

FILED

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

BOARD OF PROFESSIONAL  
RESPONSIBILITY

*Mary McKnight* EXEC. SEC.

IN RE: THOMAS FRANCIS DI LUSTRO,  
BPR No. 018624, Respondent  
An attorney Licensed to the  
Practice of Law in Tennessee  
(Knox County)

DOCKET NO. 2012-2169-2-SG

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JUDGMENT OF THE HEARING PANEL

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This matter came to be heard on the 28<sup>th</sup> day of October, 2013 for final hearing on the Board's Petition for Discipline before John E. Winters, Panel Chair; Luis C. Bustamante, Panel Member; and Cheryl G. Rice, Panel Member. A. Russell Willis, Disciplinary Counsel, appeared for the Board. Mr. diLustro did not make an appearance despite having notice.

STATEMENT OF THE CASE

This is a disciplinary proceeding against the Respondent, Thomas Francis diLustro, an attorney licensed to practice law in the State of Tennessee.

A Petition for Discipline, Docket No. 2012-2169-2-SG was filed on or about October 25, 2012. The Petition was sent via regular and certified mail to Respondent's office address, P.O. Box 25, Knoxville, Knox County, Tennessee 37901. This address was registered with the Board of Professional Responsibility of the Supreme Court of Tennessee ("Board"). Respondent filed an Answer to the Complaint on or about November 27, 2012.

On or about January 9, 2013, the Board filed a Motion to Compel Responses to Interrogatories and Requests for Production of Documents served upon Respondent. On February 25, 2013, an Order was entered requiring the Respondent to deliver full and complete responses to the Board's outstanding discovery requests to counsel for the Board on or before the close of business on February 28, 2013, and present himself to the offices of the Board on March 1, 2013, for his deposition. Respondent failed to comply with the February 25, 2013 Order.

On April 16, 2013, the Board filed a Motion for Sanctions against Respondent for failure to comply with the February 25, 2013 Order and to cooperate with discovery. On April 23, 2013, an Order was entered providing Respondent the opportunity to respond to the Board's Motion for Sanctions before the Hearing Panel ruled on said Motion. The April 23, 2013 Order required the Respondent to respond to the Board's Motion for Sanctions on or before April 30, 2013.

On May 6, 2013, the Board filed a Notice of Noncompliance by the Respondent with the April 23, 2013 Order of the Hearing Panel. Specifically, the Board notified the Hearing Panel that Respondent failed "to file a response to the Motion for Sanctions." On May 9, 2013, an Order was entered striking the Answer filed by Respondent and deeming the allegations set forth in the Petition for Discipline admitted because he failed to cooperate in discovery and ignored earlier Orders entered by the Hearing Panel.

The final hearing was originally scheduled for June 10, 2013. Based upon representations made by Respondent at the hearing, the hearing was continued until October 28, 2013.

## STATEMENT OF THE FACTS

Since all of the allegations in the Petition for Discipline are deemed admitted, this Hearing Panel finds the following facts have been established.

Respondent is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee. Respondent's most recent office address, as registered with the Board of Professional Responsibility, is 603 Main Street, Suite 706, P.O. Box 25, Knoxville, Knox County, Tennessee, which is situated within Disciplinary District II. Respondent's Board of Professional Responsibility number is 018624.

Pursuant to Tenn. Sup. Ct. R. 9, § 1, attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts.

Pursuant to Tenn. Sup. Ct. R. 9, § 1, 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 a condition for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and may be grounds for discipline.

Pursuant to Tenn. Sup. Ct. R. 9, Respondent was notified of a complaint filed by Walter Worley Fain, III ("Fain") on June 21, 2011, and asked to respond within ten (10) days. Respondent failed to respond to the Board's June 21, 2011 letter. On August 3, 2011, the Board sent Respondent a Notice of Petition for Temporary Suspension and asked for his response. Respondent's response dated August 17, 2011 was received by the Board.

Fain retained Respondent to assist him in connection with the action styled *Michael Jacobs, d/b/a I Can Fix That v. Walter Fain, Pope, Needham and Lakeview Partnership* in the Chancery Court for Sullivan County, Tennessee. Fain paid Mr. diLustro \$750 in fees. On January 10, 2008, Respondent filed an Answer and Verified Counter-Complaint on behalf of Fain and another Defendant, Keith Pope ("Pope").

