

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

FILED

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BOARD OF PROFESSIONAL  
RESPONSIBILITY

RW  
ENCLOSURE

**IN RE: PATRICIA DONICE BUTLER,  
Respondent, BPR No. 22706,  
An Attorney Licensed to  
Practice Law in Tennessee  
(Roane County)**

**DOCKET NO. 2012-2117-2-KB**

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**JUDGMENT OF THE HEARING PANEL**

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Pursuant to Rule 9§ 8.2 of the Rules of the Supreme Court of Tennessee, this cause came to be heard by the Board of Professional Responsibility of the Supreme Court of Tennessee on February 10 and 11, 2014. The Hearing Panel, comprised of Steve Erdely, IV (Chair), Heidi A. Barcus and Carl P. McDonald, makes the following findings of fact and conclusions of law, and submits its judgment in this cause as follows:

**I. STATEMENT OF THE CASE**

1. This is a disciplinary proceeding against the Respondent, Patricia Donice Butler, an attorney licensed to practice law in Tennessee in 2003. Her current address is registered with the Board as 719 Morgan Avenue, Harriman, Tennessee, 37748.

2. A Petition for Discipline, Docket No. 2012-2117-2-KB, was filed on May 3, 2012. The Respondent filed an answer on May 29, 2013. On July 12, 2013, a Supplemental Petition for Discipline was filed and the Respondent filed her answer to the Supplemental Petition on August 16, 2013.

3. A hearing was conducted on February 10 – 11, 2014, before the Hearing Panel consisting of Steve Erdely, Panel Chair; Heidi Barcus, Panel Member; Carl P. McDonald, Panel

Member. Present at the Hearing were the Respondent, Patricia Donice Butler, Chris Cawood, counsel for the Respondent and Alan D. Johnson, counsel for the Board of Professional Responsibility.

4. The Hearing Panel left the proof open until March 14, 2014, by which time the parties were to submit proposed Findings of Fact and Conclusions of law. The Hearing Panel has now reviewed the parties proposals and makes the following findings.

## **II. FINDINGS OF FACT**

This case involves six (6) complaints against the Respondent. The following represents the Facts found by the Hearing Panel.

### **A. FILE NO. 33632-2-KB – Complainants – Bobby & Loretta Murray**

5. In April, 2009, the Murrays hired Respondent to represent them in a case involving access to their property. They paid her, over a period of time, a retainer of \$2,500 plus a \$363.50 filing fee.

6. Respondent filed a complaint on behalf of the Murrays in the Circuit Court for Roane County on August 26, 2009.

7. Opposing counsel filed a motion for summary judgment in October, 2009, and set the motion for hearing on November 13, 2009, at 1:00 p. m. (Petition for Discipline and Answer to Petition, ¶ 17)

8. On the day of the hearing, at 1:01 p.m., Respondent filed a response to the motion for summary judgment, supported by affidavits of her clients, but did not file a statement of undisputed material facts. (Petition for Discipline and Answer to Petition, ¶ 18)

9. The Respondent testified that she explained to the court and opposing counsel that

she was undergoing treatment for cancer and that was the reason for the delay. (Trial Exhibit 1, Butler letter dated December 20, 2010, p. 2)

10. The Court allowed Respondent until November 16, 2009, to file a response to the statement of undisputed material facts, which Respondent filed, but it made no references to the record. (Trial Exhibit 1, Butler letter dated December 20, 2010, pp 1-2 and exhibit B to trial Exhibit 1)

11. On December 1, 2010, opposing counsel filed Motion to Renew Motion for Summary Judgment. (Trial Exhibit 1, Butler letter dated December 20, 2010, p. 2)

12. On January 21, 2010, Respondent filed a proper statement of undisputed material facts. (Petition for Discipline and Answer to Petition ¶ 22)

13. On March 3, 2010, opposing counsel served written discovery on the Murrays, and Respondent mailed the discovery to the Murrays. (Petition for Discipline and Answer to Petition ¶ 23)

14. Loretta Murray testified that she answered the discovery and sent the answers to the Respondent within a few days of receiving them.

