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BOARD OF PROFESSIONAL
RESPONSIBILITY

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

FILED

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BOARD OF PROFESSIONAL
RESPONSIBILITY

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EXEC. SEC.

IN RE: **CHRISTOPHER WAYNE BARBER,**
BPR # 020607, Respondent,
an Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Montgomery County)

DOCKET No. 2013-2177-6-AW

FINAL JUDGMENT OF THE HEARING PANEL

This matter came on for final hearing at the Belmont School of Law on June 4, 2013, before panel members Charles W. Holt, Markley R. Gill and Patrick A. Flynn, Chair, from which the Hearing Panel finds as follows:

FINDINGS OF FACT

1. A Petition for Discipline, Docket No. 2013-2177-6-AW, was filed on January 4, 2013.
2. The Petition was sent via regular and certified mail to Mr. Barber at his address as registered with the Board of Professional Responsibility, being 2277 Ermine Drive, Clarksville, Tennessee 37043-5261. The Certified Mail was subsequently returned to the Board marked "Attempted Not Known." On February 13, 2013, the Board learned that Mr. Barber's current address was 90 Whitley Drive, Gilbertsville, Kentucky 42044. On February 13, 2013, the Board amended its certificate of service and sent the Petition via certified mail to Mr. Barber's current

address of 90 Whitley Drive, Gilbertsville, Kentucky 42044. The certified return receipt was signed on February 15, 2013, and returned to the Board.

3. Mr. Barber failed to answer the Petition for Discipline, and upon motion of the Board, a default Order was entered by the Hearing Panel on April 22, 2013, deeming the allegations in the Petition for Discipline admitted.

4. The admitted facts set forth in the Petition for Discipline are summarized as follows:

5. Complainant, Kim Johnson, retained Mr. Barber in April of 2010 to domesticate a foreign divorce decree. Ms. Johnson paid a fee of \$2,500 to Mr. Barber's law firm. Mr. Barber prepared a Petition to Domesticate and for Civil Contempt and filed the same on September 16, 2010. No answer to the Petition was filed, and Mr. Barber filed a Motion for Default on October 27, 2010. The Motion was heard and granted by the Court on November 19, 2010, and a Show Cause Order was granted. Mr. Barber delayed the preparation and submission of the Order granting the Default Judgment and the Show Cause until April 22, 2011.

6. On December 3, 2010, Mr. Barber was suspended from the practice of law by the Supreme Court of Tennessee for failure to pay his professional privilege tax. Mr. Barber failed to notify Ms. Johnson of his suspension as required by Rule 9, §§ 18 and 32.5 and withdraw as attorney of record from her representation. Despite his suspension from the practice of law, Mr. Barber continued to actively practice law and specifically represented Ms. Johnson in her matter.

7. On or about April 22, 2011, Mr. Barber prepared and filed the Order to Show Cause that had been granted five (5) months previously on November 19, 2010. Shortly after preparing and filing the Order to Show Cause, Mr. Barber was terminated from his law firm for practicing law while suspended. Ms. Johnson was informed of Mr. Barber's suspension from the

practice of law, and another attorney in the law firm was substituted as her attorney of record. Ms. Johnson's foreign order was eventually domesticated, and a final Order of Judgment was entered on September 13, 2011.

8. During the investigation of the initial complaint Mr. Barber failed to respond to the Board. Pursuant to Tenn. Sup. Ct. R. 9, § 4.3, an Order of Temporary Suspension for failure to respond to the Board of Professional Responsibility was entered on August 16, 2012, and remains in effect.

9. On August 31, 2011, Mr. Barber's license was suspended for CLE non-compliance. On May 19, 2012, Mr. Barber received a Public Censure for diligence issues and practicing law while his license was suspended.

CONCLUSIONS OF LAW

10. Mr. Barber delayed the filing of a critical Order for a period of five (5) months and failed to promptly respond to numerous inquiries by Ms. Johnson regarding the status of her action. Mr. Barber's conduct violated Rules of Professional Conduct (RPC) 1.3 (diligence) and 1.4 (communication).

