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2011 FEB 14 AM 9:51

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

BOARD OF PROFESSIONAL
RESPONSIBILITY

RW EXEC. SEC. 7

**IN RE: CHARLES E. STANBERY, JR.
Respondent, BPR No. 21268
An Attorney Licensed
to Practice Law in Tennessee
(Hamilton County)**

DOCKET NO. 2010-1957-3-KH

JUDGMENT OF THE HEARING PANEL

This matter came before a duly appointed Hearing Panel for final hearing on December 17, 2010. Present before the Panel was Krisann Hodges, Disciplinary Counsel for the Board of Professional Responsibility. Respondent did not appear for the hearing.

I. PROCEDURAL HISTORY

On August 8, 2010, the Board filed a Petition for Discipline against Respondent, seeking a hearing and that Respondent be disciplined. On October 22, 2010, after Respondent failed to respond to the Petition for Discipline, the Board moved for entry of a default judgment and for admission of the factual matters asserted in the Petition for Discipline. On December 8, 2010, pursuant to Section 8.2 of Rule 9 of the Rules of the Tennessee Supreme Court, the Hearing Panel entered an Order for Default deeming admitted for purposes of the hearing the facts as asserted in the Petition for Discipline. The Board notified Respondent of the time and place of the hearing but Respondent did not appear and did not file a response of any kind to the Petition for Discipline.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the matters deemed admitted, the evidence presented at the hearing, and the entire record, the Hearing Panel makes the following findings of fact and conclusions of law.

A. FINDINGS OF FACT

As a result of the entry of default judgment against Respondent, the factual assertions in the Petition for Discipline have been deemed admitted and are adopted and incorporated herein by the Hearing Panel as though fully restated herein. For clarity, some of those factual assertions have been restated below, but the restatement of some, but not all, of the factual assertions does not limit the Hearing Panel's findings of fact to those restated.

1. Respondent was temporarily suspended from the practice of law on April 14, 2010, for failure to respond to disciplinary complaints. By the time of the hearing, he had not filed a petition to dissolve the temporary suspension and, therefore, remained on temporary suspension as of the date of the hearing.

2. Respondent was suspended for noncompliance with continuing legal education requirements on September 7, 2010.

Steven McRoy

3. On April 2, 2009, Steven McRoy filed a complaint alleging ethical misconduct by Respondent in the handling of his child support case.

4. According to Mr. McRoy, Respondent failed to notify him of a hearing set for October 21, 2008. As a result, Mr. McRoy was not present when the Court heard the matter and ordered

that a wage assignment be issued. Further, the Order entered on December 9, 2008, reflecting the judgment of the Court indicates that Respondent entered into a compromise and settlement of "all remaining issues in dispute."

5. Mr. McRoy learned of the wage assignment from his employer. Respondent did not provide a copy of the December 9th Order to Mr. McRoy.

6. Respondent failed to adequately communicate with Mr. McRoy, both before and after the hearing.

7. Mr. McRoy hired a new lawyer in January 2009 who filed a motion to alter or amend on the basis that Mr. McRoy was unaware of any agreement resulting from the October 21, 2008 hearing.

Sherry Jeffrey

8. On January 11, 2010, Sherry Jeffrey filed a complaint alleging ethical misconduct by Respondent. The complaint was referred to the Consumer Assistance Program ("CAP") for the Board. Respondent failed to reply to any of CAP's inquiries. The complaint was then assigned to disciplinary counsel for investigation. Having received no response to disciplinary counsel's initial inquiry, the Board sent a Notice of Petition for Temporary Suspension to Respondent on March 17, 2010.

9. On March 25, 2010, Respondent responded to the disciplinary complaint.

10. In April 2009, Ms. Jeffrey retained Respondent to file a bankruptcy case, paying him a total of \$1,050.00 in attorney and filing fees.

11. Respondent did not file Ms. Jeffrey's bankruptcy petition until March 12, 2010, after the disciplinary complaint was filed, and almost a year after Ms. Jeffrey hired Respondent to file the

petition.

12. During the course of his representation of Ms. Jeffrey, Respondent did not communicate with Ms. Jeffrey, despite her numerous efforts to contact him.

