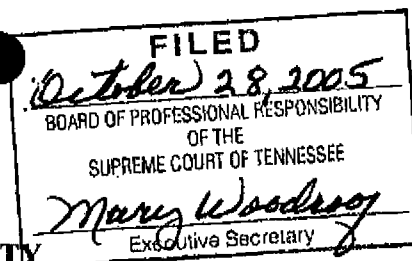


**IN DISCIPLINARY DISTRICT IX
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**IN RE: MARK LEE PITTMAN, BOPR #12753,
Respondent An Attorney Licensed
to Practice Law in Tennessee
(Shelby County)**

**DOCKET NOS. 2003-1407-9-JJ
2004-1424-9-JJ
2004-1451-9-JJ
2005-1515-9-JJ**

JUDGMENT OF HEARING PANEL

The hearing in these consolidated cases was held on October 17, 2005, in Memphis, Tennessee. Respondent was properly served with notice of the hearing but did not appear. Based upon the record before the Hearing Panel and the argument of disciplinary counsel at the hearing, the Panel issues the following Judgment.

I. FINDINGS OF FACT

DOCKET NO. 2003-1407-9-JJ

1. On November 19, 2003, the Board filed its Petition for Discipline in this matter against respondent. This Petition is comprised of two separate complaint files -- File No. 26061-9-JJ & 26107-9-JJ. Respondent filed his Answer to this Petition on April 29, 2004.
2. On September 1, 2005, the Board filed and served its Motion for Judgment on the Pleadings or for Partial Summary Judgment in this formal proceeding. Respondent did not file an opposition to the Board's Motion for Judgment on the Pleadings or for Partial Summary Judgment, and on September 12, 2005, the Executive Secretary of the Board served respondent with notice by federal express at his last-known residential address of a telephonic hearing to consider this motion on October 4, 2005. Respondent was provided with instructions on how to participate in this conference call, but did not call in to participate. Neither Disciplinary Counsel, the Board's Executive Secretary, or this Panel have any current phone number for respondent.
3. At the October 4, 2005 hearing on the Board's Motion for Judgment on the Pleadings and Partial Summary Judgment in this Petition, the Panel considered said motion to be well-taken and granted same.

FILE NO. 26061-9-JJ - - DISCOVERED DURING INVESTIGATION

4. Respondent did not respond to the Board's four notice letters and enclosed copies of summaries of complaint in this file dated February 28, March 19, August 11 and September 2, 2003, which were mailed to him at his last-known residential address of 596 Duck Call Cove, Cordova, TN 38018. This file involved the concern that respondent had been providing his clients with false information regarding the scheduling of their cases, that he had repeatedly failed to show up in court when required, and that he had ignored vital issues in his client's cases. Respondent failed to submit any written response to these allegations and on October 8, 2003, was temporarily suspended from the practice by Order of the Tennessee Supreme Court.

5. Due to respondent's failure to respond to this complaint file, he is deemed to have acquiesced in the allegations included within this complaint summary.

FILE NO. 26107-9-JJ - - COMPLAINT OF HERBERT PARSON

6. On March 14, March 31, April 14 and May 2, 2003, the Board forwarded four notice letters and enclosed copies of the complaint summary to respondent at his last-known residential address on file with the Board. Respondent did submit a brief initial response in this file on May 21, 2003.

7. Respondent was employed by Mr. Parson in February, 2001 to handle a contested divorce, and was paid the \$1,300 quoted fee for this representation. Respondent did file this client's divorce in the Spring of 2001, and falsely informed this client that the case was set for trial at some point in the Spring of 2002. Respondent then informed Mr. Parson that the case was set for trial on September 4, 2002 but did not advise him to bring corroborating witnesses. After September 4, 2002, respondent advised Mr. Parson that the case was set for September 11 but due to respondent's own neglect, this divorce matter appeared on the docket on September 10, 2002. When both respondent and Mr. Parson arrived at the courthouse on September 11, 2002 they learned of the dismissal of Mr. Parson's case the previous day.

8. By letter dated June 17, 2003, respondent assured the Board he would make this client whole by "filing and handling [a new] Complaint for Divorce at no cost to [Mr. Parson]". Between August of 2003 and November of 2003, respondent ignored Disciplinary Counsel's repeated written requests for evidence that the "new" divorce complaint for Mr. Parson had been filed, for the docket no. and information regarding the status of the "new" divorce complaint, and for some evidence that the prior setting of Mr. Parson's first divorce case for September 10, 2002 was due to a "clerical error" of either the Circuit Court Clerk's Office or the Shelby County Clerk & Master's Office. Respondent has provided the Board with no further evidence or answers as requested nor has he refunded the unearned portion of Mr. Parson's fee.

DOCKET NO. 2004-1424-9-JJ

9. On March 9, 2004, the Board filed its petition for discipline in this matter against respondent. This petition is comprised of ten (10) separate complaint files - - File Nos. 26443-9-JJ; 26554-9-JJ; 26649c-9-JJ; 26523-9-JJ; 26656c-9-JJ; 26657c-9-JJ; 26675c-9-JJ; 26678c-9-JJ; 26692c-9-JJ & 26745-9-JJ.

10. On May 20, 2004, the respondent filed his Amended Answer to the petition for discipline filed against him in Docket No. 2004-1424-9-JJ.

11. On June 22, 2005, the Board filed and served its First Set of Requests for Admission Propounded to Respondent, and according to the Amended Scheduling Order and Order Granting Extension of Time filed on July 14, 2005, respondent was required to file and serve his responses to this discovery by July 25, 2005. The record reflects that respondent filed no responses to the Board's June 22, 2005 First Set of Requests for Admission and on August 11, 2005, the Board filed a Motion to Deem Requests for Admissions Admitted pursuant to Rule 36 of the Tennessee Rules of Civil Procedure.