11. Mr. Barber's failure to notify Ms. Johnson of his suspension from the practice of law on December 3, 2010, and withdraw as her attorney of record violated RPC 1.4 (communication) and 1.16 (declining or terminating representation).

12. Mr. Barber filed an Order to Show Cause with the Court for signature on April 22, 2011, and represented Ms. Johnson for a period of four (4) months after the entry of his suspension order on December 3, 2010. The aforementioned conduct of Mr. Barber constituted the unauthorized practice of law in violation of RPC 5.5 (unauthorized practice of law).

13. When Mr. Barber filed the Order to Show Cause with the Trial Court on April 22, 2011, he failed to disclose to the Court his suspension from the practice of law. Mr. Barber's omission constitutes an offense against the administration of justice in violation of RPC 3.3(h) (candor toward the tribunal).

14. Mr. Barber's failure to disclose his suspension constitutes conduct involving deceit and misrepresentation and conduct prejudicial to the administration of justice in violation of RPC 8.4(c) and (d).

15. Mr. Barber's failure to comply with the Order of Summary Suspension For Failure To Pay Professional Privilege Tax entered by the Supreme Court of Tennessee on December 3, 2010, and Tenn. Sup. Ct. R. 9, §§ 18 and 32.5 constitute violations of RPC 8.4 (g) (misconduct).

16. Each of the aforementioned violations of the Rules of Professional Conduct by Mr. Barber constitutes a violation of RPC 8.4 (a) (misconduct).

17. Mr. Barber's knowing failure to respond to a lawful demand from the Board of Professional Responsibility for information related to a disciplinary matter violated RPC 8.4 (b).

ABA Standards

18. Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions ("ABA Standards"). The Hearing Panel finds that ABA Standards 4.42 and 7.2 are applicable to the facts and circumstances presented.

19. Pursuant to ABA Standard 9.22, the Hearing Panel finds the following aggravating factors are present in this case:

a. Prior Disciplinary Offense. Mr. Barber was issued a Public Censure on March 19, 2012, for practicing law while his license was suspended, failing to notify his clients of his suspension and charging an unreasonable fee.

b. Pattern of Misconduct. The current matter before the Hearing Panel reflects a significant pattern of misconduct. Mr. Barber willfully and knowingly ignored his client's legal matter, misrepresented the status of his license to his client and the Court, and engaged in the unauthorized practice of law for a period of at least four (4) months. In addition, Mr. Barber knowingly failed to respond to a lawful demand from Disciplinary Counsel for information related directly to a disciplinary matter. Mr. Barber's prior professional misconduct reflects a lack of diligence in his practice and a lack of proper communication with clients. It also reflects Mr. Barber's unwillingness or inability to comply with Orders of the Court and lawful requests from Disciplinary Counsel for information related to disciplinary complaints.

c. Multiple Offenses. Mr. Barber engaged in multiple violations of the Rules of Professional Conduct. Mr. Barber failed to represent Ms. Johnson in a diligent or expeditious manner. He compounded his initial misconduct by failing to notify his client, opposing counsel and the Court of his suspension from the practice of law and, thereafter, withdrawing as counsel of record in Ms. Johnson's action. Mr. Barber then ignored the Rules of the Supreme Court and practiced law in violation of the Order of Summary Suspension entered December 3, 2010. Finally, Mr. Barber ignored his duty under the Rules of Professional Conduct to respond to Disciplinary Counsel investigating the complaint of misconduct.

d. Bad-Faith Obstruction of the Disciplinary Proceeding. The undisputed facts reflect Mr. Barber failed to respond to lawful requests of Disciplinary Counsel for information.

Mr. Barber also failed to respond to the Petition for Discipline or participate in the disciplinary hearing.

