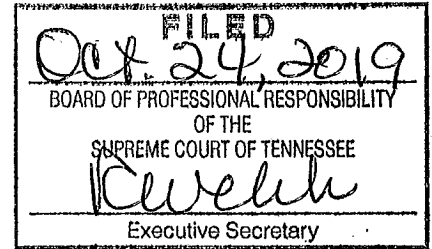


**IN DISCIPLINARY DISTRICT V  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE**



**IN RE: JONATHAN STEPHEN CARLTON,     DOCKET NO. 2018-2946-5-AW**  
**BPR No. 029768, Respondent,**  
**an Attorney Licensed to Practice**  
**Law in Tennessee**  
**(Nortonville, Kentucky)**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**STATEMENT OF THE CASE**

1.     This is a disciplinary proceeding against the Respondent Jonathan Stephen Carlton, an attorney licensed to practice law in Tennessee in 2011.
2.     The Petition for Discipline, Docket No. 2018-2946-5-AW, was filed December 14, 2018, and personally served upon Mr. Carlton on April 10, 2019 at 726 Cumberland Trace Road, Apt. 238, Bowling Green, KY 42103-9121.
3.     Mr. Carlton failed to file an answer to the Petition for Discipline as required by Rule 9, § 15.2(b), and on May 30, 2019, the Board filed a Motion for Default Judgment and that Charges in Petition Be Deemed Admitted.
4.     On June 4, 2019, the Hearing Panel was appointed.
5.     On June 21, 2019, an Order for Default Judgment was entered by the Hearing Panel and served upon Mr. Carlton. Under Rule 9, § 15(b), Respondent's failure to answer and entry of default is deemed an admission of the charges set out in the petition. *See Maddux v. Board of Professional Responsibility*, 409 S.W3d 613 (Tenn. 2013).

6. On June 21, 2019, a Notice of Hearing setting the Final Hearing for July 15, 2019, was entered and served upon Mr. Carlton and Disciplinary Counsel.

7. The Final Hearing was held July 15, 2019, before a duly constituted Hearing Panel consisting of John M. Baird, Craig V. Gabbert, and chaired by Gary C. Shockley. The Board was represented by A. Russell Willis. Respondent Carlton did not appear or participate.

### INTRODUCTION

8. The Petition for Discipline consists of one (1) complaint alleging Mr. Carlton (a) knowingly engaged in the unauthorized practice of law while suspended by the Supreme Court of Tennessee; (b) knowingly failed to comply with the Order to Show Cause on Notice of Default Issued by TSAC Pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.05(4) entered by the Supreme Court of Tennessee on September 13, 2017; (c) knowingly failed to comply with the Order of Suspension For Default with TSAC Pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.05(4) entered by the Supreme Court on October 19, 2017; (d) knowingly failed to comply with the Order of Temporary Suspension entered by the Supreme Court on September 7, 2018; (d) knowingly misrepresented his status as an attorney to a court; (e) failed to reasonably communicate with his client regarding the status of her case; (e) knowingly failed to decline or terminate the representation and promptly surrender the client's file; (f) knowingly failed to act in a diligent manner; (g) knowingly charged an unreasonable fee; and (h) knowingly failed to respond to the Board. These acts, admitted by Respondent's failure to answer, are alleged to be in violation of the Rules of Professional Conduct (RPC) 1.4 (diligence), 1.4 (communication), 1.5 (fees), 1.16 (declining or terminating representation), 3.3 (candor toward the tribunal), 5.5 (unauthorized practice of law), 8.1(b) (disciplinary matters), and 8.4(a), (c), (d) and (g) (misconduct).

9. The facts deemed admitted under Rule 9, § 15.2(b) and the documentary evidence presented to the Hearing Panel established the following facts:

**FINDINGS OF FACTS**

**File No. 57141-5-KB – Jennifer Sheppard, Esq.**

10. As alleged in the Petition and admitted by Respondent's default, on September 13, 2017, the Tennessee Supreme Court entered an Order to Show Cause on Notice of Default Issued by TSAC Pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.05(4), requiring Respondent Jonathan Stephen Carlton to show cause within thirty (30) days why his license to practice law should not be suspended for his failure to comply with his obligation regarding a student loan guaranteed or administered by the Tennessee Student Assistance Corporation (TSAC). Hearing Exhibit 1 (Petition and Exhibits).

