


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

**FILED**

2010 DEC 15 AM 11:22

BOARD OF PROFESSIONAL  
RESPONSIBILITY

 EXEC. SECRET

**IN RE: JOHN BROADBENT CUNDIFF,  
BPR No. 24382, RESPONDENT  
An Attorney Licensed to  
Practice Law in Tennessee  
(Davidson County)**

**DOCKET NO. 2010-1943-5-CM**

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**JUDGMENT OF THE HEARING PANEL**

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This matter came on to be heard before a Hearing Panel consisting of Robert Boston (Chair), Daniel Clayton and Courtney Hollins on December 1, 2010, following entry of default of Respondent, John Broadbent Cundiff, to determine the appropriate sanction, if any, to impose for the asserted violation of Rules of Professional Conduct RPC 5.5(a) [Unauthorized Practice of Law] and RPC 8.1(b) [Failure to Respond to the Board's Demand for Information]. Based upon the matters discussed, questions of the Panel to Disciplinary Counsel, and the entire record, the Panel makes the following Findings of Fact and Conclusion of Law.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Respondent was Provided Sufficient Notice of the Hearing**

At the direction of the Panel, a hearing to determine any discipline to be imposed was scheduled by the Executive Secretary to The Board of Professional Responsibility to commence at 9:00 AM on December 1, 2010 in the Appellate Court Room of the Nashville School of Law. Notice of the December 1, 2010 hearing was sent by electronic mail to Respondent at an electronic mail address of "john.b.cundiff@hotmail.com" by the administrative staff of the Board. Disciplinary Counsel also represented to the Panel that notice of the December 1, 2010

hearing was mailed to Respondent at 509 Achievement Drive, Nashville, Tennessee 37219 on November 12, 2010. Respondent received notice of the hearing via e-mail on November 12, 2010, sent by the Executive Secretary to the Board of Professional Responsibility, Rita Webb, attaching the Order of Default and advising that the hearing was set for Wednesday, December 1, 2010, which is shown by Respondent's answer to Ms. Webb's November 12, 2010 e-mail the same day. He was directed therein to contact Disciplinary Counsel, Carolyn Moore, with any questions about this, and was provided Ms. Moore's direct office telephone number. In a reply e-mail, Respondent thanked Ms. Webb and stated his intention to contact Ms. Moore the following Monday. Copies of the referenced emails are attached hereto as collective Exhibit A. However, Ms. Moore, based upon her representation to the Panel, had no contact from Respondent.

During the December 1, 2010 hearing, Disciplinary Counsel provided information sufficient to establish that Respondent received advance notice of that hearing by email and correspondence directed to him at 509 Achievement Drive, Nashville, TN 37219. Disciplinary counsel represented that Respondent had personally provided his Achievement Drive address to the Board in connection with his Petition to Dissolve his § 4.3 suspension earlier in 2010, acknowledging that because he had failed to promptly notify the Board of the new address, prior correspondence from the Board was returned as undeliverable. Disciplinary Counsel also represented that the Board has successfully served Respondent at that address, as Respondent signed a certified mail receipt when he accepted service of the Petition for Discipline at 509 Achievement Drive, Nashville, TN 37219 on July 3, 2010, a copy which is attached as Exhibit B.

Thus, the Panel finds based upon the cited record, and the Respondent's failure to present any counter-argument or proof, that proper notice of the December 1, 2010 hearing was provided to him.

**Respondent's Conduct Violates the Tennessee Rules of Professional Conduct**

Based upon the record presented and the allegations in the Petition for Discipline, same being deemed admitted by Respondent upon the prior entry of the Order of Default, the Panel finds that i) Respondent engaged in the unauthorized practice of law, on at least two occasions, in violation of RPC 5.5, and ii) failed to respond to a proper demand for information from the Board in violation of RPC 8.1(b).

**DISCIPLINE RECOMMENDED**

Based upon its findings, argument of able counsel for the Board, and the entire record herein, the Panel recommends and issues the following JUDGMENT:

- 1) First, that Respondent should receive a Public Censure for his unauthorized practice of law.
- 2) Second, the Panel further recommends the imposition of a one (1) year suspension of Respondent's law license from the date of any approval of this judgment, same to run before Respondent should be permitted to petition for reinstatement of his law license.

