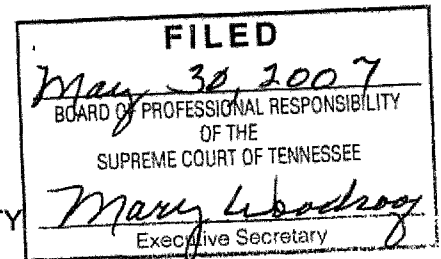


IN DISCIPLINARY DISTRICT III
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: JES BEARD
BPR No. 14170, an
Attorney Licensed to
Practice Law in Tennessee
(Hamilton County)

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DOCKET NO. 2003-1405-3 (C)-JV

JUDGMENT OF THE HEARING COMMITTEE

This cause came on to be heard on May 16, 2007 by the Hearing Committee appointed by the Board of Professional Responsibility of the Supreme Court of Tennessee. The cause was heard pursuant to Rule 9 of the Rules of the Tennessee Supreme Court. This Hearing Committee, consisting of John F. Kimball, Mary Ann Nunnally Green and Hallie Hockman McFadden, submits the following Judgment:

I.

STATEMENT OF THE CASE

1. The Respondent was licensed to practice law in 1990.
2. On November 4, 2003, the Board of Professional Responsibility filed a Petition for Discipline against the Respondent arising out of Complaint File No. 26274-3(C)-JV.
3. On November 26, 2003, the Respondent filed his Response to Petition to Discipline.
4. On August 4, 2006, the Board filed a Supplemental Petition for Discipline, accompanied by a Second Set of Interrogatories and Request for Production of Documents, and mailed same to the Respondent by certified mail on August 4, 2006.
5. On August 4, 2006, the Hearing Committee also filed a Case Management Order setting forth various deadlines and setting the case for a hearing in May of 2007.
6. On September 1, 2006, the Board filed a Motion for Default Judgment and requested that the allegations contained in the Supplemental Petition for Discipline be deemed admitted.

7. On September 12, 2006, the Board filed a Second Supplemental Petition for Discipline, accompanied by a Third Set of Interrogatories and Request for Production of Documents, and mailed same to the Respondent by certified mail on September 12, 2006.

8. On September 21, 2006, the Respondent filed a Response to Supplemental Petition for Discipline.

9. On October 10, 2006, the Board filed a Motion for Default Judgment and requested that the allegations contained in the Second Supplemental Petition for Discipline be deemed admitted.

10. On October 10, 2006, the Board filed a Motion to Compel responses to the Second Set of Interrogatories and Request for Production of Documents which accompanied the Supplemental Petition for Discipline.

11. On October 25, 2006, the Respondent filed a Response to Second Supplemental Petition for Discipline.

12. On October 27, 2006, the Board filed a Motion to Compel the Respondent to respond to the Third Set of Interrogatories and Request for Production of Documents which accompanied the Second Supplemental Petition for Discipline.

13. On December 1, 2006, the Hearing Committee filed an Order Granting the Board's Motions to Compel filed October 10, 2006, and October 27, 2006. The Committee ordered that the Respondent fully and completely respond to the Second Set of Interrogatories and Request for Production of Documents filed on August 4, 2006, and Third Set of Interrogatories and Request for Production filed on September 12, 2006. This Order established a deadline for the Respondent to answer this discovery by December 15, 2006.

14. The Respondent did not respond to the Board's Second Set of Interrogatories and Request for Production of Documents filed August 4, 2006, nor the Board's Third Set of Interrogatories and Request for Production of Documents filed September 12, 2006, as required by the Hearing Committee's Order filed December 1, 2006.

15. On December 21, 2006, the Board filed a Motion to Strike the Respondent's Answers to both the Supplemental Petition for Discipline and Second Supplemental Petition for Discipline. The Board's Motion also asked the Hearing Committee to enter Judgments by Default on both the Supplemental Petition for Discipline and the Second Supplemental Petition for Discipline.

16. Respondent never responded to this Motion, nor did the Respondent submit any responses to the Board's outstanding discovery.

17. On February 6, 2007, based on Respondent's willful and unexcused failure to participate in the discovery process and his willful and unexcused violation of the Hearing Committee's Order compelling discovery, the Hearing Committee granted the Board's Motions to Strike Respondent's Answers to the Supplemental Petition for Discipline and the Second Supplemental Petition for Discipline. In the same Order, the Hearing Committee granted the Board a Default Judgment on both the Supplemental Petition for Discipline filed on August 4, 2006, and the Second Supplemental Petition for Discipline filed on September 12, 2006.

18. With regard to the Supplemental Petition for Discipline, Respondent, by Default Judgment, was found to have committed actions and omissions in violation of Rules of Professional Conduct 1.1, 1.2(a), 1.3, 1.4, 8.4(d).

