

IN DISCIPLINARY DISTRICT VIII  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE

FILED

2011 NOV 30 PM 3: 06

BOARD OF PROFESSIONAL  
RESPONSIBILITY

 EXEC. SEC'Y

IN RE: KYLE ERIC CROWE,  
BPR # 011458, Respondent  
An Attorney Licensed and  
Admitted to the Practice of  
Law in Tennessee  
(Weakley County)

DOCKET NO. 2011-2030-8-SG

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DISCIPLINARY HEARING PANEL'S  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

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FINDINGS OF FACT

1. Mr. Crowe was licensed to practice law in Tennessee in 1985.
2. On September 13, 2009, Mr. Crowe sent a fax to the Board of Professional Responsibility (herein after "the Board") marked "extremely urgent" purporting to surrender his law license, but making no mention/self-report of misappropriated trust funds. (Ex. 2, Hearing Testimony).
3. On September 14, 2009, Mr. Crowe sent another fax to the Board marked "urgent" and "help", but still made no mention/self-report of misappropriated trust funds. (Ex. 3, Hearing Testimony).
4. On September 14, 2009, Julie Turner, an employee with the Board, sent Mr. Crowe a Petition to Surrender Law License with instructions.
5. Mr. Crowe did not file a petition to surrender his law license.
6. On September 15, 2009, the police responded to a call from Mr. Crowe's home.

7. Lt. Officer Reed and Chief of Police David Moore of the Martin, Tennessee, Police Department came to Mr. Crowe's home on September 15, 2009.
8. In a conversation with Chief Moore on September 15, 2009, Mr. Crowe admitted misusing funds from his trust accounts.
9. Chief Moore reported his conversation with Mr. Crowe to the Board of Professional Responsibility by letter dated September 16, 2009. (Ex. 1, Hearing Testimony).
10. Mr. Crowe responded to Chief Moore's report and request for information from the Board by letter dated October 26, 2009. (Ex. 4, Hearing Testimony).
11. In Mr. Crowe's October 26, 2009 letter, Mr. Crowe stated, "I did advise Mr. Moore that I had misused funds out of my Martin trust accounts listed above." (Ex. 4, Hearing Testimony).
12. Mr. Crowe further stated in his October 26, 2009 letter:

As best as I can recall I believe I used some funds out of my First Citizens account to pay one (1) month Alimony and Child Support to my ex-wife in the amount of \$5,195.00, approximately \$3,200.00 to an attorney for some fees I owed him on a case or two he had worked with me on and approximately \$ 2,000.00 to someone else for something, but cannot recall at this time who it was for. I also used some of the funds out of my First State account to pay another attorney a referral fee in the amount of approximately \$2,000.00 None of the individuals I paid those amounts to had any idea that I was misusing any funds to pay them for these things. (Ex. 4, Hearing Testimony).
13. Mr. Crowe testified that the facts as he stated in his October 26, 2009 letter were not correct.
14. Mr. Crowe testified that he did not use funds out of his First Citizens trust account to pay his ex-wife \$5,195.00 in alimony and child support.
15. Mr. Crowe further testified that his statement in his October, 2009, letter regarding the

\$3,200.00 which he alleged he paid to an attorney was actually \$3,452.46 that he paid to attorney David Strickland for fees related to social security disability cases.

16. Mr. Crowe testified that his statement in his October, 2009, letter that he used \$2,000.00 in trust funds was actually the sum of \$ 1,800.00 that he paid to attorney Langdon Unger for fees.
17. Mr. Crowe testified that Mr. Unger did not cash this \$1,800.00 check.
18. In Mr. Crowe's October 26, 2009, letter he stated:

Also, my Wife had a nervous breakdown in 2007-2008 after she was misdiagnosed as being depressed and prescribed the wrong medications. During this same time she began experiencing some female problems and was scared that something could be seriously wrong with her due to her family history. She was later diagnosed as having abnormal lymph node and was afraid she had cancer, which only caused her mental problems to worsen. The point being that she was having significant health problems and was not in her right mind during this time. During this period of time she unfortunately wrote checks out of my First Citizens Trust account totaling approximately \$6,000.00 as best we can determine. I did not report this violation since I was also afraid I would be disbarred for not properly supervising my Trust Accounts.  
(Ex. 4, Hearing Testimony).

