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

BOARD OF PROFESSIONAL
RESPONSIBILITY

IN RE: M. JOSIAH HOOVER, III,)
BPR #009494, Respondent)
An Attorney Licensed and)
Admitted to the Practice of)
Law in Tennessee (Knox County))

BPR Docket No. 2010-1947-2-SG

EXEC. SEC'Y

JUDGMENT OF THE HEARING PANEL

This matter came to be heard before the undersigned Hearing Panel on December 8, 2010, on the Petition for Discipline filed by the Board, the Answer to Petition for Discipline and Supplemental Response to Answer to Petition for Discipline filed by the Respondent, the testimony and exhibits introduced into evidence, the statements and testimony of the Respondent, the statements and arguments of Disciplinary Counsel and the Respondent, and the entire record in the cause. After carefully considering the entire record in this cause, and the applicable law, the Hearing Panel issues this Judgment.

PROCEDURAL HISTORY OF THE CASE

The Petition for Discipline was filed in this cause on July 22, 2010 and the Respondent filed an Answer to Petition for Discipline on August 6, 2010 and further supplemented the Answer to Petition for Discipline on August 27, 2010. Pursuant to the applicable rules, a case management conference was held on September 15, 2010, and the Case Management Order set the hearing date in this matter for Wednesday, December 8, 2010. In conjunction with the case management conference, Disciplinary Counsel and Respondent agreed to a discovery cut-off date of November 23, 2010 and a deadline for the filing of any motions, exchanging of exhibits and witness lists of November 30, 2010. On December 6, 2010, Respondent filed a Motion to Continue the hearing and Disciplinary Counsel filed a response on December 6, 2010. Upon due consideration of the positions advanced by the Respondent and Disciplinary Counsel, the Panel entered an Order denying the Motion to Continue on December 7, 2010. In addition, Respondent filed a Motion to Dismiss on December 1, 2010, requesting a dismissal of the complaints relating to File No. 32656-2-KS – Complaint of Wayne LeQuire and File No. 32682-2-KS – Complaint of Roy P. Neuenschwander. Upon due consideration of the Respondent's Motion to Dismiss and Disciplinary Counsel's Response to Respondent's Motion to Dismiss filed on December 2, 2010, the Panel denied Respondent's Motion to Dismiss and proceeded with the hearing as scheduled on December 8, 2010. The hearing was scheduled to commence at 9:00 a.m.; however, due to the non-appearance of the Respondent, the proceedings were delayed until 9:15 a.m. and commenced without Respondent's presence. Eventually, the Respondent arrived at 9:45 a.m. and was provided with a synopsis of the events that had transpired in his absence. The hearing conducted on December 8, 2010 included the presentation of testimony through the following witnesses: Respondent, Deborah Titus, Steve Gordon, Wayne LeQuire, Tim Disney and Andrea Bunch. In addition to the testimony presented by the witnesses, Exhibits 1 through 40 were marked and introduced into evidence.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON THE PETITION FOR DISCIPLINE**

1. The Respondent, M. Josiah Hoover, III, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee. The Respondent's most recent office address, as registered with the Board of Professional Responsibility, is 401 Henley Street, Suite 10, Knoxville, TN 37902, being in Disciplinary District II. Respondent's Board of Professional Responsibility number is 009494.

2. Pursuant to Section 1 of Rule 9, 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.

3. Pursuant to Section 3 of Rule 9, 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.

4. 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 and as supported by the findings of fact and conclusions of law set forth herein. The Board authorized the filing of formal charges on June 11, 2010.

File No. 30298-2-(K)-TH – Complaint of Norman B. Whitton

5. On June 13, 2007, the Complainant reported the Respondent to the Board of Professional Responsibility in a matter designated as File No. 30298-2-(K)-TH. On June 25, 2007, the Board notified the Respondent of the complaint and asked for the Respondent's response within ten (10) days. The Respondent's response dated July 23, 2007 was received by the Board. Copies of the complaint, the Board's letter to the Respondent and the Respondent's response are attached as Collective Exhibit 9.

6. On approximately January 10, 2007, the Complainant retained the Respondent paying \$1,000 for the Respondent's representation in judgment lien enforcement in the bankruptcy of debtor Samuel Burnette. A copy of the Complainant's retainer agreement and \$1,000 check to the Respondent are attached as Exhibit 2 and 3.

