

FILED

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

BOARD OF PROFESSIONAL  
RESPONSIBILITY

*RLW*  
SECRETARY

**IN RE: JOSEPH JAMES DOHERTY,  
BPR No. 14295, Respondent,  
an Attorney Licensed to Practice  
Law in Tennessee  
(Hamblen County)**

**DOCKET NO. 2014-2305-1-WM**

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**JUDGMENT OF THE HEARING PANEL**

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This matter came to be heard on the 14th day of May, 2015 for final hearing on the Board's Petition for Discipline before Kent Lee Chitwood, Panel Chair; Steven Douglas Drinnon, Panel Member; and Kenneth Clark Hood, Panel Member. William C. Moody, Disciplinary Counsel, appeared for the Board. Mr. Doherty did not appear. The office and home addresses registered by Mr. Doherty with the Board are no longer correct. Notice of the Hearing was mailed to Mr. Doherty at his last known place of employment, East Tennessee Nissan, but returned because he is no longer employed there. Notice of the hearing was successfully delivered to the email address registered by Mr. Doherty with the Board. Prior to commencing the hearing, multiple efforts were made to reach Mr. Doherty by telephone. The home telephone number registered by Mr. Doherty with the Board is no longer in service. Disciplinary Counsel telephoned the mobile telephone number registered by Mr. Doherty with the Board and left a voicemail message regarding the hearing but Mr. Doherty did not return the call. The Hearing Panel made numerous unsuccessful efforts to telephone Mr. Doherty or determine correct contact information including contacting East Tennessee Nissan and Randall Shelton, Esq.

## STATEMENT OF THE CASE

This is a disciplinary proceeding against the Respondent, Joseph James Doherty, an attorney licensed to practice law in Tennessee. Mr. Doherty was licensed to practice in 1990. A Petition for Discipline, Docket No. 2014-2305-1-WM, was filed on March 26, 2014. The Petition was personally served on August 4, 2014. Mr. Doherty did not file an Answer to the Petition for Discipline. On August 25, 2014, the Board filed a Motion for Default Judgment and That Charges in the Petition for Discipline be Deemed Admitted. On September 30, 2014, the Panel entered an Order for Default Judgment. As a result of the Order for Default Judgment, the allegations contained within the Petition for Discipline are deemed admitted pursuant to Tennessee Supreme Court Rule 9, Section 8.2 (2006).

A Supplemental Petition for Discipline was filed on October 22, 2014. The Supplemental Petition was personally served on November 20, 2014. Mr. Doherty did not file an Answer to the Supplemental Petition for Discipline. On February 4, 2015, the Board filed a Motion for Default Judgment and That Charges in the Supplemental Petition for Discipline be Deemed Admitted. On February 11, 2015, the Panel entered an Order for Default Judgment. As a result of the Order for Default Judgment, the allegations contained within the Supplemental Petition for Discipline are deemed admitted pursuant to Tennessee Supreme Court Rule 9, Section 15.2 (2014).

Because the matters contained within the Petition for Discipline were initiated before the Board prior to January 1, 2014, it is governed by Tenn. Sup. Ct. R. 9 (2006). Because the matters contained within the Supplemental Petition for Discipline were initiated before the Board after January 1, 2014, it is governed by Tenn. Sup. Ct. R. 9 (2014).

### **FINDINGS OF FACTS**

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

#### **File No. 36583-1-ES- Honorable Robert Headrick, Informant**

Mr. Doherty's license was suspended for non-compliance with continuing legal education requirements on August 21, 2013. On September 30, 2013, while suspended, Mr. Doherty appeared in General Sessions Court in Blount County in the representation of a client. Mr. Doherty failed to respond to a complaint of misconduct made against him as a result of practicing law while suspended.

#### **File No. 36737-1-ES – Complaint of Ronald Wilson**

Mr. Wilson hired Mr. Doherty in October 2012 to file a wrongful termination matter. On October 19, 2012, Mr. Doherty filed suit on behalf of Mr. Wilson in state court. On December 17, 2012, the case was removed to federal court. Mr. Doherty failed to advise Mr. Wilson that the case was removed to federal court. A motion to dismiss for failure to state a claim was filed on January 14, 2013. Mr. Doherty failed to advise Mr. Wilson of the filing of this motion. Mr. Doherty failed to file a response to the motion to dismiss. On April 16, 2013, an order to show cause was entered directing the plaintiff to respond to the motion to dismiss. Mr. Doherty failed to advise Mr. Wilson of the filing of this order. Mr. Doherty failed to file a response to the April 16, 2013 order. On May 3, 2013, the case was dismissed. Mr. Doherty failed to advise Mr. Wilson of the dismissal. Mr. Doherty failed to advise Mr. Wilson of his August 21, 2013 suspension for non-compliance with continuing legal education requirements in violation of Tenn. Sup. Ct. R. 9, § 18.1. Mr. Wilson made numerous efforts to communicate with Mr.

