

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

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BOARD OF PROFESSIONAL  
RESPONSIBILITY  
EXEC. SEC.

IN RE: MATTHEW QUENTIN BASTIAN      DOCKET NO. 2014-2399-6-AW  
BPR # 012562, Respondent  
An Attorney Licensed and  
Admitted to the Practice of  
Law in Tennessee  
(Maury County)

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**HEARING PANEL'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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This matter came to be heard on the 28th day of August, 2015, for final hearing on the Board's Petition for Discipline before Douglas T. Bates, III, Panel Chair; Samuel B. Garner, Panel Member; and Larry A. Rocconi, Panel Member. A. Russell Willis, Disciplinary Counsel, appeared for the Board. The record reflects Mr. Bastian was given adequate notice of the hearing; however, he did not appear at or participate in the final hearing.

**STATEMENT OF THE CASE**

This is a disciplinary proceeding against the Respondent, Matthew Quentin Bastian, an attorney licensed to practice law in Tennessee in 1987.

1. A Petition for Discipline, Docket No. 2014-2399-6-AW, was filed on November 19, 2014, and service was perfected upon Mr. Bastian pursuant to Tenn. Sup. Ct. R. 9, § 18.1.
2. Mr. Bastian did not file an answer or otherwise respond to the Petition for Discipline.

3. On April 24, 2015, Disciplinary Counsel filed a Motion for Default Judgment and That Charges in Petition for Discipline be Deemed Admitted. Mr. Bastian did not file a response to the motion.

4. The Hearing Panel was appointed on May 27, 2015, and entered an Order for Default Judgment on June 19, 2015.

5. The Final Hearing was held on August 28, 2015, in Franklin, Tennessee.

#### **STATEMENT OF THE FACTS**

6. The Petition for Discipline is based upon the complaint of Luis Sweeney and alleges a violation of Tennessee Rules of Professional Conduct (RPC) 1.1 (competence); 1.3 (diligence); 1.4 (communication); 1.16 (declining or terminating representation); 3.2 (expediting litigation); 8.1 (bar admissions and disciplinary matters) and 8.4(a) and (d) (misconduct).

7. Pursuant to the granting of the default judgment and the evidence presented at the final hearing, the following facts are established:

8. The Respondent, Matthew Quentin Bastian is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee in 1987. Mr. Bastian's most recent professional work address, as registered with the Board of Professional Responsibility is 2484 Park Plus Drive, Columbia, Tennessee 38401, and whose residence is listed as 3993 Campbellsville Pike, Columbia, Tennessee 38401, being in Disciplinary District VI. Mr. Bastian's Board of Professional Responsibility number is 12562. Mr. Bastian relocated his residence to 109 6th Ave. SE, Suite 400, #4641, Watford City, ND 58854 and corresponded with Disciplinary Counsel through his email address mqbastian@yahoo.com.

9. The Petition for Discipline, governed by Tenn. Sup. Ct. R. 9 (2014), details the professional misconduct alleged in Luis Sweeney's complaint and was introduced into evidence as Exhibit 1.

**FILE NO. 37720-6-BG – COMPLAINANT – LUIS SWEENEY**

10. On June 12, 2014, the Board received a Memorandum of Complaint from Luis Sweeney regarding Mr. Bastian.

11. Pursuant to Tenn. Sup. Ct. R. 9, the Board notified Mr. Bastian of Complaint No. 37220-6-BG on June 13, 2014, and asked for his written response within ten (10) days.

12. Mr. Bastian never responded to the Board regarding Mr. Sweeney's complaint of misconduct.

13. In December, 2012, Mr. Sweeney hired Mr. Bastian to represent him in an employment discrimination Complaint against the Department of Safety which Mr. Sweeney had filed pro se in *Sweeney v. Tennessee Department of Safety*, in the United States District Court, Middle District of Tennessee, Columbia Division.

14. Mr. Sweeney initially paid Mr. Bastian \$500.00 and later paid him \$4,000.00 for his representation in the employment discrimination case.

15. Mr. Bastian, after entering his appearance as attorney of record on December 26, 2012, failed to appear at a case management conference held in Mr. Sweeney's case on February 19, 2013.

16. The Federal Magistrate issued an Order directing Mr. Bastian to state on or before March 5, 2013, whether he was representing Mr. Sweeney.

17. Mr. Bastian did not respond to the February 19, 2013 Order.

18. On March 27, 2013, Mr. Sweeney wrote to the Court stating he had made numerous attempts to contact Mr. Bastian but had been unsuccessful.

19. Subsequent to receiving the March 27, 2013, letter from Mr. Sweeney, the Court scheduled another case management conference for April 30, 2013.