12. The record reflects further that notice was provided to respondent on September 12, 2005 of the October 4, 2005 hearing on the pending motion to deem requests for admissions admitted (See numbered ¶ 2 above) and that respondent did not file any response to the Board's August 11, 2005 motion and did not choose to participate in the October 4, 2005 telephonic hearing on this Motion.

13. At the October 4, 2005 hearing on the Board's August 11, 2005 Motion to Deem Requests for Admission admitted, the Panel considered said motion to be well-taken and granted same.

FILE NO. 26443-9-JJ - - COMPLAINT OF DAVID HOPKINS

14. Respondent began representing complainant David Hopkins in November 2001 in a Shelby Chancery Court matter, and never provided complainant David Hopkins with any written notice of his changes in office address between November, 2002 and April, 2003, nor did respondent return this client's phone messages during this time. Between November, 2002 and April, 2003, respondent falsely informed complainant David Hopkins that his Chancery Court case (*Cotherman and Scudder v. Hopkins and Hopkins*, Shelby Chancery No. CH-01-2112-1) was coming up for hearing on Hopkins' motion for summary judgment on five (5) different court dates, while knowing Mr. Hopkins' Chancery Court case was not on the Court's docket for summary judgment hearing on any of the five (5) court dates which respondent provided to this client.

15. Respondent never filed any motion for summary judgment for complainant David Hopkins in his Chancery Court case, and did not enter into any written agreement with Mr. Hopkins for representation in this Chancery Court case. Respondent did agree to represent this

complainant in Chancery Court through a ruling on summary judgment, for the fee of \$1,000, and never filed a motion to withdraw as counsel or entered an order of withdrawal or substitution of counsel in this client's case. In May of 2003, complainant hired other counsel to handle his case through trial.

FILE NO. 26523-9-JJ - - COMPLAINT OF MAHER GARADA

16. Complainant Maher Garada employed respondent to represent himself, his wife and Ebestam, Inc., in a legal matter against Ann Mabry at some point in 2002, and respondent filed a Chancery Court civil action on behalf of Maher Garada, his wife and Ebestam, Inc., against Ann Mabry in Shelby County Chancery Court in 2002 (*Ebestam, Inc., d/b/a Gelato Café, Maher Garada and Gawaher El Loulou v. Ana Mabry*), No. CH-02-0989 (Part II) ("*Ebestam*" civil action).

17. The defendant in the *Ebestam* civil action filed a counter-complaint and served respondent as counsel for the plaintiffs with interrogatories, and requests for production of documents, at some point in late 2002 or early 2003. Respondent did not file, or inform the plaintiffs of the need to file responses to the counter-plaintiff's interrogatories and requests for production which were served on him in the *Ebestam* civil action, and at some point in late 2002 or early 2003, the counter-plaintiff in the *Ebestam* civil action filed a motion for sanctions, including seeking a default judgment against respondent's clients due to respondent's failure to respond to discovery.

18. Respondent filed no opposition to the counter-plaintiff's motion for sanctions against his clients in the *Ebestam* Chancery Court civil action he handled for Mr. Garada; he never informed the plaintiffs (his clients) in the *Ebestam* civil action of the pendency of a motion for sanctions against them due to failure to respond to discovery; he never informed the plaintiffs in the *Ebestam* civil action that on May 16, 2003, an Order Granting Default Judgment to the counter-plaintiff Ann Mabry had been entered against them in this case; and he never informed the plaintiffs in the *Ebestam* civil action that a writ of inquiry had been issued and was being conducted in the summer of 2003 in order to determine the amount of the default judgment entered against them in this case.

19. Respondent never informed the plaintiffs in the *Ebestam* civil action that the Chancery Court had entered a final judgment against them in this case on July 9, 2003.

FILE NO. 26554-9-JJ - - COMPLAINT OF REBECCA ROBINSON

20. The defendant timely submitted its Rule 26(a) disclosures in the federal civil action respondent handled for Rebecca Robinson (*Robinson v. Advantica Restaurant Group, Inc., and Denny's Restaurants, Inc.*, No. 02-2302 GV, US District Court, WD of Tenn), (hereinafter *Robinson* federal action) by the agreed deadline of August 9, 2002, but respondent did not submit Rule 26(a) disclosures on behalf of Ms. Robinson in this federal action by this deadline. Counsel for the defendant in the *Robinson* federal action forwarded correspondence to respondent on both September 13 and 24, 2002 inquiring about his client's overdue Rule 26(a) disclosures, and the issue

of respondent's potential conflict, and advised in his September 24, 2002 letter that if respondent did not submit his client's Rule 26 disclosures by October 1, 2002, the defendant would have no choice other than to address the matter with the Court.

21. Respondent never responded in writing at all to counsel for the defendant's September 13 and 24, 2002 letters in the *Robinson* federal action regarding his failures to timely submit Ms. Robinson's Rule 26 disclosures, and on September 30, 2002, counsel for the defendant phoned respondent in a final effort to resolve the issue of his failure to comply with the agreed scheduling deadline of August 9, 2002 without requesting court intervention, but respondent's phone did not answer and there was no option for counsel for defendant to leave respondent a voice mail as to this September 30, 2002 call. Respondent never filed any Rule 26 disclosures on behalf of Ms. Robinson in her federal court matter.

22. Counsel for the defendant served respondent on October 7, 2002 with a copy of both his Motion to Compel and Supporting Memorandum which were filed in the *Robinson* federal court matter, but respondent never filed any Response or Opposition to the defendant's October 7, 2002 Motion to Compel. Ms. Robinson's Rule 26 disclosures in the *Robinson* federal court matter.

23. On November 13, 2002, respondent filed a Motion to Stay Proceedings and to Withdraw as Counsel in the *Robinson* federal court matter, indicating to the Court that he discovered he may have had a conflict of interest in representing Ms. Robinson from the time he began investigating her case, since he previously represented in an unrelated matter one of the key witnesses/actors of the defendant in the *Robinson* case. In his November 15, 2002 letter to Ms. Robinson advising her of his motion to withdraw, respondent did not inform this client of his delay earlier that fall in submitting the Rule 26 disclosures, nor did respondent inform her that a Motion to Compel Rule 26(a)(1) initial disclosures was pending against her in her federal suit.