19. With regard to the Second Supplemental Petition for Discipline, Respondent, by Default Judgment, was found to have committed actions and omissions in violation of Rules of Professional Conduct 3.3(a)(1)(b)(c)(d), 3.4(b), 4.1(a), and 8.4(a)(c)(d).

20. The Hearing Committee's Order filed on February 6, 2007 further provided that the Hearing Committee would hear argument and receive proof on the Petition for Discipline filed November 4, 2003, and also on the issues of the extent to which discipline should be imposed against the Respondent for his acts and omissions established by Default on the Supplemental Petition for Discipline and the Second Supplemental Petition for Discipline. A final hearing was previously set for May 16, 2007, and was reconfirmed in this Order.

21. A Final Pre-Hearing Conference was held on April 24, 2007. Between, February 6, 2007 and April 24, 2007, the Respondent did not file anything with the Board requesting any relief from the Default Judgments. The Respondent did appear in person for the Final Pre-Hearing conference. During that conference, the Respondent orally advised the Hearing Committee he was contemplating filing a Motion to Set the Default Judgments aside. He was advised by the Hearing Committee that he should promptly file in writing any Motion that he wished to have the Hearing Committee consider. Respondent did not ask for a continuance or a severance at the Final Pre-Hearing conference on April 24, 2007. Both the Board and the Respondent were reminded by the Hearing Committee at the Final Pre-Hearing Conference that Proposed Findings of Fact and Conclusions of Law were to be submitted by May 9,

2007 as provided in an Amended Case Management Order filed in February, 2007.

22. The Case Management Order required the parties to submit proposed Findings of Fact and Conclusions of Law by May 9, 2007.

23. The Board filed its proposed findings of Fact and Conclusions of Law by this deadline, but the Respondent did not. The Respondent never filed proposed findings of fact or conclusions of law.

24. On May 15, 2007, the day before the hearing, the Respondent filed a Motion to Continue in Part and a Motion to Sever. The Respondent did not move to have the Default Judgments set aside. The Board filed a Response to this Motion the same day.

25. At the beginning of the hearing on May 16, 2007, the Respondent's Motion to Continue in Part and Motion to Sever was heard by the Hearing Committee and was denied.

26. The matter proceeded to a hearing on May 16, 2007.

II.

FINDINGS OF FACT **Petition for Discipline Filed November 4, 2003** **File No. 26274-3(C)-JV**

1. The Respondent represented Julie McGehee's (now Julie Lopez) ex-husband, Mark K. McGehee, in their divorce action filed on October 3, 2001, in the Circuit Court for Hamilton County, Tennessee, No. 0101915. She is referred to in this section as "Complainant."

2. The Complainant represented herself at trial of the case on September 16, 2002.

3. A true and accurate copy of the transcript of the Memorandum Opinion rendered by the Circuit Court of Hamilton County, Tennessee, on September 16, 2002, is attached as Exhibit B to the Petition for Discipline. (The Petition for Discipline and its attachments were introduced into evidence as Exhibit 9 at the Hearing on May 16, 2007.)

4. At the conclusion of the McGehee trial on September 16, 2002, the Respondent was directed by the Court to prepare the Final Decree.

5. On October 30, 2002, Jacqueline Schulten, the Circuit Court Judge who heard the trial on September 16, 2002, wrote a letter addressed to the Respondent and to the Complainant which advised both the Respondent and the Complainant that the Court expected an Order and/or Permanent Parenting Plan to be filed by November 15, 2002, or the case would be dismissed (see Exhibit 15 introduced at hearing on May 16, 2007).

6. Prior to October 30, 2002, the Complainant had contacted the Respondent's office on multiple occasions to inquire as to the status of the Final Decree. Each time she was told by the Respondent and/or his office staff that they were working on it and/or they had not had a chance to get to it. The Respondent's letter dated July 7, 2003, to the Board (Exhibit A to the Petition for Discipline) stated: "I can't comment on whether Ms. McGehee called my office prior to this about the Order - I simply do not recall. I know she called and spoke with me about some matters after the trial including exchanging of belonging and of the child, but I don't recall whether there was ever any discussion between us regarding the Order prior to the time I drafted our proposed Order." The Hearing Committee finds the Complainant's testimony is credible and that she did contact the Respondent's office on several occasions prior to October 30, 2002.

7. According to the Respondent's testimony at the hearing, he lost all of his notes from the hearing on September 16, 2002 and could never locate them prior to the time he prepared the Decree in question. Respondent further testified that he had never located the notes even up to the date of the hearing on May 16, 2007. Respondent stated that the reason he delayed preparing the Final Decree was that he lost his notes. Respondent testified that when he finally started preparing the Final Decree, he relied solely upon his memory. Prior to submitting the Decree to the Court, the Respondent never advised the Complainant nor the Court that he had lost his notes and/or that the Decree was prepared solely from his memory.