11. Mr. Carlton knowingly failed to respond to the show cause Order and, on October 19, 2017, the Tennessee Supreme Court issued an Order of Suspension for Default with TSAC Pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.05(4), suspending Respondent Jonathan Stephen Carlton immediately from the practice of law. Hearing Exhibit 1 (Petition and Exhibits).

12. Pursuant to the Order of Suspension for Default with TSAC Pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.05(4), Respondent was required to "comply with the applicable provisions of Tennessee Supreme Court Rule 9, Section 28." Hearing Exhibit 1 (Petition and Exhibits).

13. Tenn. Sup. Ct. R. 9, § 28.8, prohibits suspended attorneys from undertaking new legal matters on or after the effective date of a suspension order and requires that they take such action as necessary to cause the removal of any indicia of attorney, lawyer, counselor at law, legal assistant, law clerk, or similar title. Tenn. Sup. Ct. R. 9, § 28.8.

14. Tenn. Sup. Ct. R. 9, § 28.5, requires a suspended attorney to deliver to his client any papers or other property to which the client is entitled.

15. Tenn. Sup. Ct. R. 9, § 28.6, requires a suspended attorney to refund his client any unearned fees or unexpended expenses.

16. Respondent never filed a Petition for Reinstatement with the Tennessee Supreme Court, nor submitted his \$200.00 reinstatement fee to the Board. Thus, he remains suspended by the Supreme Court.

17. On December 14, 2017, Mr. Carlton, while he was suspended from the practice of law by the Tennessee Supreme Court, knowingly undertook the legal representation of Renee Chevalier in a Conservatorship action to be filed in the Chancery Court for Williamson County. Hearing Exhibit 1 (Petition and Exhibits).

18. On December 14, 2017, Mr. Carlton prepared and executed a Contract for Legal Service and presented the same to Ms. Chevalier for execution. Hearing Exhibit 1 (Petition and Exhibits).

19. In accordance with the terms of the Contract for Legal Services, Ms. Chevalier delivered a check to Mr. Carlton in the amount of \$750.00. Hearing Exhibit 1 (Petition and Exhibits).

20. Pursuant to the terms of the Contract for Legal Services, \$500.00 of the retainer was non-refundable and earned upon receipt, and the remaining \$250.00 was to be deposited into trust and billed against by Mr. Carlton at a discounted rate of \$275.00 per hour. Hearing Exhibit 1 (Petition and Exhibits).

21. After being retained, Respondent, while suspended from the practice of law due to the Supreme Court's order of October 19, 2017, knowingly prepared a Fiduciary Oath and

presented the same to Ms. Chevalier for execution on or about December 31, 2017. Hearing Exhibit 1 (Petition and Exhibits).

22. Mr. Carlton, while suspended from the practice of law by the Supreme Court's October 19, 2017, order, knowingly prepared a Verification Oath and presented the same to Ms. Chevalier for execution on or about February 16, 2018. Hearing Exhibit 1 (Petition and Exhibits).

23. Thereafter Mr. Carlton, while suspended from the practice of law under the Supreme Court's October 19, 2017, order, knowingly prepared and filed an Emergency Petition for the Appointment of a Conservator of the Person and Estate of A. Willetta Chevalier on March 16, 2018, in the Chancery Court of Williamson County, Tennessee, Probate Division. Hearing Exhibit 1 (Petition and Exhibits).

24. Mr. Carlton signed the Emergency Petition as the attorney for Ms. Chevalier, thereby misrepresenting to the Chancery Court of Williamson County that he remained an actively licensed attorney. Hearing Exhibit 1 (Petition and Exhibits).

25. After being appointed conservator, Ms. Chevalier had difficulty communicating with Respondent and in obtaining information regarding the status of her case. Hearing Exhibit 1 (Petition and Exhibits).

26. Unable to contact Respondent for an extended time, Ms. Chevalier retained new counsel on or about May 1, 2018, to represent her in the conservatorship action pending in the Chancery Court for Williamson County. Hearing Exhibit 1 (Petition and Exhibits).