24. Respondent did not forward to Ms. Robinson a complete copy of her case file in her federal court matter at the time he filed his motion to withdraw in mid-November, 2002, and did not pursue his motion. Respondent simply allowed his motion to withdraw to languish. On April 1, 2003, the federal district court entered an order allowing G. Christopher Kelly (respondent's partner at the time) to withdraw and dismissing Ms. Robinson's suit for failure to prosecute. Respondent never advised Ms. Robinson of the entry of this order and this former client only learned of the dismissal when she obtained her file from respondent's prior office in mid-May of 2003.

FILE NO. 26649c-9-JJ - - COMPLAINT OF CLARA GIPSON

25. While respondent was affiliated with Shanks and Associates in January of 2003, he was assigned responsibility for handling the irreconcilable differences divorce of Clara Gipson, and both Ms. Gipson and her husband signed the marital dissolution agreement before a notary public and returned the original of the marital dissolution agreement to respondent in April of 2003. By April of 2003, Ms. Gipson had paid her court costs and attorney fees in full for the

handling of this irreconcilable differences divorce, and attempted to reach respondent by phone on many occasions regarding the status of her divorce matter between May and August of 2003, but respondent did not return this client's phone calls during this period.

26. Ms. Gipson did finally reach respondent by phone on one occasion in August, 2003, and during this conversation, respondent advised her that her divorce matter was set for September 10, 2003. Ms. Gipson later learned from the Clerk's office that respondent's statement about a September 10, 2003 setting was false. After this one phone conversation with Ms. Gipson in August of 2003, respondent never communicated with her again. In the fall of 2003, Philip T. Shanks, III assumed representation of Ms. Gipson at no additional charge after respondent left Mr. Shanks' law offices in August of 2003, and by the end of 2003, Mr. Shanks had obtained the irreconcilable differences divorce for this client.

FILE NO. 26653-9-JJ - - COMPLAINT OF JOHN T. RAGLE

27. John T. Ragle entered into a written employment contract for representation in a contested divorce matter with Shanks & Associates in January, 2003, and Mr. Shanks assigned respondent the responsibility for the handling of this client's file in January or February, 2003. Mr. Ragle phoned respondent regarding the status of his matter continuously at Shanks & Associates between late February and July, 2003, but respondent returned none of his phone calls. This client was only able to communicate with respondent twice through early April of 2003 and only by showing up at respondent's office at Shanks and Associates and waiting for a meeting. Respondent gave Mr. Ragle his cell phone number in the spring or summer of 2003, but for 3 months through early September of that year, did not return this former client's messages left on his cell phone.

28. In September, 2003, Mr. Ragle contacted support staff at Shanks and Associates and was informed that respondent had left the office, and had moved his practice to his home. By late 2003, Mr. Shanks assumed representation in Mr. Ragle's matter and the case was properly progressing toward conclusion during 2004.

FILE NO. 26656c-9-JJ - - COMPLAINT OF LESTER EGGLESTON

29. On March 10, 2003, respondent and Lester Eggleston signed a written employment contract for respondent to represent Mr. Eggleston in his contested Juvenile Court case for an advance retainer fee of \$2,500, at respondent's hourly rate for attorney time of \$175.00. Mr. Eggleston paid \$1,500 toward this agreed retainer by April 1, 2003, and another \$500 by July 7, 2003. Mr. Eggleston's minor children were in the custody of the Tennessee Department of Human Services in the spring of 2003, and they had been living in a foster care home since November of 2002.

30. Respondent filed a Petition for Change of Custody for Mr. Eggleston with the Shelby County Juvenile Court in June of 2003, and at 1pm on July 28, 2003, a meeting was conducted between Mr. Eggleston, the foster parents, and Department of Children's Services (DCS)

staff members to discuss the possibility of Mr. Eggleston's minor children returning to his home. Respondent did not attend this July 28, 2003 meeting as Mr. Eggleston's attorney despite being asked to do so several times by this former client who left respondent several voice mail messages on respondent's cell phone.

31. Respondent's provision of counsel to Mr. Eggleston prior to, and at such a meeting with DCS staff to discuss placement of Mr. Eggleston's minor children was included within the scope of the representation respondent undertook in this particular legal matter. However, respondent did not contact Mr. Eggleston at any time during the month of July, 2003 to prepare him for the July 28, 2003 meeting with DCS representatives, and certain questions were posed to Mr. Eggleston at this July 28, 2003 meeting which respondent could have assisted him with. Due to respondent's failure to assist with, or to appear at the July 28, 2003 meeting, on August 3, 2003, Mr. Eggleston delivered a handwritten letter to respondent's offices at Shanks and Associates, stating his disappointment at respondent not appearing at the July 28, 2003 meeting with DCS staff, and asking respondent for the reasons respondent did not respond to his calls or to his prior letter.

32. Respondent did not inform Mr. Eggleston at any point that he left Shanks and Associates during the month of August of 2003; he did not communicate with Mr. Eggleston in any way whatsoever after approximately July 15, 2003 about his legal matter; he did not refund to Mr. Eggleston any portion of the \$2,000 in attorney fees which was unearned and which he received from this client; and he expended no more than 5 hours in providing legal services to Mr. Eggleston in this legal matter.

33. Respondent did not refund to Shanks & Associates any portion of the \$2,000 in attorney fees which he received from Mr. Eggleston and which was unearned, and respondent's charge of \$2,000 to Mr. Eggleston for preparing a 1 page Juvenile Court petition for change of custody and expending less than 5 hours of attorney time in Mr. Eggleston's matter, was unreasonable.