19. Mr. Crowe testified that his October 26, 2009, letter stating that his wife wrote trust account checks totaling approximately \$6,000.00 was inaccurate since his wife actually misappropriated \$42,277.00; specifically \$30,192.00 from his First Citizens trust account and \$12,085.00 from his First State trust account.
20. Mr. Crowe testified that he learned of his wife's theft from his trust accounts in approximately August, 2008, but did not report this to the Board.
21. Mr. Crowe testified that when he learned of his wife's theft from his trust accounts in 2008, Mr. Crowe took no action to determine the amount of the theft.
22. Mr. Crowe testified that when he learned of his wife's theft from his trust accounts in

2008, Mr. Crowe made no restitution of those stolen funds.

23. In Mr. Crowe's October 26, 2009, letter he stated:

We have been 'lax' in paying medical providers resulting in excess money being in our Trust accounts. (Ex. 4, Hearing Testimony).

24. Mr. Crowe testified that he had not reconciled his trust accounts since 2003-2004.

25. Mr. Crowe was temporarily suspended by the Tennessee Supreme Court on November 24, 2009, for misappropriation of funds. (Ex. 5, Hearing Testimony).

26. On November 12, 2009, Mr. Crowe wrote the Board asking to be placed on Disability Inactive Status stating that he was disabled and unable to practice and defend himself from the disciplinary investigation. (Ex. 6, Hearing Testimony).

27. On November 25, 2009, the Supreme Court entered an Order staying Mr. Crowe's temporary suspension and transferring Mr. Crowe to Disability Inactive Status. (Ex. 7, Hearing Testimony).

28. Mr. Crowe remained on Disability Inactive Status until the Supreme Court entered an Order on November 17, 2010, dissolving his Disability Inactive Status but leaving intact his temporary suspension for misappropriation of funds. (Ex. 8, Hearing Testimony).

29. Mr. Crowe filed a Petition to dissolve his temporary suspension.

30. After a hearing on January 19, 2011, the Hearing Panel recommended and the Supreme Court approved the dissolution of Mr. Crowe's temporary suspension with the following conditions:

- a. Petitioner must continue in the Tennessee Lawyers Assistance Program (TLAP) and should Petitioner, Kyle Eric Crowe, stop working with the program, the Temporary Suspension Order entered against him shall be reinstated immediately;
- b. Attorney Langdon S. Unger and Petitioner, Kyle Eric Crowe, shall

ascertain to whom the funds currently held in the Petitioner's trust accounts are owed and immediately forward said funds to those persons; disbursement subject to confirmation and approval of disciplinary counsel's office;

- c. Petitioner, Kyle Eric Crowe, pending resolution of disciplinary charges, shall not enter into the solo practice of law and shall work only in a supervised firm setting where he will not have any control over trust accounts and/or trust funds; and
- d. Petitioner's spouse shall not be permitted to work in any capacity involving Petitioner's present trust accounts and/or any future trust accounts under the control and/or any future trust accounts under the control and/or associated with Petitioner, Kyle Eric Crowe. (Ex. 9, Hearing Testimony).

- 31. By Order entered February 16, 2011, the Supreme Court dissolved Mr. Crowe's temporary suspension with conditions. (Ex. 9, Hearing Testimony).
- 32. The February 16, 2011, Supreme Court Order required attorney Langdon Unger and Mr. Crowe to ascertain to whom the funds currently held in Mr. Crowe's trust accounts were owed and immediately forward those funds to those persons. (Ex. 9, Hearing Testimony).
- 33. As of Mr. Crowe's hearing on October 5, 2011, Mr. Crowe had not complied with the condition in the Supreme Court's Order requiring him to ascertain to whom the funds were owed and immediately forward those funds to those persons.
- 34. Mr. Crowe's accounting revealed that Mr. Crowe needs to make \$7,041.09 in restitution to his First Citizens trust account. (Ex. 11, Hearing Testimony).
- 35. Mr. Crowe personally wrote two checks from the First Citizens trust account on November 13, 2007, in the amount of \$1,988.87 and again on December 21, 2007, in the amount of \$1,463.39 misappropriating funds totaling \$ 3,452.46. (Ex. 11, Hearing Testimony).

