

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

**IN RE: TONY N. BRAYTON, BOPR #13725,  
Respondent. An Attorney Licensed to  
Practice Law in Tennessee  
(Shelby County)**

**FILE NO. 29272-9-JJ**

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**PUBLIC CENSURE**

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A complaint alleging ethical misconduct was filed against the respondent by David Ivy. The Board of Professional Responsibility considered the matter under Rule 9 of the Tennessee Supreme Court Rules at its December, 2006 meeting, and determined that issuance of a Public Censure was appropriate.

Respondent was state court appellate counsel with the Shelby County Public Defender's Office in a defendant's first degree murder case wherein the Tennessee Supreme Court upheld the conviction and imposition of the death penalty in late February of 2006 on direct appellate review. Both the client and the State Post-Conviction Defender expected respondent in the Spring of 2006 to file both a petition for rehearing with the Tennessee Supreme Court and a direct petition for writ of certiorari with the US Supreme Court.

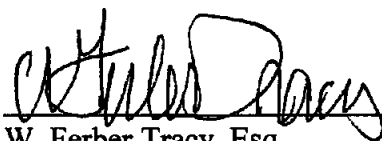
Respondent did neither, and did not inform the client or the Office of the Post-Conviction Defender of his decision before the expiration of the 90 day period in which to file the

petition for writ of certiorari. Moreover, respondent did not move to withdraw before the Tennessee Supreme Court in sufficient time to allow the Office of the Post-Conviction Defender the ability to assume representation, to check out the record, and to timely file the petition for writ of certiorari. Neither the client nor the Office of the Post-Conviction Defender learned that respondent had not filed the petition for writ of certiorari until mid-July of 2006, and the Post-Conviction's Defender's motion requesting the US Supreme Court to accept a late-filed petition for writ of certiorari on the direct appeal was denied in October of 2006.

On these facts, it does not appear that respondent properly communicated with his client or with the Post-Conviction Defender respondent's decision to refrain from filing a petition for writ of certiorari, resulting in a waiver of the client's right to file a direct certiorari petition for review in the US Supreme Court.

Based thereon, respondent Tony N. Brayton has violated RPCs 1.1, 1.2(a), 1.3(a)(b) and 8.4(a)(d) of the Tennessee Rules of Professional Conduct. Accordingly, he is hereby **PUBLICLY CENSURED** and the captioned file is closed.

**FOR THE BOARD:**

  
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W. Ferber Tracy, Esq.  
Chairman

**DATED:** 1/26/07