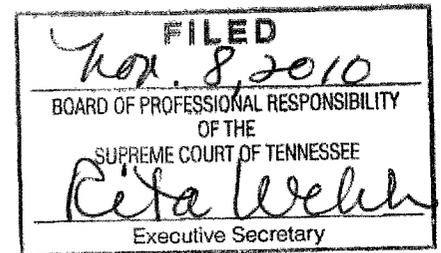


IN THE DISCIPLINARY DISTRICT II OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



RE: KATHY B. STILLMAN
BPR No. 20298, Respondent
An attorney licenses and admitted to the
practice of law in Tennessee
(Knox County)

BOPR DOCKET NO. 2010-1937-2-CM

JUDGMENT OF THE HEARING PANEL

This matter came for a hearing on October 27, 2010, before a Hearing Panel of the Board of Professional Responsibility. The Respondent, having been properly served with a Notice of the hearing at the address she had specified to the Board, failed to appear at the hearing.

STATEMENT OF THE CASE

The Board of Professional Responsibility (herein after "The Board"), filed a Petition for Discipline on June 9, 2010. The Petition was served upon Respondent via certified mail and was returned to The Board "unclaimed." The Board filed a Motion for Default Judgment on July 22, 2010. Respondent did not file a response to The Board's Motion. On September 13, 2010, the Hearing Panel entered an Order Granting the Board's Motion for Default Judgment. As a result of the Order of Default, the allegations contained within the Petition for Discipline are deemed admitted pursuant to Tenn. Sup. Ct. R. 9, § 8.2. It should be noted that the Respondent was given ample opportunity to respond to the Motion for Default Judgment but that no response was received from Respondent. Furthermore, the Panel notes that Ms. Stillman was served by regular and certified mail with the original Complaint which subsequently led to the Petition for Discipline and this was served on Ms. Stillman via certified mail which enclosed both the Complaint and a Notice of Petition for Temporary Suspension

upon her failure to reply to the Complaint within ten (10) days. The Complaint and Notice of Petition for Temporary Suspension was received and signed for by Ms. Stillman on December 21, 2009. She never responded. As a result, the Board suspended Ms. Stillman pursuant to § 4.3 of Rule 9, Rules of the Supreme Court.

FINDINGS OF FACT

Pursuant to the Hearing Panel's Order of Default entered on September 13, 2010, certain facts have been admitted. These include the facts concerning the Complaint of Kenneth Allen Wolfe, Jr. Those facts are set out below.

File No. 32580-2-KB-Complaints of Kenneth Allen Wolfe, Jr.

On October 5, 2007, Complainant Kenneth Allen Wolfe, Jr. retained Ms. Stillman in a divorce and related domestic matters. The evidence reflects that through the period of representation, he paid Ms. Stillman a total of \$2,175.00 in legal fees and \$127.00 for a filing and service fee. Ms. Stillman subsequently failed to communicate with Mr. Wolfe, failed to represent him with diligence, and failed to properly withdraw from representation. When Mr. Wolfe filed his Memorandum of Complaint with The Board in October, 2009, he was distraught. The record reflects that he could not find Ms. Stillman to obtain her assistance and he complained that she had done practically nothing in his case.

The Board forwarded Ms. Stillman his Complaint but did not receive a response. After several attempts at contacting Ms. Stillman, both by regular and certified mail, The Board advised her that her license would be temporarily suspended if she failed to reply to the Complaint within ten (10) days. As set out above, a certified letter enclosing the Complaint and a Notice of Petition for Temporary Suspension was received and signed for by Ms. Stillman on

December 21, 2009, but she still never responded and as a result The Board suspended her pursuant to § 4.3 of Rule 9, Rules of the Supreme Court.

ANALYSIS

The Panel would rather have had a response from the Respondent and the benefit of hearing the Respondent's position in this matter. The Panel has been careful to make sure the Respondent has had ample time to respond to the Petition for Discipline. Furthermore, at the hearing of this matter the Panel questioned service on Ms. Stillman since she did not respond to the Petition for Discipline and furthermore did not appear or attend the hearing on sanctions held on October 27, 2010 in Knox County. The record reflects that The Board directed the Notice of Hearing as to Sanctions to Ms. Stillman at every address available to them and the addresses that Ms. Stillman had given to The Board. The mailed Notice of Hearing as to Sanctions had not been returned to The Board "unclaimed." There is a presumption of delivery once mail is sent, the mail was not returned, and the Board made diligent and reasonable attempts to provide Ms. Stillman with notice of the hearing. As indicated in this opinion, Ms. Stillman did sign for receipt of the Notice of Petition for Temporary Suspension and of Mr. Wolfe's Complaint which confirms that she received that information. However, she never responded. The Panel is confident that every appropriate action was taken to notify Respondent of the proceedings.

