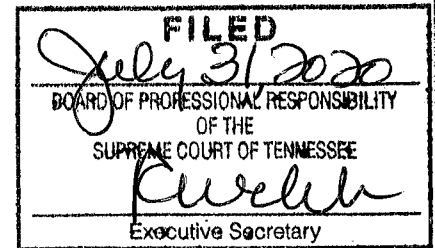


**IN DISCIPLINARY DISTRICT II
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**IN RE: JAMES LESTER KENNEDY,
BPR No. 005453, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Knox County)**

DOCKET NO. 2019-3055-2-BL

JUDGMENT OF HEARING PANEL

This matter came before the Panel for final hearing on May 27, 2020 based upon the Hearing Panel's March 11, 2020 Order Granting Default Judgment. Participating in the hearing were Clinton Woodfin, Hearing Panel Chair, W. Dale Amburn, Hearing Panel Member, Christopher Hall, Hearing Panel Member, and Brittany Lavalle, Disciplinary Counsel. Mr. Kennedy did not appear for the telephonic hearing.

STATEMENT OF THE CASE

On November 20, 2019, the Tennessee Board of Professional Responsibility (the "Board") filed a Petition for Discipline against the Respondent, James Lester Kennedy. Mr. Kennedy failed to file a Response to the Petition for Discipline. On February 14, 2020 the Board filed a Motion for Default Judgment against the Respondent. The Hearing Panel filed an Order Granting Default Judgment on March 11, 2020. The Final Hearing was originally scheduled for April 24, 2020, but was continued to May 27, 2020 in light of the concerns surrounding COVID-19. On May 27, 2020 a final hearing took place, all allegations in the Petition for Discipline having been previously deemed admitted, with the only matter for consideration to be the appropriate discipline in the case.

FINDINGS OF FACT

1. Mr. Kennedy has substantial experience in the practice of law having been licensed in Tennessee in 1977.
2. By letter dated March 28, 2019, Farrell A. Levy, attorney, notified the Board of Mr. Kennedy's actions concerning administration of the estate of Jacquelyn Wyroba during his suspension from the practice of law.
3. Mr. Kennedy represented the estate of a client in probate court which spawned into multi-state litigation.
4. In March 2015, Mr. Kennedy was appointed the successor personal representative of the estate due to the ill health of the personal representative.
5. On December 20, 2018, in the Probate Division of the Chancery Court in Knox County, Mr. Kennedy filed a Final Accounting and Plan of Proposed Distribution in the Estate of Jacquelyn Marlene Wyroba.
6. The statements of the Account for the period of March 31, 2015 through September 30, 2018 show that the account began with \$55,000.72 and ended with \$12,304.42 over that time period.
7. Mr. Kennedy's Final Accounting Plan reflected an inability to pay all of the debts.
8. Mr. Kennedy also distributed funds in the amount of \$38,275.00 in attorney fees and personal expenses which were not authorized by the court.
9. He made further distributions to himself of \$51,182.40 for unauthorized fees and expenses.
10. One of the debts incurred included that of a consultant named Jesse Jepsen.
11. On March 13, 2018, Mr. Levy filed a motion to enforce the order of the Court addressing Mr. Kennedy's failure to pay the funeral bill in the case.

12. On January 25, 2019, Mr. Levy filed a Response to the Final Accounting and Proposed Distribution.
13. The Court considered all motions and court documentation in the case.
14. On March 22, 2019, Howard Hogan entered his report as the Clerk and Master in the case.
15. The Master's Report concerned a hearing which took place on March 18, 2019.
16. Mr. Kennedy failed to appear at the hearing and did not send a representative on his behalf.
17. The Clerk and Master also reported that Mr. Kennedy had "not demonstrated good faith or exercised that degree of diligence, prudence and caution which a reasonably prudent, diligent, and conscientious businessman would employ in the management of his own affairs of a similar nature," nor has he, "demonstrated a duty of loyalty and fidelity to the estate," as required.
18. On April 25, 2019, in the Chancery Court for Knox County an Order of Confirmation was entered charging Mr. Kennedy and Mr. Edward Wryroba for unauthorized payment of personal representative fees and expenses as well as unauthorized payment of attorney fees without approval.
19. There was \$12,345.93 remaining in the estate account when it was turned over to the new representative.
20. This leaves an outstanding balance of \$38,836.47 owed to the Estate pursuant to the Clerk and Master's Report.
21. Mr. Kennedy failed to respond to the disciplinary complaint.

Prior Discipline

22. On November 5, 1999 Mr. Kennedy received a private informal admonition from the

Board for failure to act with reasonable diligence and promptness in his representation of a client.

