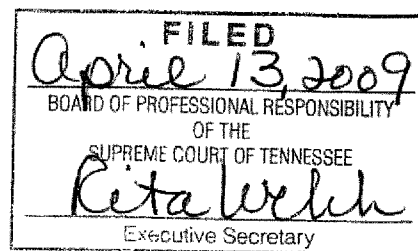


IN DISCIPLINARY DISTRICT III
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: ROBERT PHILIP RAYBURN,
 BPR No. 14170, an Attorney
 Licensed to Practice Law
 In Tennessee (Hamilton County)

DOCKET NO. 2008-1744-3(C)-RS

JUDGMENT OF THE HEARING PANEL

This cause came to be heard before the undersigned hearing panel on March 18, 2009. The respondent was given notice of the hearing, but failed to appear. The matter proceeded to a hearing. Disciplinary counsel introduced several exhibits and presented the testimony of one witness, Attorney G. Michael Luhowiak. Mr. Luhowiak was appointed by the Hamilton County Chancery Court to replace the Respondent as administrator of the estate of Mildred C. Case after the Respondent was removed as executor by Order of the Hamilton County Chancery Court. At the conclusion of the hearing, Disciplinary counsel was directed by the Hearing panel to provide comparative discipline cases. These cases were provided by disciplinary counsel on March 18, 2009, and shall be entered into the record as Exhibit 9. The Hearing Panel has received nothing from the Respondent subsequent to the hearing to explain his failure to attend the hearing. In addition, the Respondent has not filed any response to the Disciplinary counsel's submission of comparative discipline cases, which the disciplinary counsel submitted on March 18, 2009. Based upon the evidence introduced at the hearing, the hearing panel's review of the exhibits,

and the entire record in this cause, including the Hearing panel's consideration of the comparative discipline cases provided by Disciplinary counsel on March 18, 2009, the hearing panel unanimously renders the following Judgment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. By letter dated November 27, 2007, a complaint was entered as to the Respondent by the informant, S. Lee Akers, Clerk and Master of the Chancery Court for Hamilton County. The file was designated as File No. 30708-3(C)-JV. The Respondent responded to the complaint by letter dated December 10, 2007. The Petition for Discipline was filed in this cause on March 24, 2008, and served upon the Respondent by certified mail on April 10, 2008.

2. The Respondent filed his Answer to the Petition for Discipline on August 4, 2008. The Respondent admitted all of the allegations contained in the Petition for Discipline, except Paragraphs 4, 25, 27, 28 and 29. The Respondent denied these paragraphs. In essence, the Respondent admitted all of the factual allegations in the Petition for Discipline, but he denied that he violated any of the disciplinary rules cited in the Petition for Discipline, and he further denied all of the aggravating factors alleged in the Petition for Discipline, except he admitted he has substantial experience in the practice of law, being licensed since 1979.

3. The Respondent, Robert Philip Rayburn, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee. Pursuant to Section 1 of Rule 9, any attorney admitted to practice law in Tennessee is subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, and the Circuit Court and Chancery Courts. Pursuant to Section 3 of Rule 9, 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.

4. The Respondent's office address as registered with the Board of Professional Responsibility is Suite 212, 6148 Lee Highway, Chattanooga, Tennessee, 37421, being in Disciplinary District III. The Respondent's Board of Professional Responsibility number is 6557.

5. On November 9, 1999, the Respondent was appointed executor of the Estate of Mildred C. Case. In a Petition filed with the Hamilton County Chancery Court on that date, the Respondent swore under oath that the estimated value of the estate consisted of \$125,000 in personal property and \$0 in real estate.

6. On January 7, 2002, the Clerk sent a notice to the Respondent to file an accounting on or before January 28, 2002.

7. On January 28, 2002, the Respondent filed a motion for additional time. On March 1, 2002, the Court granted the Respondent six months to close the estate.

8. On September 9, 2002, the Clerk issued a Citation directing the Respondent to appear on September 24, 2002, and settle accounts.

