

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

FILED
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BOARD OF PROFESSIONAL
RESPONSIBILITY

EXEC. SECRETARY

IN RE: HAL WILKES WILKINS
BPR # 017830, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Davidson County)

DOCKET No. 2017-2707-5-AJ

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Hearing Panel on February 6, 2018, at 2:00 p.m. Participating in the hearing were Aaron Raney, Hearing Panel Chair, Zale Dowlen, Hearing Panel Member, Craig V. Gabbert, Jr., Hearing Panel Member, and Alan D. Johnson, Disciplinary Counsel. Mr. Wilkins did not appear.

STATEMENT OF THE CASE

This is a disciplinary proceeding against Hal Wilkes Wilkins, an attorney licensed to practice law in Tennessee in 1996. A Petition for Discipline was filed against Mr. Wilkins on April 24, 2017. (Trial Exhibit A) Mr. Wilkins did not file a response and the Board filed a motion for default judgment on August 22, 2017.

An Order of Default was entered on November 30, 2017. As a result of the Order of Default, the allegations contained within the Petition are deemed admitted. At the hearing, Disciplinary Counsel introduced as Exhibits A, B, and C the Petition for Discipline, and the July 22, 2014, and January 28, 2015, Orders of Enforcement that disbarred Mr. Wilkins from the practice of law. As discussed below, after the hearing, but before the proof was closed, Disciplinary Counsel introduced as late filed Exhibit D, an email from the Executive Director of the Tennessee

Bar Foundation.

FINDINGS OF FACT

File No. 46197n-5-SC– Complaint of the Board of Professional Responsibility

Respondent Hal Wilkins was disbarred by the Tennessee Supreme Court on July 22, 2014, and again on January 28, 2015. (Trial Exhibits B and C) Mr. Wilkins never responded to the Board’s investigation or the Petition for Discipline in this case.

On February 12 2016, the Board of Professional Responsibility (“Board”) received information from the Executive Director (Director) of the Tennessee Bar Foundation (Foundation) regarding the establishment of an IOLTA account by Hal Wilkes Wilkins. The Director explained that when IOLTA accounts are opened, the bank is required to notify the Foundation so that the Foundation can accurately track interest earned on the accounts that is paid to the Foundation pursuant to the IOLTA program.

The Director of the Foundation informed the Board that she had received notice from the First Tennessee Bank that Mr. Wilkins had opened an IOLTA account in his name in December 2015. In order to fulfill her duties, she looked up Mr. Wilkins’ information on the Board’s web page to verify his address, and learned that he was disbarred. The Director’s email to the Board is found at Exhibit A to the Petition for Discipline.

The Board subpoenaed the bank records and confirmed that the IOLTA account was ~~opened by Mr. Wilkins, however the account showed only one transaction of an initial deposit of~~ \$50.00. At the hearing, the Hearing Panel directed Disciplinary Counsel to determine if the account remains opened.

Pursuant to Tenn. Sup. Ct. R. 43, § 17, Disciplinary Counsel submitted a written request to the Director of the Foundation for information regarding IOLTA accounts reported open by First Tennessee Bank, and whether the account opened by Mr. Wilkins continues to be reported as

open. After the hearing, Disciplinary Counsel submitted as late filed Exhibit D, written confirmation from the Director confirming that First Tennessee Bank continues to report that the account is open.

CONCLUSIONS OF LAW

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.

Mr. Wilkins is subject to the jurisdiction of the Supreme Court, the Board of Professional Responsibility and this Hearing Panel pursuant to Tenn. Sup. Ct. R. 9, § 8, which provides in relevant part:

Any attorney admitted to practice law in this State, including any formerly admitted attorney with respect to acts committed prior to surrender of a law license, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of this Rule or of the Rules of Professional Conduct, and any attorney specially admitted by a court of this State for a particular proceeding, is subject to the disciplinary jurisdiction of the Court, the Board, panels, the district committees and hearing panels herein established, and the circuit and chancery courts of this State.

Rules of Professional Conduct 1.15 requires that Tennessee lawyers who maintain checking accounts for the deposit of client funds participate in the Interest on Lawyer’s Trust Accounts (IOLTA) program. The Tennessee Supreme Court adopted Rule 43, “Interest on Lawyer’s Trust Accounts” on September 17, 2002, which governs the operation of IOLTA accounts and the IOLTA program. The purpose of the IOLTA program is to raise funds to be distributed by the Tennessee Bar Foundation, in the form of grants, to organizations in Tennessee

that provide direct legal services to the indigent, to organizations that seek to improve the administration of justice and to students, in the form of scholarships, at the state-supported law schools.

Tennessee lawyers engaged in the private practice of law in Tennessee are required to certify in their annual registration statement required by Tenn. Sup. Ct. R. 9, § 10, that funds in the lawyer's possession that RPC 1.15(b) requires to be held in an IOTA account, are in fact held in the account. The certification requires that the lawyer identify the financial institution and the account number where the funds are held. Tenn. Sup. Ct. R. 43, § 14. Clearly, only Tennessee lawyers engaged in the practice of law participate in the program.

By opening and maintaining an IOLTA account, Mr. Wilkins is holding out to the public or otherwise representing that he is licensed to practice law, in violation of RPC 5.5(b) (2) that provides that "a lawyer who is not admitted to practice in this jurisdiction shall not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction." Mr. Wilkins is not currently admitted to practice in this jurisdiction because he is disbarred.