8. On November 12, 2002, the Complainant wrote the Trial Judge a letter advising the Trial Judge that she was submitting a Marital Dissolution Agreement (see Exhibit 16 introduced at the hearing on May 16, 2007). This letter also advised the Court that she had contacted the Respondent's office on several occasions and spoke with the Respondent's assistant (Holland) and the Respondent and she was told by each person that the paper work would be sent to her soon.

9. The Complainant filed her proposed Order on November 13, 2002 (Exhibit 11 introduced at the hearing on May 16, 2007).

10. According to the Respondent's testimony he began working on the Final Decree on November 14, 2002, one day before the date that the Court had indicated in its letter of October 30, 2002 that the Order had to be filed or the case would be dismissed. The Respondent claimed in his testimony that he did not receive Judge Schulten's letter dated October 30, 2002 (Exhibit 15) until November 12, 2002. He offered the Hearing Committee an explanation that the address on this letter

for his office was different than the address listed on his pleadings. However, the Respondent did not offer any other explanation for not beginning work on the Order until November 14, 2002 other than he had lost his notes. The Respondent's testimony before the Hearing Committee was that he began working on the Order on November 14, 2002, and later that evening he had a conversation with the Complainant where he said he attempted to go over the terms of the Order in detail and discuss the matter with her.

11. In the Respondent's letter dated July 7, 2003 (Exhibit A to the Petition for Discipline), he stated: "I also recall that prior to filing the Order, hurriedly drafted from memory, I called and spoke with Ms. McGehee, and that when I attempted to review the draft with her before submitting it to the Court, Ms. McGehee refused to discuss the matter and hung up on me within 90 seconds of picking up the phone. The only thing I recall her saying is that she was not going to discuss it with me, but that she was submitting her own Order." The Hearing Committee finds that there are significant discrepancies between the Respondent's testimony on May 16, 2007 about this phone call and the Respondent's assertions about this phone call in Respondent's letter dated July 7, 2003.

12. Contrary to the Respondent's testimony and his letter about this phone call, Ms. McGehee denied there was ever a phone conversation that evening where she and the Respondent actually spoke about his proposed Order. She testified that he called her phone and left a message but that she never actually spoke with him because by that time she had decided to prepare her own Order. The Hearing Committee finds Ms. McGehee's testimony in this regard is credible and that the Respondent's testimony before the hearing panel about this conversation was not credible.

13. The Respondent acknowledged that the errors in the Decree were due to his flawed memory and that his later review of the transcript showed that his Decree included several errors.

14. The Respondent offered no testimony or proof that he ever attempted to request additional time from the Court to prepare the Decree in light of the fact that he had lost his notes. Had the Respondent acted promptly and diligently in preparing the Order and discovered that he had misplaced his notes, then he could have and should have ordered the transcript so that he could accurately prepare the Decree. Alternatively, the Respondent could have been candid with the Complainant and the Court and advised the Court and the Complainant that he had misplaced his notes and that he needed additional time to either locate the notes or order a copy of the transcript. The Hearing Committee finds that he did neither. In fact, based on his own admission, Respondent hurriedly

prepared the Order at the last minute.

15. Sometime after the Respondent submitted his proposed Decree to the Court on November 15, 2002, the Respondent and the Complainant spoke again on the telephone. The Respondent testified that they spoke only about visitation. However, the Complainant testified that a few days after November 15, 2002, she received a copy of his proposed Decree in the mail and noted there were several differences in what the Trial Judge ordered and what was contained in the Respondent's proposed Decree. The Complainant testified that around the 17th or 18th of November 2002, the Respondent called the Complainant in regard to Thanksgiving holiday visitation. At that point she had just received the proposed Decree in the mail. She told the Respondent that he was a liar and that he had falsified information in the Decree and she hung up the phone. The Hearing Committee finds that the testimony of the Complainant about this telephone conversation is credible. The Hearing Committee finds that the Respondent knew or should have known at that time that the proposed Decree that he submitted to the Court contained errors and he should have taken steps to rectify his mistakes. Instead, the proof is he did nothing between that time and the time that his proposed Decree was entered by the Court. After that Decree was entered, he did nothing until after the Complainant filed a Motion to Alter or Amend.

16. The Court entered the Final Decree and Parenting Plan prepared by the Respondent on December 2, 2002. A copy of the Final Decree and Parenting Plan prepared by the Respondent is attached to the Petition for Discipline as Exhibit C and was entered into evidence on May 16, 2007, as part of Collective Exhibit 9.

17. The Final Decree prepared and submitted for entry by the Respondent and entered by the Court (Collective Exhibit 9 and Exhibit C to the Petition for Discipline) was inconsistent with the Memorandum Opinion rendered by the Court on September 16, 2002, (Collective Exhibit 9 and Exhibit B to the Petition for Discipline) in several material respects.

