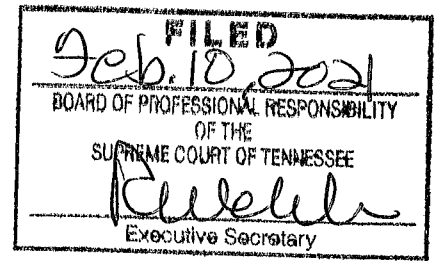


**IN DISCIPLINARY DISTRICT III
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



IN RE: JOSEPH HOUSTON CRABTREE,
Respondent

DOCKET NO. 2019-2970-3-AW

JUDGMENT OF THE HEARING PANEL

This cause came for trial before this hearing panel (Panel) of the Board of Professional Responsibility of the Supreme Court of Tennessee (Board) on January 13, 2021. This cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court, and was held through electronic means by use of the Zoom application. Present at the hearing were the respondent, Mr. Crabtree; disciplinary counsel for the Board, Brittany Lavalley; and the Panel composed of Rosemarie Hill (Chair), Stephen Crump, and John H. Cameron, Jr.

The Hearing was recorded.

STATEMENT OF THE CASE:

The Board filed a Petition for Discipline against Mr. Crabtree on February 21, 2019 (Petition). Mr. Crabtree did not file an answer to the Petition. On November 8, 2019, the Board filed a Motion for Default Judgment and That Charges in Petition Be Deemed Admitted, which the Panel granted on December 3, 2019. The default order admitted all allegations contained in the Petition, and stated that a future hearing would be set to determine the discipline to be imposed in the matter.

On November 20, 2019, the Board filed a Supplemental Petition for Discipline against Mr. Crabtree (Supplemental Petition). Mr. Crabtree did not file an answer to the Supplemental Petition. On August 24, 2020, the Board filed a Motion for Default Judgment and That Charges in Petition Be Deemed Admitted, which the Panel granted on October 9, 2020. The default order admitted all allegations contained in the Petition, and stated that a final hearing would be set to determine the discipline to be imposed in the matter.

On January 13, 2020, the Board filed a Second Supplemental Petition for Discipline against Mr. Crabtree (Second Supplemental Petition). Mr. Crabtree filed an Answer to Second Supplemental Petition on May 19, 2020.

In the hearing on January 13, 2021 (Hearing) the Panel considered the discipline to be imposed under the allegations of the Petition and the Supplemental Petition, and its judgment on the allegations of the Second Supplemental Petition.

Ms. Lavalley and Mr. Crabtree made opening remarks, after which Ms. Lavalley called witness Vickie L. Haberbosch, the underlying complainant against Mr. Crabtree as detailed in the Second Supplemental Petition. Ms. Haberbosch was sworn to tell the truth, and was subjected to direct and cross examination. Ms. Haberbosch basically corroborated the allegations from the Second Supplemental Petition.

Ms. Lavalley also called Ms. Cynthia Kyker, one of two underlying complainants against Mr. Crabtree as detailed in the Supplemental Petition. Ms. Kyker was sworn to tell the truth, and was subjected to direct and cross examination. Ms. Kyker basically corroborated the allegations from the Supplemental Petition, which the Hearing Panel had already deemed admitted.

Ms. Lavalley presented the following exhibits, which were admitted by the Panel without objection:

Exhibit 35 - February 21, 2019 Petition for Discipline
Exhibit 36 - December 3, 2019 Default Order on Petition for Discipline
Exhibit 37 - October 9, 2020 Default Order on the Supplemental Petition
Exhibit 38 - November 20, 2019 Supplemental Petition for Discipline
Exhibit 39 - January 13, 2020 Second Supplemental Petition for Discipline
Exhibit 40 - a 2010 private admonition against Mr. Crabtree
Exhibit 41 - a 2011 public censure against Mr. Crabtree
Exhibit 42 - a 2012 private admonition against Mr. Crabtree
Exhibit 43 - a 2016 private admonition against Mr. Crabtree

Ms. Lavalley rested her case on behalf of the Board.

