

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

FILED  
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BOARD OF PROFESSIONAL  
RESPONSIBILITY  
RW EXEC. SECY

IN RE: Jerry Alan Kennon,  
BPR #18744, Respondent,  
An Attorney Licensed to  
Practice Law in Tennessee  
(Davidson County)

DOCKET NO. 2013-2258-5-WM

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

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This matter came on for hearing before a duly appointed Hearing Panel on February 14, 2014, upon a Petition for Discipline filed by the Board pursuant to Tennessee Supreme Court Rule 9. Present were Charles Kevin Grant, Panel Chair; Laura Lee Chastain, Panel Member; Kenneth Mark Bryant, Panel Member; and William C. Moody, Disciplinary Counsel. Complainants, Joe and Diane Gordon, were also present at the hearing. Respondent, Jerry Alan Kennon, was properly served with the Petition for Discipline and failed to file any responsive pleading or appear at the final hearing. Upon statements of counsel, evidence presented, and upon the entire record in this cause, the Panel makes the following findings and judgment.

**STATEMENT OF THE CASE**

This is a disciplinary proceeding against the Respondent, William Alan Kennon, an attorney licensed to practice law in Tennessee. The Respondent was licensed to practice in 1997. His current home address is registered with the Board as 2 Harbor Island, Old Hickory, TN 37138. His current work address is registered with the Board as 104 Woodmont Blvd., Suite 120, Nashville, TN, 37205-5242. A Petition for Discipline, Docket No. 2013-2258-5-WM, was filed

on October 25, 2013. The Petition was sent via certified mail to Respondent's addresses of 2 Harbor Island, Old Hickory, TN 37138 and 104 Woodmont Blvd., Suite 120, Nashville, TN, 37205-5242. The copy mailed to 2 Harbor Island, Old Hickory, TN 37138 was returned by the United States Postal Service marked "unclaimed" on November 9, 2013. The copy mailed to 104 Woodmont Blvd., Suite 120, Nashville, TN, 37205-5242 was delivered on October 25, 2013. The green card was signed by Stephanie Denby and returned to the Board. A copy of the Petition for Discipline was also delivered to the Respondent's email address registered with the Board on November 18, 2013 and the Respondent acknowledged receipt via email.

No answer to the Petition for Discipline has been filed with the Executive Secretary of the Board and no answer has been served on Disciplinary Counsel.

On December 10, 2013, the Board filed a Motion for Default Judgment and That Allegations Contained in the Petition for Discipline Be Deemed Admitted. On January 7, 2014, the Panel entered an Order of Default. As a result of the Order of Default, the allegations contained within the Petition for Discipline are deemed admitted pursuant to Tennessee Supreme Court Rule 9, Section 8.2.

#### FINDINGS OF FACT

The allegations contained in the Petition for Discipline are deemed admitted and this Panel finds that the following facts have been established.

Mr. Kennon maintained a client trust account at Bank of America. On June 4, 2012, Bank of America notified the Board of an overdraft. When called upon to explain the overdraft, Mr. Kennon advised the Board that he kept no client funds in the trust account and utilized the account for personal reasons. Mr. Kennon regularly deposited personal funds in his client trust

account and wrote checks on the account to pay personal expenses. No client funds were maintained in his client trust account and no clients were injured by this practice.

On October 7, 2008, Joe and Diane Gordon retained Mr. Kennon for the purpose of preparing a living trust, a living will, a medical power of attorney and a general power of attorney for each of them. Mr. Kennon was paid a fee of \$3,760. Over a period of several years, the Gordons had tremendous difficulty communicating with Mr. Kennon. Mr. Kennon failed to respond to numerous telephone calls and emails. Mr. Kennon did not prepare their living wills and powers of attorney until March 27, 2012. Despite executing them on that day, the Gordons have not yet been provided the original documents. Despite numerous requests by the Gordons over the years that Mr. Kennon complete the trust documents for which they had paid him, it wasn't until May 11, 2012, that Mr. Kennon provided the Gordons with an incomplete and inaccurate set of living trust documents. Mr. Kennon has still not provided the Gordons with the completed living trust documents that he was retained to prepare. The Gordons have made multiple requests of Mr. Kennon for a refund but no refund of any amount has been provided or offered.

On November 4, 2010, Mr. Kennon filed a personal injury suit on behalf of Alex Zheltkov against the Westside Athletic Club in the General Sessions Court of Davidson County. The case was set for trial on December 8, 2010. Mr. Kennon did not appear and he did not advise Mr. Zheltkov of the trial. The case was dismissed for failure to prosecute. On June 6, 2011, the dismissal was set aside upon a motion filed by Mr. Kennon. Mr. Kennon has taken no action to prosecute the case since that date. Mr. Kennon named the incorrect defendant in the case. As a result of Mr. Kennon's failure to correctly name the defendant, the one-year statute of limitations is now a bar to an action against the correct defendant. Mr. Kennon failed to respond to

numerous telephone calls and emails from Mr. Zheltkov over an extended period of time. As a result of Mr. Kennon's delay in prosecuting the case, Mr. Zheltkov was delayed in obtaining employment with the Metropolitan Nashville Police Department.

