

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

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BOARD OF PROFESSIONAL  
RESPONSIBILITY

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EXEC. SEC.

**IN RE: SPENCE ROBERTS BRUNER  
BPR # 019056, Respondent  
An Attorney Licensed and  
Admitted to the Practice of  
Law in Tennessee  
(Roane County)**

**DOCKET NO. 2013-2184-2-AW**

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**JUDGMENT OF THE HEARING PANEL**

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Pursuant to Rule 9, Section 8.2 of the Rules of the Supreme Court of Tennessee, this cause came on to be heard by the Hearing Panel assigned by the Board of Professional Responsibility of the Supreme Court of Tennessee on July 22, 2013. The Hearing Panel comprised of attorneys Beecher A. Bartlett, Jr. (Chair), Danny P. Dyer and G. Keith Alley, all of whom make the following findings of fact and conclusions of law, and submit the judgment of the Hearing Panel in this cause as follows:

**I. STATEMENT OF THE CASE**

1. The Petition for Discipline (the "Petition") in this matter was filed on February 11, 2013, charging the Respondent with a violation of Rules 3.2, 3.4 and 8.4 of the Tennessee Rules of Professional Conduct effective January 1, 2011 under File No. 35583-2-BS – Media Report.
2. Respondent was duly served with the Petition on February 12, 2013.
3. The Respondent failed to file an Answer to the Petition.
4. The Board of Professional Responsibility (the "Board") filed a Motion for Default Judgment relative to the Petition on March 19, 2013 and on March 28, 2013 a Hearing Panel was

appointed by the Chair of the Board and the Respondent was notified of the appointment of the Hearing Panel.

5. On April 4, 2013, the Chair of the Board substituted attorney G. Keith Alley for attorney Alyson A. Eberling on the Hearing Panel because of a conflict, and the Respondent was notified of this change.

6. On April 22, 2013, the Hearing Panel granted the Board's Motion for Default and entered an Order for Default Judgment.

7. By Notice of Hearing filed by the Hearing Panel on April 22, 2013, the Petition was set for the Hearing Panel to hear the only remaining issue of the imposition of the appropriate discipline on May 24, 2013.

8. On May 14, 2013, the Board filed a Witness and Exhibit List and Pre-Trial Brief.

9. Respondent filed no Witness List, Exhibit List or Pre-Trial Brief.

10. The May 24, 2013 hearing was continued by the Hearing Panel on May 23 upon Motion of Continuance filed by Respondent, *pro se*, on May 22, 2013.

11. Respondent retained attorney F. Chris Cawood to represent his interests in this matter and Attorney Cawood filed his Notice of Appearance on May 31, 2013.

12. The hearing of the issue of the imposition of the appropriate discipline for Respondent was reset to July 22, 2013 by Notice of Hearing filed by the Hearing Panel on June 6, 2013.

## **II. FINDING OF FACTS**

1. The Respondent has been licensed to practice law in Tennessee since 1998 except for the periods in time when Respondent's license to practice law was suspended as follows:

a. On January 29, 2008 the Supreme Court of Tennessee issued an Order summarily and temporarily suspending Respondent's license to practice law that precluded Respondent from accepting any new cases effective January 29, 2008 and that required Respondent to cease representing existing clients effective February 28, 2008. Respondent was not to use any indicia of lawyer, legal assistant or law clerk nor maintain a presence where the practice of law was conducted between February 28, 2008 and September 10, 2008, the date an Order dissolving Respondent's temporary suspension was entered;

b. On September 11, 2008, the Supreme Court of Tennessee issued an Order of Enforcement that suspended Respondent from the practice of law for ninety (90) days retroactive to the date of Respondent's temporary suspension of January 29, 2008; and,

c. On March 25, 2011 the Supreme Court of Tennessee issued an Order of Temporary Suspension that suspended Respondent from the practice of law until an Order dissolving that temporary suspension was entered on April 25, 2011.

2. The Respondent represented Jonisha Tolbert ("Tolbert") in the Court of Criminal Appeals of Tennessee at Knoxville (the "Court of Criminal Appeals"), Docket No. E2011-02018-CCA-R3-CD (the "Tolbert Case") in the appeal of her effective eleven (11) year sentence that she received for various drug-related offences. Exhibit 18.