9. On September 24, 2002, the Respondent filed an Interim Accounting of Estate by Affidavit of the Respondent reflecting receipts of only \$115,000.00 and requesting an additional ninety days to file a Final Accounting. In this document, the Respondent did not explain the discrepancy between the original estimated value of the estate assets of \$125,000 and his receipts of only \$115,000. Because the court did not have proof of the \$115,000.00 credits claimed in the September, 2002, Interim Accounting, the estate could not be closed.

10. On January 15, 2003, the Clerk issued another Citation directing the Respondent to appear on February 7, 2003, and settle accounts.

11. The Respondent appeared on February 7, 2003, and advised the Court that the estate was ready to close and that the Respondent would send sworn statements to be signed by the heirs.

12. Over 4 years later, on March 19, 2007, the Court issued a Show Cause Order for the Respondent to appear on March 28, 2007, and show cause why he should not be held in contempt and/or be removed as executor for failure to carry out his duties.

13. On March 28, 2007, the Respondent reported to the Court that his file had been misplaced and he should close the estate in approximately thirty days.

14. On June 8, 2007, the court issued a second Show Cause Order requiring the Respondent to appear on June 21, 2007, and show cause why he should not be held in contempt and/or be removed as executor.

15. On June 19, 2007, the Respondent filed his Sworn Statement in Lieu of Final Accounting. He alleged in this sworn statement that the estate of Mildred Case consisted of assets of \$115,000. This amount was \$10,000 less than the amount the Respondent listed as the estimated value of the estate assets when he filed the original petition under oath on November 9, 1999. Both the original petition filed with the Hamilton County Chancery Court and the Sworn statement in lieu of final accounting were filed under oath. The Respondent has never filed any documents with the Court or provided any documents in this disciplinary proceeding to explain this potential \$10,000 discrepancy. Attorney G. Michael Luhowiak testified that he was never able to determine the actual beginning value of the estate, due to the combined failures of the Respondent to maintain a separate estate account, the Respondent's failure to maintain a trust

account, the Respondent's failure to maintain adequate records, and the Respondent's failure to act in a timely fashion. Mr. Luhowiak testified that the estate should have been closed within a year from the date it was opened, but as of March 18, 2009 the estate has not been closed due to these combined failures of the Respondent

16. In the Sworn statement filed on June 19, 2007, the Respondent did detail payments to the heirs and creditors, and \$5,700.00 to himself for fees. In his testimony before the hearing panel on March 18, 2009, Attorney Luhowiak testified that there was no evidence contained within the Chancery Court file to substantiate a fee agreement between the Respondent and the Respondent's client, but that based on the fee schedule set forth in Hamilton County local rule 17.12, the Respondent's fee should not have exceeded \$2,850.00

17. Despite the filing on June 19, 2007, no sworn statement from the heirs or distributees was submitted, as required by Tennessee Code Annotated 30-2-601(b).

18. In June of 2007, the Respondent represented to the court that his copies of the bank records and his file had been lost and that payments to the beneficiaries had been made some time ago. The court advised the Respondent that he must have sworn statements from the distributees, copies of cancelled checks, or receipts from the distributees for the amounts shown in his sworn statement.

19. On November 1, 2007, the Respondent filed copies of three checks dated January 31, 2003, payable to three heirs drawn on the Respondent's bank account, totaling \$25,000.00.

20. On November 2, 2007 the Court found the Respondent guilty of civil contempt, fined the Respondent \$10.00 per day until the Respondent provided the documents required to close the estate, and suspended the Respondent from the practice of law in the Chancery Court of Hamilton County until the Respondent purged himself of contempt.

21. On November 5, 2007, the Respondent filed three additional checks payable to the heirs dated September 20, 2002, totaling an additional \$25,000.00.

22. In June of 2008, Attorney Luhowiak wrote the Respondent a letter advising the Respondent that he had been appointed by the court as administrator of the estate. Mr. Luhowiak requested the Respondent's assistance in securing documentation necessary to close the estate, including records from the Respondent's bank account. The Respondent has never contacted Attorney Luhowiak in response to this request.

23. On February 20, 2009, the Respondent filed with the Board a document entitled "Documents produced pursuant to Order filed February 16, 2009." In this filing, Respondent provided, for the first time, copies of additional checks payable to the heirs of the estate, along with some documents the Respondent indicates came from a backup computer disk in his possession. In one of these documents, he listed a gross value of the estate as \$117,954.13, which is different than the original estimated figure listed in the petition filed in 1999 (\$125,000) the Interim accounting he filed in September 2002 (\$115,000) and the sworn statement he filed in June 2007 (\$115,000).