15. Having received no response, on April 23, 2010, opposing Counsel filed a motion to dismiss or in the alternative to compel discovery, and set the motion to be heard on July 1, 2010. (Trial Exhibit 1, Butler letter dated December 20, 2010, p. 2)

16. The hearing date was moved to July 16, 2010, and Respondent sent a letter to the Murrays informing them that the hearing on the motion would take place on July 16, 2010. (Trial Exhibit 1, Butler letter dated December 20, 2010, p. 3, and exhibit F to trial exhibit 1)

17. Loretta Murray testified that Respondent told her that she was going to tell the court a "white lie", and then proceeded to tell the court that the reason the discovery had not

been answered was that Ms. Murray had been sick and had missed some appointments, which Ms. Murray testified was not true.

18. Respondent testified that she told the court that the reason the discovery had not been answered was that she was sick and undergoing treatment for cancer.

19. When asked on cross examination if she had told the court and opposing counsel that the reason she had not properly and timely responded to the motion for summary judgment at the November 13, 2009, hearing was due to her health, Respondent testified that she could not remember at which hearing she had used her illness as a basis for not timely answering.

20. At the July 16, 2010, hearing, the Court denied the motion to dismiss, and granted the motion to compel. The Court also ordered the Murrays to pay attorney fees to opposing counsel in the amount of \$438.82. (Petition for Discipline and Answer to Petition ¶ 25)

21. On July 22, 2010, the written discovery was answered, and Respondent withdrew from representation in October, 2010, after being discharged by the Murrays. (Trial Exhibit 3; Petition for Discipline and Answer to Petition ¶ 26)

22. The defendants filed a motion to dismiss because the Murrays had not paid the court ordered attorney fees. The motion was granted, but the Court of Appeals reversed, and remanded the case to the trial court. The Murrays are pursuing the claim *pro se*.

**B. FILE NO. 34086c-2-BG – Complainant – Harold Pickard**

23. Mr. Pickard testified that he retained Respondent on February 11, 2008, to get emergency custody of his grand-daughter and to adopt her.

24. Mr. Pickard paid a total of \$1,500 as a retainer on the following days: \$750.00 on February 11, 2008, and \$750.00 on July 18, 2008. He also paid a \$130 filing fee on February 12, 2008. (Trial Exhibit 5)

25. The Intake Form from Respondent's office states that Mr. Pickard "would like to adopt my son's baby." (Trial Exhibit 5)

26. Respondent disputes that she was hired for the adoption.

27. Respondent testified that she obtained emergency custody of Mr. Pickard's granddaughter.

28. On February 12, 2008, Respondent filed an Ex-Parte Petition for emergency custody on behalf of Mr. Pickard in response to a Petition for emergency custody filed on behalf of Lynda Lanham and Sarah Foust, who were also seeking custody of the child. (Petition for Discipline and Answer to Petition, ¶ 52; Trial Exhibit 19)

29. Mr. Pickard and the biological parents of the child were the co-petitioners, and the biological grandmother of the child, Linda Lanham, was the respondent. (Exhibit 19)

30. The file from Juvenile Court was reviewed by the Hearing Panel and portions of the file were introduced into the record. This included the Petition, the Order and a Temporary Parenting plan. (Trial Exhibit 19)

31. The Order granting temporary emergency custody was not signed by the judge. (Trial Exhibit 19)

32. The Temporary Parenting Plan was signed by Mr. Pickard and the biological parents of the child, who were the co-petitioners, but not by the respondent to the petition, the child's biological grandmother, or by the Judge. (Trial Exhibit 19)

33. Mr. Pickard testified that Respondent told him that the order granting him custody was not worth anything because the judge had not signed it.

34. Mr. Pickard testified that he was able to obtain physical custody of the child with the assistance of the Harriman police and the agreement of the various parties involved.

35. Mr. Pickard testified that he was unable to communicate with the Respondent after he obtained physical custody of the child.

36. Mr. Pickard testified that in late 2008, he learned that Respondent had left the private practice of law and taken a job with the State of Tennessee.

37. Mr. Pickard testified that he did not receive a letter from Respondent informing him that she was leaving private practice.

38. Respondent testified that she sent Mr. Pickard and all of her clients a letter informing them that she was leaving private practice on or about November 1, 2008.

39. Respondent testified that after obtaining custody for Mr. Pickard, the case was over and she had no obligation to formally withdraw. (*See Also*, Petition for Discipline and Answer to Petition ¶ 58)

40. Mr. Pickard hired another lawyer to represent him in the case. That lawyer was able to secure an order of custody and an order of adoption in 2009.