13. On May 14, 2010, the bankruptcy court found that Respondent had provided inadequate representation to Ms. Jeffrey because he failed to file a response to the U.S. Trustee's Motion to Examine Fees Paid to [Respondent] and failed to appear at a motion hearing on May 13, 2010.

14. Respondent was ordered to disgorge the \$750 in attorney's fees charged in the case by paying Ms. Jeffrey within thirty (30) days of the order.

15. On July 16, 2010, the bankruptcy court entered an Order finding Respondent in civil contempt for failing to comply with the court's prior order of May 14, 2010.

16. The bankruptcy court further suspended Respondent from appearing in the United States Bankruptcy Court for the Eastern District of Tennessee indefinitely.

Yoko Thomas

17. On March 10, 2010, Yoko Thomas filed a complaint alleging ethical misconduct by Respondent. Having received no response to the Board's initial inquiry, the Board sent Respondent a Notice of Petition for Temporary Suspension to Respondent on March 31, 2010, advising him that it would ask the Tennessee Supreme Court to temporarily suspend him from the practice of law if he did not respond within 10 days.

18. On April 12, 2010, Respondent responded to the disciplinary complaint.

19. In early 2009, Ms. Thomas retained Respondent to file a bankruptcy case. She paid Respondent \$1,050.00 and paid for the financial counseling class, which she completed.

20. Respondent did not file the bankruptcy petition and failed to communicate with Ms. Thomas, despite her numerous efforts.

21. In his response to the Board's inquiry, the Respondent stated that he had prepared the bankruptcy petition but that he failed to file it.

22. As a result of Respondent's inaction, Ms. Thomas will be required to pay the costs for the financial counseling again.

23. In his response to the Board, Respondent advised the Board that he was suffering from depression and seeking assistance from the Tennessee Lawyer's Assistance Program ("TLAP"). However, TLAP advised the Board that it does not have a record of Respondent contacting them for assistance.

24. Respondent stated that he intended to close his private practice and apply for disability inactive status. Although it appears that Respondent has abandoned his practice, he had not applied for disability inactive status by the hearing date.

Khendra Jordan

25. On March 10, 2010, Kendra Jordan filed a complaint alleging ethical misconduct by Respondent. Having received no response to the Board's initial inquiry, the Board sent Respondent a Notice of Petition for Temporary Suspension to Respondent on April 5, 2010, advising him that it would ask the Tennessee Supreme Court to temporarily suspend him from the practice of law if he did not respond within 10 days.

26. On April 12, 2010, Respondent provided a response to the disciplinary complaint.

27. In February 2008, Ms. Jordan retained Respondent to represent her in a divorce case and paid him \$1,500.00.

28. As of the date of the filing of the Petition for Discipline, the divorce proceeding was still pending. The last time Ms. Jordan heard from Respondent was at a hearing on October 13, 2009.

29. Ms. Jordan wrote Respondent a letter on December 2, 2009, with her complaints.

30. Despite Ms. Jordan's efforts, Respondent did not communicate with her.

31. Respondent did not notify Ms. Jordan of his temporary suspension on April 14, 2010.

32. Although Respondent stated that Ms. Jordan's divorce case was tried and has been completed, the court docket for Ms. Jordan's divorce case shows that it has not been tried and completed.

Stacy Malone

33. On May 4, 2010, the Board received a complaint from Stacy Malone alleging ethical misconduct by Respondent. Having received no response to the Board's initial inquiry, the Board sent Respondent a Notice of Petition for Temporary Suspension to Respondent on June 7, 2010, advising him that it would ask the Tennessee Supreme Court to temporarily suspend him from the practice of law if he did not respond within 10 days.

34. Respondent did not respond to this complaint.

35. In March 2010, Ms. Malone retained Respondent to file a bankruptcy case. She paid Respondent a total of \$1,250.00 in attorney and filing fees. She also paid \$50.00 for the credit counseling.

36. Respondent failed to communicate with Ms. Malone and failed to provide the legal services for which he was paid.

37. When Ms. Malone called the bankruptcy court to ascertain the status of her case, she was informed that no petition had been filed on her behalf.