7. On December 13, 2006, an Order Discharging Debtor Samuel Burnette had been filed.

8. On January 12, 2007, after Samuel Burnette was discharged in his bankruptcy, the Respondent asserts he filed a Proof of Claim for the Complainant.

9. The Respondent did not check the status of the Burnette Bankruptcy prior to January 12, 2007.

10. The Complainant learned from the debtor Burnette's attorney and not from the Respondent that Burnette's Bankruptcy had been dismissed.

11. The Complainant *pro se* filed a Civil Warrant in the General Sessions Court of Loudon County, Tennessee, against the Respondent for legal malpractice.

12. On approximately on October 5, 2007, the Complainant obtained a General Sessions Judgment for \$1,000 plus interest against the Respondent. A copy of the General Sessions Warrant and Judgment is attached as Exhibit 6.

13. The Respondent appealed the General Sessions' Judgment to the Circuit Court for Loudon County, Tennessee.

14. By Order entered approximately March 27, 2008, the Circuit Court found "The Respondent's contract was unconscionable and cannot be enforced. The Defendant thus obtained the fee in pretence of representation which cannot benefit the Plaintiff and the fee should be returned. It is therefore Ordered that the Plaintiff have a Judgment against the Defendant for \$1,000 plus Post Judgment Interest of ten (10) percent from October 5, 2007. [The date of the Judgment in General Sessions Court (plus court costs).]" A copy of the Loudon County Circuit Court Order is attached as Exhibit 7.

15. The Respondent appealed the Circuit Court Order to the Court of Appeals.

16. By opinion filed November 19, 2009, the Court of Appeals of Tennessee at Knoxville reversed the Trial Judge finding that the contract was not unconscionable but concluding "that the \$1,000 under the circumstances was not a reasonable fee for the legal services rendered by the Defendant. On the facts in this case and the applicable law, we conclude that a \$500 fee would be reasonable. Accordingly, we remand for the entry of a Judgment of \$500 for Plaintiff against Defendant and in our discretion we tax the cost of the appeal one-half to Plaintiff and one-half to Defendant." A copy of the Court of Appeals of Tennessee in Knoxville Opinion is attached as Exhibit 8.

17. The Respondent failed to pay to the Complainant the \$500 Judgment and satisfy the court costs.

18. The acts and omissions of the Respondent set forth in paragraphs 5 through 17 constitute ethical misconduct in violation of Rules 1.5(a), 8.4(a) and (g), of the Tennessee Rules of Professional Conduct. As determined by the Court of Appeals of Tennessee at Knoxville on November 2, 2009, the amount of the fee charged by the respondent constituted an unreasonable fee in violation of Rule 1.5(a) of the Tennessee Rules of Professional conduct. Respondent is bound as a matter of law by the Court's determination and failed to present any evidence to controvert such a finding. Moreover, Respondent has failed to satisfy the outstanding obligation to Mr. Whitton.

File No. 31195c-2-TH – Complaint of Ronald and Deborah Titus

19. On June 13, 2008, the Board notified the Respondent of Ronald and Deborah Titus' complaint and asked the Respondent to respond to the complaint within ten (10) days.

The Respondent's response to the Board dated July 1, 2008 was received by the Board. A copy of the complaint, the Board's letter to the Respondent and the Respondent's response are attached as Collective Exhibit 17.

20. The Respondent represented the Complainants in the Circuit Court for Blount County in Titus v. Dalphonso.

21. The Circuit Court granted the Defendant's Motion for Summary Judgment in Titus v. Dalphonso.

22. On approximately July 17, 2007, the Respondent filed a Notice of Appeal on behalf of the Complainants.

23. The Respondent failed to timely file a brief in support of the Complainants' appeal.

24. On January 11, 2008, the Court of Appeals entered an Order stating "The record on appeal was filed with clerk of this Court on November 29, 2007. Even though Tenn. R. App. P. 29(a) requires that the Appellants Brief be filed within thirty days after the record is filed, the Appellant has neither filed a brief nor requested an extension of time to do so. It is therefore, Ordered that the Appellant file a brief within ten days following the entry of this Order or show cause why this appeal should not be dismissed for failure to comply with Tenn. R. App. 29(a)." A copy of Court of Appeals Order entered January 11, 2008 is attached as Exhibit 12.

