

FILED

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

2012 SEP -4 AM 10:16

BOARD OF PROFESSIONAL
RESPONSIBILITY
Law
EXEC. SEC.

IN RE: JERRY ALAN KENNON
Respondent, BPR No. 18744
An Attorney Licensed
to Practice Law in Tennessee
(Davidson County)

DOCKET NO. 2011-2062-5-KH

JUDGMENT OF THE HEARING PANEL

This matter came on to be heard on July 9, 2012, before the duly appointed Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee consisting of Robert Boston (Chair), Aubrey Harwell, III and Samuel Lipshie. That hearing followed entry of default of Respondent, Jerry Alan Kennon, in both the original and supplemental Petition filed by the Board, each under the above-captioned docket number. The hearing was commenced following default to determine the appropriate discipline, if any, for the asserted violation of Rules of Professional Conduct (RPC) (a) 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 1.16(d) (Declining and Terminating Representation); and 8.4(a) and (d) (Misconduct), all in regard to the "Ward" Complaint, and (b) 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 1.5(a) and (c) (Fees); 1.16(d) (Declining and Terminating Representation); 5.5(a) (Unauthorized Practice of Law); and 8.4(a), (d) and (g) (Misconduct) in regard to the remainder of the Complaints. Based upon the matters discussed at the hearing, proof presented, exhibits offered and admitted into evidence, the facts established in the respective Petitions for Discipline to which default was entered, questions of the Panel to Disciplinary Counsel and

Respondent and answers thereto, and the entire record, the Panel makes the following Findings of Fact and Conclusions of Law.

Respondent's Conduct Violates the Tennessee Rules of Professional Conduct

Based upon the record presented and the allegations in the Petitions for Discipline, same being deemed admitted by Respondent upon the prior entry of the Orders of Default and confirmed in large part by his testimony at the hearing, all as fairly summarized in the BPR's pre-hearing brief, the Panel finds that Respondent engaged in the conduct of which he is accused.

Discipline Recommended

Respondent's behavior is of two types: negligence and the unauthorized practice of law. Disciplinary Counsel's recommended discipline of a minimum of full suspension, as described to the Panel, is understandable and supportable. When considered in the light of the entire record, another Panel could easily reach a conclusion that is harsher than that of this Panel. Upon the Panel's consideration of what it believes to be the appropriate mitigating and aggravating factors, it respectfully declines to adopt that recommendation in full.

This is not Respondent's first disciplinary matter. He has received prior disciplinary admonition. The facts before the Panel are significant, and involve matters of trust and importance to multiple clients. The type of conduct involved was repeated. The accumulation of the events presented exposed the involved clients, and the legal system, to even greater risks and harm than that which did occur. The damaging pattern presented by Respondent's actions is clear. Those matters that support the admitted unauthorized practice of law charges were avoidable. Actual injury and harm resulted to several persons by that as well as his other actions.

Respondent's regret and recognition of his culpability indicate to the Panel reason to expect better things in the future. Although he chose voluntarily not to Answer or respond to the


Petitions for Discipline, thereby electing not to contest the allegations therein by allowing the default to be entered, his candor at the hearing, apology, and expressed remorse for his conduct are recognized by the Panel. None are, as the Panel interprets the guidance provided to it through the relevant ABA disciplinary standards and Tennessee case precedent, mitigating factors that would pretermitt its discipline assessment. The same is true regarding Respondent's description of his prior office and practice procedures, including those that could have been affected by actions of a former spouse during a period of domestic difficulty. The control of one's office procedures, and the repercussions that may result when such practice management procedures are deficient, as in Respondent's case, remain the responsibility of the attorney. Respondent's current involvement with Tennessee Lawyers Assistance Program ("TLAP") is a beneficial step. His description of his current approach to his law practice is encouraging. He clearly is an experienced, intelligent and knowledgeable attorney. His recognition of the future need to take concrete steps to improve his legal practice and to comply with applicable standards governing the conduct of Tennessee lawyers does not, however, adequately address his past deviations from these standards.

Based upon the Panel's consideration of these countervailing factors, discipline is warranted. From these findings, argument of able counsel for the Board, Respondent's candid testimony and discussion with Disciplinary Counsel and the Panel during the hearing, specific consideration and application of the ABA Standards for Imposing Lawyer Sanctions as required by § 8.4 of Rule 9 of the Rules of the Supreme Court, and the entire record herein, the Panel recommends and issues the following JUDGMENT:

1. First, that Respondent should be suspended from the practice of law for a period of six months from the date of entry of this Judgment Order.