23. On July 1, 2005 Mr. Kennedy entered a conditional guilty plea resulting in a ninety-day suspension for lack of diligence, lack of promptness in representing a client with regard to an estate, failure to keep a client reasonably informed, and continuing to practice while administratively suspended.
24. On July 20, 2017, Mr. Kennedy was suspended from the practice of law for one year based upon violations of Tennessee Rules of Professional Conduct 1.1, 1.3, 3.4, and 8.4. That case involved an estate opened in 1987 where Mr. Kennedy acted as the executor. In 2009, the beneficiaries discovered that it had not been closed. Mr. Kennedy ignored orders to settle and the Court retired the case due to inactivity. The Court also held Mr. Kennedy in contempt.
25. On June 5, 2019, Mr. Kennedy was suspended for three years based upon a hearing conducted on February 1, 2019. He violated RPC 5.5, 3.3, 8.1, and 8.4 (a), (c), (d), and (g). His violations involved his continued practice of law while suspended, misleading courts and opposing counsel, and failure to respond to his disciplinary complaint. This matter also involved the Wyroba estate, but concerned separate and distinct issues occurring before the hearing and Master's report in the Petition for Discipline before this Hearing Panel.
26. On January 22, 2020 Mr. Kennedy was suspended for two years consecutive to the aforementioned three years from 2019. This suspension was based upon violations of RPC 3.4, 4.1, 5.5, 8.1 (b), and 8.4 (a), (c), (d), and (g). Mr. Kennedy continued to participate in the unauthorized practice of law, mislead opposing counsel, and failed to

comply with the Tennessee Supreme Court Order of Enforcement from July 20, 2017.

CONCLUSIONS OF LAW

1. 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.
2. 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.
3. 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 ("RPC") 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.
4. The Board has proven by a preponderance of the evidence that Mr. Kennedy has violated RPC 1.3, 3.4 (c), and 8.4 (c) and (d).
5. Mr. Kennedy's distribution of funds from the estate which were not authorized by the Court violate RPC 1.3 (Diligence).
6. Mr. Kennedy knowingly disobeyed the rule of the tribunal in distributing the funds without approval in violation of RPC 3.4 (c) (Fairness to Opposing Party and Counsel).
7. The totality of Mr. Kennedy's dishonest behavior and conduct that was prejudicial to

the administration of justice violated RPC 8.4 (c) and (d).

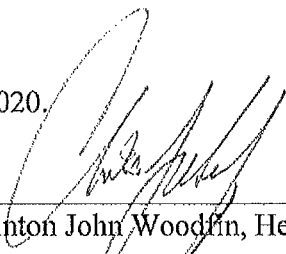
8. Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.
9. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards are applicable:
 10. ABA Standard 5.11(b) indicates that disbarment is generally appropriate when a lawyer engages in any other (besides serious criminal) intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
 11. ABA Standard 6.21 indicates that disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
 12. Under both ABA Standard 5.11 and 6.21 the appropriate sanction in this case is disbarment.
 13. The Panel has considered that an attorney disbarred after July 1, 2020 is ineligible for reinstatement.
 14. After contemplation of the permanency of disbarment, the Panel finds disbarment to be the appropriate sanction in this case.
 15. Following consideration of the ABA standards, the Panel shall consider aggravating and mitigating circumstances.
 16. Mr. Kennedy's substantial experience in the law, having been licensed in Tennessee in 1977, is an aggravating factor.

17. Mr. Kennedy's substantial prior discipline is also an aggravating factor.
18. Mr. Kennedy's ongoing refusal to acknowledge the wrongful nature of his conduct is another aggravating factor.
19. The Panel finds that there are no mitigating factors.

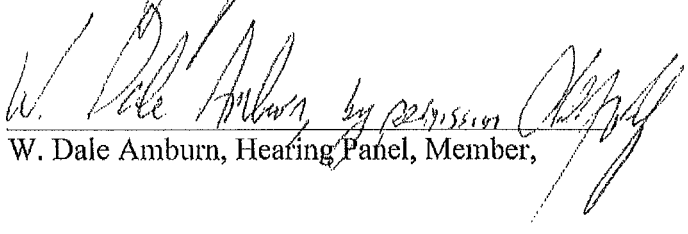
JUDGMENT

Based upon the evidence and admissions in this matter, the Panel finds that Mr. Kennedy knowingly violated the following Rules of Professional Conduct: 1.3, 3.4 (c), and 8.4 (c) and (d). According to the ABA Standards, disbarment is the appropriate sanction. The Panel has found three aggravating factors and no mitigating factors. Consequentially, the Panel imposes the sanction of disbarment. Costs of this case will be assessed pursuant to Tenn. Sup. Ct. R. 9, § 31.3 (a).

It is so ORDERED this 31st day of July 2020.



Clinton John Woodfin, Hearing Panel Chair



W. Dale Amburn, Hearing Panel, Member,

(see attached)

Christopher Alan Hall, Hearing 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.

17. Mr. Kennedy's substantial prior discipline is also an aggravating factor.
18. Mr. Kennedy's ongoing refusal to acknowledge the wrongful nature of his conduct is another aggravating factor.
19. The Panel finds that there are no mitigating factors.

JUDGMENT

Based upon the evidence and admissions in this matter, the Panel finds that Mr. Kennedy knowingly violated the following Rules of Professional Conduct: 1.3, 3.4 (c), and 8.4 (c) and (d). According to the ABA Standards, disbarment is the appropriate sanction. The Panel has found three aggravating factors and no mitigating factors. Consequently, the Panel imposes the sanction of disbarment. Costs of this case will be assessed pursuant to Tenn. Sup. Ct. R. 9, § 31.3 (a).

It is so ordered this _____ day of July 2020.

Clinton John Woodfin, Hearing Panel Chair

William Dale Amburn, Hearing Panel, Member,



Christopher Alan Hall, Hearing Panel, Member

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, James Lester Kennedy, 3100 Alcoa Highway, Knoxville, TN 37920-4776, and PO Box 293, Knoxville, TN 37901-0293, by U.S. First Class Mail, and hand-delivered to Brittany Lavalley, Disciplinary Counsel, on this the 31st day of July, 2020.



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.