25. On February 7, 2008, the Court of Appeals entered an Order requiring Complainant's transcript be filed by February 4, 2008 and Complainant's brief be filed by February 25, 2008. A copy of the Court of Appeals' Order entered February 7, 2008 is attached as Exhibit 13.

26. The Respondent failed to timely file the Complainant's brief and transcript pursuant to the Court of Appeals' February 7, 2008 Order.

27. By Order filed March 12, 2008, the Court of Appeals denied Respondent's Motion to accept a late filed transcript and brief and granted Defendant/Appellee's Motion to Dismiss Appeal based upon Plaintiff/Appellant's failure to file the brief and comply with the Court's previous Orders. A copy of this Order is attached as Exhibit 15.

28. By Order filed April 18, 2008, the Court of Appeals denied Respondent's untimely Petition to Re-hear. A copy of this April 18, 2008 Order is attached as Exhibit 16.

29. The Respondent failed to respond to the Complainants' requests for information and failed to keep the Complainants accurately informed about their case.

30. By letter dated February 15, 2008, the Respondent erroneously advised the Complainants: "I will have the brief written on or before February 28, 2008." A copy of Respondent's February 15, 2008 letter to the Complainants is attached as Exhibit 14.

31. The Complainants learned from the clerk's office and not from the Respondent that their appeal had been dismissed.

32. The acts and omissions of the Respondent set forth in paragraphs 19 through 31 constitute ethical misconduct in violation of Rules 1.3; 1.4(a), (b); 3.2 and 8.4(a) and (d), of the Tennessee Rules of Professional Conduct. The exhibits together with the testimony of Mrs. Titus conclusively established Respondent's flagrant disregard of obligations and duties owed to his clients and the Court. Respondent failed to present any evidence to dispute Mrs. Titus' complaint, and the record reflects that substantial funds were advanced by Mrs. Titus to pursue a claim for which she was not adequately represented nor kept properly apprised of its status. Respondent claimed that the untimely filing of the appeal was due to an alleged lack of transcript of a summary judgment hearing wherein no evidence was presented to the Court. Under such circumstances, the alleged lack of transcript could not have resulted in any delay to file a brief as required by the Court. As a result of Respondent's violations of the Rules of Professional Responsibility, Mr. and Mrs. Titus sustained serious injury including financial losses in excess of \$13,000 advanced to Respondent in conjunction with the presentation of their claim.

File No. 32656-2-KS – Complaint of Wayne LeQuire

33. On November 30, 2009, the Board notified the Respondent of the complaint of Wayne LeQuire and asked for the Respondent's response within ten (10) days. By letters dated December 28, 2009; January 14, 2010 and January 29, 2010, the Respondent requested additional time to respond to this complaint. The Respondent's response dated February 12, 2010 was received by the Board. Copies of the complaint, the Board's notice of the complaint, and Respondent's correspondence to the Board are attached as Collective Exhibit 18.

34. The Complainant retained the Respondent on September 11, 2008 to represent him in his divorce.

35. The Respondent assured the Complainant he would file the Complainant's Answer by Monday, September 15, 2008 but the Respondent failed to do so.

36. The Respondent failed to accept or return the Complainant's telephone calls and failed to keep the Complainant informed about his case.

37. The Respondent neglected the Complainant's case.

38. The acts and omissions of the Respondent set forth in paragraphs 33 through 37 constitute ethical misconduct in violation of Rules 1.4(a)(b) and 8.4(a) and (d), of the Tennessee Rules of Professional Conduct. Mr. LeQuire's testimony and exhibits presented in support of this complaint clearly establish Respondent's failure to keep Mr. LeQuire reasonably informed about the status of his claim, to respond to reasonable requests for information within a reasonable time and to properly apprise him of the parties' rights and obligations under the circumstances. As a result of Respondent's acts and omissions, Mr. LeQuire incurred legal expenses and pursued a settlement of his divorce claim without proper representation. Respondent failed to present any evidence to controvert the Complainant's evidence establishing violations of the Rules of Professional Responsibility.

