

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

**IN RE: ALEXANDER STEVEN VANBUREN
BPR # 023069, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Washington County)**

DOCKET No. 2009-1843-1-RS

JUDGMENT AND RECOMMENDATION OF THE HEARING PANEL

This matter came to be heard before a duly appointed hearing panel of the Board of Professional Responsibility on January 21, 2010. After reviewing all the evidence and the applicable ABA standards, this Hearing Panel makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. A Petition for Discipline was filed on August 31, 2009.
2. The Petition was sent via regular and certified mail and notification of receipt was returned to the Disciplinary Counsel on September 6, 2009.
3. A Supplemental Petition for Discipline was filed on October 1, 2009.
4. The Supplemental Petition was sent to Respondent via regular and certified mail and receipt was returned to Disciplinary Counsel as unclaimed on October 28, 2009.
5. Section 8.2 of Rule 9 provides that Respondent shall serve his answer upon Disciplinary Counsel and file the original with the Board within twenty days after service of the Petition, unless such time is extended by the Chair. In the event the Respondent fails to answer,

the charges shall be deemed admitted; provided, however, that a Respondent who fails to answer within the time provided may obtain permission of the Chair (of the Board) to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect. No answer or response to the Petition for Discipline was filed with the Executive Secretary of the Board of Professional Responsibility and no answer or response was served on Disciplinary Counsel within the time permitted by Section 8.2 of Rule 9.

6. The time for filing the answer or response was not extended by the Chair of the Board of Professional Responsibility, nor was a request or motion for an extension of time made or filed by Respondent to answer or respond to the Petition for Discipline.

7. On December 23, 2009, the Hearing Panel granted the Board's Motion for Default Judgment and deemed the facts in the Petition and Supplemental Petition to be admitted.

FINDINGS OF FACTS

PETITION FOR DISCIPLINE

FILE NO. 31560-1-KB (HIKMAT MANSOUR)

8. On October 6, 2008, the Board of Professional Responsibility received a complaint concerning the Respondent filed by Hikmat Mansour. This complaint was designated as File No. 31560-1-KB. Pursuant to Rule 9, Rules of the Supreme Court, Respondent was notified of the complaint and afforded an opportunity to respond. A copy of the complaint is attached to the Petition for Discipline as Exhibit A. A copy of the Respondent's response to the complaint is attached to the Petition for Discipline as Exhibit B.

9. On or about January, 2007, Respondent was retained by Complainant to represent Complainant's son in a civil rights action in federal court.

10. Outside counsel from the Washington, D.C. area drafted the original complaint and another Tennessee attorney acted as local counsel until his subsequent withdrawal from the case.

11. Respondent filed a notice of appearance to act as local counsel for Complainant on February 1, 2007.

12. Respondent did very little in his representation of Complainant, including the failure to conduct adequate discovery and preparation for a March 3, 2008, trial date.

13. Complainant also had great difficulties in his communications with Respondent as did counsel from Washington, D.C.

14. On February 5, 2008, the federal court filed an order that stated that the parties had not filed witness lists or an agreed pretrial order as required by the court's scheduling order and that it was apparent the parties were not ready for trial.

15. The court ordered a new scheduling order and reset Complainant's trial date for February 23, 2009.

16. Complainant and his counsel from Washington, D.C., continued to have communication problems with Respondent, and in March and April, 2008, Complainant made repeated requests for his file from Respondent.

17. Respondent did not respond to said requests.

18. On October 16, 2008, Complainant's Washington, D.C., counsel had a telephonic conference with the judge and counsel for defendants to report that minimal discovery had been taken and that Complainant intended to change local counsel.

19. The court canceled the February 23, 2009, trial date and ordered Complainant to

advise the court within sixty (60) days of his new attorney.

FILE NO. 31603-1-KB (SUSAN MAHAR)

20. On October 31, 2008, the Board of Professional Responsibility received a complaint concerning the Respondent filed by Susan Mahar. This complaint was designated as File No. 31603-1-KB. Pursuant to Rule 9, Rules of the Supreme Court, Respondent was notified of the complaint and afforded an opportunity to respond. A copy of the complaint is attached to the Petition for Discipline as Exhibit C. A copy of the Respondent's response to the complaint is attached to the Petition for Discipline as Exhibit D.

21. On June 30, 2005, Complainant paid Respondent \$5,000.00 to represent Complainant in a civil action for the recovery of personal property.

22. Respondent provided adequate representation through November 2007.

23. In December 2007, Respondent ceased working on Complainant's case and failed to communicate with Complainant.

24. In June, 2008, Complainant retained other counsel to determine the status of Complainant's case, make contact with Respondent, and determine whether Respondent was diligently representing Complainant in her civil action.