36. Mr. Crowe's wife wrote twenty-one (21) checks beginning December, 2007, through August, 2008, from Mr. Crowe's First Citizens Bank trust account misappropriating funds totaling \$30,192.65. (Ex. 11, Hearing Testimony).
37. Mr. Crowe's accounting revealed there are ten (10) "resolved cases" in his First Citizens trust account in which Mr. Crowe determined to whom the money was owed and the amount of money owed totals \$9,656.86. (Ex. 11, Hearing Testimony).
38. Mr. Crowe's accounting revealed there are four (4) cases in which he needs additional information "to resolve" and the amount of funds in these cases total \$11,947.26. (Ex. 11, Hearing Testimony).
39. Mr. Crowe's accounting of his First State trust account revealed Mr. Crowe wrote one (1) check to Langdon Unger in May, 2009, misappropriating funds totaling \$1,879.00. (Ex. 10, Hearing Testimony).
40. Mr. Crowe's accounting of his First State trust account revealed Mr. Unger never cashed this \$1,879.00 trust account check. (Ex. 10, Hearing Testimony).
41. Mr. Crowe's wife wrote thirteen (13) checks, beginning October, 2007, through March, 2008, misappropriation funds from Mr. Crowe's First State trust account totaling \$12,085.91. (Ex. 10, Hearing Testimony).
42. At his 4.3 hearing January 19, 2011, Mr. Crowe testified that a deposit had been made to his trust account to replace funds.
43. Mr. Crowe's testimony at his 4.3 hearing on January 19, 2011, was inaccurate since subsequent bank statements did not reflect this deposit to his trust account.
44. Mr. Crowe has entered into a contract with Tennessee Lawyers Assistance Program (TLAP) and according to the testimony of Ted Rice, Assistant Executive Director,

Respondent is compliant with all program requirements.

45. Mr. Crowe has a general reputation in the community as a person of good moral character, verified by his peers and adversaries in practice as elicited through the testimony of the following attorneys: Jim Glasgow, Esq.; Fred McLean, Esq.; Art Crews, Esq.; Allen Phillips, Esq.; Edward Martindale, Esq.; Keely Wilson, Esq.; and Langdon Unger, Esq. All such attorneys testified at the hearing as to the high degree of competency and integrity with which Mr. Crowe represented his clients and handled his affairs.
46. Mr. Crowe's current practice monitor, Langdon Unger, has stated that he is willing to continue to monitor Respondent's work and report to the Board as required.
47. Mr. Crowe's only other discipline imposed by the Board occurred on October 3, 1994, when the Board privately admonished Mr. Crowe in relation to a matter involving advertisement and/or solicitation of services.

#### CONCLUSIONS OF LAW

1. Mr. Crowe's misappropriation of trust funds from his First Citizens and First State trust accounts violates Rules of Professional Conduct 1.15(a)(b) and 8.4(a)(b)(c)(d).
2. Mr. Crowe's wife, Amy Crowe's misappropriation of trust funds from Mr. Crowe's First Citizens and first State trust accounts violates Rules of Professional Conduct 1.15(a)(b) and 5.3(a)(b)(c).
3. Mr. Crowe's inaccurate statements/information provided to the Board of Professional Responsibility violates Rules of Professional Conduct 8.1(a)(b).
4. Mr. Crowe's failure to reconcile his trust accounts and promptly disburse trust funds

violates rules of Professional Conduct 1.5(a)(b) and 8.4(a)(b)(c)(d).