The Orders of Enforcement disbaring Mr. Wilkins (Exhibits B and C) state that "Mr. Wilkins shall comply in all aspects with Tenn. Sup. Ct. R. 9, §18¹ (2006) and Tenn. Sup. Ct. R. 9, §30.4 (2014) regarding the obligations and responsibilities of disbarred attorneys." Tenn. Sup. Ct. R. 9, §18.7 (2006) states in relevant part that when a lawyer is suspended or disbarred, the lawyer "shall take such action as is necessary to cause the removal of any indicia of lawyer, counselor at law, legal assistant, law clerk, or similar title." By opening an IOLTA account after being disbarred, Mr. Wilkins manifested the indicia of an attorney in violation of Tenn. Sup. Ct. R. 9, Section 18.7 (2006).

¹ Tenn. Sup. Ct. R. 9, §18 (2006) is now found at Tenn. Sup. Ct. R. 9, §28 (2014).

Mr. Wilkins has thereby knowingly failed to comply with the Orders of Enforcement in violation of RPC 8.4(g) that states that “it is professional misconduct for a lawyer to knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.”

Mr. Wilkins has been unresponsive to the Board’s requests for information in violation of RPC 8.1(b) that states that “a lawyer in connection with ... a disciplinary matter, shall not ... 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 RPC 1.6.”

By violating the above Rules of Professional Conduct, Mr. Wilkins violated RPC 8.4 (a) which provides that “it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.”

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 Standard applies in this matter:

- 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.

Aggravating Factors

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

- (a) prior disciplinary offenses (Mr. Wilkins was disbarred on July 22, 2014, and again on January 28, 2015);

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (the admitted facts establish that Mr. Wilkins failed to respond to the Board);

(i) substantial experience in the practice of law (Mr. Wilkins was licensed to practice in 1996).

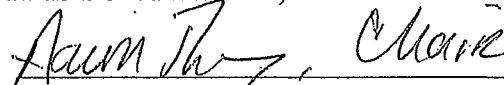
CONCLUSION

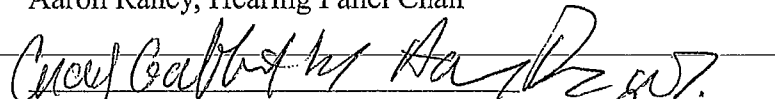
Application of the ABA Standards to the admitted facts warrants, and taking into account Mr. Wilkins' disciplinary history, the Hearing Panel finds that Mr. Wilkins should be suspended from the practice of law for one (1) year.

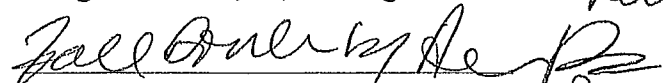
The Hearing Panel is concerned that the IOLTA account opened by Mr. Wilkins remains open. As discussed above, IOLTA accounts can only be maintained by Tennessee Lawyers engaged in the private practice of law. As a disbarred lawyer, Mr. Wilkins is not eligible to maintain an IOLTA account. Accordingly, the Hearing Panel concludes that First Tennessee Bank should be asked to close the account and return funds currently held in the account to Mr. Wilkins.

The costs of this cause, as set forth in Tenn. Sup. Ct. R. 9, § 31.3 (a), will be taxed to Mr. Wilkins following entry of this judgment pursuant to the procedures established in Tenn. Sup. Ct. R. 9, § 31.3 (a).

IT IS SO ORDERED,


Aaron Raney, Hearing Panel Chair


Craig V. Gabbert, Jr., Hearing Panel Member


Zale Dowlen Hearing Panel Member



Alan Johnson

From: Barri Bernstein <bb@tnbarfoundation.org>
Sent: Wednesday, February 07, 2018 12:23 PM
To: Alan Johnson
Subject: RE: Hal Wilkins

Alan

As of the latest information (the month of December 2017), the account is reported as "open" by First Tennessee Bank to the IOLTA program. For that month, the account did contain funds.

Please let me know if I can assist you further.

Barri Bernstein.

Barri Bernstein
Tennessee Bar Foundation
615.242.1531
800.634.2516

From: Alan Johnson [mailto:ajohnson@tbpr.org]
Sent: Wednesday, February 7, 2018 12:04 PM
To: Barri Bernstein <bb@tnbarfoundation.org>
Subject: Hal Wilkins

Dear Ms. Bernstein:

Pursuant to Tenn. Sup. Ct. R. 43, Section 17, I am requesting information concerning an IOLTA account opened by Mr. Wilkins with First Tennessee Bank on December 9, 2015. Can you tell me if First Tennessee Bank continues to report this as an open IOLTA account?

To refresh your memory, and maybe assist in answering my question, I am attaching your email to Sandy Garrett and the copy of the bank card where Mr. Wilkins opened the account.

Thank you for any assistance you can provide.

Alan D. Johnson
Disciplinary Counsel - Litigation
Board of Professional Responsibility
of the Supreme Court of Tennessee
10 Cadillac Drive, Suite 220
Brentwood, TN 37027
(615) 361-7500 Ext. 207
(615) 367-2480 Fax
ajohnson@tbpr.org
www.tbpr.org

Exhibit D

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Hal Wilkes Wilkins, at 320 11th Avenue South, Apt. 227, Nashville 37203, 1120 Woodland Street, Nashville 37206, 614-A South 11th Street, Nashville 37206, via U.S. First Class Mail, and hand-delivered to Disciplinary Counsel, Alan D. Johnson, on this the 13th day of February 2018.



Rita Webb
Executive Secretary

NOTICE

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.