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BOARD OF PROFESSIONAL
RESPONSIBILITY

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

**IN RE: ALAN G. WARD,
BPR# 18949, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Benton County)**

DOCKET NO. 2017-2708-7-WM

JUDGMENT OF THE HEARING PANEL

This cause came for trial before this Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee on August 2, 2017 in the Supreme Court Courtroom of the Supreme Court Building, #6 Highway 45 Bypass, Jackson, Tennessee 38301. This cause was heard pursuant to Rule 9 of the Rules of the Tennessee Supreme Court. Petitioner, the Board of Professional Responsibility (the "Board"), was represented by Disciplinary counsel, William C. Moody. Neither Respondent, Allan G. Ward ("Mr. Ward") nor anyone on Mr. Ward's behalf appeared at the trial. This Hearing Panel, Clinton H. Scott (Chair), Matthew A. Floyd, and Candace L. Thorne, after considering the entire file in this matter, the exhibits, the arguments presented to this Panel, and after thorough deliberations makes the following Findings of Fact, Conclusions of Law, and renders its Judgment in this cause.

I. STATEMENT OF THE CASE

The Petition for Discipline was filed April 25, 2017. Mr. Ward failed to respond to the Petition for Discipline, and on June 20, 2017, the Board filed a Motion for Default Judgment. This Hearing Panel entered its Order for Default Judgment granting the Board's motion on July 5, 2017. The trial of this matter was properly noticed for August 2, 2017 at 10:00 a.m. in the Supreme Court Courtroom of the Supreme Court Building, #6 Highway 45 Bypass, Jackson,

Tennessee 38301. The only response by Mr. Ward was an e-mail sent to Rita Webb, Executive Secretary of the Board, indicating that he would not be present at the trial, as he was working midnights. No request was made for a continuance or other relief from the trial date in the aforementioned e-mail. Beyond this, there has been no further response from Mr. Ward since entry of the Order for Default Judgment.

II. FINDINGS OF FACT

Law License of Alan G. Ward

Mr. Ward is licensed to practice law in Tennessee, with Board of Professional Responsibility Number 18949.

File No. 48490-7-KB – Complainant – Jessica Goforth

In 2015, Mr. Ward was retained by Jessica Utley¹ and Shawn Goforth to represent them in a petition filed against them in the Juvenile Court for Benton County wherein Ms. Utley's mother, and aunt and uncle petitioned to be named permanent guardians of Ms. Utley's and Mr. Goforth's minor children, Regan Goforth and Kaiser Goforth. On April 2, 2015, a final hearing was held at which permanent guardianship was awarded to the aunt and uncle. Mr. Ward failed to file an answer to the petition.

On November 25, 2015, Mr. Ward was retained by Jessica Utley and Shawn Goforth to file a petition in the Juvenile Court of Benton County to regain custody of their children for which they paid Mr. Ward a \$3,500 retainer. On December 24, 2015, Ms. Utley advised Mr. Ward by email that her aunt and uncle were planning to move out of state with the children and requested that the petition for change of custody be filed as soon as possible. Mr. Ward responded to the email through his assistant on December 29, 2015 and acknowledged the urgency in filing the petition for custody. Ms. Utley made numerous requests to Mr. Ward that

the petition be filed expeditiously.

Mr. Ward prepared a Petition to Return Custody to Parents on behalf of Ms. Utley and Mr. Goforth. Ms. Utley and Mr. Goforth signed the petition on January 11, 2016. Mr. Ward caused the signatures of Ms. Utley and Mr. Goforth to be notarized on March 31, 2016 as if the petition had actually been signed that day. Despite the urgency, Mr. Ward did not file the petition until March 31, 2016.

Mr. Ward failed to provide information to the children's guardian ad litem, Jennifer Hedge, made available to him by his clients, which supported their contention that they should be awarded custody of their children. Mr. Ward failed to respond to numerous efforts by Ms. Hedge to communicate with him regarding the case.

In May, 2016, Mr. and Ms. Goforth terminated Mr. Ward's representation. Upon Mr. Ward's termination, Mr. and Ms. Goforth retained Teresa Marshall to represent them. Mr. Ward did not adequately cooperate with Ms. Marshall by failing to respond to numerous efforts by Ms. Marshall to communicate with him regarding the case. Mr. Ward did not provide Ms. Marshall with the Goforths' file until more than one month after being requested to do so.

Mr. Ward did not refund any portion of the retainer to Mr. and Ms. Goforth.

After responding to the Board's initial request for a response to the complaint, Mr. Ward failed to respond to a request for additional information from the Board.