FILE NO. 26675c-9-JJ - - COMPLAINT OF CHERYL AVERILL

34. Respondent began representing complainant Cheryl Averill in March or April of 1999 regarding her automobile accident, and Ms. Averill sent respondent a letter on October 5, 2000 asking him several questions about her case and informing him that the November 14, 2000 trial date in her matter would have to be continued due to her scheduled jury duty. Respondent informed Ms. Averill by reply letter dated of October 18, 2000 that the November 14, 2000 trial date was continued, and on November 9, 2000, this complainant left respondent a phone message requesting information about the status of her case. Respondent did not return Ms. Averill's November 9, 2000 call.

35. On July 23, 2001, Ms. Averill received a letter from respondent concerning an August setting (without a specific date) for the deposition of Dr. Millican in her legal matter - - consequently, Ms. Averill contacted Dr. Millican directly on August 20, 2001 and learned respondent

had set this doctor's deposition for August 30, 2001. Respondent did not ever notify Ms. Averill of the August 30, 2001 setting of Dr. Millican's deposition.

36. Ms. Averill spoke with respondent on August 21, 2001 and informed him that she did not receive any prior notice about Dr. Millican's deposition and that she was unhappy with the current attorney-client relationship. On August 23, 2001, respondent filed a Motion to Withdraw in Ms. Averill's Circuit Court personal injury and automobile accident matter, and on August 29, 2001, Ms. Averill phoned respondent three times regarding the status of Dr. Millican's deposition which was still set for August 30, 2001, but respondent did not return any of her August 29, 2001 calls.

37. Ms. Averill spoke with Dr. Millican twice between August 29 and 30, 2001 and informed this doctor on August 30, 2001 that his deposition was being canceled; however, respondent himself did not contact Dr. Millican at all on August 29 or 30, 2001 to advise of the cancellation of this deposition. Ms. Averill left respondent a phone message on September 16, 2002 asking him why his motion to withdraw in her case had not been ruled upon yet, but he did not return this phone call. Respondent's motion to withdraw in Ms. Averill's Circuit Court personal injury and accident case was not set for hearing and granted until September 20, 2002.

38. On December 19, 2002, Ms. Averill phoned respondent to obtain a copy of the case file and interrogatories issued to the plaintiff in her legal matter, but she was unable to reach him. Moreover, respondent never informed Ms. Averill of his November, 2002 change of office address and phone number to the law offices of Philip T. Shanks, III, and he never delivered to this former client a complete copy of the case file in the legal matter he handled for her.

39. On December 28, 2002, Ms. Averill reached respondent at Shanks and Associates after phoning respondent's home, and respondent indicated she could pick up her file after 1 pm on December 30, 2002 at Shanks and Associates; this complainant did as requested and appeared at respondent's office twice between 1:25 and 3:00 pm on December 30, 2002 and waited - - but respondent was not available. Ms. Averill phoned respondent 12 times between January 3 and February 24, 2003 seeking her complete case file in the legal matter respondent handled for her, but respondent provided only excuses and no case file.

40. In response to Ms. Averill's phone conversation with respondent on January 10, 2003, respondent indicated her file was boxed up in storage and would be available on January 13, 2003; during this complainant's January 31, 2003 phone conversation with respondent, he advised that he was mailing her file to her residential address. On February 24, 2003, respondent did admit he had just obtained a copy of the defendant's interrogatories from the courthouse and Ms. Averill finally received them by mail from respondent on February 28, 2003.

41. On August 13, 2003, Ms. Averill received notice from counsel for the defendant indicating that her personal injury and accident suit which respondent had previously handled was set for trial on September 12, 2003. When respondent moved out of his offices at

Shanks & Associates in August of 2003, he did not inform this former client of his move to his home, and Ms. Averill first learned of respondent's latest move when she called the offices of Shanks & Associates on August 21, 2003. On August 22, 2003, Ms. Averill reached respondent on his cell phone, and on this day, respondent again agreed to track down her file. During this August 22, 2003 phone conversation, Ms. Averill informed respondent of her expectation for him to have her file ready for pick up by August 25, 2003. This complainant phoned respondent 8 times and on his voice mail requesting her file between August 25 and August 29, 2003, but respondent did not return any of this client's calls.

FILE NO. 26678c-9-JJ - - COMPLAINT OF SHEILA FAYE WOODS

42. While sharing space at Shanks & Associates in the late winter or early spring of 2003, respondent assumed representation of Sheila Faye Woods in this former client's irreconcilable differences divorce. By April of 2003, respondent received the original of the marital dissolution agreement signed by Ms. Woods and her husband before a notary public. Between April and August of 2003 respondent did not set this client's divorce for final hearing, and on August 27, 2003, respondent provided her a false court date of August 27, 2003 for the final hearing in her irreconcilable differences divorce. Respondent later provided this client with a second false final hearing date of September 17, 2003.

43. Ms. Woods appeared at the Shelby County Courthouse on August 27, 2003, and again on September 17, 2003, for these fictitious final hearing dates as provided by respondent. This complainant took leave from work on both August 27 and September 17, 2003 due to these false court dates which respondent provided. In December of 2003, Philip T. Shanks, III refunded \$1,000 of the attorney fees paid by Ms. Woods, which enabled this complainant to employ new counsel in her divorce matter, and on January 21, 2004, she obtained her final decree on irreconcilable differences grounds after retaining new counsel.

FILE NO. 26692c-9-JJ - - COMPLAINT OF LATARSHA W. TERRY

44. Complainant Latarsha W. Terry employed respondent in June, 2002 for assistance with a real estate matter and consequent credit report difficulties she suffered, paying respondent \$1,500 in fees. Respondent did not notify Ms. Terry of his new office address and phone number when he affiliated with Shanks & Associates in November of 2002, and in August of 2003, this client began leaving messages on respondent's cell phone regarding her continued problems, but respondent did not return any of these calls.

