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BOARD OF PROFESSIONAL RESPONSIBILITY

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

**IN RE: HAL WILKES WILKINS
BPR No. 17830, Mr. Wilkins,
an Attorney Licensed to Practice
Law in Tennessee
(Davidson County)**

DOCKET NO. 2014-2283-5-AJ

JUDGMENT OF THE HEARING PANEL

This matter came to be heard on April 29, 2014, for final hearing on the Board's Petition for Discipline before Leon Vincent Williams, Panel Chair; John Franklin Floyd, Panel Member; and, Andrew B. Campbell, Panel Member. Alan D. Johnson, Disciplinary Counsel, appeared for the Board. Mr. Wilkins did not appear.

FINDINGS OF FACT

1. On December 2, 2013, Mr. Wilkins was suspended from the practice of law pursuant to Tenn. Sup. Ct. R. 8, § 4.3, for failing to respond to the Board of Professional Responsibility concerning a complaint of misconduct.
2. Mr. Wilkins has not taken any steps to dissolve his temporary suspension.
3. A Petition for Discipline, Docket No. 2013-2283-5-AJ, was filed on January 2, 2014.
4. The Petition was sent via regular and certified mail to Mr. Wilkins' address of Post Office Box 24122, Nashville, Tennessee, 37202-4144, as registered with the Board.
5. On January 19, 2014, the certified mail was returned to the Board with the Post

Office notation that it was "unclaimed".

6. The Board filed a Motion for Default on March 4, 2014.

7. An Order of Default was entered on April 9, 2014. As a result of the Order of Default, the allegations contained within the Petition are deemed admitted.

File No. 35854-5-BG – Complaint of John Edward McTigue, III

8. On May 17, 2012, Mr. McTigue retained Mr. Wilkins to represent him on two charges, possession and probation violation, which were pending in the Davidson County General Sessions Court, and set for hearings on July 23, 2012 and July 24, 2012.

9. Mr. McTigue paid Mr. Wilkins a flat fee in the amount of \$1,500.00 to represent him on both cases.

10. At the hearing on the possession charge on July 23, 2012, Mr. McTigue entered an "under advisement plea" that allowed him to participate in an alcohol and drug abuse class which, if successfully completed, would result in the dismissal of the charge.

11. At the hearing on the probation violation charge on July 24, 2012, Mr. McTigue was found guilty of violating probation and immediately taken into custody.

12. After being taken into custody, Mr. McTigue made numerous, unsuccessful attempts to contact Mr. Wilkins.

13. Mr. McTigue enlisted the help of his friends to try to reach Mr. Wilkins but Mr. Wilkins did not reply to their phone calls.

14. Because there was a limited amount of time to appeal his conviction for violating probation, Mr. McTigue retained the services of two other lawyers who were able to get the finding of guilt set aside and secure the release of Mr. McTigue from custody.

15. Mr. Wilkins promised Mr. McTigue that he would refund the amount of

\$1,000.00 but has yet to pay Mr. McTigue.

16. Mr. Wilkins responded to Disciplinary Counsel about this investigation on February 11, 2013, and thereafter he failed to respond to numerous requests for information.

File No. 36488c-5-BG – Complaint of Stephen Adreon

17. In March, 2012, Mr. Adreon retained Mr. Wilkins to represent him in his efforts to recover workers compensation benefits, and paid Mr. Wilkins a flat fee in the amount of \$2,500.00.

18. Mr. Wilkins was successful in obtaining a favorable ruling in the Workers' Compensation Division of the Department of Labor; however, that decision was reversed on administrative review.

19. The employer then filed a Petition for Final Judgment in the Circuit Court for Davidson County, and Mr. Wilkins filed a Response and a Counter-Petition on behalf of Mr. Adreon.

20. At a hearing on May 10, 2013, the court granted in part and denied in part the employer's motion to compel answers to discovery.