CONCLUSION

Based upon the facts and evidence presented at the final hearing, our review of the full record, application of the Rules of Professional Conduct and the ABA Standards, this Hearing Panel concludes by preponderance of the evidence that Mr. Barber has committed disciplinary misconduct.

Pursuant to Tenn. Sup. Ct. R. 9, § 4.2, Mr. Barber is suspended from the practice of law for a period of three (3) years with two (2) years served as an active suspension. Pursuant to Tenn. Sup. Ct. R. 9, § 8.5, the remaining one (1) year of the suspension shall be probated subject to the following conditions: (a) Mr. Barber shall engage a Practice Monitor approved by Disciplinary Counsel. (b) Mr. Barber shall meet with the Practice Monitor face to face at least once a month and by telephone at least weekly. (c) Mr. Barber shall comply fully with the terms and conditions of his practice monitoring agreement. (d) Mr. Barber shall authorize the Practice Monitor to discuss all matters with Disciplinary Counsel. (e) Mr. Barber shall not violate any RPC during his suspension or be the subject of an ethics complaint which the Board of Professional Responsibility concludes, in good-faith, is a violation of the RPC, warranting revocation of probation and the imposition of one (1) additional year active suspension.

Mr. Barber shall contact the Tennessee Lawyers Assistance Program for evaluation and, if recommended, enter into a monitoring agreement and comply with all terms and conditions of the agreement.

Mr. Barber shall pay restitution of \$2,500.00 to Ms. Kim Johnson and all costs incurred by the Board.

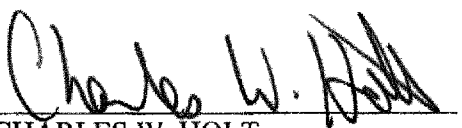
In addition to the requirements of Tenn. Sup. Ct. R. 9. § 19.3, Mr. Barber's right to file a petition for reinstatement to the practice of law shall be conditioned upon full payment of restitution to Ms. Kim Johnson, or the Lawyers Fund for Client Protection, if applicable; evaluation by TLAP and satisfactory compliance with any recommended monitoring agreement; payment of all outstanding Professional Privilege Taxes; and satisfactory completion of all Continuing Legal Education requirements.

IT IS SO ORDERED.


PATRICK A. FLYNN, CHAIR


MARKLEY R. GILL

S. PAF
N/Acm.v.v.m


CHARLES W. HOLT

NOTICE: 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.

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IN RE: CHRISTOPHER WAYNE BARBER,
BPR # 020607, Respondent,
an Attorney Licensed and
Admitted to the Practice of
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(Montgomery County)

DOCKET No. 2013-2177-6-AW

ORDER TO ALTER OR AMEND FINAL JUDGMENT

This matter is before the Hearing Panel upon a Motion by the Board of Professional Responsibility to Alter or Amend the Final Judgment of this Hearing Panel entered on August 7, 2013 to correct a typographical error in Paragraph 17 of the Final Judgment which inadvertently cited Rule of Professional Conduct 8.4(b) instead of 8.1(b). The Hearing Panel finds the Motion of the Board of Professional Responsibility is well taken and should be granted.

It is therefore Ordered that Paragraph 17 of the Final Judgment is amended as follows:

17. Mr. Barber's knowing failure to respond to a lawful demand from the Board of Professional Responsibility for information related to a disciplinary matter violated RPC 8.1 (b).

IT IS SO ORDERED.

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FOR THE PANEL:

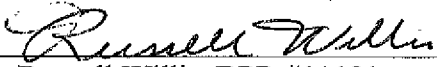


PATRICK A. FLYNN, CHAIR

BOARD OF PROFESSIONAL
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Prepared and submitted for entry by:



A. Russell Willis, BPR #11191
Disciplinary Counsel - Litigation
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027
(615) 361-7500

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing proposed Order has been served upon Respondent, Christopher Wayne Barber, by First Class U. S. Mail addressed to him at 90 Whitley Drive, Gilbertsville, Kentucky 42044, on this the 23rd day of August, 2013.



A. Russell Willis