45. On September 10, 2003, respondent received a September 6, 2003 Fed Ex Standard Overnight Delivery Letter from Ms. Terry (Tracking No. 6432 0350 6771) at his residential address, wherein Ms. Terry specifically asked respondent for an update regarding her case, for a current business address or fax where respondent was located, and for an idea of when her case would proceed. Respondent did not send Ms. Terry any response whatsoever to her September 6, 2003 letter, and on September 18, 2003, this complainant e-mailed respondent requesting urgent

communication from respondent regarding her legal matter, and legal advice regarding correspondence she was receiving from mortgage companies.

46. On September 23, 2003, Ms. Terry sent respondent a final e-mail again requesting a response to her issues, stating therein that she felt "left in the dark", and informing respondent that she had received additional letters and phone calls regarding her matter. Respondent never responded to Ms. Terry's e-mails of September 18 and 23, 2003 in any way whatsoever, and took this former client's file with him upon leaving Shanks & Associates in August of 2003. Further, respondent never contacted this former client again about her legal matter as requested, he never refunded the \$1,500 in fees which he was paid in this matter, and never provided her with an accounting and the unearned portion of this \$1,500 fee if he claimed any portion of it was earned.

FILE NO. 26745-9-JJ - - COMPLAINT OF LOUIS W. HAYNES

47. Respondent previously represented Mr. Haynes in two Shelby County Circuit Court cases (CT-00087400 and CT-00087500 - - Division 9) between 2000 and 2002, and did not inform Mr. Haynes of his changes of office address and of phone numbers in either November, 2002 or in August, 2003.

48. Respondent never communicated with this former client at all as to the status of his cases, and Mr. Haynes could not contact respondent as of September of 2003 because respondent would not answer his cell phone and could not be located within any law office or within the phone directory.

DOCKET NO. 2004-1451-9-JJ

49. On July 1, 2004, the Board filed its Petition for Discipline in this matter against respondent. The petition is comprised of two separate complaint files - - File Nos. 26868-9-JJ & 26886-9-JJ. Respondent never filed an Answer to this Petition and in September, 2004, the Board filed a Motion for Default Judgment pursuant to Tenn. R. Sup. Ct. 9, §8.2.

50. On June 15, 2005, the Panel filed a Show Cause Order in which respondent was ordered to show cause within 15 days why a default judgment should not be entered against him as to this petition and respondent failed to file a written response within the time allowed in the Show Cause Order. Accordingly, on July 14, 2005, the Panel entered a default judgment against respondent as to this petition, finding that the charges as contained in this petition are deemed admitted.

FILE NO. 26868-9-JJ - - COMPLAINT OF RICHARD GREEN

51. Mr. Green contacted the law office of Philip T. Shanks, III by phone on or around April 17, 2003, regarding his divorce and child custody matter, and was transferred to the respondent. Complainant Green had a meeting with and employed respondent on April 22, 2003.

On April 29, 2003, respondent filed a petition for change in primary residential custody and for injunctive relief. Respondent provided Mr. Green with a court date of May 30, 2003 at 10:00 am.

52. Mr. Green arrived at the Shelby County Courthouse at approximately 9:30 am on May 30, 2003, but respondent had not shown up by 10 am on this day. Complainant Green frantically attempted to reach respondent at the law office and on respondent's cell phone, leaving respondent several voice mail messages indicating that the Court had called the case. At 11:10 am on May 30, 2003, respondent finally appeared in Circuit Court and advised the Judge he had been tied up in another courtroom. Mr. Green's matter was then continued until June 6, 2003.

53. On June 6, 2003, the respondent did appear and argue the cause and the Circuit Court granted Mr. Green temporary custody of the minor child until July 10, 2003. After July 10, 2003, respondent was to obtain an order extending the 30 day grant of temporary custody through the date of the final hearing. Complainant Green, however, heard nothing from respondent after July 10, 2003 despite having left numerous messages on respondent's cell phone. Further, complainant Green had considerable difficulty enrolling his child in school in August of 2003 due to respondent's failure to prepare and enter the order extending the grant of temporary custody.

54. The final hearing in complainant Green's custody matter was set for October 24, 2003, and respondent contacted Mr. Green prior to that date, advising this client that the Judge would be out of town on October 24. Respondent called this client back a second time regarding the final custody hearing on October 28, 2003, and admitted it would be unlikely to get another court date set before the first of 2004, but that respondent would try to get an emergency date before the first of 2004 "to put closure to the case".

55. During the phone conversations respondent had with complainant Green in late October, 2003 regarding the setting of the final hearing on custody, respondent did not inform this client that his law license had been temporarily suspended since October 8, 2003, and that unless he were reinstated, after November 7, 2003 respondent could not practice law in any capacity in Tennessee.

56. Complainant Green continued to contact respondent during the month of November, 2003, leaving numerous voice mail messages for respondent to return his calls. However, respondent never did and on November 24, 2003, complainant Green learned from the opposing party in his divorce that respondent's law license had been suspended in October of 2003. Mr. Green then phoned respondent several additional times about the suspension, but respondent never returned any such calls. Respondent never informed Mr. Green in writing of his October 8, 2003 suspension, and never moved to withdraw as counsel in the Circuit Court in Mr. Green's matter. In mid-December of 2003, respondent finally turned over Mr. Green's case file to the law office of Philip T. Shanks.

57. By January, 2004, Mr. Shanks had taken Mr. Green's divorce custody matter over and has resolved the case earlier last year to the satisfaction of this client. Respondent never filed any written response to this complaint with the Board.

FILE NO. 26886-9-JJ -- COMPLAINT OF IRVING ZEITLIN, ESQ.

58. Four notice letters and enclosed summaries of complaint were mailed to respondent between December 10, 2003 and February 27, 2004 in this complaint file requesting respondent's response, but as of present, the Board has still received no written response from respondent as to the complaint in File No. 26886-9-JJ.

59. Mr. Zeitlin's complaint sets forth that respondent was ordered by US Bankruptcy Judge David S. Kennedy to file an application with the Court to represent debtor Luther Jones in Mr. Jones' workers compensation claim, by May 15, 2003. Zeitlin represented Mr. Jones in a Chapter 13 Bankruptcy case in 2003. Respondent, however, never filed the application with the Bankruptcy Court.