Mr. Crabtree called himself and had the opportunity to tell the Panel his side of the case. He also addressed the statements made by the Board's two witnesses, and discussed the background on Exhibits 40-43. Mr. Crabtree was subjected to cross examination by Ms. Lavalley.

Ms. Lavalley and Mr. Crabtree made further closing remarks to the Panel. The Hearing was closed, and the Panel held a telephone conference immediately after to discuss the Hearing: arguments and statements made by the parties; all the facts and exhibits presented by the parties and witnesses; facts admitted through the two default judgment orders; the alleged misconduct from the Second Supplemental Petition; all applicable rules and standards; and mitigating and aggravating factors.

STATEMENT OF THE FACTS:

SOF 1. Mr. Crabtree, Joseph Houston Crabtree, is an attorney admitted by the Supreme Court of Tennessee in 1985 to practice law in the State of Tennessee. His Board number is 011451. He currently practices in Athens, Tennessee and environs, and his office address is 100 W. Madison Avenue, Athens, Tennessee.

SOF 2. Facts from the original Petition that are admitted under the Panel's Order for Default Judgment of December 3, 2019:

File No. 57992-3-PS- Complainant — Jerry Wilson - (Note that all Exhibits included below are attached to the Petition which is Exhibit 35 to this Hearing):

1. On July 30, 2018, the Board of Professional Responsibility ("Board") received a complaint from Jerry Wilson, alleging misconduct by Mr. Crabtree relating to his representation of Mr. Wilson in a workers' compensation action. The complaint was forwarded to Mr. Crabtree on August 2, 2018, for response within ten (10) days. True and exact copies of the complaint and Disciplinary Counsel's letter to Mr. Crabtree are attached hereto as Exhibit 1.

2. On September 5, 2018, the Board received Mr. Crabtree's response and by letter dated September 5, 2018, the Board forwarded the same to Mr. Wilson for his response. True and exact copies of Mr. Crabtree's response and the Board's letter of September 5, 2018, are attached hereto as Exhibit 2.

3. On or about January 21, 2017, Jerry Wilson retained Mr. Crabtree for legal advice regarding a settlement Mr. Wilson had reached with opposing counsel on his workers' compensation claim.

4. Prior to retaining Mr. Crabtree, opposing counsel had altered the settlement amounts agreed to by Mr. Wilson.

5. Mr. Crabtree advised that the reduction by opposing counsel of the settlement payment were not appropriate and he could obtain more workers' compensation for Mr. Wilson.

6. Based upon Mr. Crabtree's representations, Mr. Wilson agreed to retain Mr. Crabtree.

7. After being retained, Mr. Crabtree corresponded with opposing counsel and was advised of certain case law which provided certain offsets for social security payments received by Mr. Wilson.

8. Thereafter, Mr. Crabtree became quite busy on other clients' legal matters and failed to advise Mr. Wilson of the results of Mr. Crabtree's correspondence with opposing counsel.

9. Mr. Wilson made numerous attempts to contact Mr. Crabtree regarding the status of the settlement of his workers' compensation claim against his employer; however, Mr. Crabtree failed to timely respond to or otherwise reasonably communicate with Mr. Wilson.

10. Despite assurances from Mr. Crabtree that he would contact opposing counsel and follow up on resolving the workers' compensation claim, Mr. Crabtree did not contact opposing counsel or take appropriate action to preserve Mr. Wilson's workers' compensation claim.

11. Mr. Crabtree failed to notify Mr. Wilson that no action had been taken to contact opposing counsel, to finalize the workers' compensation settlement or to preserve Mr. Wilson's cause of action.

12. As a direct consequence of Mr. Crabtree's misrepresentations and/or omissions, the statute of limitations governing Mr. Wilson's cause of action for workers' compensation expired without his knowledge.

13. On July 30, 2018, Mr. Wilson filed a legal malpractice action against Mr. Crabtree in the General Sessions Court for McMinn County and the warrant was served upon

Mr. Crabtree on July 31, 2018. A true and exact copy of the General Sessions warrant filed against Mr. Crabtree is attached hereto as Exhibit 3.

14. On or about September 18, 2018, Mr. Crabtree directly negotiated a settlement with Mr. Wilson of his potential malpractice liability without advising Mr. Wilson in writing that he should seek the advice of independent legal counsel before settling his claim of malpractice in violation of RPC 1.8(h).

