

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

IN RE: MICHAEL ANTHONY GUTH, BPR NO. 19093

Respondent, an attorney licensed
to practice law in Tennessee
(Roane County)

FILE NOS. 44646-2-BG
46812-2-SC

PUBLIC CENSURE

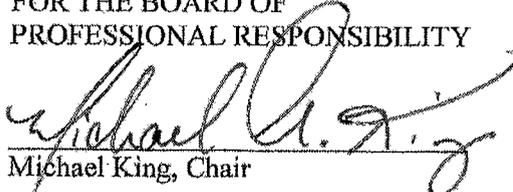
The above complaint was filed against Michael Anthony Guth, #19093, an attorney licensed to practice law in Tennessee, alleging certain acts of misconduct. Pursuant to Tenn. Sup. Ct. R. 9, the Board of Professional Responsibility considered these matters at its meeting on September 9, 2016.

Mr. Guth, acting pro se, filed a lawsuit against an individual defendant, who retained counsel and contested the suit. Mr. Guth nonsuited the action and refiled in another county where venue was improper. Both lawsuits involve the same set of material facts and allegations. Mr. Guth named two defendants in the refiled suit; a partnership consisting of the defendant in the original suit and one of the defendant's business associates, and the business associate individually. There was no written or verbal partnership agreement and the original defendant and his business associate did not refer to their relationship as a partnership. Prior to filing the second lawsuit, Mr. Guth told the business associate that he would be named as a defendant but promised to enter into a settlement agreement indemnifying the business associate from any liability. Mr. Guth subsequently told the business associate that settlement would no longer be considered.

The business associate agreed to waive service. Mr. Guth did not attempt service on the defendant in the original suit or provide notice to his counsel. Mr. Guth obtained a default judgment against the partnership and the business associate. Mr. Guth did not advise the Court at the default hearing about the prior lawsuit, the fact that no partnership agreement existed, or that the defendant in the original suit had not been served. The defendant in the original suit became aware of the second lawsuit when Mr. Guth attempted execution of the judgment on his investments and property. The defendant retained his prior counsel who obtained an order setting aside the default judgment.

By these acts, Michael Anthony Guth has violated Rules of Professional Conduct 3.1 (meritorious claims), 3.3 (candor towards the tribunal), 4.1(a) (truthfulness in statements to others), 4.3 (dealings with an unrepresented person), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (conduct prejudicial to the administration of justice), and is hereby Publicly Censured for these violations.

FOR THE BOARD OF
PROFESSIONAL RESPONSIBILITY


Michael King, Chair

Oct. 14, 2016
Date