5. Section 8.4 of Rule 9, Rules of the Supreme Court, states “In determining the appropriate type of discipline, the Hearing Panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions.
6. The ABA Standards for Imposing Lawyer Sanctions defines “injury” as “harm to a client, the public, the legal system or the profession which results from a lawyer’s misconduct.”
7. Section 1.1 of the ABA Standards for Imposing Lawyer Sanctions states:
  - 1.1 Purpose of Lawyer Discipline Proceedings. The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.
8. Section 2.3 of the ABA Standards for Imposing Lawyer Sanctions states, “Generally, suspensions should be for a period of time equal to or greater than six months....”
9. ABA Standards 4.11 and 4.12 as follows are applicable to Mr. Crowe’s actions
  - 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
  - 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
10. Section 9.2 of the ABA Standards for Imposing Lawyer Sanctions states:
  - 9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

The Hearing Panel finds that the following aggravating factors exist in this case:

1. A pattern of misconduct;



2. Multiple offenses;
  3. Dishonest or selfish motive; and,
  4. Substantial experience in the practice of law.
11. Section 9.32 of the ABA Standards for Imposing Lawyer Sanctions states the factors considered in mitigation of punishment. The Hearing Panel finds the following mitigating factors exist in this case:
  1. Personal and emotional problems;
  2. Full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings;
  3. Character and reputation;
  4. Physical or mental disability or impairment;
  5. Interim rehabilitation;
  6. Imposition of other penalties or sanctions;
  7. Remorse; and,
  8. Remoteness of prior offenses.
12. Pursuant to Rule 9, Section 4.2 and Section 8.5 of the Rules of the Tennessee Supreme Court and all proof presented at the hearing of this cause, the Hearing Panel finds that a suspension for a fixed period of time suspended in conjunction with a fixed period of probation.
13. The Hearing Panel further finds that the period of suspension be for a period of three (3) years, that the imposition of the suspension be in conjunction with a period of probation with the following conditions:
  1. That the Respondent must continue in the Tennessee Lawyers Assistance Program for an additional two (2) years, such that the entire period of participation in the program is a total of five (5) years, as recommended by Director Ted Rice, and

should Respondent, Kyle Eric Crowe, stop working with the program before the end of such period, the probation period be revoked and the Respondent serve the balance of the suspension;

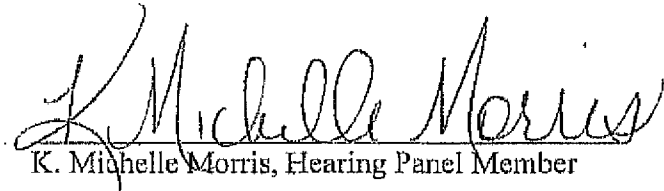
2. That Respondent, Kyle Eric Crowe, shall within ninety (90) days make full restitution to the trust accounts at First Citizens National Bank and First State Bank;
3. That within said ninety (90) day period, Attorney, Langdon S. Unger, and Respondent, Kyle Eric Crowe, shall ascertain to whom the funds in said trust accounts are owed and forward said funds to those persons; disbursement subject to confirmation and approval of the Disciplinary Counsel's office;
4. That any funds remaining in the trust accounts which ownership thereof has not been ascertained at the end of said ninety (90) day period shall be paid over to the Disciplinary Counsel's office accompanied by an explanation as to why the owners of the funds have not been ascertained, and the Disciplinary Counsel's Office shall dispose of such funds pursuant to the Unclaimed and Abandoned Property Act, codified at TCA Section 66-29-101 et seq., or otherwise as provided by Tennessee law; it being the specific directive of the Hearing Panel that Mr. Crowe's trust accounts shall maintain zero dollar (\$0.00) balances and be closed at the end of such ninety (90) time period;
5. Respondent, Kyle Eric Crowe, shall not enter into the solo practice of law and shall work only in a supervised firm setting where he will not have any control over trust accounts and/or trust funds;
6. Respondent's spouse shall not be permitted to work in any capacity involving trust accounts associated with the Respondent or any trust account with any firm employing, associating, or associated with Respondent;
7. This judgment may be appealed pursuant to Section 1.3 of Rule 9 of the Rules of the Tennessee Supreme Court by filing a petition for writ of certiorari, which petition shall be made under oath of affirmation and shall state that it is the first application for the writ; and,
8. Respondent, Kyle Eric Crowe, shall pay the costs of this proceeding.