15. On September 18, 2018, Mr. Crabtree presented Mr. Wilson with a "Release Of All Claims And Indemnity Agreement" and an "Agreed Order Of Dismissal With Prejudice" and allowed Mr. Wilson to execute both settlement documents without advising Mr. Wilson in writing that he should seek the advice of independent legal counsel before executing the documents settling his claim of malpractice in violation of RPC 1.8(h). A true and exact copy of the Release Of All Claims And Indemnity Agreement and an Agreed Order Of Dismissal With Prejudice executed by Mr. Wilson are attached hereto as Exhibit 4.

16. By the aforesaid acts and omissions, Mr. Crabtree engaged in unethical conduct in violation of the Tennessee Rules of Professional Conduct and more specifically set forth hereinafter:

17. ALLEGED VIOLATIONS

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:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS; SPECIFIC RULES

- (h) A lawyer shall not:
- (1) make an agreement prospectively limiting the lawyer's liability to a client or prospective client for malpractice; or
 - (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless the lawyer fully discloses all the terms of the agreement to the client in a manner that can reasonably be understood by the client and advises the client in writing of the desirability of seeking and gives the client a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

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;

AGGRAVATING FACTORS

22. Mr. Crabtree's multiple offenses are an aggravating circumstance justifying an increase in discipline.

23. Mr. Crabtree's refusal to acknowledge the wrongful nature of his conduct is an aggravating circumstance justifying an increase in discipline.

24. Mr. Crabtree's pattern of misconduct is an aggravating circumstance justifying an increase in discipline.

25. Mr. Crabtree's prior disciplinary history is an aggravating circumstance justifying an increase in discipline.

26. Mr. Crabtree's substantial experience in the practice of law is an aggravating circumstance justifying an increase in discipline.

SOF 3. Facts from the Supplemental Petition that are admitted under the Panel's Order for Default Judgment of October 9, 2020:

File No. 60108-3-PS — Report of Cynthia Kyker - (Note that all Exhibit numbers below are attached to the Supplemental Petition which is Exhibit 38 to this Hearing):

1. By complaint filed on March 1, 2019, Cynthia Kyker notified the Board of a complaint against Mr. Crabtree. A true and exact copy of the complaint is attached hereto as Exhibit 1.

2. On March 5, 2019, the Board sent a copy of the complaint to Mr. Crabtree and requested a response within ten (10) days. A true and exact copy of the Board's letter dated March 5, 2019 is attached hereto as Exhibit 2.

3. As of May 30, 2019, Mr. Crabtree had not responded to the Board's letter. On May 30, 2019, the Board sent another letter requesting a response within seven (7) days. A true and exact copy of the response is attached hereto as Exhibit 3.

4. On July 5, 2019 Mr. Crabtree filed a response to the complaint.

5. By letter dated July 26, 2019 the Board requested additional responses to the complaint by August 5, 2019. A true and exact copy of the letter is attached hereto as Exhibit 4.

6. On November 5, 2012 Ms. Kyker and her husband retained Mr. Crabtree in relation to a case for injuries sustained based on a laser hair removal treatment. A true and exact copy of the Retainer Agreement is attached hereto as Exhibit 5.

7. Mr. Crabtree sent a pre-suit notice to Ms. Riddlesworth on January 8, 2013. This notice mentioned only Ms. Kyker as a plaintiff. It did not mention her husband. A true and exact copy of the pre-suit notice is attached as Exhibit 6.

8. On March 22, 2013 Mr. Crabtree filed a complaint against Ms. Riddlesworth as well as other defendants on behalf of both Cynthia Kyker and Stephen Kyker for injuries sustained during the laser hair removal procedure. A true and exact copy of the complaint is attached hereto as Exhibit 7

9. This complaint arises out of Ms. Kyker's laser hair removal treatment March 24, 2012.

10. On July 20, 2017 Mr. Crabtree filed a response to a motion for summary judgement. A true and exact copy of the Motion is attached hereto as Exhibit 8.