The facts alleged in the Petition were deemed admitted so the Panel met on October 27, 2010, to hear from the parties on the issue of what discipline should be imposed. The Respondent did not attend to state her position and no mitigating factors have been suggested by The Board.

Based upon the Oder of Default and the record, the Panel finds the Respondent has violated Rules 1.3, 1.4, 1.16, 8.1 and 8.4 of the Tennessee Rules of Professional Conduct. When

disciplinary violations are established, the appropriate discipline should incorporate the *ABA Standards for Imposing Lawyer Sanctions*, (“ABA Standards”) pursuant to § 8.4, Rule 9 of Tenn. Sup. Ct. With regard to Respondent’s violation of RPC 1.3, the ABA Standards warrant not less than a suspension.

RPC 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. In this case, Mr. Wolfe reported that Ms. Stillman began work on his case after he paid a retainer. He had the impression that the retainer would cover the divorce and a custody dispute. Shortly after he hired her, Ms. Stillman obtained a dismissal of a protective order against him. According to Mr. Wolfe, beyond that Ms. Stillman took little or no action on the case. As a result of her inaction, Mr. Wolfe asked her legal secretary how to subpoena witnesses and did so without Ms. Stillman’s assistance. He stated that Ms. Stillman made haphazard attempts to get through the courtroom proceedings. He complained that he painstakingly maintained a complete file of the case on his own behalf, rather than Ms. Stillman. He handed her filed documents in the midst of court appearances because she was unfamiliar with the case and unprepared for court. He asked her whether she was his lawyer or he was her’s. The applicable ABA Standards are as follows:

A. Lack of Diligence

- 4.41 Disbarment is generally appropriate when:
- (a) A lawyer abandons the practice and causes serious or potentially serious injury to a client;
 - (b) A lawyer not only fails to perform services for a client and causes a serious or potentially serious injury to a client;

- (c) A lawyer engages in a pattern of neglect with respect to client matters and causes serious and potentially serious injury to a client.

B.

4.42 Suspension is generally appropriate when:

- (a) A lawyer knowingly fails to perform the services for the client and causes an injury or potential injury to a client;
- (b) A lawyer engages in a pattern of neglect with respect to client matters and causes serious and potentially serious injury to a client.

As a result of the Order of Default, Ms. Stillman has also found to have violated the following Tennessee Rules of Professional Conduct:

**Rule 1.4(a)
COMMUNICATION**

(a) A lawyer shall keep a client reasonably informed about the status of a matter and comply with reasonable requests for information within a reasonable time.

**Rule 1.16
DECLINING AND TERMINATING REPRESENTATION**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of the client if:

- (1) The representation will result in a violation of the Rules of Professional Conduct or other law; or
- (2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) The lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer shall withdraw from the representation of a client if the withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

- (1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

- (2) the client has used the lawyer's services to perpetrate a crime or fraud;
- (3) a client insists upon pursuing an objective or taking action that the lawyer considers repugnant or imprudent;
- (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (5) the representation will result in an unanticipated and substantial financial burden on the lawyer or has been rendered unreasonably difficult by the client;
- (6) other good cause for withdrawal exists; or
- (7) after consultation with the lawyer, the client consents in writing to the withdrawal of the lawyer.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of the representation of a client, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including:

- (1) giving reasonable notice to the client so as to allow time for the employment of other counsel;
- (2) promptly surrendering papers and property of the client and any work product prepared by the lawyer for the client and for which the lawyer has been compensated;
- (3) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse affect on the client with respect to the subject matter of the representation;
- (4) promptly refunding to the client any advance payment for expenses that have not been incurred by the lawyer; and
- (5) promptly refunding any advance payment for fees that have not been earned.

Rule 8.1(b)
BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) ...
- (b) fail to disclose a fact necessary to correct a misapprehension of material fact known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Rule 8.4(d)
MISCONDUCT

It is professional misconduct for a lawyer to:

- (a)-(c) ...
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e)-(g) ...

