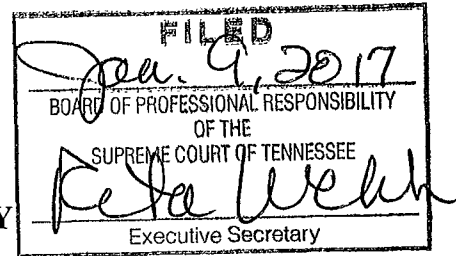


**IN DISCIPLINARY DISTRICT V
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**IN RE: JOHN MARTIN DRAKE,
BPR No. 30532, Respondent,
An Attorney License to Practice
Law in Tennessee
(Davidson County)**

DOCKET NO. 2016-2587-5-AW

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came to be heard for final hearing on the 14th day of December, 2016, on the Petition for Discipline filed May 25, 2016, before Hearing Panel members Claiborne K. McLemore, III, Peter C. Sales and James W. Milam, Panel Chair. A. Russell Willis, Disciplinary Counsel, appeared for the Board of Professional Responsibility (Board) and Mr. Drake appeared pro se and participated in the hearing.

STATEMENT OF THE CASE

This is a disciplinary proceeding against the Respondent, John Martin Drake, an attorney licensed to practice law in Tennessee in 2011.

1. A Petition for Discipline, Docket No. 2016-2587-5-AW, was filed on May 25, 2016, and service was perfected upon Mr. Drake pursuant to Tenn. Sup. Ct. R. 9, § 18.1. See Petition for Discipline introduced as Exhibit 1.

2. Mr. Drake did not file an answer or otherwise respond in writing to the Petition for Discipline.

3. On October 4, 2016, Disciplinary Counsel filed a Motion for Default Judgment and That Charges in Petition for Discipline be Deemed Admitted.

4. Mr. Drake did not file a response to the motion.

5. The Hearing Panel, duly appointed October 10, 2016, entered an Order Granting Motion for Default on November 3, 2016. See Order Granting Motion for Default introduced as Exhibit 2.

6. The Final Hearing was held December 14, 2016, in Nashville, Tennessee.

STATEMENT OF THE FACTS

7. Respondent, John Martin Drake, is an attorney licensed to practice law in the State of Tennessee in 2011, holding Board of Professional Responsibility number 30532. Mr. Drake's most recent preferred address as registered with the Board of Professional Responsibility is 3805 Boatner Drive, Nashville, Tennessee 37207 being in Disciplinary District V.

8. Pursuant to the granting of the default judgment and the evidence presented at the final hearing, the following facts are established:

On February 16, 2015, Mr. Drake was temporarily suspended from the practice of law by the Supreme Court of Tennessee for failure to comply with the Continuing Legal Education requirements. Mr. Drake has not been reinstated to the practice of law. Pursuant to the Order of Temporary Suspension, Mr. Drake was required to comply with Tenn. Sup. Ct. R. 9, § 28.8 which mandated he take such action as necessary to remove any indicia of attorney, lawyer or counselor at law. Subsequent to his suspension, Mr. Drake made a series of telephone calls to the Bledsoe County Correctional Complex in late November, 2015, and early December, 2015, and spoke with the Warden and other administrative staff regarding an inmate residing at the facility and disciplinary action involving the inmate. During each of those phone calls, Mr. Drake identified himself as an attorney and represented he was the attorney for the inmate at the facility. During the last phone call,

Mr. Drake was questioned by correctional officials about his status as an attorney and admitted he was suspended from the practice of law. See Exhibit 1.

Mr. Drake testified he suffered financial and personal difficulties prior and subsequent to his suspension from the practice of law on February 16, 2015, and he no longer intended to practice law. Mr. Drake characterized his phone calls as being made as a friend of his former client, not as an attorney, and he did not think he was violating the suspension order.