3. Respondent had initially represented Tolbert in the trial court when Tolbert agreed to enter into a blind plea agreement with the State of Tennessee for her various drug-related offences.

4. Tolbert filed the appeal of her criminal conviction from the trial court to the Court of Criminal Appeals without the assistance of Respondent and Respondent remained her appointed attorney of record for the appeal.

5. Pursuant to Rule 29(a) of the Tennessee Rules of Appellate Procedure, Respondent was required to file appellant's brief within thirty (30) days of January 27, 2012. Exhibit 12.

6. Respondent did not file appellant's brief within thirty (30) days of January 27, 2012 nor did Respondent request an extension of time for doing so. Exhibit 12.

7. On March 7, 2012, the Court of Criminal Appeals entered an Order that directed Respondent to file a brief accompanied by an explanation as to why it should be accepted late or else show cause why Tolbert's appeal should not be dismissed for failure to comply with Rule 29(a) of the Tennessee Rules of Appellate Procedure by March 27, 2012. Exhibit 12.

8. By May 11, 2012 Respondent had not filed a brief, a motion to voluntarily dismiss Tolbert's appeal or a motion seeking additional time within which to file the principal brief with the Court of Criminal Appeals. Exhibit 13.

9. On May 11, 2012, the Court of Criminal Appeals entered an Order that directed Respondent to file a brief by May 31, 2012 or else show cause why the Court should not issue an Order directing Respondent to appear before a panel of the Court to explain why he should not be held in contempt for his failure to comply with Rule 29(a) of the Tennessee Rules of Appellate Procedure and orders of the Court. Exhibit 13.

10. On June 4, 2012, Respondent filed a Motion for Extension of Time ("Respondent's Motion") in the Tolbert Case requesting that the Court of Criminal Appeals grant him an extension of time up to and including June 8, 2012 in which to file a voluntary dismissal of Tolbert's appeal. Exhibit 14.

11. Respondent's Motion stated that Respondent had been unable to contact Tolbert until the week of May 28, 2012 to confirm Tolbert's intent to dismiss her appeal. Exhibit 14.

12. Respondent's Motion was without an accompanying affidavit as was required by Rule 22(a) of the Tennessee Rules of Appellate Procedure and Rule 8(b) of the Rule of the Court of Criminal Appeals. Exhibit 15.

13. Respondent was advised by notice dated June 22, 2012 that he needed to file an affidavit in support of Respondent's Motion. Exhibit 16.

14. On July 13, 2012, after having received no response to the June 22, 2012 notice that Respondent needed to file an affidavit in support of Respondent's Motion, a deputy clerk in the Knoxville office of the appellate court clerk telephoned Respondent's office and advised Respondent that an affidavit was needed in support of Respondent's Motion. Exhibit 16.

15. On July 13, 2012, Respondent told a deputy clerk in the Knoxville office of the appellate court clerk that he would send an affidavit to the appellate court clerk's office via facsimile transmission. Exhibit 16.

16. On July 19, 2012, after having received no affidavit from Respondent in support of Respondent's Motion, a deputy clerk in the Knoxville office of the appellate court clerk again telephoned Respondent's office and left a message with Respondent's staff that it was very important that Respondent contact the appellate court clerk's office regarding the filing of Tolbert's appellate brief. Exhibit 16.

17. By July 24, 2012, Respondent had not filed appellant's brief with the Court of Criminal Appeals, Respondent had not filed an affidavit in support of Respondent's Motion nor had Respondent filed a motion to voluntarily dismiss Tolbert's appeal in compliance with Rule 15(a) of the Tennessee Rules of Appellate Procedure and Rule 11 of the Rules of the Court of Criminal Appeals. Exhibit 15.

18. On July 24, 2012, the Court of Criminal Appeals entered an Order again directing Respondent to file appellant's brief, this time on or before August 8, 2012, or else show cause why the Court should not issue an order directing Respondent to appear before a panel of the Court to explain why he should not be held in contempt for his failure to comply with Rule 29(a) of the Rules of Appellate Procedure and the orders of the Court. Exhibit 15.