18. On January 20, 2003, an attorney retained by the Complainant filed a Motion to Alter or Amend the Judgment entered on December 2, 2002 and a Motion for Sanctions. A copy of this Motion is attached to the Petition for Discipline (Exhibit 9) as Exhibit D. This Motion set out the specific ways that the Final Decree (Exhibit C attached to the Petition for Discipline) prepared and submitted to the Court by the Respondent was inconsistent with the Memorandum Opinion of the Court rendered September 16, 2002 (Exhibit B). This Motion included a copy of the court reporter's transcript of the

Memorandum Opinion of the court as an exhibit.

19. A reading of the transcript clearly shows that the Decree prepared by the Respondent was wrong in several material respects. Respondent admitted at the hearing that a reading of the transcript showed the Decree he prepared was inaccurate in several respects.

20. The Hearing Committee finds that the Respondent's actions following the receipt of the Complainant's Motion to Alter or Amend clearly indicate the Respondent did not take responsibility for his errors. The Respondent did not take any action to correct the erroneous Decree between the time he received the Complainant's Motion to Alter or Amend with the transcript on or about January 21, 2003 and the February 24, 2003 hearing date on the Complainant's Motion to Alter or Amend.

21. At a hearing on the Complainant's Motion to Alter or Amend conducted on February 24, 2003, the Trial Court found that the Final Decree should be altered.

22. An Amended Final Decree and Parenting Plan was entered on March 12, 2003. A true and accurate copy of this document is attached to the Petition for Discipline (Exhibit 9) as Exhibit E.

23. On April 9, 2003, the Respondent filed a Motion to Alter or Amend. By Order entered April 28, 2003, the Court denied the Respondent's Motion to Alter or Amend.

24. By Order entered May 12, 2003, a true and accurate copy of which is attached to the Petition for Discipline as Exhibit F, the Court granted sanctions against the Respondent and awarded attorney's fees to the Complainant in the amount of \$2,383.80.

25. The Respondent filed a Notice of Appeal to the Court of Appeals.

26. In his July 7, 2003 letter to the Board and in his testimony before the Hearing Committee on May 16, 2007, the Respondent repeatedly implied that all the Complainant would have had to do to get him to correct his errors in the Decree would have been for her to pick up the phone and call him and he would have corrected the Decree. The Hearing Committee finds that such assertions by the Respondent are not credible in light of the fact that even after he received the transcript of the hearing, he refused to concede that the Decree had mistakes in it that were caused by him, and he opposed the Complainant's efforts to correct the errors. In fact, the Respondent took the position in front of the Court of Appeals that his Decree with all of the errors in it should not have been set aside on the basis of mistake or fraud. (However, the Court of Appeals found that the Trial Court was correct in setting aside the Order on the basis of Rule 60 of the Tennessee Rules of Civil Procedure on either mistake or fraud but did not make a specific finding). (A copy of the Opinion of the Court of Appeals was introduced into

evidence on May 16, 2007 as Exhibit 10.)

27. Respondent contends that because the Rule 11 sanctions imposed against him were set aside by the Court of Appeals that he has been exonerated by the Court of Appeals for his conduct in the matter. The Court of Appeals made no such finding. To the contrary, the Court of Appeals stated in its opinion: "It is clear that the Order Mr. Beard submitted to the Court on December 2, 2002, was inaccurate. It is equally clear that Mr. Beard had an obligation to submit an Order that was accurate."

28. The Court of Appeals vacated the Trial Court's Order granting Rule 11 sanctions against the Respondent solely because the Complainant's counsel did not comply with the safe harbor requirement of Rule 11.03(1)(a). Specifically, the Court of Appeals stated: "We do not condone the conduct of Appellant's counsel in submitting an inaccurate Order to the Trial Court, but because the record fails to show that Mother complied with the safe harbor requirement of Rule 11.03(1)(a), and the Trial Court did not comply with Rule 11.03(3), we reversed the Order of sanctions against Mr. Beard."

29. The Hearing Committee finds that the Respondent's actions following the receipt of the Complainant's Motion to Alter or Amend clearly indicate the Respondent did not take responsibility for his errors and in fact he attempted to enforce an erroneous Order of his own making on the Complainant.

III.

FINDINGS OF FACT **Supplemental Petition for Discipline Filed August 4, 2006** **File No. 27235-3 (C)-JV**

The facts deemed admitted in the Supplemental Petition for Discipline filed August 4, 2006, are, in part, as follows:

1. The Respondent represented the Complainant in a child support dispute styled Tina Louise Payne Murray v. Raymond Clayton Murray, Jr., Circuit Court for Hamilton County, No. 91-DR-0957.

2. A hearing was conducted on September 8, 2003, following which the Respondent advised the Complainant that he would probably have to pay the adversary between \$12,000.00 and \$16,000.00.

3. On advice of the Respondent, the Complainant authorized a quick settlement of \$8,000.00.

4. The Court rendered its Opinion on October 13, 2003, a true and accurate copy of which is attached to the Supplemental Petition for Discipline as Exhibit B. (The Supplemental Petition for Discipline with Attachments was introduced as Exhibit 7 at the hearing on May 16, 2007.)