Respondent and Fain attended mediation on or about March 9, 2010. That day, Respondent asked that mediation be reconvened so more information could be gathered and the missing defendants could attend. Plaintiff's counsel agreed to reconvene the mediation based on Respondent's promise to quickly provide other mediation dates to the mediator. At the March 9, 2010 mediation, the mediator asked Fain to forward to the mediator a listing of his damages. Fain provided Respondent with the mediator's requested list of damages approximately one week after the March 9, 2010 mediation. Respondent failed to forward or provide this information regarding Fain's damages to opposing counsel and/or the mediator. After the March 9, 2010 mediation was continued, Respondent failed to respond to opposing counsel's attempts to reschedule the mediation. Respondent failed to accept or return the mediator's calls.

On February 3, 2011, plaintiff's counsel filed a Motion to Strike the Defendant's Claims and Defenses for Failure to Participate in Mediation Under Local Rule 13. Respondent failed to file any response to plaintiff's Motion to Strike Defendant's Claims and Defenses for Failure to Participate in Mediation under Local Rule 13. On approximately April 27, 2011, plaintiff's counsel sent to the Clerk and Master a Proposed Judgment regarding the Motion to Strike with a copy to Respondent and a blind copy to defendant/attorney Pope. Defendant's client, Pope, contacted Respondent about the Motion

to Strike and the proposed Judgment granting the Motion to Strike. On April 29, 2011, Respondent wrote the Clerk and Master, advising that he planned to file a response to the Motion to Strike.

Despite Respondent's April 29, 2011 letter, he did not file a Response to Motion to Strike. On May 3, 2011, Respondent's client, attorney Pope, filed a Response to Motion to Strike.

Respondent neglected his client's case. Respondent failed to communicate with his clients and failed to keep them informed about their case. The acts and omissions of Respondent relating to Fain and Pope constitute ethical misconduct in violation of Rules of Professional Conduct 1.3; 1.4; 3.2; and 8.4.

Pursuant to Tenn. Sup. Ct. R. 9, the Respondent was notified of the complaint filed by Mike Baker ("Baker") on September 21, 2011, and asked to respond within ten (10) days. Respondent failed to respond to the Board's September 21, 2011 letter. On October 14, 2011, the Board sent Respondent a Notice of Petition for Temporary Suspension and asked for his response. Respondent's response dated November 7, 2011, was received by the Board.

Baker retained Respondent to represent him in a divorce, and paid Respondent a \$1,500.00 fee. On July 16, 2010, Respondent filed an Answer and Counter-complaint for Baker after numerous requests by Baker. Respondent presented a Marital Dissolution Agreement (MDA) and parenting plan to Baker with an unspecified amount of child support. Baker signed the MDA but declined to sign the parent plan reflecting an unspecified amount of child support.

By letter dated February 16, 2012, Respondent misrepresented to the Board that Baker signed the parenting plan with the unspecified child support.

Respondent advised Baker that Respondent would determine the child support amount with opposing counsel and discuss it with Baker prior to filing the parenting plan. Respondent failed to advise Baker of his child support obligations reflected in the Parenting plan prior to its being filed with the Chancery Court. Respondent allowed the Parenting Plan to be filed reflecting an inflated and inaccurate amount of gross monthly income for Baker. Without Baker's knowledge or permission, Respondent signed Baker's signature to the parenting plan dated March 27, 2011, and filed it with the Chancery Court for Grainger County, Tennessee. At the insistence of Chancellor Telford Fogerty, Respondent drove to the Courthouse on March 28, 2011, -- the day of the hearing -- to notarize Baker's signature on the Parenting Plan. Respondent notarized the forged signature of his client on the parenting plan filed with the Chancery Court for Grainger County, Tennessee. Respondent failed to provide Baker with copies of his Final Decree of Divorce and Marital Dissolution Agreement (MDA) filed with the Grainger County Chancery Court.

Baker, on his own initiative, obtained copies of his divorce documents from the Clerk's office. Baker learned from his review of his divorce documents and not from Respondent that Baker's income as reflected on the parenting plan was inaccurate and, therefore, the child support amount he was ordered to pay was inflated and incorrect. Baker asked Respondent to file the necessary paper work to correct Baker's income and child support. Respondent assured Baker that he would file a petition or motion to correct Baker's income and modify Baker's child support. Respondent advised Baker to not pay the child support reflected in Baker's Final Decree of Divorce and Permanent Parenting Plan filed with the Chancery Court for Grainger County, Tennessee. Baker paid and continues to pay his child support as ordered by the Chancery Court despite Respondent's instruction.

Respondent failed to file any motion or petition to modify or correct Baker's income and child support.

Respondent did not act with reasonable diligence and promptness in representing Baker. Respondent failed to communicate with Baker and failed to respond to his requests for information. Respondent forged Baker's signature on the Parenting Plan and subsequently notarized the signature, knowing that Baker had not signed the document. The acts and omissions of Respondent relating to Baker constitute ethical misconduct in violation Rules of Professional Conduct 1.3; 1.4; 3.2; 3.3 (a) (b) and (c), 3.4(b); 8.1(a) and 8.4.