11. Mr. Crabtree filed a motion to trial date and scheduling order on July 20, 2017. A true and exact copy of the Motion is attached hereto as Exhibit 9.

12. On July 3, 2018 Mr. Crabtree filed an agreed scheduling order with a deadline of October 31, 2018 for the disclosure of all expert witnesses. A true and exact copy is attached hereto as Exhibit 10

13. On August 27, 2018, Mr. Crabtree filed a response declining a settlement offer. A true and exact copy is attached hereto as Exhibit 11.

14. Throughout the pendency of the case, Ms. Kyker was having difficulty meeting with and communicating with Mr. Crabtree. There were times when several months would pass with no communication. A true and exact copy of email communications between Ms. Kyker and Mr. Crabtree are attached hereto as comprehensive Exhibit 12

15. On February 12, 2019, Ms. Kyker sent Mr. Crabtree a certified letter in order to establish communication with her attorney. A true and exact copy of the letter and certified receipt are attached hereto as Exhibit 13.

16. Mr. and Ms. Kyker were unaware that the loss of consortium claim was dismissed with prejudice in 2014 based upon a failure to comply with the notice provisions. A true and exact copy of the dismissal order dated March 20, 2014 is attached hereto as Exhibit 14.

17. On December 4, 2018 an order granting the Defendants' Joint Motion to Dismiss was granted and the case was dismissed without prejudice. Mr. Crabtree had failed to file in opposition to the motion, failed to comply with two court orders, and failed to prosecute the case. A true and exact copy of the Order is attached as Exhibit 15

18. On February 15, 2019 the Court entered an Order granting costs against Ms. Kyker in the amount of \$2,260.42 for defendant, IrMa Abrams and Quality Health Care. A true and exact copy of the Order is attached hereto as Exhibit 16.

19. On February 25, 2019 the Court entered an Order granting discretionary costs for Mikala Riddlesworth against Ms. Kyker. A true and exact copy of the Order is attached hereto as Exhibit 17.

20. The Court provided for fifteen (15) days for response to the February 25, 2019 order. Having received no response from Mr. Crabtree or Ms. Kyker in that time Ms. Kyker was ordered to pay costs in the amount of \$2,629.42 to defendant Mikala Riddlesworth. A true and exact copy of the Order is attached hereto as Exhibit 18.

File No. 60172-3-PS- Report of Crystal Velez

21. On June 23, 2017 Ms. Velez retained Mr. Crabtree to represent her in a personal injury lawsuit. A true and exact copy of the retainer agreement is attached hereto as Exhibit 19.

22. By letter dated March 21, 2019, the Board provided a copy of Ms. Velez's complaint to Mr. Crabtree and requested a response. A true and exact copy of the letter from the Board is attached as Exhibit 20.

23. On May 30, 2019, the Board sent another letter to Mr. Crabtree requesting his response within ten (10) days. He had been granted prior extensions for his response as covered in the letter. A true and exact copy of the letter is attached hereto as Exhibit 21.

24. On June 18, 2019 Mr. Crabtree responded to Ms. Velez's complaint. He indicated that sent a letter to Walmart to preserve evidence in the case. A true and exact copy of the response is attached hereto as Exhibit 22.

25. Mr. Crabtree also admits that he did not properly calendar the case and did not communicate with his client concerning the expiration of the statute of limitations.

26. Ms. Velez was injured in a slip and fall in Bradley County, Tennessee.

27. Mr. Crabtree was retained by Ms. Velez three (3) days after the incident.

28. Mr. Crabtree did not file the case, and the one (1) year statute of limitations expired.

29. By email dated July 11, 2019, the Board requested additional information as to when he notified Ms. Velez about the statute of limitations expiration by July 19, 2019. A true and exact copy of that email is attached hereto as Exhibit 23.

30. By letter dated July 24, 2019, the Board requested that Mr. Crabtree provide proof that he asked Wal-Mart to preserve evidence in Ms. Velez's case within ten (10) days. A true and exact copy of that letter is attached hereto as Exhibit 24.

31. Mr. Crabtree did not provide a letter showing that he requested that Wal-Mart preserve the evidence for the case.

32. Mr. Crabtree did not provide correspondence showing that he informed Ms. Velez that the statute of limitations had expired.