5. On October 14, 2003, the Respondent advised the Complainant that the Court had ruled that the Complainant pay \$15,000.00, but that Respondent needed to read the full Opinion and would get back with the Complainant.

6. On October 15, 2003, the Respondent advised the Complainant that the adversary had offered to settle the matter for \$10,000.00 and recommended that the Complainant deliver the money quickly before the adversary read the Court's Opinion.

7. The Complainant paid the money immediately.

8. The parties entered into an Agreed Order arising out of the settlement resolving the dispute.

9. Five hours later, the Respondent advised the Complainant that he should stop payment on the settlement checks because the Court had actually held that the Complainant pay \$10,500.00 in back child support but minus credits of \$2,595.00 and ordered that the adversary was obligated for \$14,552.38 of necessities which the Complainant had provided to the child.

10. An Agreed Order was filed on October 16, 2003. A true and accurate copy of this Order is attached as Exhibit C to the Supplemental Petition for Discipline.

11. On November 17, 2003, the Respondent filed a Motion for Relief or Guidance. A true and accurate copy this Motion is attached to the Supplemental Petition for Discipline as Exhibit D.

12. By Order entered December 16, 2003, the Court found that the Agreed Order settling the matter was binding. A true and accurate copy this Order is attached to the Supplemental Petition for Discipline as Exhibit E.

13. On September 17, 2004, the Complainant filed a Complaint for Professional Negligence against the Respondent. A true and accurate copy of this Complaint is attached to the Supplemental Petition for Discipline as Exhibit F.

14. On or about November 29, 2005, the Complainant filed a Motion to Compel Discovery. A true and accurate copy of this Motion is attached to the Supplemental Petition for Discipline as Exhibit G. This Motion sought to compel the Respondent to respond to expert interrogatories.

15. On January 25, 2006, the Complainant filed a Motion to Exclude Evidence. A true and accurate copy of this Motion is attached to the Supplemental Petition for Discipline as Exhibit H. This Motion was filed because the Respondent had failed to respond to expert interrogatories.

16. On May 26, 2006, the Respondent filed a Motion for Summary Judgment. A true and accurate copy of this Motion is attached to the Supplemental Petition for Discipline as Exhibit I.

17. On or about June 5, 2006, the Complainant filed a Motion to Strike. A true and accurate copy of this Motion is attached to the Supplemental Petition for Discipline as Exhibit J.

18. On or about June 14, 2006, the Court entered an Order dismissing the Respondent's Motion for Summary Judgment. A true and accurate copy of this Order is attached to the Supplemental Petition for Discipline as Exhibit K.

19. On or about June 26, 2006, the Respondent filed a Response to Plaintiff's Amended Motion to Compel. A true and accurate copy of this Motion is attached to the Supplemental Petition for Discipline as Exhibit L.

20. The trial of the case was set for June 28, 2006 and the Trial Judge announced on June 27, 2006 that he was granting the Complainant's Motion to preclude the Respondent from offering proof and limiting the trial to an issue of damages only. (See also the Order attached as Exhibit N to the Supplemental Petition for Discipline).

21. On or about June 28, 2006, the Respondent filed a Motion to Reconsider. A true and accurate copy of the Motion to Reconsider is attached to the Supplemental Petition for Discipline as Exhibit M.

22. The case was heard on June 28, 2006.

23. On June 30, 2006, the Court entered an Order. A true and accurate copy of this Order is attached to the Supplemental Petition for Discipline as Exhibit N. This Order granted the Complainant's Motion to Compel nunc pro tunc for November 30, 2005. The Order reflects that the Court found that the Respondent was unwilling or unable to comply with discovery, dismissed all liability defenses, and held that the case would proceed only on the issue of damages.

24. On June 30, 2006, the Court entered an Order on the Complainant's Motion to Exclude evidence. A true and accurate copy of this Order is attached to the Supplemental Petition for Discipline as Exhibit O, holding that expert testimony on behalf of the Respondent would be excluded.

25. On July 10, 2006, the Court entered an Order overruling the Respondent's Motion to Reconsider. A true and accurate copy of this Order is attached to the Supplemental Petition for Discipline as Exhibit P.

26. On July 10, 2006, the Court entered a Judgment against the Respondent and in favor of the Complainant in the amount of \$16,697.38 . A true and accurate copy of the Judgment is attached

to the Supplemental Petition for Discipline as Exhibit Q.

27. The Respondent has appealed this Judgment to the Tennessee Court of Appeals.

IV.

FINDINGS OF FACT
Second Supplemental Petition for Discipline Filed on September 12, 2006
File No. 28909-3(C)-JV

Although the Board requested and was granted a default on the Second Supplemental Petition for Discipline, the Board presented one witness, Sean Morehead, an attorney for the Department of Children's Services, who was the Complainant in the Second Supplemental Petition. The Respondent also testified. The Hearing Committee finds the following facts on the Second Supplemental Petition:

1. The Respondent represented the mother in Juvenile Court regarding dependency and neglect and a Petition to terminate parental rights.