**C. FILE NO. 34206-2-BM(A) – Informant – Brett Stokes, Esquire**

41. Mr. Stokes is a lawyer in Knoxville who represented Anna McCombs in a divorce case.

42. Ms. McCombs allegedly owed Mr. Stokes approximately \$10,000.

43. At some point during the case Ms. McCombs reconciled with her husband and terminated Mr. Stokes.

44. Mr. Stokes obtained an order from Roane County General Sessions Judge Humphries that permitted him to attach a bank account in the name of Anna McCombs' husband and his parents.

45. Mr. Stokes then executed on the bank account and attached approximately \$10,000.00.

46. Mr. McCombs' lawyer, Tom McFarland, contacted Judge Humphries and the Judge held a conference call with Mr. McFarland, Mr. Stokes and Respondent, who had entered an appearance on behalf of Ms. McCombs.

47. Judge Humphries testified at the trial of this case that he believed he had made a mistake signing the order, and directed that the money be returned to the bank account, or held in court until a full hearing could be conducted.

48. At about the time of the conference call, Respondent sent text messages to Mr. Stokes accusing him of stealing money, and threatening criminal prosecution. (Trial Exhibit 6)

**D. FILE NO. 34355-2-BM – Complainant – Paul Lawson, Jr.**

49. Mr. Lawson had an illegitimate child and he hired Respondent to file a Petition to establish child support and visitation which Respondent did. At the time he retained her, he paid a fee in the amount of \$1,500.00.

50. The case was partially resolved when Respondent requested an additional \$1,500.00 that Mr. Lawson paid.

51. The case was mediated and an order was entered that set visitation and child support.

52. A wage assignment was subsequently issued against Mr. Lawson for unpaid child support.

53. Mr. Lawson testified that he requested information from Respondent regarding his case, that she did not attend scheduled meetings and that she did not communicate with him and provide him requested information.

**E. FILE NO. 35478-2-ES – Complainant – Tom Hogan**

54. Mr. Hogan hired Respondent to represent him in an appeal from his termination by the Harriman Police Department.

55. A grievance was filed with the Police Board and after the hearing, Mr. Hogan's termination was upheld on November 18, 2009.

56. Respondent had a time limit in which to appeal that decision to either the City Council or Police Board, and she failed to timely seek an appeal.

57. In October, 2010, Respondent filed a lawsuit on behalf of Mr. Hogan and an amended complaint was filed in March, 2011.

58. Defense counsel filed a motion for summary judgment and Respondent missed the hearing date.

59. Respondent testified that she had been in conference with the judge and Defense counsel in December and they had agreed to reconvene on January 30, 2012, for a pre-trial conference. (Exhibit 16)

60. The hearing on the motion for summary judgment was set for January 17, 2012, but Respondent testified that she did not receive the Notice setting the hearing.

61. The Notice stated that the hearing would take place in Loudon County; however, the hearing took place in Roane County. (Trial Exhibit 17)

62. The court granted summary judgment.

63. Respondent testified that she decided to file a rule 60 motion to set aside the order granting summary judgment, and she had one year to do so.

64. Before the year was up, Mr. Hogan filed this complaint against her.

**F. FILE NO. 35612-2-ES – Complainant – Margie Delozier**

65. Ms. Delozier and her estranged sister were co-owners of their late mother's home.

66. Ms. Delozier had lived in the home with her mother for a number of years.

67. Her sister filed a complaint for partition.

68. Ms. Delozier and her other sister, Annie Harrell, went to Respondent who agreed to represent her.

69. Respondent concluded that because Ms. Delozier had lived in the house with her mother, and had paid the taxes and made improvements, a settlement could be worked out whereby she would receive credit for the maintenance and improvements, and purchase her sister's share of the house at a reduced value.

70. Respondent and opposing counsel, Tom McFarland, agreed that they would enter an order to allow the parties 60 days to settle the case.

71. The agreement was to be announced in court at a hearing.

72. On the day of the hearing, Respondent was in court in another county, and informed opposing counsel that if the case was called before she arrived to announce the agreement.

73. Respondent was delayed and did not arrive at court when the case was called, and opposing counsel announced the agreement.

74. Annie Harrell testified that she was with Margie Delozier in court at the time the announcement was made.

75. She testified that she heard something about selling the house.

76. She and Margie Delozier immediately went to another lawyer, Mark Foster, and retained him to handle the case.

77. Mr. Foster sent Respondent a letter telling her that she had no authority to sign the agreed order because Ms. Delozier had terminated her, did not agree to the arrangement, and that he would be representing Ms. Delozier going forward.