33. ALLEGED VIOLATIONS

33. By the aforementioned acts and omissions, Mr. Crabtree has engaged in unethical conduct in violation of the Tennessee Rules of Professional Conduct and more specifically set forth hereinafter:

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 1.4 COMMUNICATION

- (a) A lawyer shall:
 - (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0 (e), is required by these Rules;
 - (2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) Keep the client reasonably informed about the status of the matter;
 - (4) Promptly comply with reasonable requests for information; and
 - (5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 3.2 EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation.

RULE 3.4(c) FAIRNESS TO OPPOSING PARTY AND COUNSEL

- (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

RULE 8.1 (b)
BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by RPC 1.6.

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

34. AGGRAVATING FACTORS

1. After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanctions to impose.

2. Mr. Crabtree's multiple offenses are an aggravating circumstance justifying an increase in discipline.

3. Mr. Crabtree's prior disciplinary offense is an aggravating circumstance justifying an increase in discipline.

4. Mr. Crabtree's pattern of misconduct is an aggravating circumstance justifying an increase in discipline.

5. Mr. Crabtree's substantial experience in the practice of law, having been licensed in Tennessee in 1977, is an aggravating circumstance justifying an increase in discipline.

SOF 4. Facts Concerning the Second Supplemental Petition for Discipline filed May 19, 2020 and judged by the Panel as true pursuant to the Hearing:

File No. 61044c-3-MS — Report of Vickie L. Haberbosch – (Note that all referenced exhibit numbers below are attached to the Second Supplemental Petition which is Exhibit 35 to this Hearing):

1. By complaint filed on June 4, 2019, Vickie L. Haberbosch notified the Board of a complaint against Mr. Crabtree. A true and exact copy of the complaint is attached hereto as Exhibit 1.

2. On August 5, 2019, the Board sent a copy of the complaint to Mr. Crabtree and requested a response within ten (10) days. A true and exact copy of the Board's letter dated March 5, 2019 is attached hereto as Exhibit 2.

3. As of August 23, 2019, Mr. Crabtree had not responded to the Board's letter. On August 23, 2019, the Board sent another letter requesting a response within seven (7) days. A true and exact copy of the response is attached hereto as Exhibit 3.

4. On September 4, 2019, Disciplinary Counsel sent an email to Mr. Crabtree granting him an extension until September 10, 2019 to file a response. A true and exact copy of Disciplinary Counsel's email dated September 4, 2019 is attached hereto as Exhibit 4.

5. On September 10, 2019 Mr. Crabtree filed a response to the complaint which is attached hereto as Exhibit 5.

6. By email dated October 4, 2019, Disciplinary Counsel requested additional documentation from Mr. Crabtree evidencing the return of one-half (1/2) of the retainer to Ms. Haberbosch. A true and exact copy of this email is attached hereto as Exhibit 6.

7. On March 11, 2019 Ms. Haberbosch retained Mr. Crabtree with respect to her business, Family Home Care Services, LLC. Mr. Crabtree was retained to send cease and desist letters to two (2) former employees, obtain an assignment of a 5% membership in the Company from one of those employees, and prepare a new operating agreement. Ms. Haberbosch paid Mr. Crabtree a retained in the amount of Two Thousand Five Hundred and 00/100 (\$2,500.00). A true and exact copy of the Retainer Agreement is attached hereto as Exhibit 7.

8. Despite repeated requests from Ms. Haberbosch, Mr. Crabtree never sent the cease and desist letters.

9. In April 2019 Mr. Crabtree obtained the signature of the employee on the assignment of membership interest but did not forward it to Ms. Haberbosch for signature.

10. Mr. Crabtree also did not prepare a new operating agreement.

SOF 5. Mr. Crabtree's Hearing Testimony and Argument:

At the Hearing, Mr. Crabtree admitted the prior discipline delineated in Exhibits 40-43. He also presented defenses on why he allowed the issues detailed in the Petition and Supplemental Petition to occur.