2. An adjudicatory hearing was conducted before the Juvenile Court Referee on May 19, 2004.

3. The father was present but was not represented by counsel at this hearing.

4. The Referee determined that the father had abused one of the children and awarded custody of the children to the State of Tennessee.

5. The Findings and Recommendations of the Referee were filed on June 1, 2004. A true and accurate copy of these Findings are attached to the Second Supplemental Petition for Discipline as Exhibit B. (The Second Supplemental Petition for Discipline and attachments were admitted into evidence at the hearing on May 16, 2007 as Exhibit 6.)

6. The Respondent was present in Juvenile Court on June 1, 2004. The Respondent received a copy of the Court's Findings, and discussed them, on the record, in detail, with the Referee and asked several questions.

7. The parties were advised by the Court that they had five days to request a hearing before the presiding Judge and ten days thereafter to request an appeal to the Circuit Court.

8. On June 11, 2004, the Juvenile Judge confirmed and affirmed the findings of the Referee. A true and accurate copy of this Order is attached to the Second Supplemental Petition for Discipline as Exhibit C and was also introduced at the hearing on March 16, 2007 as Exhibit 2.

9. On or about April 22, 2005, counsel for the father filed the Father's Bill of Exceptions and Motion to Allow His Appeal. A true and accurate copy of this document is attached to the Second Supplemental Petition for Discipline as Exhibit D. This document stated that the father had not been

served with the June 1, 2004, Findings and Recommendations of the Referee and that neither the father's counsel nor the father had received same until April 11, 2005.

10. At the hearing, on April 22, 2005, the Respondent orally joined the Motion filed by counsel for the father on behalf of the mother.

11. On April 25, 2005, the Respondent filed a Brief in Support of Rehearing on behalf of his client, the mother. A true and accurate copy of this Brief is attached to the Second Supplemental Petition for Discipline as Exhibit E. In the Brief, the Respondent asserted that he first became aware of the Order from the adjudicatory hearing sometime in either late July or August, 2004, but that he was not served with a copy of the Referee's Findings until April 11, 2005, although he stated he had seen the Findings in the Court file sometime in August or September 2004. The Respondent further stated that when the parties were last before the Court, the Respondent had orally represented to the Court in good faith that the mother had been served with the Order in a timely manner.

12. On April 27, 2005, the Respondent filed the mother's Affidavit of Non-Receipt. A true and accurate copy of this Affidavit is attached to the Second Supplemental Petition for Discipline as Exhibit F. In this Affidavit, the mother asserted that she had not received the Adjudicatory Order until April 11, 2005.

13. Sometime between mid-April 2005 and early May 2005, the Complainant brought to the Respondent's attention that Respondent had in fact received a copy of the Juvenile Referee's Findings back in June of 2004 and that the Respondent had in fact discussed said Findings with the Complainant. This conversation was prior to the Juvenile Judge entering an Order in June 2005. Although he had received the Findings, and the fact that he had received the Findings was brought to his attention by the Complainant, the Respondent did not correct his assertions or his client's Affidavit at any time.

14. The Juvenile Judge entered an Order dated June 16, 2005, denying the mother's appeal. A true and accurate copy of this Order is attached to the Second Supplemental Petition for Discipline as Exhibit G.

15. An audiotape of the June 1, 2004, hearing reflects that the Respondent asked the Referee questions about the Findings and Recommendations of the Referee in open Court. Respondent advised the Hearing Committee that he listened to the tape before the May 16, 2007 hearing and conceded that is clearly heard on the tape. (A copy of the tape was introduced as Exhibit 3 and a copy of the transcript

of the June 1, 2004 proceedings was introduced as Exhibit 4.)

16. The Respondent made misrepresentations of fact to the Court. Even if the initial misrepresentations were unintentional, these misrepresentations were brought to the Respondent's attention. Respondent had a duty to correct these misrepresentations. He never did.

17. The Board asserts Respondent violated several disciplinary rules by joining into a Motion based on incorrect and misleading information; i.e., that neither he nor his client had received the Referee's Findings and Recommendations, and by helping his client prepare and file a false Affidavit. Further, the Board asserts that when the misrepresentation was brought to Respondent's attention, he failed to remedy the misrepresentation. Respondent concedes that there was in fact a misrepresentation, but maintains such misrepresentation was accidental. Respondent also asserts that although Complainant brought the misrepresentation to his attention, it was done in a manner that was sufficient not to put Respondent on notice of the misrepresentation. The Hearing Committee finds Respondent's assertion disingenuous and not credible. Initially, it should be noted that Respondent did not accept responsibility for correcting the misrepresentation, rather blaming Complainant for not explicitly advising him of the misrepresentation. The Hearing Committee finds the Complainant's testimony was credible and that the Respondent's testimony was not credible. The Hearing Committee further finds that even if the initial misrepresentation was negligent, and the Hearing Committee does not make that assumption, the Respondent had the misrepresentation brought to his attention, and failed to correct the misrepresentation with the Court.