In this case the Panel finds that Ms. Stillman knowingly failed to perform services for a client that caused injury or potential injury to the client and engaged in a pattern of neglect with respect to client matters that caused an injury or potential injury to a client. Furthermore, Ms. Stillman failed to properly communicate with Mr. Wolfe and did not keep him reasonably informed about the status of his case, therefore violating Rule 1.4(a). The Panel finds that she also violated Rule 1.16 since she did not withdraw from representing Mr. Wolfe in conformance with the Rule after her representation of him had commenced.

The Panel finds that Ms. Stillman violated Rule 8.1(b) since she knowingly failed to respond to a lawful demand for information from a disciplinary authority, even after the certified mail receipt proof that she received the demand for information and a response to Mr. Wolfe's Complaint. Finally, the Panel finds that Ms. Stillman violated Rule 8.4(d) in that she engaged in

conduct that was prejudicial to the administration of justice, including failure to respond to repeated requests from The Board for information or a response to the Complaint.

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanctions to impose against the Respondent. The following aggravating circumstances justify an increase in the discipline to be imposed against the Respondent.

1. The Respondent's pattern of misconduct. As a result of a previous Petition for Discipline involving fifteen (15) client complaints, Ms. Stillman was suspended on July 1, 2010 for one (1) year and was required to make restitution in the amount of \$16,160.00 as a condition of her reinstatement. The allegations of the previous Petition for Discipline included complaints that Ms. Stillman failed to communicate, failed to represent clients diligently, and took money without performing legal services (BPR Docket No. 2009-1836-2-RS). She never filed an answer to said Petition for Discipline.

2. In addition, she was suspended for CLE non-compliance in September 2009, suspended for nonpayment of BOPR fees in October 2009 and was suspended under § 4.3 for failure to respond to the Board of Professional Responsibility in January of 2010. Prior discipline has not deterred subsequent misconduct. The Panel therefore finds:

- a. A pattern of misconduct;
- b. Multiple offenses;
- c. Bad Faith obstruction of the disciplinary proceeding by intentionally failing to comply with Rules or orders of the disciplinary agency.

3. The Respondent's substantial experience in the practice of law having been licensed since 1999.

No mitigating factors were submitted by the Respondent and the Panel finds no mitigating factors in the record.

The Panel has examined the facts of other cases in which suspension has occurred and determined that proportionality calls for a suspension of three (3) years in addition to the one (1) year suspension previously ordered for Ms. Stillman. Furthermore, the Panel finds that one half (1/2) of the fee paid by Complainant Wolfe shall be returned in restitution by Ms. Stillman as a condition to reinstatement. This amounts to \$875.00. Furthermore, as condition of reinstatement, the Panel will require a practice monitor and monthly reports to the Board for a period of six (6) months.

The Tennessee Supreme Court has imposed a suspension in similar cases for a lack of diligence and other violations. For example: In Re: David B. James: on January 7, 2005 the Supreme Court of Tennessee entered an order suspending Mr. Jones for one (1) year for neglecting his client's bankruptcy case. In Re: Fernando J. Ramos: Mr. Ramos was suspended for three (3) years for neglecting a client's bankruptcy matter. In Re: Reece Bagwell, Jr. the respondent was suspended for two (2) years for failing to return unearned fees, failing to withdraw from employment, failing to competently and zealously represent his client and failed to preserve the identity and property of a client. In Re: Bonnie J. Anderson-Yarling: the respondent was suspended for eighteen (18) months by order entered August 27, 1987. She failed to file an answer and a motion for default judgment was granted. She neglected the cases of three (3) of her clients, did not return files upon request and did not respond to numerous inquiries by The Board after complaints were filed. The Panel has considered all less severe forms of discipline and finds that they would be insufficient.

JUDGMENT

Based upon the admitted facts, the applicable ABA Standards, other disciplinary decisions and existing aggravating circumstances, it is the recommendation of the Hearing Panel that Respondent should receive a three (3) year suspension in addition to rather than concurrent with the one (1) year suspension already in place for Ms. Stillman. As conditions to reinstatement, Ms. Stillman should be ordered to pay restitution of \$875.00 representing one half (1/2) of the fees paid to her by Complainant Wolfe and that Ms. Stillman be supervised by a practice monitor with monthly reports to The Board for a period of six (6) months.

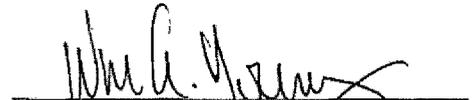
This the 3rd day of November, 2010.

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