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

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

DOCKET NO. 2014-2336-5-WM

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JUDGMENT OF THE HEARING PANEL

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This matter came to be heard on the 18th day of June, 2015 for final hearing on the Board's Petition for Discipline before Matthew Joseph Sweeney, III, Panel Chair; John Baxter Enkema, Panel Member; and Mark Steven LeVan, Panel Member. William C. Moody, Disciplinary Counsel, appeared for the Board. Mr. Kennon did not appear. Notice of the Hearing was mailed to Mr. Kennon at his home address as registered by him with the Board and was also delivered to him by email at the email address registered by him with the Board.

STATEMENT OF THE CASE

This is a disciplinary proceeding against the Respondent, Jerry Alan Kennon, an attorney licensed to practice law in Tennessee. Mr. Kennon was licensed to practice in 1997. A Petition for Discipline was filed on July 8, 2014. Among many attempts to serve Mr. Kennon, the Petition was mailed by certified mail to his home address as registered by him with the Board, 7925 Amber Hills, Nashville, Tennessee 37221, on November 12, 2014. It was returned by the United States Postal Service marked "unclaimed" on December 29, 2014. The Petition was also successfully delivered to Mr. Kennon's email address as registered by him with the Board,

kennon@comcast.net, on August 15, 2014 and November 10, 2014. Mr. Kennon did not file an Answer to the Petition for Discipline. On April 17, 2014, the Board filed its Second Motion for Default Judgment and That Charges in the Petition for Discipline be Deemed Admitted. On September 30, 2014, the Panel entered an Order Granting Renewed Motion for Default Judgment. As a result of the Order Granting Renewed Motion for Default Judgment, the allegations contained within the Petition for Discipline are deemed admitted pursuant to Tennessee Supreme Court Rule 9, Section 15.2 (2014).

### FINDINGS OF FACTS

Since all of the allegations in the Petition for Discipline are deemed admitted, this Panel finds that the following facts have been established.

Mr. Kennon represented himself in an action in Wilson County Chancery Court. On September 22, 2011, he filed an Ex Parte Petition for Temporary Restraining Order seeking to “prevent or reverse” the foreclosure of his home. In actuality, the foreclosure had already taken place on August 31, 2011. The petition was defective in a number of ways. T.R.C.P. 65.01 provides that a restraining order may only restrict the doing of an act whereas the petition sought to “reverse” a foreclosure. T.R.C.P. 65.03(1)(A) requires that a request for a restraining order be accompanied by an affidavit showing that immediate and irreparable injury will otherwise result. The affidavit filed by Mr. Kennon did not include this showing. T.R.C.P. 65.03(1)(B) requires a description of efforts made to give notice to the adverse party and Mr. Kennon did not do so.<sup>1</sup>

On September 23, 2011, Mr. Kennon’s petition was granted in an order restraining the defendant from foreclosing on the home for 60 days, despite the fact that the home had already

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<sup>1</sup> The court inexplicably granted the TRO despite these apparent deficiencies. The panel does not base its decision on the inadequacy of the Respondent’s filings. It does in part base its decision on the Respondents lack of candor to the court, including the failure to disclose that the property had already been foreclosed upon.

been foreclosed on at the time the petition was filed. The Clerk and Master issued a summons to Mr. Kennon to be served on the defendant along with the order as required by T.R.C.P. 65.03(4) but Mr. Kennon did not deliver the summons and order to the defendant.

On January 11, 2012, the defendant filed a motion seeking to set the restraining order aside on multiple grounds. On March 14, 2012, the court granted the motion, vacated the restraining order and dismissed the action.

Despite the dismissal of the action, on January 8, 2013, Mr. Kennon filed a second Ex Parte Motion for Temporary Restraining Order under the same docket number. Once again, the motion sought to restrain the bank from foreclosing on the property or in the alternative to reverse the foreclosure. This second request for a restraining order was defective in all the same ways as the first one.<sup>2</sup> On the same date, the court issued an Ex Parte Temporary Restraining Order.

As with the first restraining order, the defendant filed a motion to dissolve it. The court entered an order on May 7, 2013 dissolving the second temporary restraining order and this time awarded the defendant attorney fees.

On October 3, 2013, Mr. Kennon filed a third Ex Parte Motion for Temporary Restraining Order. This request contained the same deficiencies as the first two. On October 3, 2014, the court entered a Temporary Restraining Order.<sup>3</sup>

Again, the defendant filed a motion to dissolve the temporary restraining order. The

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<sup>2</sup> The court inexplicably granted the second TRO despite these apparent deficiencies. The panel does not base its decision on the inadequacy of the Respondent's filings. It does in part base its decision on the Respondents lack of candor to the court, including the failure to disclose that the property had already been foreclosed upon and that this was not the first application for extraordinary relief in the matter. See T.C.A. § 29-1-107.

<sup>3</sup> The court inexplicably granted the third TRO despite these apparent deficiencies. The panel does not base its decision on the inadequacy of the Respondent's filings. It does in part base its decision on the Respondents lack of candor to the court, including the failure to disclose that the property had already been foreclosed upon and that this was not the first application for extraordinary relief in the matter. See T.C.A. § 29-1-107.

defendant's motion was granted by the court by an order entered February 3, 2014 vacating the temporary restraining order and dismissing the case, again awarding the defendant its attorney fees and directing the Clerk and Master to transmit the order to the Board.

On March 12, 2014, Mr. Kennon filed a fourth request for an ex parte temporary restraining order. The court entered an order granting the request on March 12, 2014. The defendant again filed a motion to dissolve the temporary restraining order on June 23, 2014. The motion to dissolve the temporary restraining order was granted by the court on July 23, 2014. Once again, the court's order awarded attorney fees to the defendant and directed the Clerk and Master to transmit the order to the Board. Additionally, the order permanently enjoined Mr. Kennon from filing any further pleadings related to the matter without first submitting the pleadings to the Chancellor for screening.