V.

CONCLUSIONS OF LAW

1. With regard to the Petition for Discipline filed on November 2, 2003, the Hearing Committee finds that the Board has proven, by a preponderance of the evidence, that the Respondent violated the following Disciplinary Rules of the Code of Professional Responsibility:

DR 1-102(A) (1) (4) (5) (6);

DR 7-102(A) (1) (3) (5) (8);

and the following Rules of Professional Conduct:

RPC 1.1;

RPC 1.3;

RPC 3.1;

RPC 3.2;

RPC 8.4(a)(c)(d).

The Hearing Committee finds that the Respondent's acts and omissions, as set forth in the Hearing Committee's Findings of Fact on the Petition for Discipline, violated the following rules:

DR 1-102. Misconduct

(A) A lawyer shall not:

- (1) Violate a Disciplinary Rule.
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (5) Engage in conduct that is prejudicial to the administration of justice.
- (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 7-102. Representing a Client Within the Bounds of the Law

(A) In the representation of a client, a lawyer shall not:

- (1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.
- (3) Conceal or knowingly fail to disclose that which he is required by law to reveal.
- (5) Knowingly make a false statement of law or fact.
- (8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

Rule 1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 3.1. Meritorious Claims and Contentions.

A lawyer shall not bring or defend or continue with the prosecution or defense of a proceeding, or assert or controvert or continue to assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.

Rule 3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation.

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

- (a) 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;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice.

3. With regard to the Supplemental Petition for Discipline, Respondent, by Default Judgment, is found to have committed actions and omissions in violation of the following Rules of Professional Conduct:

RPC 1.1,

RPC 1.2(a),

RPC 1.3,

RPC 1.4,

RPC 8.4(d).

The Hearing Committee finds that the Respondent's acts and omissions, as set forth in the Hearing Committee's Findings of Fact on the Supplemental Petition for Discipline, and as established by Default, violated the following rules:

Rule 1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Rule 1.2. Scope of the Representation and the Allocation of Authority Between the Lawyer and Client. (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of the representation and may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter.

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client

Rule 1.4. Communication.

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and comply with reasonable requests for information within a reasonable time.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

- (d) engage in conduct that is prejudicial to the administration of justice.

4. With regard to the Second Supplemental Petition for Discipline, Respondent, by Default Judgment, is found to have committed actions and omissions in violation of the following Rules of Professional Conduct:

RPC 3.3(a)(1)(b)(c)(d),

RPC 3.4(b),

RPC 4.1(a),

RPC 8.4(a)(c)(d).

*

The Hearing Committee finds that the Respondent's acts and omissions, as set forth in the Hearing Committee's Findings of Fact on the Second Supplemental Petition for Discipline, and as established by Default, violated the following rules:

Rule 3.3. Candor Toward the Tribunal.

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal;
- (b) A lawyer shall not offer evidence the lawyer knows to be false.
- (c) A lawyer shall not affirm the validity of, or otherwise use, any evidence the lawyer knows to be false.
- (d) A lawyer may refuse to offer or use evidence, other than the testimony of a client who is a

defendant in a criminal matter, that the lawyer reasonably believes is false, misleading, fraudulent or illegally obtained.

Rule 3.4. Fairness to the Opposing Party and Counsel.

A lawyer shall not:

- (b) falsify evidence, counsel or assist a witness to offer false or misleading testimony.

Rule 4.1. Truthfulness and Candor in Statements to Others.

- (a) In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

- (a) 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;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice.

VI.

APPLICABLE STANDARDS OF DISCIPLINE

Section 8.4 of Supreme Court Rule 9 provides "[i]n determining the appropriate type of discipline, the hearing committee shall consider the applicable provisions of the *ABA Standards for Imposing Lawyer Sanctions*" (hereinafter ABA Standards).

The Hearing Committee finds that the following ABA Standards are applicable to the case herein:

- 4.4 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:

* * *

- 4.42 **Suspension** is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

- 4.6 Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the

lawyer engages in fraud, deceit, or misrepresentation toward a client:

* * *

- 4.62 **Suspension** is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

- 5.1 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 commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

* * *

- 5.12 **Suspension** is generally appropriate when a lawyer knowingly engages in criminal conduct with does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

- 6.1 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 conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

* * *

- 6.12 **Suspension** is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, 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.

- 6.2 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 failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

* * *

- 6.22 **Suspension** is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

- 8.0 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 prior discipline.

* * *

- 8.2 **Suspension** is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further acts of misconduct that causes injury or potential injury to a client, the public, the legal system or the profession.