The Panel's Rational is as follows:

Under Section 19 of Supreme Court Rule 9, no attorney who has been suspended for one year or more from the practice of law in Tennessee may resume practice until reinstated by Order of the Supreme Court. It is this Panel's explicit ruling and recommendation that Respondent be required to petition for reinstatement of his law license and participate in a reinstatement proceeding as set forth in Section 19 of Supreme Court Rule 9 prior to resuming the active practice of law. The Panel has determined that a suspension from the practice of law for one year, subject to any reinstatement only by proper petition thereafter, is an appropriate sanction based upon the seriousness of Respondent's conduct and the several prior opportunities afforded

Respondent to address his disciplinary issues. The Panel anticipates that if such a request for reinstatement is made, Respondent will be required to provide in the course of a reinstatement proceeding, a full and complete explanation as to why he originally failed to address the disciplinary charges against him, and whether mitigating or aggravating factors meriting consideration then existed.

IT IS SO ORDERED. ENTERED ON THIS, THE 15 DAY OF DECEMBER, 2010.

Robert Egan w/ permission And  
Robert Boston, Panel Chair direction PJS

Daniel Clayton w/ permission And  
Daniel Clayton, Panel Member direction PJS

Courtney Hollins w/ permission  
Courtney Hollins, Panel Member And  
direction PJS

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**From:** John Cundiff [mailto:john.b.cundiff@hotmail.com]  
**Sent:** Friday, November 12, 2010 11:37 AM  
**To:** Rita Webb  
**Subject:** RE: IN RE: John Cundiff - Order on Motion for Default

Ms. Webb-

Thank you for your response. I will contact Ms. Moore on Monday. I appreciate your help.

John Cundiff

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**Subject:** RE: IN RE: John Cundiff - Order on Motion for Default  
**Date:** Fri, 12 Nov 2010 11:24:26 -0600  
**From:** RWebb@tbpr.org  
**To:** john.b.cundiff@hotmail.com  
**CC:** cmoore@tbpr.org

Mr. Cundiff,

I have not received any messages from you at any time previous to this email response. Regardless, disciplinary counsel is out of the office today. I would advise you to give Ms. Moore a call on Monday to discuss your concerns. Her direct dial is 615-695-0947.

Thank you.

Rita Webb

Executive Secretary

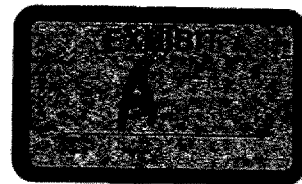
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**From:** John Cundiff [mailto:john.b.cundiff@hotmail.com]  
**Sent:** Friday, November 12, 2010 11:17 AM  
**To:** Rita Webb  
**Subject:** RE: IN RE: John Cundiff - Order on Motion for Default

Ms. Webb-

I have attempted to call your office a few times since I received your original motion, and have not been able to get in touch with you, or received a call back. There are several misstatements in the findings, and I would just like to know if there is anything I can currently do to correct those, and hopefully reduce the requested discipline. Please let me know if there is anything that I can do. Thank you.

John Cundiff



Subject: IN RE: John Cundiff - Order on Motion for Default  
Date: Fri, 12 Nov 2010 10:51:57 -0600  
From: RWebb@tbpr.org  
To: bboston@wallerlaw.com; dclayton@kcbattys.com; chollins@wyattfirm.com  
CC: cmoore@tbpr.org; john.b.cundiff@hotmail.com

Dear Panel Members,  
Enclosed is the Order of Default for your approval. Mr. Boston may sign for the panel, if you concur.  
Please fax the signed Order back to me at your earliest convenience. I do not necessarily need the original.  
The Hearing in this matter has been set for Wednesday, December 1. A Notice of Hearing will be forthcoming.  
Thank you.  
Rita

Rita Webb  
Executive Secretary  
Board of Professional Responsibility  
Of the Supreme Court of Tennessee  
10 Cadillac Drive, Suite 220  
Brentwood, TN 37027  
Phone – 615-361-7501  
Fax – 615-367-2480

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*Cundiff*  
*(943) Per TV Doc*

PS Form 3800, August 2006 See Reverse for Instructions

*John Cundiff*  
*509 Achievement Drive*  
*Nashville, TN 37219*