78. Despite being informed that she was no longer representing Ms. Delozier, Respondent signed the agreed order that was later signed by the judge and entered.

79. Ms. Delozier's new counsel later had the agreed order set aside.

80. The case later settled.

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

81. Pursuant to Tenn. Sup. Ct. R. 9, § 1, 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.

82. Pursuant to Tenn. Sup. Ct. R. 9, § 3, 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. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline.

83. The Hearing Panel finds by a preponderance of the evidence that the Respondent violated Rules of Professional Conduct ("RPC") 1.1 (competence), 1.2 (a) (scope of

representation), 1.3 (diligence), 1.4 (communication), 1.16 (a) (3) and (d) (declining and terminating representation), 3.2 (expediting litigation), 3.3 (candor to the tribunal) and 8.4(a), (c), and (d) (misconduct).

**A. FILE NO. 33632-2-KB – Complainants – Bobby & Loretta Murray**

84. The Hearing Panel finds that the preponderance of the evidence establishes that the Respondent violated RCP 1.1 (competence), 1.3 (diligence), 1.4 (communication), 3.2 (expediting litigation), 3.3 (candor to the tribunal), and 8.4(a), and (c) (misconduct).

85. The Hearing Panel credits Ms. Murray's testimony that she had difficulty communicating with Respondent, that she received the written discovery in March, 2010, and returned the answers to Respondent, and that Respondent misled the court at the July 16, 2010, hearing regarding the reasons for the discovery not being timely answered.

86. While Respondent's illness was accepted by the court as a legitimate reason for the Respondent to fail to timely and fully respond to the motion for summary judgment, the respondent failed to file the appropriate response by the deadline set by the court, November 16, 2009.

87. It was not until opposing counsel filed a renewed motion for summary judgment that the Respondent filed the appropriate response on January 21, 2010, more than two (2) months after the deadline set by the court.

88. Respondent denies that she misled the court at the July 16, 2010, hearing on the motion to compel; however, when asked at trial what she told the court, she testified that she said that the discovery had not been answered because of her own illness.

89. When asked if that was the reason she told the court for not adequately responding to the motion for summary judgment on November 13, 2009, Respondent claimed that she could not recall at which hearing she justified her tardy response on her illness.

90. The Hearing Panel finds that at the July 26, 2010, hearing, Respondent told the court that the discovery had not been answered because her client had been sick and had missed appointments. The Hearing Panel further finds that what the Respondent told the court was not true.

91. The Hearing Panel notes that the March 3, 2010, letter Respondent sent to the Murrys with the interrogatories attached informed the Murrys to provide the requested information within ten days.

92. The only other correspondence provided by Respondent with respect to the interrogatories is a letter dated June 29, 2010, informing the Murrys that the hearing on the motion to compel had been moved from July 1, 2010, to July 16, 2010.

93. Ms. Murray testified that after she delivered to the Respondent the responses to the discovery in March, 2010, she did not hear from Respondent until she received the June 29, 2010, letter, despite her efforts to communicate with her.

94. The circumstantial evidence leads the Hearing Panel to conclude that the discovery was not timely answered because the Respondent was not diligent, and the Respondent misled the court about the reason the discovery had not been timely answered.

95. The Respondent violated RPC 1.1 (competence) and 1.3 (diligence) by failing to prepare and timely file a response to the Statement of Undisputed Material Facts.

96. The Respondent violated 3.2 (expediting litigation) by her delay in responding to the Statement of Undisputed Material Facts and in responding to the written discovery.

97. The Respondent violated 3.3 (candor to the tribunal) by misleading the court concerning the reason written discovery had not been answered.

98. The Respondent violated 8.4 (a) and (c) by violating the Rules of Professional Conduct and engaging in dishonest conduct with the court.

**B. FILE NO. 34086c-2-BG – Complainant – Harold Pickard**

99. The Hearing Panel finds that the preponderance of the evidence establishes that the Respondent violated RCP 1.3 (diligence), 1.4 (communication), 1.16(d) (declining and terminating representation), 3.2 (expediting litigation), and 8.4(a), and (d) (misconduct).

100. Mr. Pickard and Respondent disagree about the scope of Respondent's representation. Mr. Pickard testified that he retained Respondent to get custody and adopt his granddaughter. Respondent testified that she was retained only for the purpose of obtaining temporary custody.