20. Mr. Sweeney appeared for the April 30, 2013, case management conference but Mr. Bastian did not.

21. At the case management conference, Mr. Sweeney informed the Court he had made numerous attempts to contact Mr. Bastian without success and had discovered Mr. Bastian had closed his office. Mr. Sweeney orally requested leave of court to dismiss Mr. Bastian as his counsel, and the Court granted his request.

22. On June 19, 2013, Mr. Bastian filed a second notice of appearance as counsel for Mr. Sweeney stating he had recently returned from an extended leave of absence for medical reasons and was prepared to proceed with the case.

23. A third case management conference was scheduled for July 16, 2013, however Mr. Bastian failed to appear, file a motion to reschedule or otherwise notify the Court of his inability to appear.

24. On July 16, 2013, the defendants filed a Motion to Dismiss for failure to prosecute and for failure to respond to discovery requests.

25. On November 21, 2013, Mr. Sweeney again wrote to the U. S. Magistrate regarding the difficulty he was continuing to experience with Mr. Bastian's representation.

26. On February 5, 2014, Mr. Bastian manually filed a Motion for Status Conference on the basis he had lost track of the status of the case due to the nature of the notice being by

electronic means. Mr. Bastian admitted he was not aware that the electronic filing and service system was used in Federal Court.

27. A case management conference was set for February 26, 2014.

28. On February 26, 2014, Mr. Bastian failed to appear for the Status Conference.

29. On April 15, 2014, the U. S. Magistrate entered a Report and Recommendation granting the defendants' Motion to Dismiss.

30. Mr. Sweeney obtained new counsel, Attorney Andrew Love, who filed an Objection to the Report and Recommendation on April 29, 2014.

31. On May 14, 2014, the U. S. District Court rejected the Report and Recommendation and denied the Motion to Dismiss.

32. Mr. Bastian did not provide professional services sufficient to earn the retainer fee paid by Mr. Sweeney.

33. Despite being terminated, Mr. Bastian failed to refund any of the unearned fee paid by Mr. Sweeney.

#### CONCLUSIONS OF LAW

34. Pursuant to Tenn. Sup. Ct. R. 9, § 8 (2014), attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts.

35. Pursuant to Tenn. Sup. Ct. R. 9, § 1 (2014), 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.

36. Pursuant to Tenn. Sup. Ct. R. 9, § 11 (2014), acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct of the Supreme Court of Tennessee shall constitute misconduct and are grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

37. Based upon the facts established at the final hearing, the Hearing Panel concludes Mr. Bastian knowingly failed to reasonably communicate with his client regarding the status of his case, failed to appear at scheduled court hearings and otherwise failed to represent his client in a diligent manner, failed to expedite litigation, failed to reasonably notify his client he was abandoning his office and terminating his law practice, failed to provide his client with alternative contact information after abandoning his law office and terminating his law practice and failed to return unearned fees and expenses to his client.

38. The Hearing Panel concludes Mr. Bastian did not provide any meaningful legal services to his client and should be required to refund \$4,500.00 to Mr. Sweeney.

39. The Hearing Panel further concludes Mr. Bastian knowingly failed to respond to the Board regarding his disciplinary complaint resulting in the entry of the default judgment in this disciplinary action.

40. Mr. Bastian failed to conduct himself in conformity with the standards required of ethical attorneys practicing law in Tennessee, and the Hearing Panel finds by a preponderance of the evidence Mr. Bastian violated Tennessee Rules of Professional Conduct (RPC) 1.1 (competence); 1.3 (diligence); 1.4 (communication); 1.16 (declining or terminating representation); 3.2 (expediting litigation); and 8.1 (bar admissions and disciplinary matters).

41. As a result of violating RPC 1.1, 1.3, 1.4, 1.16, 3.2, and 8.1, Mr. Bastian also violated RPC 8.4(a) and (d).

42. Pursuant to Tenn. Sup. Ct. R. 9, § 15.4, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, (“ABA Standards”).

The Panel finds the following ABA Standards applicable in this matter:

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.

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

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.

43. Pursuant to ABA Standard 9.1, the Hearing Panel may consider aggravating and mitigation circumstances in determining the appropriate disciplinary sanction to impose.

44. The Hearing Panel finds the following aggravating factors applicable in this matter:

- (a) prior disciplinary offenses;
- (b) a pattern of misconduct;
- (c) multiple offenses

- (d) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of disciplinary agency
- (e) substantial experience in the practice of law; and
- (f) indifference to making restitution.

45. Mr. Bastian's disciplinary history was introduced into evidence as Exhibit 2 and reflects he has been suspended and reprimanded previously for the same or similar misconduct detailed in the present Petition for Discipline.

