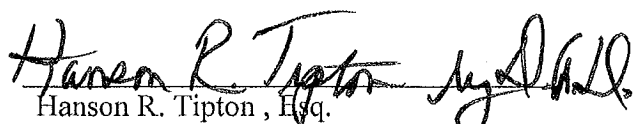
Based upon the facts in this case, the application of the Rules of Professional Conduct, consideration of the cited ABA Standards and consideration of the presence and absence of aggravating and mitigating factors, the Hearing Panel finds by a preponderance of the evidence that Mr. Kennedy committed disciplinary misconduct and should be suspended from the practice of law, pursuant to Tenn. Sup. Ct. R. 9, § 12.2, for a period of two (2) years to be served consecutive to the three (3) year suspension imposed by the Order of Enforcement (Docket No. M2019-00926-SC-BAR-BP) entered June 5, 2019.

ENTERED ON THIS THE 8th DAY OF OCTOBER, 2019.

FOR THE PANEL:


David A. Draper, Esq. Panel Chair


Virginia L. Couch, Esq.


Hanson R. Tipton, Esq.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, James Lester Kennedy, by First Class U.S. Mail, addressed to him at 3100 Alcoa Highway, Knoxville, Tennessee 37920, and 1100 Galewood Road, Knoxville, Tennessee 37919, and to A. Russell Willis, 10 Cadillac Drive, Ste 220, Brentwood, Tennessee 37027 on this the 8th day of October, 2019.


David A. Draper, Panel Chair

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, James Lester Kennedy, 3100 Alcoa Highway, Knoxville, TN 37920, and 1100 Galewood Road, Knoxville, TN 37919, via U.S. First Class Mail, and hand-delivered to Russell Willis, Disciplinary Counsel, on this the 8th day of October, 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.