27. Ms. Chevalier's new counsel, Jennifer Sheppard, Esq., made attempts to contact Respondent, but he did not respond to Ms. Sheppard. Hearing Exhibit 1 (Petition and Exhibits).

28. Thereafter, Ms. Sheppard discovered that Respondent Carlton was suspended from the practice of law under the Supreme Court's order of October 19, 2017. Ms. Sheppard entered

her appearance in the Williamson County conservatorship action and filed a motion to remove Mr. Carlton as attorney of record. Hearing Exhibit 1 (Petition and Exhibits).

29. On June 27, 2018, an Order to Remove Jonathan Carlton as Attorney of Record and Compel the Production of Respondent's Original Last Will & Testament was entered by the Chancery Court for Williamson County. Hearing Exhibit 1 (Petition and Exhibits).

30. On September 7, 2018, the Tennessee Supreme Court entered an Order of Temporary Suspension suspending Respondent—for the second time--from the practice of law for failing to respond to the Board concerning a complaint of misconduct. Hearing Exhibit 1 (Petition and Exhibits).

#### **CONCLUSIONS OF LAW**

31. Respondent Jonathan Stephen Carlton is an attorney admitted by the Supreme Court of Tennessee in 2011 to practice law in the State of Tennessee. His most recent address as registered with the Board of Professional Responsibility is 706 Monroe Street, Suite B, Nashville, Tennessee 37208-2605, in Disciplinary District V. Mr. Carlton's current address as registered with the Board of Professional Responsibility is 2437 Red Hill Road, Nortonville, KY 42442-9345. Mr. Carlton's Board of Professional Responsibility number is 029768. On April 10, 2019, Mr. Carlton was personally served at 726 Cumberland Trace Road, Apt. 238, Bowling Green, KY 42103-9121, as shown by the return of service completed by an officer of the Sheriff's Department of Warren County, Kentucky. Motion for Default Judgment, Ex. A (Return of Service). This constitutes valid service of process under Rule 9, § 18.1, and Rules 4.04(1) and 4.05(1) of the Tennessee Rules of Civil Procedure.

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

33. Pursuant to Tenn. Sup. Ct. R. 9, § 1 (2014), the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

34. Pursuant to Tenn. Sup. Ct. R. 9, § 11 (2014), acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and grounds for discipline, regardless of whether the act or omission occurred in the course of an attorney-client relationship.

35. Based upon the facts deemed admitted under Rule 9, § 15.2(b) and the additional documentary evidence presented, the Hearing Panel finds by a preponderance of the evidence that Respondent Jonathan Stephen Carlton knowingly and intentionally engaged in the unauthorized practice of law by undertaking the representation of Ms. Chevalier, preparing legal documents, and filing pleadings in the Chancery Court of Williamson County in which he identified himself as an attorney.

36. The Panel further finds that the above recited conduct reflects misrepresentations by Respondent Jonathan Stephen Carlton in his dealings with the Williamson County Chancery Court and his client.

37. Based upon the facts deemed admitted by default and the additional documentary evidence presented, the Hearing Panel finds by a preponderance of the evidence that Jonathan Stephen Carlton (a) knowingly failed to comply with the first Order of Suspension for Default with

TSAC Pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.05(4) entered by the Supreme Court of Tennessee on October 19, 2017; (b) knowingly failed to comply with Tenn. Sup. Ct. R, 9, § 28 regarding his obligations upon suspension; (c) knowingly failed to comply with the Order to Show Cause entered September 13, 2017, by the Supreme Court; and (d) knowingly failed to comply with the second Order of Temporary Suspension entered September 7, 2018, by the Supreme Court. Hearing Exhibit 1 (Petition and Exhibits); Rule 9, § 15.2(b).

38. Likewise, the Hearing Panel finds by a preponderance of the evidence that Respondent Jonathan Stephen Carlton, while suspended from the practice of law, charged and accepted a fee in the amount of \$750.00. While the Panel reaches no conclusion on whether this fee would have been reasonable under other circumstances, it was unreasonable in this case because Respondent was expressly prohibited from performing any services as an attorney at the time, a fact of which his client was unaware.