101. The Hearing Panel finds that even if Respondent's representation was limited to assisting Mr. Pickard in getting temporary emergency custody, the Respondent failed to do so.

102. While Respondent filed a Petition for temporary emergency custody, the Juvenile Court file reveals that the order submitted by Respondent to the Juvenile Court purporting to grant Mr. Pickard temporary custody was never signed by the judge.

103. An unsigned order is void and of no effect. Accordingly, Respondent did not accomplish Mr. Pickard's objective to get legal, temporary emergency custody. *Blackburn v. Blackburn*, 270 S.W.3d 42 (Tenn. 2008); *See Also*, Rule 58, Tennessee Rules of Civil Procedure.<sup>1</sup>

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<sup>1</sup> Entry of a judgment or an order of final disposition is effective when a judgment containing one of the following is marked on the face by the clerk as filed for entry:  
(1) the signatures of the judge and all parties or counsel, or

104. Even though Mr. Pickard was able to get physical custody of his granddaughter, without the help of Respondent, he did not have the benefit of a valid court order that gave him legal custody.

105. At the trial, The Respondent argued that the Temporary Parenting Plan signed by Mr. Pickard and the parents of the child was a binding contract on the parties, and even though it was not signed by the judge, was sufficient to grant legal, temporary custody to Mr. Pickard.

106. The Hearing Panel finds that the Respondent's argument is without merit because an agreement that affects the interest of the child must be approved by the court to ensure that the child's best interests are met. *Tuetken v. Tuetken*, 320 S. W. 3d 262, 271-272 (Tenn. 2010),

107. Even if court approval were not required, Respondent's argument does not survive analysis under basic principles of contract law.

108. The Ex-Parte Petition prepared and filed by the Respondent identified Mr. Pickard and the biological parents of the child as the co-petitioners, and Linda Lanham, who had physical custody of the child, and was the child's biological grandmother, as the respondent to the petition for temporary custody.

109. The Hearing Panel finds that in order for the Temporary Parenting Plan to serve as a binding contract that gave Mr. Pickard legal custody of the child, Linda Lanham would have had to sign the Plan, and her signature does not appear on it.

110. Notwithstanding the Respondent's instance that she had accomplished the goals of Mr. Pickard, and was no longer representing him, she testified that she sent all of her clients,

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(2) the signatures of the judge and one party of counsel with a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel, or

(3) the signature of the judge and a certificate of the clerk that a copy has been served on all other parties or counsel.

including Mr. Pickard, letters informing them that she was leaving private practice in November, 2008.

111. Mr. Pickard testified that he did not receive such a letter and that he was unable to communicate with Respondent after he secured physical custody of his granddaughter.

112. The Hearing Panel notes that Mr. Pickard paid the balance of his retainer, \$750, to the Respondent on July 18, 2008. (Trial Exhibit 5)

113. The Respondent violated RPC 1.3 (diligence) by failing to follow through with Mr. Pickard's desire to secure legal, temporary emergency custody.

114. The Respondent violated RPC 1.4 (communication) by not maintaining communication with Mr. Pickard after filing the Petition for temporary emergency custody.

115. The Respondent violated RPC 1.16 (d) (declining and terminating representation) by failing to withdraw from representation and by not taking steps to protect Mr. Pickard's interests.

116. The Respondent violated 8.4 (a) and (d) by violating the Rules of Professional Conduct and by failing to follow through with Mr. Pickard's case which constituted conduct that is prejudicial to the administration of justice.

**C. FILE NO. 34206-2-BM(A) – Informant – Brett Stokes, Esquire**

117. There is no dispute that the Respondent sent the text messages that were entered into the record and read by the Respondent at the trial. (Exhibit 6)

118. The Hearing Panel credits the Respondent's testimony that she did not send the messages for the purpose of obtaining an advantage in a civil matter, and the record supports her testimony.

119. The Respondent did not violate RPC 4.4 (a) (2) in this matter.

**D. FILE NO. 34355-2-BM – Complainant – Paul Lawson, Jr.**

120. Mr. Lawson testified that he had difficulty communicating with the Respondent.

121. He testified that on one occasion, he set an appointment for July 5, 2010, and when he arrived for the appointment, the office was closed.

122. He testified that on another occasion, he met with Respondent and learned at the meeting that he was to be in court two (2) days later. He testified that he had not received any communication from Respondent about the court date until the meeting.