60. After respondent was ordered by the Bankruptcy Court to file the application to represent Mr. Jones in the workers compensation case, Mr. Zeitlin learned that respondent had asserted a lien on Mr. Jones' net proceeds in the workers' compensation case to cover an unpaid prior attorney fee due by Mr. Jones to respondent in an unrelated Juvenile Court case - - which would constitute a conflict of interest were respondent to be appointed by the Bankruptcy Court to handle the workers' compensation case.

61. Respondent never disclosed this conflict of interest to the Bankruptcy Court, even though he did address the Bankruptcy Court orally regarding this debtor's workers' compensation claim. The failure on respondent's part to disclose to the Bankruptcy Court all conflicts with the debtor, with the bankruptcy estate or with creditors violated §327 of the Bankruptcy Code, 11 USC §327. Further, respondent's dilatoriness in working on Mr. Jones' claim and his failure to file the application with the Bankruptcy Court as ordered caused this debtor's workers' compensation claim to languish and caused at least potential injury to the substantive rights of this client.

DOCKET NO. 2005-1515-9-JJ

62. On May 26, 2005, the Board filed its Petition for Discipline in this matter against respondent. This petition is comprised of five separate complaint files - - File Nos. 27030c-9-JJ, 27224-9-JJ, 27206-9-JJ, 27502-9-JJ & 27696-9-JJ. Respondent's prior counsel was served with this Petition on July 5, 2005, and respondent never filed an answer to this petition. On August 31, 2005, the Board filed its Motion for Default Judgment as to this petition for discipline under Tenn. R. Sup. Ct. 9, §8.2.

63. At the October 4, 2005 hearing on the Board's Motion for Default filed as to

this Petition, the Panel considered said Motion to be well-taken and granted same. Accordingly, the charges as contained in this petition for discipline are deemed admitted.

FILE NO. 27030c-9-JJ - - COMPLAINT OF PATRICIA TOWNSEND

64. Respondent previously handled a personal divorce and bankruptcy for Ms. Townsend while his law license was in good standing. Moreover, respondent also prepared a will for Ms. Townsend's mother, and a Power of Attorney for this complainant's mother, Ms. Ernestine B. Lawrence.

65. On January 14 and 30, 2004, complainant prepared and mailed letters to respondent at his residential address requesting copies of all her own personal legal files, and copies of any and all legal files for Ms. Lawrence, to be sent to complainant. Simultaneously, the complainant's mother herein, Ms. Ernestine B. Lawrence, prepared and mailed letters on January 14 and 30, 2004 to respondent at his residential address also requesting that respondent's files including her will and power of attorney previously prepared by respondent, be returned to complainant.

66. Respondent claimed in his April 21, 2004 initial response letter sent to the Board that he would "immediately retrieve her [complainant's] file, and that of her mother, and will send it to her . . ." However, the respondent failed to properly communicate with these former clients as to their requests and did not answer the many messages left for him by complainant on his answering machine. Further, as of May 13, 2004, respondent had not forwarded to complainant copies of the files he promised to send to her many months ago - - as he also agreed to do in his April 21, 2004 initial response letter to the Board.

67. Respondent has provided no further information to these former clients or to the Board regarding their requests for copies of their case files. Given respondent's unequivocal commitment in his April 21, 2004 initial response to the effect that he would "immediately retrieve" the former clients' case files and deliver them as requested, the Board can only conclude that the respondent has failed to deliver such papers and property to his former clients upon their requests, as he is ethically obligated to do.

FILE NO. 27224-9-JJ - - COMPLAINT OF BARBARA AND DEAN GASSAWAY

68. According to the Gassaways, respondent was paid a \$1,000 retainer in July, 2002 and had done nothing on their case as of May of 2004. These former clients had attempted to contact respondent on many, many occasions regarding the status of their legal matter. By early 2004, these complainants had been told by support staff at respondent's prior law office (Shanks and Associates) that respondent was no longer physically there, and accordingly, were provided with respondent's cell phone number as a means to attempt further communication with respondent.

69. Respondent's contentions as contained in his May 21, 2004 initial response to the effect that he had turned over the Gassaways' case file to Mr. Shanks as of the time he left Mr. Shanks' office, and that as of the time of his last contact with these former clients, he understood they were in the process of hiring other counsel, were false, as is demonstrated by the July 1, 2004 affidavit with attached case inventory submitted by Mr. Shanks, and by the complainants' May 28, 2004 reply to respondent's response.

70. As of present, respondent has not provided to Disciplinary Counsel any evidence that he has located or retrieved these former clients' case file in the matter or that he has returned said file to them. Moreover, respondent has inappropriately failed to refund to these former clients the \$1,000 in unearned fees which he received in July, 2002 to handle their legal matter, since he has performed no legal services for them.

FILE NO. 27206-9-JJ - - COMPLAINT OF RICHARD RISHER

71. Respondent contended in his initial response that he "agreed to temporarily take over this file to give Mr. Risher time to retain another attorney", after G. Christopher Kelly left Memphis in 2002. Kelly (respondent's former partner) had previously filed an action for personal injuries on behalf of this complainant in Tipton County Circuit Court, Docket No. 5365, based on injuries allegedly suffered by this client while incarcerated at a CCA facility. Respondent also contended in his May 11, 2004 initial response that he had learned through complainant's wife, that complainant "had retained other counsel recently", and indicated he had "delivered [complainant's] file to his new attorney" on May 11, 2004.

72. However, respondent's contentions as set forth in his May 11, 2004 initial response and as quoted above were false to the effect that he was only "temporary" counsel, and that he had delivered Mr. Risher's file to this client's "new lawyer" on May 11, 2004. The consent order substituting respondent for G. Christopher Kelly filed with the Tipton County Circuit Court on July 9, 2002 did not limit respondent's role in any way, and respondent was considered permanent counsel for complainant until he was officially relieved or until his law license was no longer in good standing. Further, as of June 5 and August 13, 2004, complainant knew nothing about any "new lawyer" given that respondent had not provided to Mr. Risher either the name or address of this other attorney respondent had allegedly delivered the file to.