Doherty by telephone and email. Mr. Doherty failed to respond to Mr. Wilson's efforts to communicate with him. Mr. Doherty abandoned his representation of Mr. Wilson and abandoned his practice. Mr. Doherty failed to respond to this complaint of misconduct.

**File No. 36846-1-ES – Complaint of Jerry Barnard**

Mr. Barnard hired Mr. Doherty to probate the estate of Wylie C. Carpenter on April 5, 2011 and paid a \$2,000 retainer. Mr. Doherty failed to file the Tennessee inheritance tax return, failed to obtain the Tennessee Department of Revenue closing letter and failed to file an order closing the estate. Mr. Doherty failed to respond to multiple attempts by Mr. Barnard to communicate with him. Mr. Doherty failed to advise Mr. Barnard of his August 21, 2013 suspension for non-compliance with continuing legal education requirements in violation of Tenn. Sup. Ct. R. 9, § 18.1. Mr. Doherty abandoned his representation of Mr. Barnard and abandoned his practice. Mr. Barnard was forced to hire a new attorney to complete the probate of the estate. Mr. Doherty has failed to refund unearned fees of approximately \$600. Mr. Doherty failed to respond to this complaint of misconduct.

**File No. 37164-1-ES- Complaint of William Nichols**

In 2012, Mr. Nichols was injured in an automobile accident and retained Mr. Doherty to represent him. On January 22, 2013, Mr. Doherty filed a complaint on behalf of Mr. Nichols in the Circuit Court for Jefferson County, *Nichols v. Estep*, case number 23510-III. A summons was issued but never returned. No new process was ever obtained. After filing the complaint on behalf of Mr. Nichols, Mr. Doherty took no further action to prosecute his lawsuit. In addition to being suspended for non-compliance with continuing legal education requirements on August 21, 2013,

Mr. Doherty was temporarily suspended from the practice of law on December 27, 2013, based upon his failure to respond to a disciplinary complaint. After being suspended, Mr. Doherty informed Mr. Nichols that he “would be working on the case with another lawyer.” Mr. Doherty did not provide Mr. Nichols with the name of the other lawyer. Subsequently, Mr. Nichols made multiple attempts to communicate with Mr. Doherty without success. Mr. Nichols requested that Mr. Doherty return his file but he failed to do so. On or about October 1, 2014, Mr. Nichols spoke with Mr. Doherty by telephone. This was the first occasion in over a year that Mr. Doherty answered a telephone call from Mr. Nichols. During this telephone conversation, Mr. Nichols asked Mr. Doherty about the status of his lawsuit. Mr. Doherty falsely told Mr. Nichols that the case was near a favorable resolution despite the fact that he had taken no action to further the case since its filing, he was prohibited by his suspensions from taking any action to further the case and prosecution of the case was now barred by the statute of limitations. Mr. Doherty failed to respond to this complaint of misconduct.

As a result of the Orders for Default Judgment, all the facts contained in the Petition for Discipline and the Supplemental Petition for Discipline, and summarized here, are deemed admitted.

#### **CONCLUSIONS OF LAW**

Pursuant to Tenn. Sup. Ct. R. 9, § 3 (2006) and § 1 (2014), the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be

grounds for discipline. The Respondent has failed to conduct himself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited within the Petition for Discipline and Supplemental Petition for Discipline.

As noted above, Respondent has failed to answer the Board's Petition for Discipline and Supplemental Petition for Discipline. The Hearing Panel has already entered Orders for Default Judgment and, therefore, pursuant to Tenn. Sup. Ct. R. 9, § 8.2 (2006) and § 15.2 (2014), the charges are deemed admitted.

By failing to timely reissue process in the Nichols matter, Mr. Doherty allowed the action to become barred by the statute of limitations. In so doing, he violated RPC 1.1 (Competence).

Mr. Doherty failed to exercise reasonable diligence in prosecuting the Wilson, Barnard and Nichols matters. In so doing, he violated RPC 1.3 (Diligence).

Mr. Doherty failed to adequately communicate with Mr. Wilson, Mr. Barnard and Mr. Nichols. In so doing, he violated RPC 1.4 (Communication).