Pursuant to Tenn. Sup. Ct. R. 9, the Respondent was notified of the complaint filed by Billy Hicks ("Hicks") on May 1, 2012, and asked to respond within ten (10) days. Respondent failed to respond to the Board's May 1, 2012 letter. On June 4, 2012, the Board sent Respondent a second notice of the complaint and asked for Respondent's response. Respondent failed to respond to the June 4, 2012 letter. On June 18, 2012, the Board sent Respondent a third notice of the complaint and asked for his written response. Respondent failed to respond to the June 18, 2012 letter. On August 9, 2012, the Board sent a Notice of Petition for Temporary Suspension to Respondent and asked for his written response.

On September 17, 2012, the Board filed a Petition for Temporary Suspension with the Tennessee Supreme Court based upon Respondent's failure to respond to Hick's complaint. On September 28, 2012, Respondent responded to Hicks' complaint. After receiving Respondent's response, the Board filed a Notice of Withdrawal of Petition for Temporary Suspension which the Supreme Court granted by Order filed October 8, 2012.

Respondent was appointed to represent Hicks in *State v. Hicks* in the Criminal Court for Knox County, Tennessee. Respondent failed to respond to Hicks' requests for

information. Hicks repeatedly requested, but Respondent failed to show Hicks the police video from Mr. Hicks' arrest.

Respondent failed to act with reasonable diligence and promptness in representing Hicks. Respondent failed to respond to the Board regarding Hicks' complaint promptly. The acts and omissions of Respondent relating to Hicks constitute ethical misconduct in violation of Rules of Professional Conduct 1.3; 1.4; 8.1(b) and 8.4.

### CONCLUSIONS OF LAW

1. As noted above, Respondent failed to cooperate with discovery and ignored Orders entered by the Hearing Panel which resulted in the entry of an Order deeming the allegations set forth in the Petition for Discipline admitted. Therefore, pursuant to Tenn. S. Ct. R. 9, § 8.2, the charges are deemed admitted.

2. Based upon the admitted facts, as set forth above, and incorporated herein by reference, as if copied verbatim, Respondent violated the following Rules of Professional Conduct: Rule 1.3 (Diligence); Rule 1.4 (Communication); Rule 1.4 (Communication effective January 2011); Rule 3.2 (Expediting Litigation); Rule 3.3 (Candor to the Tribunal); Rule 3.4 (Fairness to the Opposing Party and Counsel); Rule 8.1 (Bar Admission and Disciplinary Matters, Effective January 2011); and Rule 8.4 (Misconduct).

3. Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, the appropriate discipline must be based upon the application of the *ABA's Standards for Imposing Lawyer Sanctions* ("*ABA Standards*"). The following *ABA Standards* apply:

4.41 Disbarment is generally appropriate when: (b) a lawyer knowingly fails to perform services for a client and causes serious or potential serious injury to a client;



4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the 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 (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, and misrepresentation that seriously and adversely reflects on the lawyer's fitness to practice.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to the client, the public, or the legal system.

8.11 Disbarment is generally appropriate when a lawyer: (b) has been suspended for the same or similar misconduct and intentionally or knowingly engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

4. Pursuant to *ABA Standard 9.22*, a number of aggravating factors present in this case are listed below:

- (a) a pattern of misconduct;
- (b) failure to acknowledge the wrongful nature of misconduct;
- (c) prior disciplinary history;
- (d) multiple offenses;
- (e) substantial experience in the practice of law;
- (f) dishonest or selfish motives; and
- (g) bad faith obstruction of a disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

**JUDGMENT**

Based on the findings of fact and conclusions of law, as set forth above, it is the judgment of the Panel that Thomas Francis diLustro should be disbarred pursuant to Tenn. Sup. Ct. R. 9, § 4.1

IT IS SO ORDERED.

FOR THE PANEL:

John E. Winters

John Winters, Chair

Luis C. Bustamante by J.C. at my place

Luis C. Bustamante, Panel Member

Cheryl G. Rice, by J.C. at my place

Cheryl G. Rice, Panel Member

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

**FILED**

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BOARD OF PROFESSIONAL  
RESPONSIBILITY

*fw*

EXEC. SEC.