123. Copies of return receipts from certified letters, dated July 12, 2011 and July 22, 2011, that Mr. Lawson sent to Respondent, and that were received by individuals in Respondent's office, were introduced at trial. (Trial Exhibit 13)

124. Mr. Lawson testified that he never received a response from Respondent after the letters were delivered.

125. The Respondent violated RPC 1.4 (communication) in this matter.

**E. FILE NO. 35478-2-ES – Complainant – Tom Hogan**

126. The facts in this matter are not in dispute.

127. Mr. Hogan was employed by the Harriman Police Department, and the Chief of Police recommended his termination to the Police Board, and the Police Board authorized his termination by the Chief of Police.

128. On November 18, 2009, the Chief of Police terminated Mr. Hogan.

129. At trial, there was a question regarding the proper procedural action that should have been taken to protect Mr. Hogan's right to challenge his termination, and indeed the procedure followed by the Police Department when terminating employees.

130. Notwithstanding the conflicting testimony, the Hearing Panel notes that in her answer to the Supplemental Petition for Discipline, the Respondent admitted that she filed a grievance on behalf of Mr. Hogan, and following a Hearing by the Police Board on November 16, 2009, the Board issued a decision upholding Mr. Hogan's termination. (Supplemental Petition for Discipline and Answer to Supplemental Petition, ¶¶ 10-11)

131. The Hearing Panel finds that review of Mr. Hogan's termination was governed by T.C.A. § 27-9-101, *et. seq.*, and pursuant to T.C.A. § 27-9-102, Respondent had sixty (60) days from Mr. Hogan's termination to appeal the decision.<sup>2</sup> Respondent admits that she missed the deadline to appeal the decision to terminate Mr. Hogan.

132. Approximately eleven (11) months later, on October 21, 2010, Respondent filed a wrongful termination lawsuit against the City of Harriman on behalf of Mr. Hogan.

133. The Defendant filed a motion for summary judgment that was heard on January 17, 2012.

134. The Respondent testified that she did not receive notice of the hearing, and that based on a status conference held in December, 2011, she was under the impression that the next court date in the case would be January 30, 2012.

135. Respondent did not attend the January 17, 2012, hearing on the motion for summary judgment, but she was at court the day it was heard.

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<sup>2</sup> T.C.A. § 27-9-101 states: "Anyone who may be aggrieved by any final order or judgment of any board or commission functioning under the laws of this state may have the order or judgment reviewed by the courts, where not otherwise specifically provided, in the manner provided by this chapter." T.C.A. § 27-9-102 states: "Such party shall, within sixty (60) days from the entry of the order or judgment, file a petition of certiorari in the chancery court of any county in which any one (1) or more of the petitioners, or any one (1) or more of the material defendants reside, or have their principal office, stating briefly the issues involved in the cause, the substance of the order or judgment complained of, the respects in which the petitioner claims the order or judgment is erroneous, and praying for an accordant review."

136. Respondent testified that she saw the trial judge in court later that day and he informed her that he had granted the motion for summary judgment.

137. Respondent testified that she told Mr. Hogan that he had one (1) year in which to file a rule 60 motion to set aside the order granting summary judgment.

138. Later that year, Mr. Hogan filed a complaint with the Board of Professional Responsibility, and Respondent discontinued representing him.

139. The Respondent violated RPC 1.1 (competence), 1.3 (diligence) and in this matter by failing to respond to the motion for summary judgment and appear at the hearing, and by not taking advantage of the Rule of Civil Procedure that would allow her to move quickly to attempt to set aside the order granting summary judgment.

**F. FILE NO. 35612-2-ES – Complainant – Margie Delozier**

140. It is undisputed that the Respondent signed an agreed order after she had been terminated by her client and instructed to not sign the order.

141. The Respondent violated RPC 1.2(a) (scope of representation) by disregarding Ms. Delozier's instruction to not sign the Agreed Order.

142. The Respondent violated RPC 1.16(a) (3) (termination of representation) by not withdrawing from representation after she was discharged.

143. The Respondent violated RPC 1.4 (communication) failing to explain the proposed agreement to Ms. Delozier sufficiently to allow her to make an informed decision.

144. The Respondent violated RPC 3.3 (candor to the tribunal) and 8.4 (d) (prejudice to the administration of justice) by signing the agreed order for submission to the court without informing the court that she had been discharged by Ms. Delozier.

#### IV. ABA Standards for Imposing Lawyer Sanctions

145. When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, ("ABA Standards") pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court.