38. In May 2010, Ms. Malone wrote Respondent a letter with her complaints, but Respondent had not replied as of the date of the hearing.

39. As of the date of the filing of the Petition for Discipline, Respondent's telephone was disconnected and Ms. Malone had not been notified of a changed telephone number or address.

40. Respondent did not notify Ms. Malone of his temporary suspension.

Shannon L. Leeth

41. On May 4, 2010, Shannon Leeth filed a complaint alleging ethical misconduct by Respondent. Having received no response to the Board's initial inquiry, the Board sent Respondent a Notice of Petition for Temporary Suspension to Respondent on June 7, 2010, advising him that it would ask the Tennessee Supreme Court to temporarily suspend him from the practice of law if he did not respond within 10 days. By this time, however, Respondent already had been temporarily suspended for his failure to respond to earlier complaints.

42. As of the date of the hearing, Respondent had not responded to this complaint.

43. On April 16, 2010, Ms. Leeth paid Respondent \$750.00 in cash to file an uncontested divorce.

44. Later, Ms. Leeth learned that Respondent had been temporarily suspended on April 14, 2010, and was prohibited from taking on any new cases.

45. On or around April 25, 2010, Ms. Leeth called Respondent to inquire about his licensure status.

46. According to Ms. Leeth, Respondent informed her that he was able to practice law.

47. Further, Respondent told Ms. Leeth he was not suspended and scheduled another meeting with her for April 27, 2010.

48. Prior to the April 27, 2010, meeting, Ms. Leeth attempted to contact Respondent but all the telephone had been disconnected and he had vacated his office.

Kelly Payne

49. On May 19, 2010, Kelly Payne filed a complaint alleging ethical misconduct by Respondent. Due to Respondent's failure to answer, the Board sent Respondent a Notice of Petition for Temporary Suspension on June 15, 2010, advising him that it would ask the Tennessee Supreme Court to temporarily suspend him from the practice of law if he did not respond within 10 days. By this time, Respondent already had been suspended for his failure to respond to earlier disciplinary complaints.

50. Respondent did not provide a response to this complaint.

51. Ms. Payne hired Respondent in February 2010 to handle a divorce case. The total legal fees paid by Ms. Payne are \$1,007.50.

52. Respondent advised Ms. Payne that he would file the petition for divorce and that after ninety (90) days, they would be able to set a hearing date.

53. Ms. Payne waited for ninety (90) days and then began attempting to contact Respondent, but to no avail. She discovered that his phone had been disconnected. Further, she visited his office only to learn that he had vacated the premises.

54. Ms. Payne called the clerk of court to ascertain whether a petition had been filed. She was informed that no petition had been filed.

55. Additionally, Ms. Payne learned from the clerk that Respondent had been suspended from the practice of law.

56. Respondent failed to notify Ms. Payne of his suspension so that she could make

arrangements to have another attorney handle her case. Respondent did not refund any of her money.

Leslie Marsh

57. On May 6, 2010, a complaint was filed by Leslie Marsh alleging ethical misconduct by Respondent. Due to Respondent's failure to answer the Board's initial inquiry, a Notice of Petition for Temporary Suspension was sent to Respondent on June 9, 2010. However, by this time, Respondent had been suspended for failure to respond to earlier disciplinary complaints.

58. Respondent never answered Ms. Marsh's complaint.

59. Ms. Marsh hired Respondent to handle a Chapter 7 bankruptcy. She paid him \$200.00.

60. About a week prior to the filing of the disciplinary complaint, Ms. Marsh attempted to contact Respondent to no avail.

61. She learned that his phone had been disconnected and his office was vacant.

62. Respondent failed to notify Ms. Marsh of his temporary suspension so that she could make arrangements to have another attorney handle her case.

63. Respondent did not refund any of Ms. Marsh's money.

Jody Jenkins

64. On May 18, 2010, Jody Jenkins filed a complaint alleging ethical misconduct by Respondent. Due to Respondent's failure to answer the Board's initial inquiry, a Notice of Petition for Temporary Suspension was sent to Respondent on June 9, 2010. However, by this time, Respondent had been suspended for failure to respond to earlier disciplinary complaints.