File No. 49788-7-KB

Mr. Ward was appointed to represent the appellant, David E. Breezee, in an appeal to the Western Section of the Court of Criminal Appeals. The appellate record was filed on February 19, 2016. Mr. Ward failed to file the appellant's brief.

On April 5, 2016, the Court of Criminal Appeals ordered Mr. Ward to file the brief within

¹ Ms. Utley subsequently married Mr. Goforth and became Jessica Goforth.

ten days. That order was mailed to Mr. Ward by the Clerk of the Court of Criminal Appeals by certified mail but was returned as “unclaimed.” After the order was returned, a staff attorney for the Court of Criminal Appeals, attempted to telephone Mr. Ward and left a voicemail message telling Mr. Ward that his brief was due. Mr. Ward did not return the telephone call. The Clerk of the Court of Criminal Appeals mailed the order to Mr. Ward again on May 9, 2016 by regular and certified mail. On May 19, 2016, the Court of Criminal Appeals ordered Mr. Ward to appear on June 7, 2016 on the issue of whether he should be held in contempt. Mr. Ward failed to appear on June 7, 2016. Mr. Ward never filed a brief on behalf of Mr. Breezee.

Mr. Ward was retained to represent the appellant, Joel Wayne Allen, in an appeal to the Western Section of the Court of Criminal Appeals. The appellate record was filed on August 29, 2016. Mr. Ward failed to file the appellant’s brief within thirty days of the filing of the record. On October 13, 2016, the Clerk of the Court of Criminal Appeals sent notice to Mr. Ward directing him to contact the Court regarding the status of the appeal within ten days. Mr. Ward did not respond to the notice.

As a result of the Order for Default Judgment, all the facts contained in the Petition for Discipline are deemed admitted.

III. AUGUST 2, 2017 - TRIAL

At the August 2, 2017 hearing, the Board presented two exhibits. The first was the e-mail from Mr. Ward indicating that he would not be present at the hearing. As noted previously, no request was made for a continuance of the hearing or any other relief. The second exhibit was the prior disciplinary history of Mr. Ward.

IV. BURDEN OF PROOF

Tennessee Supreme Court Rule 9, Section 8.2 states the following:

In hearing on formal charges of misconduct, Disciplinary Counsel

must prove the case by a preponderance of the evidence.

V. CONCLUSIONS OF LAW

Pursuant to Tenn. Sup. Ct. R. 9, § 1, 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.

The preponderance of the evidence establishes that Mr. Ward has committed the following violations of the Rules of Professional Conduct.

File No. 48490-7-KB – Complainant – Jessica Goforth

By failing to expeditiously file the petition, by failing to respond to the guardian ad litem's efforts to communicate with him, and by failing to provide information to the guardian ad litem, Mr. Ward violated RPC 1.3 (Diligence). By failing to respond to numerous efforts on the part of Ms. Goforth to communicate with him, Mr. Ward violated RPC 1.4(a) (Communication). Mr. Ward violated RPC 1.5(a) (Fees) by charging an excessive fee for the work performed. By failing to refund all or a portion of the \$3,500 retainer, Mr. Ward violated 1.16(d)(6) (Declining and Terminating Representation). By failing to cooperate with his client's subsequent attorney and failing to promptly provide her with the Goforths' file, Mr. Ward violated RPC 1.16(d)(3) and (4). By causing the petition to be notarized on March 31, 2016, as if it had been signed on that date, when it had actually been signed on January 11, 2016, Mr. Ward violated RPC 3.3(a)(1) (Candor toward the Tribunal) and 8.4(c) (Misconduct). By failing to provide a response to the Board's request for additional information, Mr. Ward violated RPC 8.1(b) (Bar Admission and Disciplinary Matters).

File No. 49788-7-KB

Mr. Ward abandoned his representation of two clients in the Criminal Court of Appeals. By failing to file the appellate briefs, and by failing to respond to the orders and notices of the Court of Criminal Appeals, Mr. Ward violated RPC 1.1 (Competence), 1.3 (Diligence), 3.2 (Expediting Litigation) and 3.4(c) (Fairness to Opposing Party and Counsel).

Rule 8.4(a) - MISCONDUCT

Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a), Misconduct.

VI. APPLICATION OF ABA STANDARDS

Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

4.41 Disbarment is generally appropriate when:

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

Mr. Ward knowingly failed to timely file the petition to change custody. He also knowingly failed to file the briefs in the Court of Criminal Appeals. Mr. Ward knowingly failed to respond to the court orders. His pattern of neglect with respect to client matters jeopardized

his clients' cases potentially causing serious injury, especially considering the fact that these cases involved very important and fundamental issues related to the right to parent and the right to freedom. His total failure to do anything in the two criminal appeals can only be explained by an abandonment of his practice.