21. The May 10, 2013, hearing was the last time Mr. Wilkins participated in the case.

22. After May 10, 2013, Mr. Wilkins: a) did not respond to Mr. Adreon's phone messages and emails; b) did not respond to three letters sent to him by opposing counsel; c) failed to provide supplemental discovery ordered by the court; d) failed to attend a hearing in September, 2013, when the court granted the employer's motion to dismiss the Counter-Petition, and; e) failed to attend a hearing in October, 2013, when the court granted the employer's Motion for Default Judgment.

23. Mr. Wilkins never responded to Disciplinary Counsel's requests for information.

24. After the Petition for Discipline was filed, the Nashville Bar Association filed a Petition for Appointment of Receiver Attorney, and on March 13, 2014, the Probate Court granted the Petition.

25. Disciplinary Counsel enlisted the aid of the Tennessee Lawyer Assistance Program (TLAP) in an effort to locate Mr. Wilkins and provide him with assistance from TLAP.

26. Laura McClendon, Executive Director of TLAP, reported that nobody knows where he is and she has been unable to reach him.

CONCLUSIONS OF LAW

27. Pursuant to Tenn. S. Ct. R. 9, § 3, 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 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 (hereinafter "RPC") of the State of Tennessee shall constitute misconduct and be grounds for discipline.

28. Based upon the admitted facts alleged in the Petition for Discipline, the Hearing Panel finds that Mr. Wilkins' actions in representing Mr. McTigue violated Rules of Professional Conduct: 1.16 (Declining or Terminating Representation) when he abandoned Mr. McTigue after Mr. McTigue was found guilty of violating probation and placed in custody; 1.4 (Communication) when he failed to respond to Mr. McTigue's efforts to communicate with him after Mr. McTigue was found guilty of violating probation and placed in custody; 1.3 (Diligence) when he did nothing to protect Mr. McTigue's interest after Mr. McTigue was found guilty of violating probation and placed in custody, and; 1.5 (Fees) by failing to secure Mr. McTigue's signature on a written, non-refundable fee agreement, by failing to provide Mr. McTigue with an

accounting and by failing to refund a portion of the \$1,500.00 fee paid by Mr. McTigue.

29. Based upon the admitted facts alleged in the Petition for Discipline, the Hearing Panel finds that Mr. Wilkins' actions in representing Mr. Adreon violated Rules of Professional Conduct: 1.16 (Declining or Terminating Representation) when he abandoned Mr. Adreon's case after the hearing on May 10, 2013; 1.4 (Communication) when he failed to respond to Mr. Adreon's efforts to communicate with him after the hearing on May 10, 2013; 1.3 (Diligence) when he abandoned Mr. Aderon's case and failed to produce discovery ordered by the court, and; 8.1 (b) (Disciplinary Matters) by failing to respond to the Board's inquiries regarding Mr. Adreon's complaint.

30. When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, ("ABA Standards") pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court. The following ABA Standards apply in this matter:

4.4 LACK OF DILIGENCE

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

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.

7.0 VIOLATIONS OF DUTIES OWED AS A PROFESSIONAL

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct. (emphasis added)

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

31. The admitted facts establish that Mr. Wilkins knowingly abandoned his law practice which adversely affected his clients and that he is currently a threat to the public at large.

Aggravating Factors

32. Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (h) vulnerability of victim, and;
- (i) substantial experience in the practice of law.

JUDGMENT

Based on these findings of fact and conclusions of law, it is the judgment of the Panel that Mr. Wilkins shall be disbarred pursuant to Tenn. Sup. Ct. R. 9, § 4.1. Further, the Panel

finds that Mr. Wilkins must pay restitution, pursuant to Tenn. Sup. Ct. R. 9, § 4.7, to Mr. McTigue in the amount of \$1,000.00, and to Mr. Aderon in the amount of \$2,500.00. Payment of restitution shall be a condition precedent to reinstatement. In the event restitution is made by the Tennessee Lawyers' Fund for Protection of Clients (TLFCP), Mr. Wilkins will be responsible for reimbursement of TLFCP in the same amount.

IT IS SO ORDERED:


Leon Vincent Williams, Panel Chair


John Franklin Floyd, Panel Member


Andrew B. Campbell, Panel Member

NOTICE TO RESPONDENT

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ. See Tenn. Code Ann. § 27-8-104(a) and 27-8-106.