24. On March 10, 2009, the Respondent also filed with the Board a document entitled "Documents produced pursuant to Order filed February 26, 2009." In this filing, Respondent also provided copies of some additional checks payable to the heirs of the estate.

25. Respondent has never provided any bank records to substantiate the amount which represents the actual beginning value of the estate assets. He has represented in various filings at various times that the estate assets were \$125,000, \$115,000 and \$117, 954.13, but the Respondent has never attempted to explain these discrepancies or provide documents to reconcile these different figures.

26. The Respondent has substantial experience in the practice of law, being licensed since 1979.

27. The Hearing Panel finds that the Respondent failed to diligently and competently represent his client and knowingly disobeyed his obligations to the Court.

28. The Hearing Panel finds that the Respondent's failures have made it impossible to properly close the estate which he represented.

29. The Petition for Discipline charges the Respondent with the violation of Rules of Professional Conduct 1.1, 1.3, 3.4(c), and 8.4 (a).

30. Rule of Professional Conduct 1.1 requires that an attorney "provide competent representation to a client".

31. Rule 1.1 further states that competent representation "requires legal knowledge, skill, thoroughness, and preparation reasonable necessary for the representation."

32. The Hearing Panel finds that the Respondent's failure to keep adequate records of his representation and his failure to properly and timely close the estate was a violation of Rule 1.1.

33. Rule 1.3 of the Tennessee Rules of Professional Conduct requires that a lawyer "act with reasonable diligence and promptness when representing a client."

34. The Hearing Panel finds that the Respondent's failure to close the estate timely also violated Rule 1.3.

35. Rule 3.4(c) of the Tennessee Rules of Professional Conduct prohibits a lawyer from:

- (c) knowingly disobey[ing] an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

36. The Hearing Panel finds that the Respondent violated Rule 3.4 (c). The Respondent was ordered by the Court on numerous occasions to provide accountings of the estate and to bring the estate to a close. The Respondent has knowingly disobeyed several court orders. The Respondent has refused to take adequate action to comply with the Court's orders. Time and time again, the respondent has failed to provide documentation to comply with the Orders of the Court. The estate remains open to this day, over nine years after it was opened.

37. RPC 8.4(a) provides that it is professional misconduct of a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

38. The Hearing Panel finds that the Respondent's actions violated section 8.4(c). The Respondent's actions violated RPC 1.1, 1.3, and 3.4(c) as detailed above, and those violations violate 8.4(a).

39. The Hearing Panel finds that the acts and omissions by the Respondent constitute ethical misconduct in violation of Rules of Professional Conduct 1.1, 1.3, 3.4(a) and 8.4(a).

40. The Supreme Court has adopted for use by its Hearing Panels the ABA Center for Professional Responsibility Standards for Imposing Lawyer Sanctions (ABA Standards).

41. The Hearing Panel finds that Section 4.12 of the ABA Standards is applicable in this case. Section 4.12 states:

Suspension is generally appropriate when a lawyer knows or should know what he is dealing improperly with client property and causes injury or potential injury to a client.

42. The Hearing Panel finds that Section 4.42 of the ABA Standards is applicable in this case. Section 4.42 states:

Suspension is generally appropriate when:

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

43. The Hearing Panel finds that Section 6.22 of the ABA Standards is applicable in this case. Section 6.22 states:

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.

44. The Hearing Panel finds that Section 7.2 of the ABA Standards is applicable in this case. Section 7.2 states:

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

45. The Hearing Panel finds that there are aggravating factors that apply in this case.

46. Section 9.2 of the ABA Standards sets forth several factors that may act to increase the level of discipline imposed.

47. First, the Respondent admittedly has substantial experience in the practice of law, having been licensed to practice law since 1979.

48. Second, the Hearing Panel finds that the Respondent's conduct evidences multiple offenses and a pattern of both misconduct and neglect. The Respondent knowingly disobeyed multiple court orders. He failed to provide necessary and required documentation on numerous occasions. He has been in contempt of court since November 2, 2007. There is no proof that he has ever attempted to purge himself of the contempt. The estate remains open today due to his failures.