39. The Panel finds on the facts deemed admitted by default and the additional documentary evidence that Respondent. Carlton was required to decline the representation of Ms. Chevalier. The Panel further finds that Mr. Carlton, after accepting the representation, was immediately required to terminate the representation, refund all fees, and promptly return the original Last Will and Testament to Ms. Chevalier. He failed to take any of these steps required by section 28.

40. Based upon the facts deemed admitted by default and the additional documentary evidence presented, the Hearing Panel finds by a preponderance of the evidence that Respondent Jonathan Stephen Carlton failed to reasonably communicate with or otherwise respond to Ms. Chevalier about the status of her case and, having undertaken the representation, failed to diligently represent Ms. Chevalier.



41. The Hearing Panel further finds from the facts deemed admitted by default and the additional documentary evidence that Mr. Carlton knowingly and intentionally failed to respond to the Board's request for information related to this disciplinary complaint, failed to file an answer to the Petition for Discipline, and failed to participate in the final hearing.

42. The Hearing Panel finds by facts deemed admitted by default and the additional documentary evidence that Jonathan Stephen Carlton knowingly and intentionally violated Rules of Professional Conduct (RPC) 1.4 (diligence), 1.4 (communication), 1.5 (fees), 1.16 (declining or terminating representation), 3.3 (candor toward the tribunal), 5.5 (unauthorized practice of law), 8.1(b) (disciplinary matters), and 8.4(a), (c), (d) and (g) (misconduct).

#### **APPLICATION OF THE ABA STANDARDS**

43. Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, ("ABA Standards"). *Meehan v. Board of Professional Responsibility*, \_\_\_ S.W.3d \_\_\_, 2019 WL 4564937 (Tenn. Sept. 20, 2019).

44. The Board submitted ABA Standards 4.41, 4.61, 6.11, 5.11, 7.1, and 4.42 to the Panel for its consideration. Hearing Exhibits 2-7.

45. Based upon the admitted facts and misconduct previously cited, the Hearing Panel finds the following ABA Standards applicable and relevant to its determination of the appropriate discipline to be imposed against Mr. Carlton:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

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.

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

5.11 Disbarment is generally appropriate when:

- (a) . . . .
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

46. Based upon the admitted conduct of failing to respond to the Board on multiple occasions, failing to comply with two separate suspension orders, failing to communicate with a client, failure to return an original will to a client, and failure to respond to or participate in these disciplinary proceedings, the Panel concludes that the appropriate baseline sanction is disbarment.

**AGGRAVATING AND MITIGATING CIRCUMSTANCES**

47. Pursuant to ABA Standard 9.22, the Hearing Panel finds the following aggravating factors present and applicable to determining the appropriate discipline to be imposed against Mr. Carlton:

- (a) Mr. Carlton's multiple offenses are an aggravating circumstance justifying an

increase in discipline.

(b) Mr. Carlton's substantial experience in the practice of law is an aggravating circumstance justifying an increase in discipline.

(c) Mr. Carlton's pattern of misconduct is an aggravating circumstance justifying an increase in discipline.

48. Pursuant to ABA Standard 9.32, the Hearing Panel finds the following mitigating factors present and applicable to determining the appropriate discipline to be imposed against Mr. Carlton:

(a) No prior disciplinary history.

**JUDGMENT**

Based upon the admitted facts in this case, the application of the Rules of Professional Conduct, consideration of the cited ABA Standards and of aggravating and mitigating factors, the Hearing Panel finds by a preponderance of the evidence that Mr. Carlton committed disciplinary misconduct and should be disbarred from the practice of law pursuant to Tenn. Sup. Ct. R. 9, § 12.1.

ENTERED ON THIS THE 24<sup>th</sup> DAY OF OCTOBER, 2019.

FOR THE PANEL:

Gary C. Shockley  
Gary C. Shockley, Hearing Panel Chair

John M. Baird by ECS  
John M. Baird

Craig V. Gabbert by ECS  
Craig V. Gabbert

**NOTICE**

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

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to Respondent, Jonathan Stephen Carlton, 726 Cumberland Trace Road, Apt. 238, Bowling Green, KY 42103, via U.S. First Class Mail, and hand-delivered to Russell Willis, Disciplinary Counsel, on this the 24<sup>th</sup> day of October, 2019.



Rita Webb  
Executive Secretary

**NOTICE**

**This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.**