146. The following ABA Standards apply in this case.

##### 4.4 LACK OF DILIGENCE

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.

##### 4.5 LACK OF COMPETENCE

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 provide competent representation to a client:

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

##### 7.0 VIOLATIONS OF DUTIES OWED AS A PROFESSION

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 false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a

prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.

## 8.0 PRIOR DISCIPLINE ORDERS

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 similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

147. After misconduct has been established the ABA Standards, Section 9.2, identifies several aggravating circumstances that may justify an increase in the degree of discipline to be imposed. The following aggravating circumstances are present in this case which support an increase in the degree of discipline:

- (a) prior disciplinary offenses (Trial Exhibits 8-9);
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law.

148. Respondent has been disciplined in the past for similar conduct (dismissing a case without knowledge and consent of client; failing to file a brief and withdrawal three days before hearing); the complaints in this case establish a pattern of misconduct and there are multiple offenses; the Respondent's clients are vulnerable, and; Respondent has substantial experience in the practice of law having been licensed in 2003.

149. After misconduct has been established the ABA Standards, Section 9.3, identifies several mitigating circumstances that may justify an decrease in the degree of discipline to be imposed. The following mitigating circumstances are present in this case which support a decrease in the degree of discipline:

- (c) personal or emotional problems (Trial Exhibit 20);
- (e) full and free disclosure to disciplinary board and cooperative attitude toward proceedings;
- (f) delay in disciplinary proceedings.

150. During the period in which some of the Respondent's misconduct occurred, Respondent was undergoing chemotherapy and taking medication for relief from pain due to the numerous operations she underwent; Respondent cooperated with the Board's investigation and litigation of this case, and; some of the complaints in this case were filed several years after the conduct complained of.

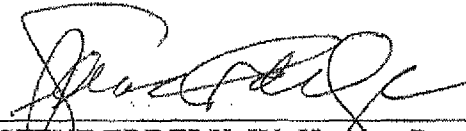
## **V. CONCLUSION**

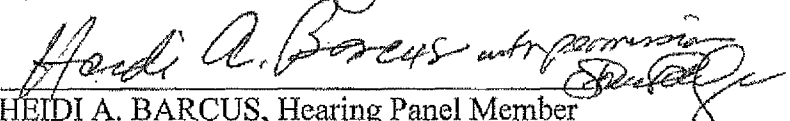
Based upon these findings of fact and conclusions of law, the Hearing Panel finds that the Respondent shall be suspended from the practice of law for a period of nine (9) months. The Hearing Panel also concludes that the first ninety (90) days of the suspension will be an active suspension. The Respondent shall complete twelve (12) hours of continuing legal education (CLE) in the topics of either: (1) ethics; (2) client communication; (3) accepting, declining and terminating representation; or (4) running a solo practice during the first ninety (90) days of the active suspension.

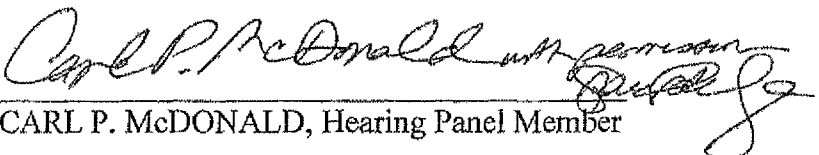
In light of the mitigating circumstances in this case, the remaining six (6) months of the suspension will be served under probation, and Respondent shall be assigned a practice monitor

as provided for in Tenn. Sup. Ct. R. 9, § 8.5. Respondent shall engage a practice monitor at her own expense who shall meet with Respondent on a monthly basis to review basic office procedures such as scheduling, maintenance of case deadlines and the use of written communication. The practice monitor shall send monthly reports of these meetings to the Board. Respondent shall select three potential practice monitors within thirty (30) days of entry of this judgment and submit the names to Disciplinary Counsel for final approval of a practice monitor. The Hearing Panel also orders the Respondent to confer with the Tennessee Lawyer Assistance Program (TLAP) for a consultation and shall comply with any recommendations of TLAP.

Respectfully submitted this 11th day of April, 2014.

  
STEVE ERDELY, IV, Hearing Panel Chair

  
HEIDI A. BARCUS, Hearing Panel Member

  
CARL P. McDONALD, Hearing Panel Member

#### NOTICE

The judgment of the Hearing Panel herein may be appealed pursuant to Section 1.3 or 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.