2. Second, that its Judgment of suspension be itself suspended for all but the first thirty (30) days thereof, pending and so long as Respondent is in compliance with the remainder of this Judgment.
3. Third, that Respondent fully cooperate and remain in full compliance with all recommendations, plans, monitoring agreements, if any, directives and/or requests by TLAP related to its involvement with him.
4. Fourth, that Respondent make restitution in the amount of Four Hundred Fifty-Six and No/100 (\$456) to Judith Ann Ward; and One Thousand Two Hundred Fifty and No/100 Dollars (\$1,250) to Lee Ann Cole.
5. Fifth, that Respondent obtain and provide at his expense the services of a law practice monitor for a period of probation of eighteen (18) months. The monitor shall be recommended by Respondent to be approved by Disciplinary Counsel, and shall keep Disciplinary Counsel reasonably informed of his or her services to Respondent. Respondent shall submit at his expense to a monthly, or if approved by Disciplinary Counsel, other less frequent period, mentoring/monitoring program through that experienced and seasoned monitor approved by Disciplinary Counsel. The purpose of this condition is to provide Respondent with a ready, able and willing mentor and sounding board for appropriate decision-making and procedural improvements. The Panel emphasizes this part of its Judgment due to Petitioner's practice being largely as a solo practitioner.
6. Should Respondent fail to meet any provision of this Judgment, the entire period of the suspension shall be served and he shall be subject to further probation upon motion.

IT IS SO ORDERED. ENTERED ON THIS, THE ~~31~~ DAY OF August 2012.


Robert Boston, Panel Chair


Aubrey Harwell, III, Panel Member


Samuel Lipshie, Panel Member

FILED

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

2012 OCT 23 PM 12:07

BOARD OF PROFESSIONAL
RESPONSIBILITY
Rew EXEC. SEC

IN RE: JERRY ALAN KENNON
Respondent, BPR No. 18744
An Attorney Licensed
to Practice Law in Tennessee
(Davidson County)

DOCKET NO. 2011-2062-5-KH

AMENDED JUDGMENT OF THE HEARING PANEL

This matter came on to be heard on July 9, 2012, before the duly appointed Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee consisting of Robert Boston (Chair), Aubrey Harwell, III and Samuel Lipshie.

The July 9, 2012 hearing followed entry of default of Respondent, Jerry Alan Kennon, in both the original and supplemental Petition filed by the Board, each under the above-captioned docket number. The hearing was commenced following default to determine the appropriate discipline, if any, for the asserted violation of Rules of Professional Conduct (RPC) (a) 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 1.16(d) (Declining and Terminating Representation); and 8.4(a) and (d) (Misconduct), all in regard to the "Ward" Complaint, and (b) 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 1.5(a) and (c) (Fees); 1.16(d) (Declining and Terminating Representation); 5.5(a) (Unauthorized Practice of Law); and 8.4(a), (d) and (g) (Misconduct) in regard to the remainder of the Complaints. Based upon the matters discussed at the hearing, proof presented, exhibits offered and admitted into evidence, the facts established in the respective Petitions for Discipline to which default was entered, questions of

the Panel to Disciplinary Counsel and Respondent and answers thereto, and the entire record, the Panel makes the following Findings of Fact and Conclusions of Law.

Respondent's Conduct Violates the Tennessee Rules of Professional Conduct

Based upon the record presented and the allegations in the Petitions for Discipline, same being deemed admitted by Respondent upon the prior entry of the Orders of Default and confirmed in large part by his testimony at the hearing, all as fairly summarized in the BPR's pre-hearing brief, the Panel finds that Respondent engaged in the conduct of which he is accused.

Discipline Recommended

Respondent's behavior is of two types: negligence and the unauthorized practice of law. Disciplinary Counsel's recommended discipline of a full suspension, as described to the Panel is understandable and supportable. When considered in the light of the entire record, another Panel could easily reach a conclusion that is harsher than that of this Panel. Upon the Panel's consideration of what it believes to be the appropriate mitigating and aggravating factors, it respectfully declines to adopt that recommendation in full.