73. Complainant Risher corresponded regularly with respondent and with Mr. Kelly between July, 2002 and May of 2003 seeking detailed information on the status of his civil action - - writing respondent on July 9 and December 9, 2002, Mr. Kelly on January 30 and April 25, 2003, and the Clerk of Court on February 10, 2003 (with a copy to respondent). Respondent never responded at all in writing to complainant's requests for a status update on complainant's civil action, nor did he respond to copies of Mr. Kelly's letters sent to complainant (after Kelly's withdrawal) which were also copied to respondent.

74. Between July, 2004 and the present, the Board has requested respondent to deliver to complainant Risher a full copy of his case file in the matter and for respondent to provide a copy of a filed order allowing his withdrawal as counsel in Mr. Risher's matter, as is required by the temporary suspension order and Tenn. R. Sup. Ct. 9, §18. Respondent has not responded to the Board at all in this regard.

FILE NO. 27502-9-JJ - - DISCOVERED DURING INVESTIGATION

75. Respondent filed a civil action for medical malpractice on behalf of plaintiffs Robert & Edith Knight against Dr. Travis L. Bolton, on April 27, 1998 in Fayette County Circuit Court (Case No. 4907). The defendant filed his Answer in June of 1998, but respondent neglected the matter on behalf of his clients and allowed the lawsuit to languish with no further activity through the date of his temporary suspension on October 8, 2003.

76. Within ten (10) days after October 8, 2003, respondent failed to forward to these former clients and to opposing counsel in the legal matter any notice letters by certified or registered mail return receipt requested, advising them of the Tennessee Supreme Court order entered that day suspending his law license as he was required to do pursuant to Tenn. S. Ct. R. 9, §18.1(a) & (c). Moreover, respondent did not move to withdraw as counsel for Mr. & Mrs. Knight in the Fayette County civil action against Dr. Bolton as he was required to do within ten (10) days after his October 8, 2003 temporary suspension pursuant to Tenn. S. Ct. R. 9, §18.6.

77. On May 3, 2004, respondent filed an affidavit with the Tennessee Supreme Court and with the Board stating that he had notified all of his existing clients as of October 8, 2003, of the contents of the Supreme Court's October 8, 2003 order suspending his license. This was a false representation on respondent's part, inasmuch as the listing of clients which he attached to his May 3, 2004 affidavit did not include Robert & Edith Knight.

78. Respondent acknowledged the falsity of the representation as contained in his May 3, 2004 affidavit in late July of 2004, when his prior retained counsel forwarded certified mail notice to the Knights as former clients advising them of his October 8, 2003 temporary suspension.

79. Due to the efforts of his prior retained counsel, respondent did finally succeed, albeit in a dilatory fashion, withdrawing as counsel for Robert and Edith Knight in their civil action against Dr. Travis L. Bolton, by order of withdrawal filed on August 9, 2004.

FILE NO. 27696-9-JJ - - DISCOVERED DURING INVESTIGATION

80. In either 2001 or early 2002, respondent accepted representation in Ronnie Priest's legal matter - - which involved the setting of child support in a Shelby County Juvenile Court case. In late November of 2002, respondent moved his private practice to the law offices of Philip T. Shanks, III, but as of July of 2004, Mr. Shanks was not in possession of a case file logged

in for Mr. Priest to be handled by Shanks and Associates. Respondent left the offices of Mr. Shanks in July or August of 2003 and took certain case files with him to his residential address.

81. In either late 2001 or early 2002, Mr. Priest gave respondent possession of certain income tax returns and/or papers which were relevant to the question of the setting of this client's child support. However, respondent did not expedite or conclude the client's legal matter before the Juvenile Court prior to the date of his temporary suspension, and did not withdraw as counsel in Mr. Priest's legal matter after his October 8, 2003 temporary suspension. Respondent has also failed or refused through the present, to deliver to this former client said income tax returns and/or papers the client entrusted to respondent over 3 years ago. The Juvenile Court had not set child support in Mr. Priest's legal matter as of early November, 2004, since the Court was waiting for respondent to supply the client with the needed evidence.

82. Respondent did not notify the Juvenile Court or its staff attorneys of his status as a suspended lawyer and did nothing further to assist this former client through November of 2004; consequently, the expeditious disposition of this former client's legal matter before the Juvenile Court was delayed. Further, Disciplinary Counsel received communications from the Juvenile Court staff attorney as late as the end of October of 2004 seeking respondent's whereabouts, given that court staff did not know how to locate respondent and since the client's case was showing up on the Court's docket for further activity.

83. Even though respondent was counsel of record for Mr. Priest as of the effective date of the Tennessee Supreme Court's October 8, 2003 Order suspending his law license, respondent did not forward to Mr. Priest certified or registered return receipt mail advising of his suspension, and respondent's omission of Mr. Priest as a client listed in his May 3, 2004 affidavit filed with the Supreme Court is further evidence of the falsity of respondent's May 3, 2004 affidavit.

84. Notwithstanding respondent's refusal to list Mr. Priest as a former client in his May 3, 2004 affidavit, and respondent's refusal to timely send correspondence notifying this former client of the Supreme Court's order suspending his law license or to timely file a motion to withdraw with the Juvenile Court, respondent's prior retained counsel did file a motion to withdraw before the Juvenile Court and forwarded correspondence to Mr. Priest notifying this former client of respondent's suspension on December 15, 2004.