65. Respondent never answered Mr. Jenkins's complaint.

66. Mr. Jenkins hired Respondent to represent him in a divorce and child support matter.

67. He paid Respondent \$1,500.00 in legal fees.
68. According to Mr. Jenkins, Respondent did not file any pleadings in the case.
69. Mr. Jenkins has tried to find Respondent to ascertain the status of his case to no avail.
70. Respondent failed to notify Mr. Jenkins of his suspension so that he could make arrangements to have another attorney handle the case.
71. Respondent did not refund any of Mr. Jenkins's money.

Eric Slaughter

72. On July 18, 2010, Eric Slaughter filed a complaint alleging ethical misconduct by Respondent. On July 23, 2010, the Board sent a copy of the complaint to Respondent requesting a response within ten (10) days.

73. Respondent did not respond to the complaint within the time requested or ever.

74. Mr. Slaughter hired Respondent to represent him in a divorce. The divorce was filed in January 2010.

75. After hiring Respondent, Mr. Slaughter was unable to communicate with Respondent about the status of his case.

76. Respondent failed to provide satisfactory information to Mr. Slaughter about the status of the case.

77. According to Mr. Slaughter, Respondent failed to follow up on an Order of Protection filed against his wife. Further, the divorce had not been finalized as of the date of the filing of the Petition for Discipline.

Howard Hughes, Sr.

78. On June 17, 2010, Howard Hughes, Sr., filed a complaint alleging ethical misconduct

by Respondent. On June 21, 2010 and July 30, 2010, the Board sent inquiries to Respondent regarding the disciplinary complaint.

79. Respondent did not respond to Mr. Hughes's complaint.

80. Mr. Hughes hired Respondent to represent him in a Chapter 7 bankruptcy matter in February 2009.

81. Mr. Hughes paid Respondent \$2,000.00 in legal fees.

82. According to Mr. Hughes, Respondent has failed to communicate with him since February 2009.

83. Mr. Hughes attempts to contact Respondent were unsuccessful. Mr. Hughes learned that Respondent's phone had been disconnected.

84. Mr. Hughes reported that creditors were making demands to which he did not know how to respond.

Trust Account Overdrafts

85. On December 15, 2009 and January 25, 2010, FSG Bank ("FSG") notified the Board that Respondent's attorney trust account was overdrawn.

86. On December 15, 2009, an item in the amount of \$280.00 was presented for payment, but the account balance was \$103.78, so the item was not honored.

87. On January 25, 2010, an item in the amount of \$50.00 was presented for payment and the item was honored, leaving an account balance of (\$594.22).

88. On March 11, 2010, the Board received notice from FSG that Respondent's attorney trust account was again overdrawn.

89. An automatic debit in the amount of \$285.41 was attempted on three separate occasions

on the account, but because the funds in the account were not enough to cover the amount of the debit, FSG did not honor it.

90. As of March 23, 2010, FSG stated the account was overdrawn by \$51.69.

91. On April 5, 2010, FSG notified the Board of an additional overdraft from Respondent's attorney trust account.

92. On April 5, 2010, an item in the amount of \$357.43 was presented for payment, but the account balance was (\$51.69), so the item was not honored.

93. On April 9 and 12, 2010, FSG notified the Board of additional overdrafts on Respondent's attorney trust account.

94. On April 9, 2010, an item in the amount of \$357.43 was presented for payment, but the account balance was (\$82.69), so the item was not honored.

95. On April 12, 2010, an item in the amount of \$357.42 was presented for payment but the account balance was (\$113.69), so the item was not honored.

96. Respondent did not provide a response or explanation to the Board regarding the overdrafts until April 12, 2010.

97. In his letter, Respondent stated that one of the overdrafts was due to his writing a check from the trust account that should have been drawn on his operating account.

98. Respondent later informed Disciplinary Counsel that he had been using his trust account for operating expenses.

Contempt of Bankruptcy Court

99. The Board received several Orders from the United States Bankruptcy Court for the Eastern District of Tennessee finding Respondent guilty of contempt of court.

100. The Board sent a copy of each of these Orders to Respondent and asked for a response to the allegations of disciplinary misconduct.