This is not Respondent's first disciplinary matter. He has received prior disciplinary admonition. The facts before the Panel are significant, and involve matters of trust and importance to multiple clients. The type of conduct involved was repeated. The accumulation of the events presented exposed the involved clients, and the legal system, to even greater risks and harm than that which did occur. The damaging pattern presented by Respondent's actions is clear. Those matters that support the admitted unauthorized practice of law charges were avoidable. Actual injury and harm resulted to several persons by that as well as his other actions.

Respondent's regret and recognition of his culpability indicate to the Panel reason to expect better things in the future. Although he chose voluntarily not to Answer or respond to the

Petitions for Discipline, thereby electing not to contest the allegations therein by allowing the default to be entered, his candor at the hearing, apology, and expressed remorse for his conduct are recognized by the Panel. None are, as the Panel interprets the guidance provided to it through the relevant ABA disciplinary standards and Tennessee case precedent, mitigating factors that would pretermitt its discipline assessment. The same is true regarding Respondent's description of his prior office and practice procedures, including those that could have been affected by actions of a former spouse, during a period of domestic difficulty. The control of one's office procedures, and the repercussions that may result when such practice management procedures are deficient, as in Respondent's case, remain the responsibility of the attorney. Respondent's current involvement with Tennessee Lawyers Assistance Program ("TLAP") is a beneficial step. His description of his current approach to his law practice is encouraging. He clearly is an experienced, intelligent and knowledgeable attorney. His recognition of the future need to take concrete steps to improve his legal practice and to comply with applicable standards governing the conduct of Tennessee lawyers does not, however, adequately address his past deviations from these standards.

Based upon the Panel's consideration of these countervailing factors, discipline is warranted. From these findings, argument of able counsel for the Board, Respondent's candid testimony and discussion with Disciplinary Counsel and the Panel during the hearing, specific consideration and application of the ABA Standards for Imposing Lawyer Sanctions as required by § 8.4 of Rule 9 of the Rules of the Supreme Court, and the entire record herein, the Panel recommends and issues the following AMENDED JUDGMENT:

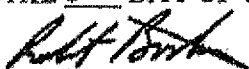
1. First, Respondent Jerry Alan Kennon shall be suspended from the practice of law for a period of eighteen (18) months from the date of entry of an Order of

Enforcement by the Supreme Court pursuant to Tenn. Sup. Ct. R.9, §§ 8.4 and 18.5, consisting of thirty (30) days active suspension and the remainder of the suspension period on probation, pursuant to Tenn. Sup. Ct. R. 9, §§ 4.2 and 8.5. Probation shall be conditioned on and subject to the following:

- (a) Mr. Kennon shall fully cooperate and remain in full compliance with all recommendations, plans, monitoring agreements, if any, directives and/or requests by TLAP related to its involvement with him;
- (b) Mr. Kennon shall make restitution in the amount of Four Hundred Fifty-Six and No/100 (\$456) to Judith Ann Ward; and One Thousand Two Hundred Fifty and No/100 Dollars (\$1,250) to Lee Ann Cole;
- (c) Mr. Kennon shall obtain and provide at his expense the services of a law practice monitor. The monitor shall be recommended by Respondent to be approved by Disciplinary Counsel, and the monitor shall keep Disciplinary Counsel reasonably informed of his or her services to Respondent. Respondent shall submit at his expense to a monthly, or if approved by Disciplinary Counsel, other less frequent period, mentoring/monitoring program through that experienced and seasoned monitor approved by Disciplinary Counsel. The purpose of this condition is to provide Respondent with a ready, able and willing mentor and sounding board for appropriate decision-making and procedural improvements. The Panel emphasizes this part of its Judgment due to Petitioner's practice being largely as a solo practitioner; and

- (d) Should Mr. Kennon fail to meet any provision of this Judgment, the entire period of the suspension shall be served and he shall be subject to further probation only upon motion.
2. Any costs associated with this Disciplinary Action are assessed against Respondent Jerry Kennon; and
 3. This Amended Judgment shall supercede and replace in its entirety the Judgment filed by this Hearing Panel on September 4, 2012.

IT IS SO ORDERED, ENTERED ON THIS, THE 25th DAY OF OCTOBER, 2012.



Robert Boston, Panel Chair



Aubrey Harwell, III, Panel Member



Samuel Lipshie, Panel Member