File No. 32682-2-KS – Complaint of Attorney Roy Neuenschwander

39. The Board notified the Respondent of the complaint of attorney Roy Neuenschwander on December 7, 2009 and asked for the Respondent's response within ten (10) days. The Respondent's response dated February 12, 2010 was received by the Board. A copy of the complaint, Board's notice to the Respondent and the Respondent's response are attached as Collective Exhibit 27.

40. In Edwards v. Powers filed in the United States District Court for the Southern District of West Virginia, the District Court entered a June 5, 2003 Memorandum Opinion and Order finding in part the following:

The Court repeatedly has warned Plaintiff's counsel [the Respondent] that he would be personally sanctioned if he continued to fail to comply with the discovery requests and orders of this court. Accordingly, the Court **FINDS** that it has given plaintiff's counsel more than sufficient notice of his alleged misconduct and the consequences of that misconduct. As stated in the show cause hearing, the court **FINDS** that Hoover has repeatedly violated the orders of this court, the local rules and the *Federal Rules of Civil Procedure*. Although, Mr. Hoover proffers that he did not '*intend* to hinder or delay' litigation and that he 'has done the best [he] could' in this complex case, the court **FINDS** that these excuses are not credible and that Mr. Hoover's numerous violations of the rules *were* in fact made in bad faith with the intent to delay. The court thus **GRANTS in part** the defendant's motion for sanctions against plaintiff's counsel.

41. In its June 5, 2003 Memorandum Opinion and Order, the District Court sanctioned the Respondent \$12,649.58 and further Ordered:

Because of Hoover's flagrant abuse of this court's orders, the local rules and the *Federal Rules of Civil Procedure*, the court also **ORDERS** that Mr. Hoover be fined **\$1,000 per week** for every week that he does not pay these sanctions after they are due.

42. The District Court in its June 5, 2003 Memorandum Opinion further found in part:

Mr. Hoover has been admitted to this court *pro hac vice*. Admission *pro hac vice* is a privilege that this court grants to out-of-state counsel. In exchange, counsel is expected to abide by the rules and orders of this court, to behave in an ethical manner and to otherwise act as an officer of this court. Mr. Hoover has not met these standards. Instead, he has come perilously close to losing the case for his client and has caused undue expense and delay to the plaintiff, the defendant, defense counsel and the court. Mr. Hoover is not the type of attorney that should be practicing in this court.

Following the disposition of this case, the court recommends that Mr. Hoover seriously reflect upon his misconduct in this case and review the ethical and procedural rules that govern the legal profession. Based upon Mr. Hoover's absolute disregard for the practices and procedures of this court, the court **ORDERS** that M.J. Hoover, III's *pro hac vice* status be **REVOKED** and that he never again be allowed to practice before the United States District Court for the Southern District of West Virginia following the conclusion of matters in this case.

A copy of the June 5, 2003 Memorandum Opinion and Order in Edwards v. Powers is attached as Collective Exhibit 21.

43. The Respondent filed a Request to Alter or Amend the Judgment which was denied by the District Court by Order entered July 16, 2003. A copy of the Court's July 16, 2003 Order is attached as Exhibit 22.

44. In State of West Virginia v. Hoover, the Knox County Chancery Court domesticated the Edwards v. Powers Judgment against the Respondent. A copy of the Knox County Chancery Court Order is attached as Exhibit 23.

45. Respondent's appeal of State of West Virginia v. Hoover was dismissed by the Court of Appeals based upon Respondent's failure to timely file Notice of Appeal. A copy of the Court of Appeals docket sheet is attached as Exhibit 24.

46. The Respondent has failed to pay this State of West Virginia v. Hoover Judgment.

47. In Hoover v. Disney, the Circuit Court of Blount County filed an Order on May 26, 2010 finding that the Complaint filed by the Respondent violated Tennessee Rules of Civil Procedure 11.02 and on the Court's own initiative imposed sanctions.