The ABA Standards further provide:

- 9.1 After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.
- 9.22 This section lists the following Aggravating factors that could be applicable to this case:
- (a) prior disciplinary offenses;
 - (b) dishonest or selfish motive;
 - (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;
 - (i) substantial experience in the practice of law.

VII.

FINDINGS OF FACT AS TO PRIOR DISCIPLINE

1. The Hearing Committee finds Respondent received a Private Informal Admonition on October 8, 1998. A copy of this Private Informal Admonition is attached the Petition for Discipline as Exhibit G.

2. The Hearing Committee finds Respondent received a Private Reprimand on June 18, 1999. A copy of this Private Reprimand is attached the Petition for Discipline as Exhibit H.

3. The Hearing Committee finds Respondent received a Public Censure on August 22, 2000. A copy of this Public Censure is attached to the Petition for Discipline as Exhibit I.

4. The Hearing Committee finds Respondent received a Private Reprimand on January 11, 2001. A copy of this Private Reprimand is attached to the Petition for Discipline as Exhibit J.

5. The Hearing Committee finds Respondent received a Public Censure on December 4, 2002. A copy of this Public Censure is attached to the Petition for Discipline as Exhibit K.

6. The Hearing Committee finds Respondent received a Public Censure on June 23, 2003. A copy of this Public Censure is attached to the Petition for Discipline as Exhibit L.

VIII.

FINDINGS AS TO AGGRAVATING AND MITIGATING CIRCUMSTANCES

1. The Hearing Committee finds Respondent has substantial experience in the practice of law, being licensed in Tennessee since 1990. This is an aggravating circumstance.

2. The Hearing Committee finds the Respondent's failures set forth in the Petition for Discipline, the Supplemental Petition for Discipline, and the Second Supplemental Petition for Discipline, in conjunction with other offenses which are the subject of prior discipline imposed upon the Respondent, constitute or contribute to a pattern of misconduct, incompetence, or neglect. This is an aggravating circumstance.

3. The Hearing Committee finds the Respondent's violations and failures as set forth in the Petition for Discipline, the Supplemental Petition for Discipline, and the Second Supplemental Petition for Discipline, in conjunction with other offenses which are the subject of prior discipline imposed upon the Respondent, constitute multiple offenses. This is an aggravating circumstance.

4. The Hearing Committee finds that Respondent has engaged in a bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. This is an aggravating circumstance.

5. The Hearing Committee finds Respondent made no attempt to present relevant evidence of mitigating circumstances to the Hearing Committee for its consideration. The Respondent was given every opportunity to present evidence of whether or to what extent Respondent should be disciplined as a result of his acts and omissions found by the Hearing Committee on the Petition for Discipline and admitted by default relating to the Supplemental Petition for Discipline and the Second Supplemental Petition for Discipline. The Hearing Committee finds that there are no mitigating circumstances in this case.


IX.

JUDGMENT

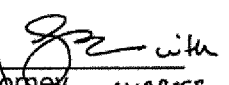
The Hearing Committee concludes that suspension is the appropriate discipline in this case. Even if the Respondent was given the benefit of the doubt and the Hearing Committee had concluded that the Respondent was merely negligent: 1) in failing to properly draw the Final Decree, as alleged in the Petition for Discipline; 2) in giving advice to his client to settle for \$10,000 without first reading the Memorandum Opinion which the court had already rendered and which Respondent had in his possession, as alleged in the Supplemental Petition for Discipline, and; 3) in filing false pleadings and a false affidavit of his client asserting that the client had not timely received the Findings and Recommendations of the Referee, as alleged in the Second Supplemental Petition for Discipline, the Committee believes that suspension would still be the appropriate discipline.

Based upon the Hearing Committee's findings of fact and conclusions of law, and based upon the finding of aggravating circumstances and the lack of any mitigating circumstances, it is the Judgment of the Hearing Committee that the Respondent should be suspended from the practice of law for a period of two (2) years. Because the May 16, 2007 Hearing included three separate Petitions for Discipline (although a Default Judgment had already been granted on two of the Petitions), the Hearing Committee wishes to make it clear that the Hearing Committee has concluded that a two year suspension would be the appropriate discipline on each of the three Petitions for Discipline. However, it is the intent of the Hearing Committee that a two year suspension on each of the Petitions would run concurrently, meaning an effective suspension of two years.

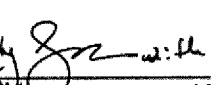
HEARING COMMITTEE MEMBERS:



John F. Kimball, Attorney
BPR #012144
P. O. Box 1169
Cleveland, TN 37364-1169
(423) 476-8541



Mary Ann Nunnally Green, Attorney *express*
BPR #9175 *permission*
701 Cherry Street, Suite 300
Chattanooga, TN 37402
(423) 634-6374



Hallie Hochman McFadden, Attorney *express*
BPR #17185 *permission*
1010 Market Street, Suite 400
Chattanooga, TN 37402
(423) 756-8080