25. On June 6, 2008, Complainant's other counsel sent written correspondence to Respondent but received no response.

26. On July 24, 2008, Complainant's other counsel telephoned Respondent and was informed that Respondent had been ill, was missing long periods of work due to hospitalization, was in the process of closing his practice, and believed that Complainant was hiring other counsel to pursue her case.

27. On July 30, 2008, Complainant's other counsel sent a certified letter to Respondent expressing Complainant's displeasure with Respondent's representation, demanding a refund of the retainer fee, and requesting that Respondent send certain personal property to Complainant's other counsel.

28. Said letter went unclaimed.

29. Complainant eventually hired a private investigator who personally served said letter upon Respondent on August 29, 2008.

30. Respondent has ignored Complainant's requests and has failed to take further action in the case.

31. Respondent failed to appear for a docket call in August 2008, and a subsequent docket call on May 12, 2009.

32. The defendant has filed a motion for summary judgment set for May 18, 2009.

33. Respondent has failed to formally withdraw from Complainant's civil action.

34. On May 26, 2009, the Circuit Court entered an order for the Respondent to appear on June 15, 2009, to show why he should not be held in contempt of court for unilaterally withdrawing from representation of the Complainant. A true and exact copy of that Order is attached to the Petition for Discipline as Exhibit E.

35. The Respondent failed to appear on June 15, 2009.

36. On June 15, 2009, the Court entered an Order of Attachment ordering the Sheriff of Washington County to "ATTACH the body of Attorney Alex Steven Vanburen and to incarcerate him pending further order of this Court." A true and exact copy of this Order of Attachment is attached to the Petition for Discipline as Exhibit F.

37. Respondent has failed to respond to requests for additional information from disciplinary counsel.

FILE NO. 31661c-1-KB (BENJAMIN FULCHER)

38. On October 14, 2008, the Board of Professional Responsibility's Consumer Assistance Program received a request for assistance concerning the Respondent filed by Benjamin Fulcher. When the Respondent failed to respond to the Consumer Assistance Program, the file was transferred to Disciplinary Counsel and designated as File No. 31661c-1-KB. Pursuant to Rule 9, Rules of the Supreme Court, Respondent was again notified of the complaint and afforded an opportunity to respond. A copy of the complaint is attached to the Petition for Discipline as Exhibit G. A copy of the Respondent's response to the complaint is attached to the Petition for Discipline as Exhibit H.

39. In 2006, Complainant paid Respondent \$4,000.00 to represent him in a juvenile court custody matter.

40. Respondent adequately represented Complainant until on or about July, 2008.

41. Complainant made repeated attempts to contact Respondent but Respondent failed to return any calls.

42. Complainant lived approximately 500 miles from the court.

43. On one instance, Complainant was half way to court for a scheduled hearing before Respondent contacted Complainant and told Complainant that the matter had been rescheduled.

44. Respondent failed to give Complainant the new court date and Complainant is uncertain whether Respondent appeared in court on his behalf.

45. Complainant later contacted the juvenile court and was given the new court date. Complainant never heard from Respondent again and was forced to appear in court without his counsel.

46. Without the benefit of the representation of the Respondent that he had paid for, Complainant agreed to settle the custody matter for less parenting time than what Complainant felt was deserved.

47. Respondent never formally withdrew from the case.

48. Respondent has failed to respond to additional requests for information from disciplinary counsel.

49. The acts and omissions by the Respondents constitute ethical misconduct in violation of Rules of Professional Conduct 1.3, 1.4, 1.16(a)(2), 8.1(b) and 8.4:

SUPPLEMENTAL PETITION FOR DISCIPLINE

FILE NO. 32347-1-KB (Keilan Livingston)

50. On July 15, 2009, the Board of Professional Responsibility received a complaint concerning the Respondent filed by Keilan Livingston. This complaint was designated as File No. 32347-1-KB. Pursuant to Rule 9, Rules of the Supreme Court, Respondent was notified of the complaint and afforded an opportunity to respond. A copy of the complaint and each of the Board's requests for a response are attached to the Supplemental Petition for Discipline as Exhibit A.

51. The Respondent failed to respond and was temporarily suspended from the practice of law by the Tennessee Supreme Court on September 21, 2009. A copy of the Supreme Court's Order is attached to the Supplemental Petition for Discipline as Exhibit B.

52. Respondent represented Complainant in a child custody and visitation matter. Respondent received a fee of \$3,200.00 for the representation.

53. On December 10, 2008, the court conducted a hearing in the matter and ordered that the parents were to continue to make joint decisions in areas affecting the child and that Respondent's client was confirmed as the primary custodial parent.

54. The court requested that Respondent prepare an order to reflect the decision of the court.

55. Respondent has failed to prepare and submit an order to the court and has failed to respond to requests for information from Complainant.

56. The court eventually appointed alternate counsel to represent Complainant and an order was presented to the court on August 5, 2009.

57. Respondent has failed to respond to the disciplinary complaint against him.

58. Respondent has failed to diligently and zealously represent and communicate with Complainant during his representation.