Mr. Doherty failed to properly terminate his relationship with Mr. Wilson, Mr. Barnard and Mr. Nichols. In so doing, he violated RPC 1.16(d) (Declining or Terminating Representation).

Mr. Doherty failed to refund \$600 in unearned fees to Mr. Barnard. In so doing, he violated RPC 1.16(d) (Declining or Terminating Representation).

Mr. Doherty failed to expedite the Wilson, Barnard and Nichols litigation. In so doing, he violated RPC 3.2 (Expediting Litigation).

Mr. Doherty appeared in court on behalf of a client while suspended from the practice of law. In so doing he violated RPC 5.5 (Unauthorized Practice of Law).

Mr. Doherty failed to respond to requests for information from the Board regarding all four complaints of misconduct. In so doing, he violated RPC 8.1(b) (Bar Admission and Disciplinary Matters).

Mr. Doherty misrepresented the status of Mr. Nichol's lawsuit to him when he falsely told him the case was nearing a favorable resolution despite the fact that he had taken no action since filing the suit and it was then barred by the statute of limitations. In so doing, he violated RPC 8.4(c) (Misconduct).

Mr. Doherty failed to notify Mr. Wilson, Mr. Barnard and Mr. Nichols of his suspensions in violation of the Supreme Court orders imposing the suspensions. In so doing, he violated RPC 8.4(g) (Misconduct).

Mr. Doherty abandoned his practice.

Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a) (Misconduct).

A preponderance of the evidence demonstrates that the acts and omissions by the Respondent constitute ethical misconduct in violation of Rules of Professional Conduct 1.1, Competence; 1.3, Diligence; 1.4, Communication; 1.16(d), Declining and Terminating Representation; 3.2, Expediting Litigation; 5.5, Unauthorized Practice of Law; 8.1(b), Bar Admission and Disciplinary Matters; and 8.4(a), (c) and (g), Misconduct.

The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has carried its burden and proven the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence. Once disciplinary violations have been established, the Panel shall consider the applicable provisions

of ABA Standards for Imposing Lawyer Sanctions. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

4.41 LACK OF DILIGENCE

Disbarment is generally appropriate when:

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

Mr. Doherty failed to prosecute the matters of Mr. Wilson, Mr. Barnard and Mr. Nichols. He failed to communicate with them. He abandoned their cases. He caused Mr. Wilson's case to be dismissed. Mr. Barnard was forced to hire another attorney. He caused Mr. Nichol's cause of action to be barred by the statute of limitations. He has abandoned his practice causing serious injury to his clients.

7.2 VIOLATION OF DUTIES OWED AS A PROFESSIONAL

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes serious or potentially serious injury to a client, the public, or the legal system.

Mr. Doherty continued to practice after being suspended. He refused to respond to four separate complaints of misconduct.

5.11 Failure to Maintain Personal Integrity

Disbarment is generally appropriate when:

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

Mr. Doherty lied to Mr. Nichols about the status of his lawsuit in order to conceal his wrongdoing which resulted in the case being barred by the statute of limitations.



## 6.22 ABUSE OF THE LEGAL PROCESS

Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

Mr. Doherty failed to comply with court orders by failing to give his clients notice of his suspensions.

Pursuant to ABA Standard 9.22, we find that the following aggravating factors are present in this case and are listed below.

a. Mr. Doherty has shown a dishonest or selfish motive, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

c. Mr. Doherty has shown a pattern of misconduct, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

d. Mr. Doherty has committed multiple offenses, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

e. Mr. Doherty has substantial experience in the practice of law, having been licensed in Tennessee since 1990, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against him.

There are no mitigating circumstances.

Based upon the evidence and admissions in this matter, the appropriate discipline is a disbarment from the practice of law.

### **JUDGMENT**

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Mr. Doherty should be disbarred from the

practice of law. As a condition of reinstatement, he is ordered to make restitution to Mr. Barnard in the amount of \$600 or to the Lawyer's Fund for Client Protection if appropriate.

It is so ordered this 27 day of May, 2015.

  
Kent Lee Chitwood, Hearing Panel Chair

 by: K.C.  
Steven Douglas Drinnon, Hearing Panel Member

 by: K.C.  
Kenneth Clark Hood, Hearing Panel Member

**NOTICE TO RESPONDENT**

**NOTICE:** As it pertains to File No. 36583-1-ES and File No. 36737-1-ES, this judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 (2006) 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. As it pertains to File No. 36846-1-ES and File No. 37164-1-ES, this judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a petition for review.