Mr. Kennon represents the personal representative of the Estate of Glenn Edward Bales which was admitted to probate on October 31, 2000. Though the estate was largely distributed to the beneficiaries by 2002, Mr. Kennon has yet to properly close the estate. On May 12, 2004, Mr. Kennon filed a Personal Representative Statement contending, among other things, that Statements in Lieu of Final Accounting had been filed on behalf of all the beneficiaries of the estate. Three of the Statements in Lieu of Final Accounting had been improperly signed by him on behalf of the distributees, two of the Statements in Lieu of Final Accounting had been signed by minors, a Statement in Lieu of Final Accounting had not been filed by one of the distributees and Mr. Kennon had not filed a TennCare release as required by law. On April 17, 2013, an Order was entered setting the matter for a show cause hearing as a result of Mr. Kennon's failure to file the required documents to close the estate. On May 14, 2013, Mr. Kennon was held in contempt of court for failing to properly administer the estate and failing to appear for the show cause hearing.

Mr. Kennon received a private informal admonition on July 29, 2011 for violations of RPC 1.3 (Diligence) and 1.4 (Communication.) Mr. Kennon was suspended on January 18, 2013 for eighteen months (18) months, thirty (30) days active and the remainder to be served on probation, for violations of RPC 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).

## CONCLUSIONS OF LAW

1. The Respondent has failed to conduct himself in conformity with the Rules of Professional Conduct and is guilty of acts and omissions in violation of the authorities cited within the Petition for Discipline.

2. As noted above, Respondent has failed to answer the Board's Petition for Discipline. The Hearing Panel already has entered an Order of Default and, therefore, pursuant to Tenn. S. Ct. R. 9, Section 8.2 the charges are deemed admitted.

3. A preponderance of the evidence demonstrates that the acts and omissions by the Respondent constitute ethical misconduct in violation of RPC 1.1, Competence; 1.3, Diligence; 1.4, Communication; 1.15, Safekeeping Property and Funds; 1.16, Declining or Terminating Representation; 3.2, Expediting Litigation; and 8.4(a) and (d), Misconduct.

4. Mr. Kennon violated RPC 1.15 (Safekeeping Property and Funds) by utilizing his trust account as an operating account. The fact that no client funds were in the account is immaterial.

5. Mr. Kennon violated duties owed to his clients, Joe and Diane Gordon, in violation of RPC 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining and Terminating Representation) and 8.4(a) (Misconduct). He demonstrated his incompetence by providing the Gordons with inaccurate and incomplete trust documents. He demonstrated a lack of diligence by taking over three years to prepare living wills, powers of attorney and a draft of the living trust documents. He never provided his clients with the executed living wills and powers of attorney. He never completed preparation of the living trust documents. He failed to communicate his clients. When terminated by his clients, he failed to refund the fees that had not been earned.

6. Mr. Kennon violated duties owed to his client, Alex Zheltkov, in violation of RPC 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 3.2 (Expediting Litigation) and 8.4(a) (Misconduct). Mr. Kennon's lack of competence was demonstrated by suing the wrong defendant and failing to correct his error prior to the expiration of the statute of limitations. His lack of diligence was demonstrated by failing to appear for a court date and by failing to advise his client of the court date. His failure to expedite the litigation was demonstrated by failing to take any further action to prosecute the case. Mr. Kennon failed to communicate with his client. As a result of Mr. Kennon's misconduct, Mr. Zheltkov has lost his cause of action and was hampered in his ability to obtain employment.

7. In his handling of the Bales Estate, Mr. Kennon violated RPC 1.1 (Competence), 1.3 (Diligence), 3.2 (Expediting Litigation) and 8.4(a) and (d) (Misconduct). Mr. Kennon's lack of competence was demonstrated by failing to file properly executed Statements in Lieu of Final Accounting and a TennCare release. His lack of diligence and failure to expedite the litigation is demonstrated by the fact that this simple estate is still open thirteen (13) years after it was filed. His lack of diligence was compounded by his failure to appear at the show cause hearing. His conduct which led to being held in contempt of court was prejudicial to the administration of justice.

8. The Respondent's misconduct caused actual injury to his clients.

9. When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, ("ABA Standards") pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court.

10. The Panel concludes that a one (1) year suspension is the appropriate discipline in

this matter pursuant to the following ABA Standards:

4.53 Lack of Competence

Reprimand is generally appropriate when a lawyer:

- (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client...

4.42 Lack of Diligence

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.13 Failure to Maintain the Client's Property

Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

7.3 Violation of Duties Owed as a Professional

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

6.22 Abuse of the Legal Process

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.

11. Pursuant to ABA Standard 9.22, a number of aggravating factors are present in this case and are listed below.

- a) prior disciplinary offenses;
  - b) a pattern of misconduct;
  - c) multiple offenses;
  - d) substantial experience in the practice of law; and
  - e) indifference to making restitution.
10. There is no proof of mitigating factors.

**CONCLUSION**

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that the Respondent should be suspended from the practice of law for one (1) year pursuant to Tenn. Sup. Ct. R. 9, § 4.2. The Respondent is ordered to pay restitution to Joe and Diane Gordon in the amount of Three Thousand Seven Hundred Sixty Dollars (\$3,760.00). Payment of this restitution shall be a condition of reinstatement. In the event restitution is made by the Tennessee Lawyers' Fund for Protection of Clients (TLFCP), Mr. Kennon will be responsible for reimbursement of TLFCP in the same amount.

IT IS SO ORDERED.

  
Charles Kevin Grant, Panel Chair

  
Laura Lee Chastain, Panel Member

  
Kenneth Mark Bryant, Panel Member



**NOTICE:** This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ. See Tenn. Code Ann. § 27-8-104(a) and 27-8-106.