In presenting all four petitions, Mr. Kennon never informed the court that the house had already been sold at foreclosure. In presenting the second, third and fourth petitions, Mr. Kennon did not inform the court of the filing or the dismissal of the prior petitions.

After receiving a report of Mr. Kennon's misconduct from the Clerk and Master, the Board wrote to Mr. Kennon requesting his response. Mr. Kennon did not respond.

On July 29, 2011, Mr. Kennon received a private informal admonition for violations of RPC 1.3 (Diligence) and 1.4 (Communication). On January 18, 2013, Mr. Kennon received a 12 month suspension, with 30 days active suspension and the remainder to be served on probation, for violations of RPC 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), 5.5(a) (Unauthorized Practice of Law) and 8.4(a), (d)

and (g) (Misconduct); Mr. Kennon recommenced practice after the 30 day suspension without satisfying at least one condition, the payment of costs to the board and to the court. Respondent was on probation when he filed the third application for a TRO referenced above. On May 15, 2014, Mr. Kennon received a one year suspension for violations 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).

As a result of the Order Granting Renewed Motion for Default Judgment, all the facts contained in the Petition for Discipline, and summarized here, are deemed admitted.

#### **CONCLUSIONS OF LAW**

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. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline. The Respondent has failed to conduct himself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited within the Petition for Discipline.

As noted above, Respondent has failed to answer the Board's Petition for Discipline. The Hearing Panel has already entered an Order Granting Renewed Motion for Default Judgment and, therefore, pursuant to Tenn. Sup. Ct. R. 9, § 15.2 (2014), the charges are deemed admitted.

Mr. Kennon brought the multiple actions seeking temporary restraining orders with no basis in law or fact for the purpose of delaying his eviction from his home. In those applications he misled the court by failing to disclose essential facts. By doing so, he violated RPC 3.1

(Meritorious Claims and Contentions).

Each time Mr. Kennon failed to inform the court that the home had already been sold at foreclosure. In the final three applications he failed to inform the court that earlier applications had been filed and the petitions dismissed. He violated RPC 3.3(a)(3) by failing to inform a court of all material facts in each ex parte proceeding.

By failing to respond to the Board's request for information, Mr. Kennon violated RPC 8.1(b) (Bar Admission and Disciplinary Matters).

Mr. Kennon's misconduct was a violation of RPC 8.4 (a) and (d) (Misconduct).

A preponderance of the evidence demonstrates that the acts and omissions by the Respondent constitute ethical misconduct in violation of Rules of Professional 3.1, Meritorious Claims and Contentions; 3.3(a)(3), Candor toward the Tribunal; 8.1(b), Bar Admission and Disciplinary Matters; and 8.4(a) and (d), Misconduct.

The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has carried its burden and proven the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence. Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

- 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.

Mr. Kennon knowingly and repeatedly violated court rules by filing multiple, defective requests for temporary restraining orders. In doing so, he injured the defendant and significantly

delayed and complicated the proceedings.

- 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.

Mr. Kennon knowingly withheld information from the court each time he presented a petition for a temporary restraining order. He never informed the court that the home had already sold at foreclosure and didn't inform the court of the dismissal of the preceding petitions.

## 7.2 VIOLATION OF DUTIES OWED AS A PROFESSIONAL

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

Mr. Kennon failed to respond to a request for information from the Board.

Pursuant to ABA Standard 9.22, we find that the following aggravating factors are present in this case and are listed below.

- a. Mr. Kennon's history of prior disciplinary offenses where he also failed to cooperate, including two suspensions and resumption of practice without satisfying the condition of payment of costs, is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.
- b. Mr. Kennon has shown a dishonest or selfish motive, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.
- c. Mr. Kennon has shown a pattern of misconduct, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

d. Mr. Kennon has committed multiple offenses, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

e. Mr. Kennon has substantial experience in the practice of law, having been licensed in Tennessee since 1997, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

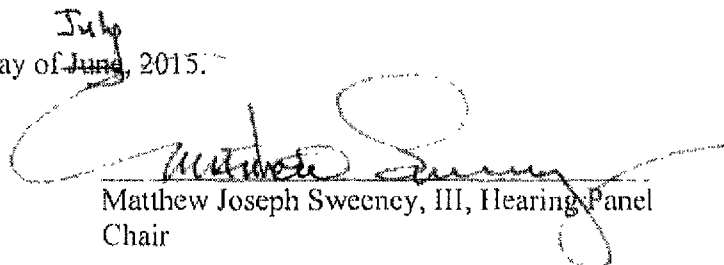
There are no mitigating circumstances.

Based upon the evidence and admissions in this matter, the appropriate discipline is a disbarment from the practice of law.

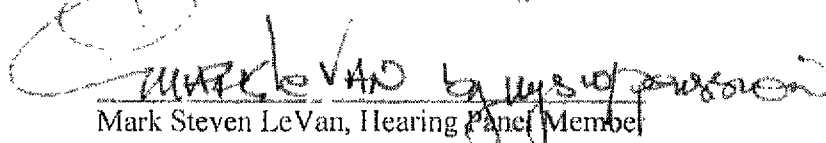
### JUDGMENT

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Mr. Kennon should be disbarred from the practice of law.

It is so ordered this 18<sup>th</sup> day of ~~June~~<sup>July</sup>, 2015.

  
Matthew Joseph Sweeney, III, Hearing Panel  
Chair

  
John Baxter Enkema, Hearing Panel Member

  
Mark Steven LeVan, Hearing Panel Member

### NOTICE TO RESPONDENT

**NOTICE:** This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a petition for review.