- 6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Mr. Ward submitted a false document to the court when he filed the petition wherein he notarized the signatures of his client as if they had signed on March 31 when they actually signed on January 10.

- 6.22 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.

Mr. Ward failed to comply with the Orders of the Court of Criminal Appeals entered on April 5, 2016 and May 19, 2016 that are attached as Exhibits K and L respectively to the Petition for Discipline.

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

Mr. Ward violated numerous duties as a professional. He charged an unreasonable fee and failed to refund his fee, he failed to cooperate with his clients' subsequent attorney and failed to promptly provide her with his clients' file and he failed to respond to a request for information from the Board.

Pursuant to ABA Standard 9.22, aggravating factors are present in this case. The following aggravating circumstances justify an increase in the degree of discipline to be imposed against Mr. Ward:

1. Pattern of Misconduct: Mr. Ward displayed a pattern of misconduct by abandoning his clients in two separate criminal appeals.
2. Multiple offenses: Mr. Ward committed violations of RPC 1.1, 1.3, 1.4(a), 1.5(a), 1.16(d)(3), (4) and (6), 3.2, 3.3(a)(1), 3.4(c), 8.1(b) and 8.4(a) and (c).
3. Refusal to Acknowledge Wrongful Nature of Conduct: Mr. Ward failed to appear or respond to the allegations of the Board, thereby refusing to acknowledge the wrongful nature of his conduct.
4. Vulnerability of Victims: Mr. Ward's victims were vulnerable. In the Goforth matter, they were at risk of losing their children. His appointed defendants in the criminal appeals were at risk of losing their freedom.
5. Respondent's substantial experience in the practice of law: Mr. Ward was licensed to practice law in 1997.

There are no mitigating circumstances because there was no evidence put on by Mr. Ward regarding mitigating circumstances.

VII. JUDGMENT

The preamble of the Tennessee Rules of Professional Conduct provides, in part, the following:

A lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service and engaging at these pursuits as part of a common calling to promote justice and public good. Essential Characteristics of the lawyer are knowledge of the law, skill in applying the law to the factual context, thoroughness of preparation, practical and prudential wisdom, ethical conduct and integrity, and dedication to justice and the public good.

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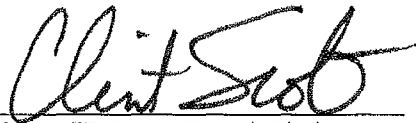
The legal profession's relative autonomy carries with it special responsibilities of self government. . . . Every lawyer is responsible for observance of the Rules of Professional Conduct. . . . Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

Tenn. Sup. Ct. Rule 8, Preamble.

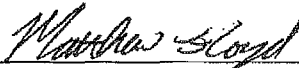
The Hearing Panel has found that Mr. Ward has violated the Rules of Professional Conduct. Therefore, after considering all of the evidence in this matter, the actions of Mr. Ward, the aggravating factors, the lack of mitigating factors, and the entire record in this case, it is the opinion of the Hearing Panel that, based upon the ABA Standards for Imposing Lawyer Discipline, Mr. Ward should be *disbarred* from the practice of law. The Hearing Panel further finds that Mr. Ward shall, pursuant to Tennessee Supreme Court Rule 9, § 12.7, pay restitution to Jessica Goforth in the amount of \$2,500.00 and that payment of said restitution be a condition of reinstatement. In the event restitution is paid by the Tennessee Lawyers Fund for Client Protection (TLFCP), Mr. Ward shall reimburse TLFCP the amount so paid.

IT IS SO ORDERED.

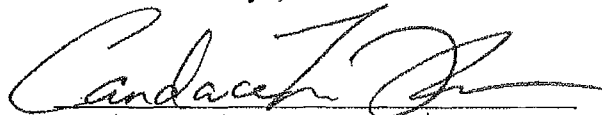
ENTERED on this the 14th day of August, 2017.



Clinton H. Scott, Panel Chair



Matthew A. Floyd, Panel Member



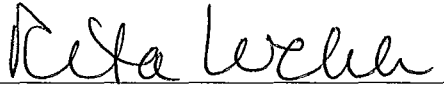
Candace L. Thorne, Panel Member

NOTICE TO RESPONDENT

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Alan G. Ward, 290 Washington Avenue, Camden, TN 38320-1155, by U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 14th day of August, 2017.

A handwritten signature in cursive script, appearing to read "Rita Webb", written over a horizontal line.

Rita Webb
Executive Secretary