59. Respondent also has failed to properly withdraw as counsel from Complainant's case and has failed to respond to this complaint against him.

60. By his actions Respondent has violated RPC 1.3, RPC 1.4, RPC 1.16, 8.1(b) and RPC 8.4.

CONCLUSIONS OF LAW

61. The Respondent failed to communicate with the Board regarding the Livingston complaint, failed to communicate with his clients, and failed to diligently communicate and represent his clients.

62. The Respondent violated RPC 1.3 by failing to represent to diligently represent his clients. The Respondent failed to pursue the legal matters of the Complainants as has been set forth above, and, in most cases, abandoned his clients with little or no explanation.

63. The Respondent violated RPC 1.4 by failing to communicate with his clients. As detailed above, the Respondent abandoned the representation of each of the Complainants and failed to inform the Complainants of the status of their matters or of his ceasing representation.

64. The Respondent violated Rule 1.16 by failing to properly withdraw from the representation of the Complainants and failing to properly terminate each attorney-client relationship by giving the Complainant's reasonable notice, promptly surrendering papers and property to the Complainants, promptly surrendering work product, and promptly refunding any monies owed to the client.

65. The Respondent violated Rule 8.1(b) by failing to respond to the Board's request for information regarding the Livingston complaint.

66. The Respondent violated Rule 8.4(a) of the Rules of Professional Conduct by violating all of the rules set forth above.

67. The Respondent's abandonment of his practice and his clients, including the Complainants, violates RPC 8.4(d) because it is conduct that is prejudicial to the administration of justice.

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

69. Section 4.42 of the ABA Standards state:

Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or

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

70. Section 4.42 is applicable in this case.

71. Section 7.2 of the ABA Standards 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.

72. Section 7.2 is applicable in this case.

73. The Panel has read the Petition for Discipline and the Supplemental Petition for Discipline in this matter and notes that in his response to several of the Complainants, the Respondent details personal problems that he has faced in the recent past. The Panel notes that nothing in the evidence indicates that the Respondent provided less-than-adequate representation for his clients until he had to deal with the numerous personal problems affecting him and his family.

74. The Panel takes note of these personal problems and considers them as mitigating. While the panel is truly sympathetic with the numerous and significant personal problems with which the Complainant had to contend, the Panel finds that they did impact the quality of representation which he provided to his clients.

75. The Panel finds no aggravating circumstances.


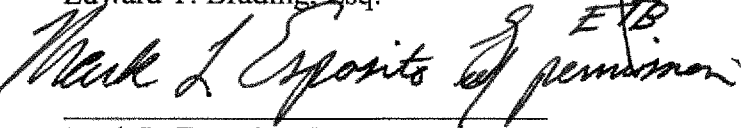
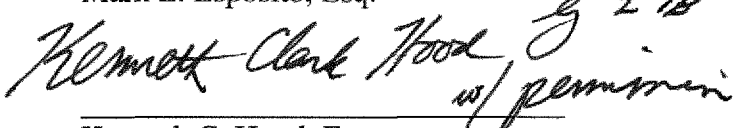
JUDGMENT

76. Based on all the evidence before the panel, including the Petition for Discipline, the Supplemental Petition for Discipline, the facts within those Petitions that have been deemed admitted in light of the Respondent's default, and based on the applicable ABA Standards, the

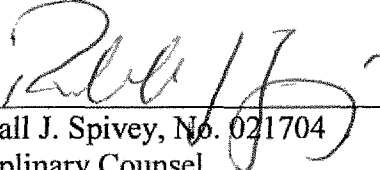
Panel recommends that the Respondent be suspended for a period of one year and one day, with the beginning date of the suspension retroactive to the date of his temporary suspension from the practice of law on September 21, 2009.

77. The Panel further finds that, as a condition to the Respondent's reinstatement to the practice of law, the Respondent must show that the personal problems that he contends created the violations of the Rules of Professional Conduct set forth above have been resolved.

ENTERED ON THIS THE 28 DAY OF January, 2010.


Edward T. Brading, Esq.

Mark L. Esposito, Esq.

Kenneth C. Hood, Esq.

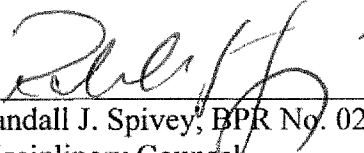
Submitted for Entry:



Randall J. Spivey, No. 021704
Disciplinary Counsel
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Certificate of Service

I certify that a copy of the foregoing has been mailed to the Respondent, Alexander Steven Vanburen, 1216 Lake Ridge Square, Johnson City, Tennessee 37601 and 2112 North Roan Street, Suite 702, Johnson City, Tennessee 37601 and 4008 Ranch Rd, Johnson City TN 37601, by regular mail on this the 1st day of February, 2010.



Randall J. Spivey, BPR No. 021704
Disciplinary Counsel