As to the Petition, Mr. Crabtree pointed out that a new workers' compensation law came into effect in the middle of his case for Mr. Wilson and he missed some dates because of the new law. Mr. Crabtree believes Mr. Wilson was "made whole" with the \$8,638.27 settlement paid to him by Mr. Crabtree.

As to the Supplemental Petition, Mr. Crabtree regretted that he missed the statute of limitations for Ms. Crystal Velez's case but believes her case was very weak.

Further as to the Supplemental Petition, Mr. Crabtree stated he had known Ms. Vickie Kyker for many years; in fact, she is his cousin (Ms. Kyker corroborated this and the other facts set out in the Supplemental Petition). Mr. Crabtree told the Hearing Panel that four defense lawyers had attempted mediation for Ms. Kyker's negligence case, and that he paid \$6,000 for video and non-video depositions for her. He agreed he owed her \$1,230.00 (\$3,730 she paid another attorney minus \$2,500 Mr. Crabtree paid an expert for the case). Mr. Crabtree did not think Ms. Kyker had paid any court costs or discretionary costs as listed in the Supplemental Petition, and Ms. Kyker testified she had not and didn't even know if she had any such costs assessed against her. Mr. Crabtree agreed that Ms. Kyker may not have been able to reach him every time she tried, but he said she was also hard to reach and that it was very hard to schedule depositions in the case with all the involved parties and lawyers.

During her testimony, Ms. Vickie Haberbosch corroborated the facts from the Second Supplemental Petition set out above. She also testified that she tried to contact Mr. Crabtree numerous times, that he never showed her the cease and desist letters he allegedly sent to her employees, and in fact, she firmly believes he never sent those letters. He did not help her in determining if a bonus requested from an employee was accurate and owed, but Mr. Crabtree testified that the accounting on this bonus was confusing and neither he nor Ms. Haberbosch were able to decipher whether a bonus was owed or in what amount. Ms. Haberbosch says she paid the employee the bonus anyway because Mr. Crabtree wouldn't advise her on the matter and she simply wanted to end the dispute.

Further, Ms. Haberbosch testified that Mr. Crabtree only responded to approximately 5% of her e-mails and almost never returned calls. He was very hard to reach. She admitted he had told her at the beginning of her case that he would be tied up in a federal trial for a number of days. Mr. Crabtree acknowledged he was hard to reach when she first contacted him, but says he told her he would be. He admitted that he could be hard to reach at times, but reiterated that he was very busy, and denied that he was as hard to reach as Ms. Haberbosch claimed.

Mr. Crabtree testified he did prepare a release agreement and assignment of membership for one of Ms. Haberbosch's employees. Ms. Haberbosch agreed he did that, but he did not prepare an LLC operating agreement for her business even though she requested it a number of times. Mr. Crabtree admitted he didn't prepare an operating agreement, but believed it was not necessary.

Ms. Haberbosch believed that Mr. Crabtree had agreed to reimburse her \$1,250 for her losses due to his negligent handling of her case, but it wasn't paid once the Second Supplemental Petition was filed. Mr. Crabtree agreed he owed her that amount.

CONCLUSION:

Applicable Tennessee Rules of Professional Conduct:

Based on the foregoing acts and omissions, Mr. Crabtree has engaged in unethical conduct in violation of the Tennessee Rules of Professional Conduct and more specifically as follows:

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.

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

1.4: Communication:

- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

1.8: Conflict of Interest:

- (h) A lawyer shall not:
 - (1) make an agreement prospectively limiting the lawyer's liability to a client or prospective client for malpractice; or
 - (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless the lawyer fully discloses all the terms of the agreement to the client in a manner that can reasonably be understood by the client and advises the client in writing of the desirability of seeking and gives the client a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

3.2: Expediting Litigation:

A lawyer shall make reasonable efforts to expedite litigation.

3.4(c): Fairness to Opposing Party and Counsel:

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

8.1(b): Bar Admission and Disciplinary Matters:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by RPC 1.6.

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;

American Bar Association Standards for Imposing Lawyer Actions:

The Panel also has considered, accepted, and applied the ABA Standards for Imposing Lawyer Sanctions to guide the Panel's use of the Tennessee Rules of Professional Liability in deciding this matter. The following Sections of the ABA Standards specifically apply to this case:

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 injuries to a client.