ALL OF WHICH IS SO HEREBY ORDERED, ADJUDGED AND DECREED.

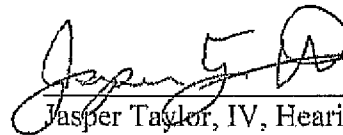
This the 30<sup>th</sup> day of November, 2011.



Dean P. Dedmon, Hearing Panel Chair



K. Michelle Morris, Hearing Panel Member

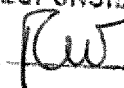


Jasper Taylor, IV, Hearing Panel Member

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IN RE: KYLE ERIC CROWE,  
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An Attorney Licensed and  
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DISCIPLINARY HEARING PANEL'S AMENDED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

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This cause came to be heard this the 14<sup>th</sup> day of May, 2012, upon the Board of Professional Responsibility's Motion to Alter or Amend Disciplinary Hearing Panel's Findings of Fact and Conclusions of Law, filed December 6, 2011, the Respondent's Reply to the Motion, filed December 20, 2011, and the record as a whole and from all of which the Hearing Panel finds, concludes and orders as follows:

FINDINGS OF FACT

1. Mr. Crowe was licensed to practice law in Tennessee in 1985.
2. On September 13, 2009, Mr. Crowe sent a fax to the Board of Professional Responsibility (herein after "the Board") marked "extremely urgent" purporting to surrender his law license, but making no mention/self-report of misappropriated trust funds. (Ex. 2, Hearing Testimony).
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“help”, but still made no mention/self-report of misappropriated trust funds. (Ex. 3, Hearing Testimony).

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9. Chief Moore reported his conversation with Mr. Crowe to the Board of Professional Responsibility by letter dated September 16, 2009. (Ex. 1, Hearing Testimony).
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  - b. Attorney Langdon S. Unger and Petitioner, Kyle Eric Crowe, shall ascertain to whom the funds currently held in the Petitioner's trust accounts are owed and immediately forward said funds to those persons; disbursement subject to confirmation and approval of disciplinary counsel's office;
  - c. Petitioner, Kyle Eric Crowe, pending resolution of disciplinary charges, shall not enter into the solo practice of law and shall work only in a supervised firm setting where he will not have any control over trust accounts and/or trust funds; and
  - d. Petitioner's spouse shall not be permitted to work in any capacity involving Petitioner's present trust accounts and/or any future trust accounts under the control and/or any future trust accounts under the control and/or associated with Petitioner, Kyle Eric Crowe. (Ex. 9, Hearing Testimony).
  
31. By Order entered February 16, 2011, the Supreme Court dissolved Mr. Crowe's temporary suspension with conditions. (Ex. 9, Hearing Testimony).
  
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47. Mr. Crowe's only other discipline imposed by the Board occurred on October 3, 1994, when the Board privately admonished Mr. Crowe in relation to a matter involving advertisement and/or solicitation of services.

## CONCLUSIONS OF LAW

1. Mr. Crowe's misappropriation of trust funds from his First Citizens and First State trust accounts violates Rules of Professional Conduct 1.15(a)(b) and 8.4(a)(b)(c)(d).
2. Mr. Crowe's wife, Amy Crowe's misappropriation of trust funds from Mr. Crowe's First Citizens and first State trust accounts violates Rules of Professional Conduct 1.15(a)(b) and 5.3(a)(b)(c).
3. Mr. Crowe's inaccurate statements/information provided to the Board of Professional Responsibility violates Rules of Professional Conduct 8.1(a)(b).
4. Mr. Crowe's failure to reconcile his trust accounts and promptly disburse trust funds violates rules of Professional Conduct 1.5(a)(b) and 8.4(a)(b)(c)(d).
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The Hearing Panel finds that the following aggravating factors exist in this case:

- 1. A pattern of misconduct;
- 2. Multiple offenses;
- 3. Dishonest or selfish motive; and,
- 4. Substantial experience in the practice of law.