101. Respondent failed to provide any response regarding these cases.

102. On June 18, 2010, the United States Bankruptcy Court for the Eastern District of Tennessee entered an Order in the matter of In Re: James M. Morton and Cathy Louise Morton, No. 06-11093, suspending Respondent from practice in the bankruptcy court.

103. The Court entered an order of civil contempt against Respondent on May 17, 2010; however, the Court permitted Respondent one final opportunity to purge the contempt. Respondent did not purge himself of contempt and the Court suspended him indefinitely.

104. On July 1, 2010, the United States Bankruptcy Court for the Eastern District of Tennessee entered an Order in the matter of In Re: Joe Glenn Allmon, III. And Melissa Jean Allmon, No. 09-16577, finding Respondent in civil contempt for failing to respond to the Court's prior orders.

105. Respondent failed to timely file a financial management course certificate on behalf of his client, thus causing the Chapter 7 case to be closed without discharge.

106. Although Respondent filed the certificate the day after the discharge, he failed to file a Motion to Reopen the case.

107. The U.S. Trustee was contacted by the debtor and filed a Motion to Reopen. Respondent failed to appear at any of the subsequent hearings and failed to file a response to a show cause Order.

108. On July 29, 2010, the United States Bankruptcy Court for the Eastern District of Tennessee entered an Order in the matter of In Re: David Anthony Phillips and Patricia Jean

Phillips, No. 09-17502, finding Respondent in civil contempt.

109. Respondent failed to respond to the Court's prior order requiring him to disgorge attorney's fees.

110. Respondent failed to comply with the Order.

111. On July 29, 2010, the United States Bankruptcy Court for the Eastern District of Tennessee entered an Order in the matter of In Re: James Henry Boles, No. 08-14410, finding Respondent in civil contempt for failing to respond to the Court's prior orders.

112. Respondent failed to file a financial management course certificate on behalf of his client, thus causing the Chapter 7 case to be closed without discharge.

113. The U.S. Trustee was contacted by the debtor and filed a Motion to Reopen.

114. Respondent failed to appear at any of the subsequent hearings and failed to file a response to a show cause Order.

115. On August 5, 2010, the United States Bankruptcy Court for the Eastern District of Tennessee entered an Order in the matter of In Re: Paul Leroy Fulghum, Jr., No. 09-16575, finding Respondent in civil contempt for failing to respond to the Court's prior orders.

116. Respondent failed to timely file a financial management course certificate on behalf of his client, thus causing the Chapter 7 case to be closed without discharge.

117. The U.S. Trustee was contacted by the debtor and filed a Motion to Reopen.

118. Respondent failed to appear at any of the subsequent hearings and failed to file a response to a show cause Order.

CONCLUSIONS OF LAW

Based on the Hearing Panel's findings of fact, the Hearing Panel finds that Respondent abandoned his practice, failed to communicate with his clients, failed to adequately represent his clients, failed to comply with court orders, and failed to notify his clients of his suspension. The Hearing Panel also finds that Respondent's actions and inaction adversely affected the complainants, the courts, opposing counsel, opposing parties, and the Board. Consequently, the Hearing Panel finds by a preponderance of the evidence that Respondent violated the Rules of Professional Conduct as discussed below.

A. Violations of Duties Owed to Clients

All of the complaints from former clients demonstrate that Respondent violated RPC 1.3 (Diligence) and 1.4 (Communication). Respondent's lack of communication and failure to properly comply with Section 18 resulted in an abandonment of practice and caused serious injury to his clients. In the Jeffrey, Thomas, Jordan, Malone, Leeth, Payne, Marsh, Jenkins, Slaughter, and Hughes matters, Respondent accepted legal fees from clients and then failed to perform the work for which he was hired. Respondent's misconduct resulted in severe injury and/or subjected these clients to potentially severe injury. Additionally, the cases for which he was actually held in contempt by the Bankruptcy Court demonstrate that the Court, the bankruptcy trustee, and other third parties were adversely affected by his failure to abide by the Court's Orders.