49. Third, the Hearing panel finds that the Respondent has failed to acknowledge the wrongfulness of his conduct.

50. Fourth, the Hearing Panel finds that the Respondent has committed prior disciplinary offenses. Specifically, on July 19, 2007, a hearing panel recommended that the

Respondent be disbarred because of previous disciplinary violations. The Respondent appealed that recommendation, and it was affirmed by the Circuit Court of Hamilton County on May 1, 2008. The matter is currently pending before the Tennessee Supreme Court.

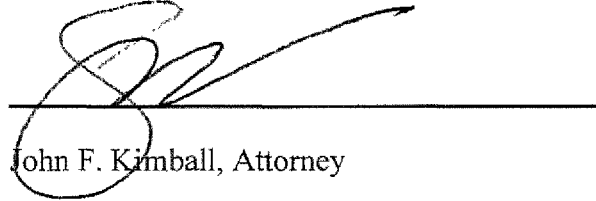
55. Despite the entry of a case management Order, the Respondent has not filed any proposed findings of fact or conclusions of law. The Respondent has not submitted to the Hearing Panel any argument or legal authorities regarding the appropriate disposition of the Petition for Discipline, with the exception of the answer filed by the Respondent to the Petition for Discipline. Respondent did file the documents referred to in Paragraphs 23 and 24 of this Judgment, but those documents leave questions unanswered and did not have the effect of eliminating any of the problems created by the Respondent's misconduct and neglect. The Respondent failed to appear for the hearing on March 18, 2009 despite having notice of the hearing. The Respondent has not alleged any mitigating factors, nor has he provided any evidence to establish any mitigating factors.

56. Disciplinary Counsel asserts that a lengthy suspension is the appropriate discipline for the actions and omissions of the Respondent. Several cases cited by the Board support the imposition of a suspension. The Hearing Panel finds the appropriate disposition of the Petition for Discipline is a suspension. The only question remaining for the Hearing Panel to decide is the length of the proposed suspension.

JUDGMENT OF THE HEARING PANEL

Based on the foregoing facts and conclusions of law, and based upon the above the aggravating factors found by the Hearing panel, this Hearing Panel recommends the Respondent receive a suspension from the practice of law for a period of one year.

HEARING PANEL:



John F. Kimball, Attorney

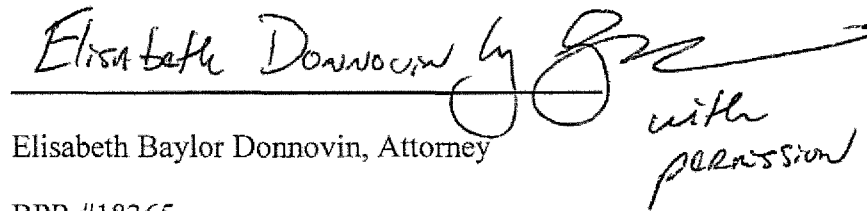
BPR #012144

462 First Street, NW

P. O. Box 1169

Cleveland, TN 37364-1169

(423) 476-8541



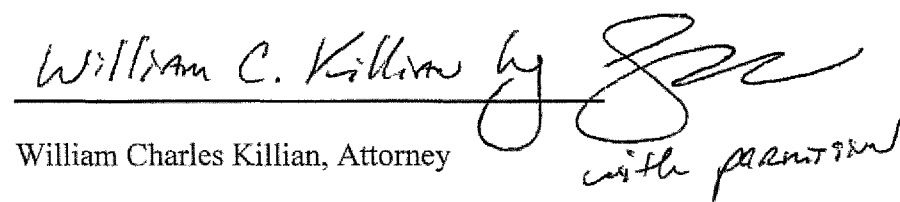
Elisabeth Baylor Donnovin, Attorney

BPR #18365

428 McCallie Avenue

Chattanooga, TN 37402

(423) 266-2300



William Charles Killian, Attorney

BPR # 2425

Number One, Oak Avenue

Jasper, TN 37347

(423) 942-5801