46. Mr. Bastian's law license was suspended for eleven (11) months and twenty-nine (29) days on July 9, 2014, and he was ordered to pay restitution for failing to appear at hearings, respond to discovery, reasonably communicate with his client, and improper use of his trust account.

47. Mr. Bastian's license was suspended for one (1) year (all probated) on November 20, 2009, and he was ordered to pay restitution for failing to file his client's lawsuit, failing to reasonably communicate with his client, improperly attempting to settle potential liability claims with his client and failing to advise his client of potential conflicts of interest and to seek independent advice.

48. Mr. Bastian received an Informal Admonition on February 27, 2008, for failing to return the client's file upon request and failing to refund unearned fees after being suspended and the representation terminated.

49. Mr. Bastian received an eleven (11) month and twenty-nine (29) day suspension with six (6) months being served as an active suspension on October 17, 2006, for incompetent representation, lack of diligence, failure to communicate, failure to refund unearned fees and failure to expedite litigation.



50. Mr. Bastian received a Private Informal Admonition on August 17, 2005, for failure to serve a summons timely and failure to cause an alias summons to issue, resulting in the loss of the client's cause of action.

51. Mr. Bastian received a Private Reprimand on January 8, 2001, for failure to appear at two (2) court hearings and failure to reasonably communicate with his client.

52. Mr. Bastian received a Private Informal Admonition on January 5, 2000, for failure to reasonably communicate with his client after the entry of a default judgment.

53. Mr. Bastian received a Public Censure on August 18, 1998, for failure to reasonably communicate with his client, failure to file appropriate pleadings, failure to surrender his file to his client and failure to notify his clients of his new business address.

54. Mr. Bastian received a Private Informal Admonition on January 31, 1996, for failure to reasonably communicate with his clients, failure to seek court approval before withdrawing and failure to notify clients of his new business address.

55. Mr. Bastian received a Public Censure on November 10, 1994, for contempt of court for failure to timely file appellate briefs in three (3) separate criminal cases.

56. Mr. Bastian received a Public Censure on February 17, 1993, for failure to timely file an appellate brief, resulting in the dismissal of the appeal and failure to timely prepare a suitable Last Will and Testament for a terminally ill client.

57. The Hearing Panel finds no mitigating factors applicable in this matter.

58. Disciplinary Counsel submitted an Application for Assessment of Costs accompanied by an affidavit and itemized cost bill incurred in the investigation and prosecution of the disciplinary complaints. The Hearing Panel, having received no objection to the cost bill

within fifteen (15) days of its submission<sup>1</sup>, finds the cost bill in the amount of \$912.84 is reasonable and necessary, and properly assessed against Mr. Bastian.

### **JUDGMENT**

Based on these findings of fact and conclusions of law, the presence of aggravating circumstances, and the absence of mitigating circumstances, Mathew Quentin Bastian is disbarred pursuant to Tenn. Sup. Ct. R. 9, § 12.1 (2014) and shall pay restitution in the amount of \$4,500.00 to Mr. Luis Sweeney.

The Application for Assessment of Costs is granted, and the cost bill submitted by the Board pursuant to Tenn. Sup. Ct. R. 9, § 31.3 (2014) in the amount of \$912.84 is approved as a reasonable and necessary costs of the disciplinary proceedings and assessed against Mathew Quentin Bastian.

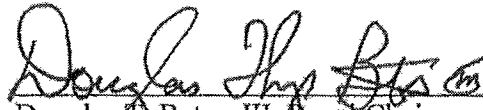
In addition to all other requirements and obligations of disbarred attorneys set forth in Tenn. Sup. Ct. R. 9, payment of restitution and all costs assessed in this matter, payment of all registration fees due and owing, payment of all professional privilege taxes due and owing, and compliance with all CLE requirements are conditions precedent to the reinstatement of Matthew Quentin Bastian to the practice of law in Tennessee.

Any additional costs in this matter not addressed herein are taxed to Mathew Quentin Bastian for which execution, if necessary, may issue.

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<sup>1</sup>Tenn. Sup. Ct. R. 9, § 31.3 (2014) provides the respondent attorney fifteen (15) days to file an objection to the cost bill submitted by the Board. In the present action, the cost bill and affidavit of Disciplinary Counsel were submitted with the proposed Findings of Fact and Conclusions of law, and respondent filed no timely objection.

IT IS SO ORDERED.

  
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Douglas T. Bates, III, Panel Chair

  
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Samuel B. Garner, Panel Member

  
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Larry A. Rocconi, Jr., Panel Member

**NOTICE TO RESPONDENT**

**This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a Petition for Review in the Circuit or Chancery court within sixty (60) days of the date of entry of the hearing panel's judgment.**