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

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.

9.21: Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify and increase in the degree of discipline to be imposed.

9.22: Factors which may be considered . . . aggravating factors include:

- a) Prior disciplinary offenses
- c) Pattern of misconduct
- d) Multiple offenses
- i) Substantial experience in the practice of law

Aggravating Factors Which the Panel Finds Relevant in this Matter:

After the Hearing Panel found that misconduct was established, aggravating and mitigating circumstances were considered in deciding what sanctions to impose. In this case, Mr. Crabtree's multiple offenses, his prior disciplinary offenses as well as his pattern of misconduct, are aggravating circumstances justifying an increase in discipline. In addition, Mr. Crabtree's substantial experience in the practice of law, and his refusal to acknowledge the wrongful nature of much of his conduct are further aggravating circumstances justifying an increase in discipline.

There were no mitigating factors that legislated against the findings of fact or judgment in this matter.

JUDGMENT:

The Hearing Panel finds that Mr. Crabtree, under a preponderance of the evidence standard of Rule 9 of the Tennessee Rules of Professional Conduct, violated the Rules as discussed above, and that the aggravating factors listed above are applicable.

Suspension from the practice of law: After considering the actions of Mr. Crabtree, all of the above, the aggravating factors, and the entire record and testimony in this case, it is the opinion of this Hearing Panel that Mr. Crabtree shall be suspended from the practice of law for a period

of two (2) years. After six (6) months of active suspension, Mr. Crabtree can begin practicing law again under a probationary period for eighteen (18) months. During the period of suspension and probation, Mr. Crabtree shall incur no new complaints of misconduct that relate to conduct occurring during the period of suspension and probation, and which result in the recommendation by the Board that discipline be imposed. In the event that Mr. Crabtree violates or otherwise fails to meet any condition of probation, Disciplinary Counsel is authorized to file a petition to revoke probation. Upon a finding that probation was violated, Mr. Crabtree shall serve the entirety of the previously deferred period of suspension.

Restitution: Further and pursuant to Rule 9, Section 4.7, Mr. Crabtree shall be required to make restitution to the following individuals: 1) \$1,250.00 (One thousand two hundred fifty dollars) to Ms. Vickie L. Haberbosch, and 2) \$1,230.00 (One thousand two hundred thirty dollars) to Ms. Cynthia Kyker.

As additional restitution, if Ms. Kyker incurs any costs, fines or penalties against her resulting from the matters listed in her complaint contained in the Supplemental Petition, Mr. Crabtree shall pay those fines, penalties or costs on her behalf, or reimburse her for them in total. These possible fines or penalties include, but are not limited to, those described in paragraphs 18-20 in the Supplemental Petition under Ms. Kyker's File No. 60108-3-PS.

The payments of the restitutions are conditions precedent to any reinstatement. In addition, payment of all costs assessed against Mr. Crabtree is a condition precedent to reinstatement.

In the event any restitution is made by the Tennessee Lawyer's Fund for Client Protection (TLFCP) on behalf of any of the complainants in this matter, Mr. Crabtree will be responsible for reimbursement to the TLFCP of the same amount.

Appeal Rights: This Hearing Panel's findings and judgments may be appealed pursuant to Rule 9 of the Tennessee Rules of the Supreme by filing a writ of certiorari, which shall be made under oath or affirmation and which shall state that it is the first application of the writ.

HEARING COMMITTEE PANEL MEMBERS:

Rosemarie L. Hill by JHC w/permission
Rosemarie L. Hill, Attorney *Given 2/10/21*

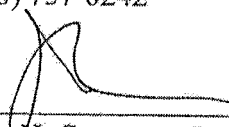
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Stephen D. Crump, Attorney *Given 2/10/21*

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Cleveland, TN 37311

(423) 472-2179

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Joseph Houston Crabtree, 100 W. Madison Drive, Athens, TN 37303-4254, by U.S. First Class Mail, and hand-delivered to Brittany Lavalley, Disciplinary Counsel, on this the 10th day of February 2021.

A handwritten signature in black ink, appearing to read "Rita Webb", written over a horizontal line.

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.