19. By August 20, 2012, Respondent had failed to file appellant's brief with the Court of Criminal Appeals in violation of Rule 29(a) of the Rules of Appellate Procedure as well as orders of the Court of Criminal Appeals entered on March 7, 2012, May 11, 2012 and July 24, 2012. Exhibit 16.

20. On August 20, 2012, the Court of Criminal Appeals gave notice to Respondent that he may be held in contempt of Court because he had ignored the rules of appellate procedure and the orders of the Court and ordered Respondent to appear before a panel of the Court of Criminal Appeals on September 18, 2012 to show cause why he should not be held in contempt of court and punished pursuant to Tennessee Code Annotated Section 29-9-103. Exhibit 16.

21. Respondent failed to appear before a panel of the Court of Criminal Appeals on September 18, 2012 and on that date the Court ordered the appellate court clerk to issue a capias for the Respondent's immediate arrest and ordered the Sheriff of Roane County, Tennessee to serve notice upon Respondent that he shall appear before a panel of the Court on October 23, 2012 and show cause why he should not be held in contempt and punished pursuant to Tennessee Code Annotated Section 29-9-103 based upon Respondent's failure to comply with the rules of appellate procedure and the orders of the Court. Exhibit 17.

22. On October 23, 2012, after reviewing the record in the Tolbert Case and hearing the testimony of Respondent, the Court of Criminal Appeals found that Respondent willfully failed to

file a brief on behalf of Tolbert as required by the Rules of Appellate Procedure or show cause why the brief was not filed. Exhibit 18.

23. The Court of Criminal Appeals also found that Respondent willfully failed to comply with the August 20, 2012 show cause order. Exhibit 18.

24. By Order entered on October 24, 2012 (the "October 24 Order"), Respondent was found to be in contempt of the Court of Criminal Appeals and was confined in the Roane County Jail for a period of ten (10) days, with said sentence being suspended provided that Respondent paid the fine of Fifty Dollars (\$50.00) and court costs of One Hundred Fifty-seven Dollars (\$157.00) within thirty (30) days of October 24, 2012. Exhibit 18.

25. The October 24 Order also directed Respondent to file an appellate brief or a notice of dismissal signed by Tolbert within ten (10) days of October 24, 2012. Exhibit 18.

26. The October 24 Order prohibited Respondent from appearing before the Court of Criminal Appeals without co-counsel for a period of one (1) year from October 24, 2012. Exhibit 18.

27. The Court of Criminal Appeals directed the appellate court clerk to send a copy of its October 24 Order to the Tennessee Board of Professional Responsibility. Exhibit 18.

28. Respondent filed a notice of dismissal signed by Tolbert within ten (10) days of October 24, 2012, paid the fine of Fifty Dollars (\$50.00) and court costs of One Hundred Fifty-seven Dollars (\$157.00) within thirty (30) days of October 24, 2012 and has not appeared before the Court of Criminal Appeals since October 24, 2012.

29. Although Respondent filed no Answer to the Petition, Respondent admits that the allegations contained within the Petition are true and accurate.

30. Respondent believes that each deadline set by the Court of Criminal Appeals in the Tolbert Case was on his calendar, but that the show cause hearing of September 18, 2012 was incorrectly calendared as a deadline for a brief.

31. Respondent explains his conduct by stating that the Tolbert Case was not a case that he was attempting to prevail in, so he directed his attention elsewhere.

32. Respondent additionally explains his conduct by stating that he delegated the responsibility of the Tolbert Case file to his secretary, a non-lawyer whose secretarial services he shared with another lawyer.

33. Respondent maintains that Tolbert was fortunate to receive the sentence that she received and that he sincerely believed that Tolbert's appeal never should have been filed in the first place. Petition, Exhibit E.

34. Respondent did not believe that Tolbert should win her appeal. Petition, Exhibit E.

35. Respondent additionally explains his conduct by stating that the hospitalization of his fiancé during the months of June through August caused him to spend a considerable amount of time away from his office caring for his minor children. Petition, Exhibit E.

36. Respondent rarely does appellate work, having handled only a handful of appeals in his more than fourteen (14) years of practice. Petition, Exhibit E.