CONCLUSIONS OF LAW

9. Pursuant to Tenn. Sup. Ct. R. 9, § 8 (2014), 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.

10. Pursuant to Tenn. Sup. Ct. R. 9, § 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.

11. Pursuant to Tenn. Sup. Ct. R. 9, § 11 (2014), acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct of the Supreme Court of Tennessee constitute misconduct and grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

12. Based upon the facts established at the final hearing, the Hearing Panel concludes Mr. Drake by omission, knowingly and intentionally misled correctional officials to believe he was a licensed attorney authorized to practice law in Tennessee. Mr. Drake, until questioned by correctional officials, intentionally failed to disclose he was a suspended attorney prohibited by the Supreme Court from practicing law in Tennessee.

13. Mr. Drake's knowing misrepresentations and intentional conduct in November and December, 2015, constitute the unauthorized practice of law in violation of RPC 5.5.

14. Mr. Drake's conduct violated Tenn. Code Ann. § 23-3-103, a Class A misdemeanor, and involved dishonesty, deceit and misrepresentations constituting a violation of RPC 8.4(b) and (c).

15. Mr. Drake knowingly failed to respond to a lawful demand by the Board for information related to a disciplinary complaint in violation of RPC 8.1(b).

16. Pursuant to Tenn. Sup. Ct. R. 9, § 15.4, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, ("ABA Standards"). See ABA Standards suggested by the Board introduced as Exhibit 4. The Panel finds the following ABA Standards applicable in this matter:

5.11 Disbarment is generally appropriate when:

- (a) lawyer engages in serious criminal conduct a necessary element of which includes misrepresentation, or
- (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.

5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice.

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

7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.

17. Pursuant to ABA Standard 9.1, the Hearing Panel may consider aggravating and mitigating circumstances in determining the appropriate disciplinary sanction to impose.

18. Mr. Drake received a Public Censure on October 14, 2015, for failure to file a brief and failure to respond to the Court. See Public Censure introduced as Exhibit 3.

19. The Hearing Panel finds the following aggravating factors applicable in this matter:

(a) prior disciplinary history.

20. The Hearing Panel finds the following mitigating factors applicable in this matter:

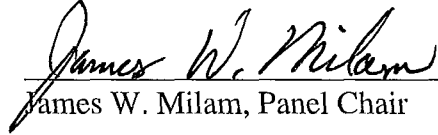
(a) personal problems;

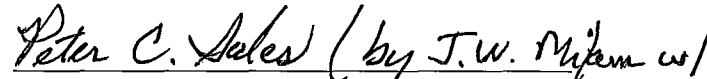
(b) inexperience in the practice of law.

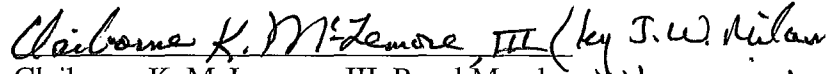
JUDGMENT

In consideration of the above, the Hearing Panel finds the appropriate disciplinary sanction to impose upon John Martin Drake is a two (2) year suspension pursuant to Tenn. Sup. Ct. R. 9, § 12.2 (2014) and referral to Tennessee Lawyers Assistance Program (TLAP) for evaluation and compliance with any monitoring agreement recommended by TLAP. In addition to all other requirements and obligations of suspended attorneys set forth in Tenn. Sup. Ct. R. 9, payment of all Board and Court costs assessed in this matter, payment of all registration fees due and owing, and compliance with all CLE requirements are conditions precedent to the reinstatement of John Martin Drake to the active practice of law in Tennessee.

IT IS SO ORDERED.


James W. Milam, Panel Chair


Peter C. Sales, Panel Member *(by J.W. Milam w/ permission given 1/4/17)*


Claiborne K. McLemore, III, Panel Member *(w/ permission given 1/4/17)*

NOTICE TO RESPONDENT

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a Petition for Review in the Circuit or Chancery court within sixty (60) days of the date of entry of the hearing panel's judgment.