OTHER PROCEDURAL MATTERS

85. On May 5, 2004, in Docket Nos. 2003-1407 & 2004-1424, the Board filed a Motion for the Panel to Order a Mental Examination of Respondent pursuant to Tenn. R. Civ. P. 35, to focus on respondent's allegations of suffering burn-out and depression. At a prehearing conference on June 7, 2005, the Board informed the Panel that it was withdrawing this Motion as moot, since respondent had provided medical evidence of his mental competency to practice law later in 2004. On July 14, 2005, the Panel entered its Order Withdrawing the Board's Motion for Rule 35 Examination of Respondent, consolidating all four of the captioned petitions for hearing,

and granting an order protecting the confidentiality of certain information as contained in the first three of said petitions, which were filed prior to the Tennessee Supreme Court's November 2, 2004 Order amending Tenn. R. Sup. Ct. 9, §25.

86. On September 12, 2005, the Hearing Panel issued a notice of conference call to address all pending motions on October 4, 2005, and respondent was served with a copy of this notice by Fed Ex Priority Delivery and First Class Mail by the Board's Executive Secretary. Respondent chose not to participate in this conference call.

87. On September 26, 2005, the Panel filed its final Trial Scheduling Order, informing the parties of the prehearing conference call on October 4, 2005 and of the Panel's setting of these consolidated petitions for a final hearing on October 17 and October 18, 2005 at the Peabody Hotel. This final Trial Scheduling Order was served on respondent via First Class Mail by the Board's Executive Secretary on September 26, 2005.

II. CONCLUSIONS OF LAW

88. By the above actions, and as is set forth in detail within each of the aforementioned petitions for discipline, respondent has violated the following specific Disciplinary Rules, Rules of Professional Conduct and Rules of Disciplinary Enforcement as embodied within Tenn. R. Sup. Ct. 8 & 9:

DR 1-102(A)(1)(4)(5)(6); DR 2-106(A); DR 2-110(A)(2)(3); DR 6-101(A)(3); DR 7-101(A)(1)(2)(3); DR 7-102(A)(1)(3)(5)(8); DR 7-106(C)(5)(6)(7); & DR 9-102(B)(3)(4); RPCs 1.3, 1.4(a)(b), 1.5(a), 1.15(b), 1.16(a)(1)(d)(1)(2)(4)(5), 3.2(a), 3.3(a)(1), 3.4(c), 4.1(a), 5.5(a), 8.1(a)(b) & 8.4(a)(c)(d)(g) (contained within Tenn. R. Sup. Ct. 8), and Tenn. R. Sup. Ct. 9, §§18.1(a)(b)(c), 18.4, 18.5, 18.6 & 18.7.

III. APPLICABLE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

89. The Panel finds the following *ABA Standards for Imposing Lawyer Sanctions* as cited by the Board to be applicable herein due to respondent's conduct: *Standards* 4.12 & 4.43(a)(b) (engaging in a pattern of neglect and a knowing failure to return unearned fees, costs & files to clients despite numerous requests); *Standard* 4.62 (knowingly deceiving clients as to the status of their legal matters, the location of their files and that other counsel had been employed); *Standard* 6.12 (knowingly making false statements of fact to the Board as tribunal); *Standards* 6.22 & 8.1 (knowingly violating requirements of Supreme Court order temporarily suspending his law

license); and *Standard 7.2* (knowing failure to withdraw after being suspended and his receipt of charging fees in cases where he performed no services).

90. The Panel also finds the following to constitute aggravating circumstances under *ABA Standard 9.22*:

- <a Respondent's prior disciplinary offenses (3 Private Informal Admonitions; 1 Public Censure; and Temporary Suspension) *Standard 9.22(a)*);
- <b Respondent's dishonest or selfish motive (*Standard 9.22(b)*);
- <c A pattern of ethical misconduct engaged in by respondent within these petitions and within prior disciplinary sanctions (*Standard 9.22(c)*);
- <d Multiple ethical offenses as committed by respondent within these petitions (*Standard 9.22(d)*);
- <e A bad faith refusal to comply with the rules of the disciplinary agency (*Standard 9.22(e)*);
- <f Submission of false statements during the disciplinary process (*Standard 9.22(f)*);
- <g Substantial experience in the practice of law (16 years licensed in Tennessee)(*Standard 9.22(i)*); and
- <h Respondent's indifference to making restitution to clients (*Standard 9.22(j)*).

IV. JUDGMENT

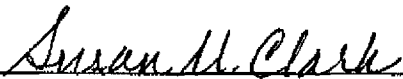
91. Based on the foregoing findings of fact, conclusions of law, and applicable *ABA Standards*, it is hereby the Judgment of this Panel that the respondent Mark Lee Pittman be **DISBARRED** from the practice of law in Tennessee and that he be ordered to pay all costs of the Board pursuant to Tenn. R. Sup. Ct. 9; §24.3. It is further **ORDERED** that respondent Mark Lee Pittman make restitution of unearned fees and costs to the following former clients or to the Tennessee Lawyers' Fund for Client Protection (if said Fund pays claims on behalf of these clients) in the following amounts: complainant Herbert Parson (File No. 26107-9-JJ) in the amount of \$1,300; complainant David Hopkins (File No. 26443-9-JJ) in the amount of \$1,000; complainant Lester Eggleston (File No. 26656c-9-JJ) in the amount of \$2,000; complainant Latarsha W. Terry (File No. 26692c-9-JJ) in the amount of \$1,500; and complainants Dean and Barbara Gassaway (File No. 27224-9-JJ) in the amount of \$1,000.

It is the Judgment of this Panel that the respondent demonstrate having made such restitution as outlined above, and restitution to the Lawyers Fund for Client Protection for claims paid on behalf of any other complainants who are named within these four consolidated petitions, as a prerequisite to any future petition for reinstatement which respondent may file in the future.


Finally, it is the Judgment of this Panel that the respondent be required to present himself to the Tennessee Lawyers Assistance Program for assessment and entry into a peer assistance contract with TLAP, and compliance with said program's requirements if recommended by TLAP, as a prerequisite to any future reinstatement petition which respondent may file in the future.


This 25th day of October, 2005.


THE HEARING COMMITTEE PANEL:


Susan M. Clark, Esq.
Panel Chair

APPROVED FOR ENTRY:


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