37. Respondent states that if he had intended to try and prevail in Tolbert's appeal, he certainly would have educated himself better about all of the applicable appellate rules and made sure all of the proper pleadings were filed in a timely manner. Petition, Exhibit E.

38. Respondent made no attempt to withdraw as Tolbert's counsel of record in the appeal of Tolbert's criminal conviction, nor did Respondent ever file an affidavit in support Respondent's Motion.



### **III. CONCLUSIONS OF LAW**

1. The Board avers and Respondent admits that Respondent violated Rule of Professional Conduct ("RPC") 3.2 because he failed to make reasonable efforts to expedite litigation and specifically the resolution of Tolbert's appeal of her criminal conviction. Accordingly, the Hearing Panel concludes that the Board has proved by the preponderance of the evidence that the Respondent violated RPC 3.2 because Respondent failed to make reasonable efforts to expedite the resolution of Tolbert's appeal of her criminal conviction.

2. The Board avers and Respondent admits that Respondent violated RPC 3.4(c) because he knowingly disobeyed obligations in the form of the rules of appellate procedure and valid court orders of the Court of Criminal Appeals. Accordingly, the Hearing Panel concludes that the Board has proved by the preponderance of the evidence that the Respondent violated RPC 3.4(c) because Respondent knowingly disobeyed the rules of appellate procedure and valid court orders of the Court of Criminal Appeals.

3. The Board avers and Respondent admits that Respondent violated RPC 8.4(a) and 8.4(d) because Respondent engaged in conduct that was prejudicial to the administration of justice. Accordingly, the Hearing Panel concludes that the Board has proved by the preponderance of the evidence that the Respondent violated RPC 8.4(a) and 8.4(d) because Respondent engaged in conduct that was prejudicial to the administration of justice.

### **IV. AGGRAVATING AND MITIGATING CIRCUMSTANCES**

1. The Hearing Panel finds that the Respondent's prior disciplinary offenses as evidenced by Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 that include prior violations of RPC 3.2, RPC 3.4(c), RPC 8.4(a) and RPC 8.4(d) are aggravating circumstances.

2. The Hearing Panel finds that the Respondent's pattern of misconduct and multiple offenses over a period of time of approximately ten (10) years are aggravating circumstances.

3. The Hearing Panel finds that the Respondent's delegation of the significant legal responsibilities of the Tolbert file to his secretary, a non-lawyer, is an aggravating circumstance.

4. The Hearing Panel finds that the Respondent's substantial experience in the practice of law since 1998 is an aggravating circumstance.

5. The Hearing Panel finds that Respondent's failure to comply with the valid orders of the Court of Criminal Appeals was willful and that fact is an aggravating circumstance.

6. The Hearing Panel finds that the imposition of other penalties and sanctions already imposed upon the Respondent personally by the Court of Criminal Appeals in the Tolbert Case is a mitigating circumstance.

7. The Hearing panel finds that the fact that Tolbert ultimately chose to voluntarily dismiss the appeal of her criminal conviction resulted in Respondent's conduct causing no actual injury to Tolbert is a mitigating circumstance.

#### **V. SPECIFICATION OF DISCIPLINE**

Pursuant to Rule 9, Section 8.4 of the Rules of the Supreme Court of Tennessee, having found one or more grounds for discipline of the Respondent and having considered the applicable provisions of the *ABA Standards for Imposing Lawyer Sanctions*, the Hearing Panel recommends and specifies that the following discipline is appropriate:

1. That the Respondent, Spence Roberts Bruner, be suspended from the practice of law for a period of Ninety (90) days.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of July, 2013.

Beecher A. Bartlett, Jr.  
BEECHER A. BARTLETT, JR. Hearing Panel Chair

Danny P. Dyer, by Bartlett, Jr., with permission  
DANNY P. DYER, Hearing Panel Member

G. Keith Alley, by Bartlett, Jr., with permission  
G. KEITH ALLEY, Hearing Panel Member

NOTICE

The judgment of the Hearing Panel herein may be appealed pursuant to Section 1.3 of Rule 9 of the Rules of the Supreme Court of Tennessee 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.