**IN RE: THOMAS FRANCIS DILUSTRO,  
BPR No. 018624, Respondent  
An attorney Licensed to the  
Practice of Law in Tennessee  
(Knox County)**

**DOCKET NO. 2012-2169-2-SG**

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**AMENDED JUDGMENT OF THE HEARING PANEL**

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Baker, on his own initiative, obtained copies of his divorce documents from the Clerk's office. Baker learned from his review of his divorce documents and not from Respondent that Baker's income as reflected on the parenting plan was inaccurate and, therefore, the child support amount he was ordered to pay was inflated and incorrect. Baker asked Respondent to file the necessary paper work to correct Baker's income and child support. Respondent assured Baker that he would file a petition or motion to correct Baker's income and modify Baker's child support. Respondent advised Baker to not pay the child support reflected in Baker's Final Decree of Divorce and Permanent Parenting Plan filed with the Chancery Court for Grainger County, Tennessee. Baker paid and continues to pay his child support as ordered by the Chancery Court despite Respondent's instruction.



Respondent failed to file any motion or petition to modify or correct Baker's income and child support.

Respondent did not act with reasonable diligence and promptness in representing Baker. Respondent failed to communicate with Baker and failed to respond to his requests for information. Respondent forged Baker's signature on the Parenting Plan and subsequently notarized the signature, knowing that Baker had not signed the document. The acts and omissions of Respondent relating to Baker constitute ethical misconduct in violation Rules of Professional Conduct 1.3; 1.4; 3.2; 3.3 (a) (b) and (c), 3.4(b); 8.1(a) and 8.4.

Pursuant to Tenn. Sup. Ct. R. 9, the Respondent was notified of the complaint filed by Billy Hicks ("Hicks") on May 1, 2012, and asked to respond within ten (10) days. Respondent failed to respond to the Board's May 1, 2012 letter. On June 4, 2012, the Board sent Respondent a second notice of the complaint and asked for Respondent's response. Respondent failed to respond to the June 4, 2012 letter. On June 18, 2012, the Board sent Respondent a third notice of the complaint and asked for his written response. Respondent failed to respond to the June 18, 2012 letter. On August 9, 2012, the Board sent a Notice of Petition for Temporary Suspension to Respondent and asked for his written response.

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Respondent was appointed to represent Hicks in *State v. Hicks* in the Criminal Court for Knox County, Tennessee. Respondent failed to respond to Hicks' requests for

information. Hicks repeatedly requested, but Respondent failed to show Hicks the police video from Mr. Hicks' arrest.

Respondent failed to act with reasonable diligence and promptness in representing Hicks. Respondent failed to respond to the Board regarding Hicks' complaint promptly. The acts and omissions of Respondent relating to Hicks constitute ethical misconduct in violation of Rules of Professional Conduct 1.3; 1.4; 8.1(b) and 8.4.

### CONCLUSIONS OF LAW

1. As noted above, Respondent failed to cooperate with discovery and ignored Orders entered by the Hearing Panel which resulted in the entry of an Order deeming the allegations set forth in the Petition for Discipline admitted. Therefore, pursuant to Tenn. S. Ct. R. 9, § 8.2, the charges are deemed admitted.

2. Based upon the admitted facts, as set forth above, and incorporated herein by reference, as if copied verbatim, Respondent violated the following Rules of Professional Conduct: Rule 1.3 (Diligence); Rule 1.4 (Communication); Rule 1.4 (Communication effective January 2011); Rule 3.2 (Expediting Litigation); Rule 3.3 (Candor to the Tribunal); Rule 3.4 (Fairness to the Opposing Party and Counsel); Rule 8.1 (Bar Admission and Disciplinary Matters, Effective January 2011); and Rule 8.4 (Misconduct).

3. Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, the appropriate discipline must be based upon the application of the *ABA's Standards for Imposing Lawyer Sanctions* ("*ABA Standards*"). The following *ABA Standards* apply:

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4. Pursuant to *ABA Standard 9.22*, a number of aggravating factors present in this case are listed below:

- (a) a pattern of misconduct;
- (b) failure to acknowledge the wrongful nature of misconduct;
- (c) prior disciplinary history;
- (d) multiple offenses;
- (e) substantial experience in the practice of law;
- (f) dishonest or selfish motives; and
- (g) bad faith obstruction of a disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

### JUDGMENT

Based on the findings of fact and conclusions of law, as set forth above, it is the judgment of the Panel that Thomas Francis diLustro should be disbarred pursuant to Tenn. Sup. Ct. R. 9, § 4.1.

IT IS SO ORDERED.

FOR THE PANEL:

*John E. Winters*

John Winters, Chair

*Luis C. Bustamante by J.E.W. w/*

Luis C. Bustamante, Panel Member

*Cheryl G. Rice by J.E.W. w/*

Cheryl G. Rice, Panel Member

NOTICE: This Amended Judgment may be appealed pursuant to Section 1.3 of Supreme Court Rule 9 by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ. See Tenn. Code Ann. § 27-8-104(a) and 27-8-106.