11. Section 9.32 of the ABA Standards for Imposing Lawyer Sanctions states the factors considered in mitigation of punishment. The Hearing Panel finds the following mitigating factors exist in this case:

- 1. Personal and emotional problems;
- 2. Full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings;
- 3. Character and reputation;
- 4. Physical or mental disability or impairment;
- 5. Interim rehabilitation;
- 6. Imposition of other penalties or sanctions;
- 7. Remorse; and,

8. Remoteness of prior offenses.

12. Pursuant to Rule 9, Section 4.2, Section 8.4 and Section 8.5 of the Rules of the Tennessee Supreme Court and all proof presented at the hearing of this cause, the Hearing Panel finds that a suspension for a fixed period of time suspended in conjunction with a fixed period of probation.

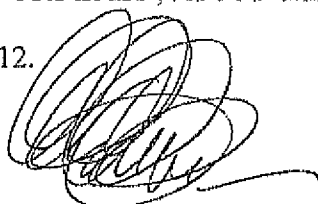
13. The Hearing Panel further finds that the period of suspension be for a period of three (3) years, that the imposition of the suspension should be suspended in conjunction with a fixed period of probation of three (3) years with the following conditions:

1. That the Respondent must continue in the Tennessee Lawyers Assistance Program for an additional two (2) years, such that the entire period of participation in the program is a total of five (5) years, as recommended by Director Ted Rice, and should Respondent, Kyle Eric Crowe, stop working with the program before the end of such period, the probation period be revoked and the Respondent serve the balance of the suspension;
2. That Respondent, Kyle Eric Crowe, shall within ninety (90) days make full restitution to the trust accounts at First Citizens National Bank and First State Bank;
3. That within said ninety (90) day period, Attorney, Langdon S. Unger, and Respondent, Kyle Eric Crowe, shall ascertain to whom the funds in said trust accounts are owed and forward said funds to those persons; disbursement subject to confirmation and approval of the Disciplinary Counsel's office;
4. That any funds remaining in the trust accounts which ownership thereof has not been ascertained at the end of said ninety (90) day period shall be disposed of by the Respondent pursuant to the Unclaimed and Abandoned Property Act, codified at TCA Section 66-29-101 et seq. and the Respondent shall keep the Disciplinary Counsel's Office informed of progress in complying with said Act;
5. Should the Respondent fail to comply with the restitution provisions herein, then the Respondent's probation shall be revoked and Mr. Crowe shall serve the balance of his suspension;

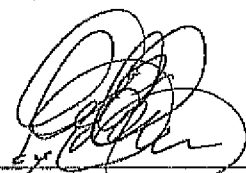
6. Should the Respondent fail to comply with the provisions of the Unclaimed and Abandoned Property Act within a reasonable period of time (otherwise no later than 180 days from the entry of this order), or should the Respondent fail to keep the Disciplinary Counsel's Office informed of his progress in complying with the Act, then the Respondent's probation shall be revoked and Mr. Crowe shall serve the balance of his suspension;
7. The Respondent, Kyle Eric Crowe, shall not enter into the solo practice of law and shall work only in a supervised firm setting where he will not have any control over trust accounts and/or trust funds;
8. Respondent's spouse shall not be permitted to work in any capacity involving trust accounts associated with the Respondent or any trust account with any firm employing, associating, or associated with Respondent;
9. This judgment may be appealed pursuant to Section 1.3 of Rule 9 of the Rules of the Tennessee Supreme Court by filing a petition for writ of certiorari, which petition shall be made under oath of affirmation and shall state that it is the first application for the writ; and,
10. Respondent, Kyle Eric Crowe, shall pay the costs of this proceeding.

ALL OF WHICH IS SO HEREBY ORDERED, ADJUDGED AND DECREED.


This the 27<sup>th</sup> day of May, 2012.



Dean P. Dedmon, Hearing Panel Chair



*K. Michelle Morris, Esq. w/ permission of court*  
 K. Michelle Morris, Hearing Panel Member



*Jasper Taylor, IV, Esq. w/ permission of court*  
 Jasper Taylor, IV, Hearing Panel Member