In the Thomas, Malone, Leeth, Payne, Marsh, Jenkins and Slaughter matters, Respondent took fees from clients without performing any legal work. Respondent also failed to alert these clients to his temporary suspension, which prevented them from obtaining appropriate legal

representation in a timely fashion. He has not refunded their legal fees.

The Respondent abandoned his practice without providing his clients any notice that he was going to do so or that he was terminating his representation of them. When they called or tried to communicate with Respondent, they discovered his phone had been disconnected and he had apparently moved.

ABA Standards 4.11, 4.41, 4.51, 4.61, and 7.1 apply to the violations of diligence, neglect, and lack of communication in this case.

B. Misrepresentation

In the Jordan, Thomas, and Leeth cases, Respondent failed to truthfully advise his clients about the status of their cases and his status as an attorney. Respondent also may have misrepresented to the Board that he was seeking disability inactive status and contacting TLAP for assistance. By his actions, Respondent has violated RPCs 1.4 and 8.4(a), (c) and (d). ABA Standards 4.6 and 7.1 apply.

C. Failure to Respond to Disciplinary Complaints

Respondent's consistent failure to respond to these disciplinary complaints is a violation of RPC 8.1. In all but four of the twenty complaints, Respondent failed to provide any response to the disciplinary complaints. Respondent filed untimely responses in all of the remaining complaints. Respondent's actions (or inaction) violate RPC 8.1. The aggravating factors set forth below justify an increase in the degree of discipline.

D. Contempt of Court

As further evidence of Respondent's abandonment of his clients and his legal practice, the United States Bankruptcy Court for the Eastern District of Tennessee entered six (6) Orders

finding Respondent in contempt of court. These Orders state that despite being given opportunity to respond, Respondent failed to follow the orders of the Court. As a consequence, Respondent caused injury to his clients, the bankruptcy trustee, the Court, and the administration of justice. As a result, Respondent violated RPC 3.4(c) in addition to RPCs 1.1, 1.3, 1.4, 8.1, and 8.4 (a) and (d). ABA Standard 7.1 applies to these matters.

E. Aggravating Factors

Pursuant to ABA Standard 9.22, finds a number of aggravating factors are present in this case. Respondent has had a prior disciplinary offense (private informal admonition issued on March 1, 2008). By failing to refund legal fees and by failing to truthfully advise his clients as to the status of their cases and his status as an attorney, Respondent demonstrated dishonest or selfish motives. The number of offenses, which are similar in nature, demonstrate a pattern of misconduct and constitute multiple offenses. By failing to respond to inquiries by the Board in relation to disciplinary complaints, Respondent demonstrated a bad faith obstruction of the disciplinary proceeding. Respondent has substantial experience in the practice of law. Finally, Respondent victims were particularly vulnerable in that many were bankruptcy clients who were injured further by Respondent's failure to refund unearned legal fees and by the predicament in which they were placed, *vis-à-vis* their creditors, by Respondent's inaction.

JUDGMENT

Based on the findings of fact and conclusions of law, the Hearing Panel finds that the Respondent should be disbarred and orders that Respondent pay restitution to the following complainants in the following amounts.

- a. Sherry Jeffrey: \$1,050.00
- b. Yoko Thomas: \$1,050.00

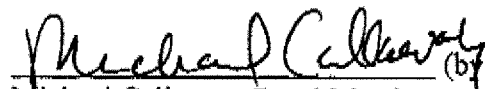
- c. Khendra Jordan: \$1,500.00
- d. Stacy Malone: \$1,250.00
- e. Shannon Leeth: \$750.00
- f. Kelly Payne: \$1,007.50
- g. Leslie Marsh: \$200.00
- h. Jody Jenkins: \$1,500.00
- i. Howard Hughes, Sr.: \$2,000.00
- j. Steven McRoy: total fees paid to Respondent but not refunded as of the date of the entry of this Order.
- k. Eric Slaughter: total fees paid to Respondent but not refunded as of the date of the entry of this Order

Pursuant to Tenn. S. Ct. R. 9, Respondent is responsible for all costs in this cause.

IT IS SO ORDERED,



Elisabeth Donnovin, Panel Chair



Michael Callaway, Panel Member

(by EBD with express permission)



Cara Alday, Panel Member

(by EBD with express permission)