48. The Circuit Court in its Hoover v. Disney May 26, 2010 Order further found:

This Complaint and subsequent proceedings have been a waste of judicial economy and expense. The Complaint was vague; the Motion for Default was premature and Plaintiff's refusal to address a Request for Admissions in light of this demand for punitive damages is inexcusable. The Court further concludes that this proceeding is not the proper form for the Defendant to seek further monetary damages against the Plaintiff since this matter has been decided in favor of Defendant and damages have been awarded pursuant to the Counter Complaint. Defendant has an adequate remedy at law to pursue any further relief from malicious or annoying litigation. Sanctions, however, should be limited to such sufficient remedies as to deter further repetition as such conduct.

49. The Circuit Court in its Hoover v. Disney May 26, 2010 Order further ordered:

That Mr. M.J. Hoover, III shall not be allowed to file any further complaints in the Circuit Court for Blount County unless these conditions are complied with:

1. The complaint may be submitted to Mr. Tom Hatcher, Circuit Court Clerk prior to filing.
2. Mr. Hatcher shall select two (2) attorneys from the local Bar that will screen the complaint in order to determine that the complaint meets the requirement of T. R. C. P. 11.02. If the screening process approves the complaint, the Clerk is to file the lawsuit.
3. The screening process will be in effect for one year from the date of this Order.
4. If a complaint is filed by Mr. Hoover pursuant to this Order, Mr. Hoover will be requested to abide by all discovery deadlines and file appropriate responses within the time prescribed by the Tenn. R. Civ. P. or the Blount County Local Rules of Practice. Failure to abide by such time periods will result in Mr. Hoover's suspension from practice in the Circuit Court of Blount County for one year.

A copy of the Blount County Circuit Court Order filed May 26, 2010 is attached as Exhibit 26.

50. The acts and omissions of the Respondent set forth in paragraphs 39 through 46 constitute ethical misconduct in violation of Rules 1.3; 3.2 and 8.4(a), (d) and (g), of the Tennessee Rules of Professional Conduct and in paragraphs 47 through 49 constitute ethical misconduct in violation of Rules 3.2; 8.4(a) and (d) of The Tennessee Rules of Professional Conduct. The evidence presented in support of the complaint of Attorney Roy Neuenschwander clearly establishes Respondent's violations of the Tennessee Rules of Professional Conduct due to multiple acts in total disregard of court deadlines, orders and instructions designed to promote a proper and efficient administration of justice. Despite numerous attempts by the Court in Edwards to impress upon the Respondent the need to comply with the Rules of Civil Procedure and the entry of several court orders, Respondent simply ignored such directives to the detriment of his client and the administration of justice. As a result of Respondent's conduct, the Edwards claim proceeded to trial without the testimony of several experts including Larry Lynch and William P. Kissel. Exhibit 20, pp. 70 and 71 (Docket Entry No. 380). Moreover, the result of the ensuing jury trial was a defense verdict. Respondent's conduct in connection with the presentation of the Edwards claim cannot be condoned. Respondent's contentions before the Court and this Panel are simply not credible, and his conduct in the Edwards matter resulted in substantial harmful prejudice to his client. Respondent contends that Complainant has an ulterior motive in pursuing issues which were addressed by the United States District Court in West Virginia over seven (7) years ago and never referred to the authorities in Tennessee for disciplinary action. The Panel is not persuaded by Respondent's contention. Regardless of any

motive impugned to the Complainant, the Panel must address the facts and circumstances presented within the record evidence in support of the Petition, and the evidence of the proceedings in the Edwards and Disney matters clearly establishes violations of the Tennessee Rules of Professional Conduct. Obviously, Respondent has consistently impeded the administration of justice in both the Edwards and Disney litigation, and such conduct is unacceptable, sanctionable and harmful to the legal system and the profession.

DISCIPLINARY COUNSEL'S CONTENTIONS CONCERNING DISCIPLINE

The Board maintains that disbarment or suspension is the appropriate discipline to impose against Respondent. In support of the Petition and the request for appropriate discipline, the Board also relies upon the following prior discipline imposed against the Respondent:

- (a) Public Censure on January 10, 1997 (Exhibit 28);
- (b) Private Informal Admonition on February 10, 1997 (Exhibit 29);
- (c) Private Informal Admonition on May 7, 1998 (Exhibit 30);
- (d) Private Informal Admonition on October 1, 1999 (Exhibit 31);
- (e) Private Reprimand on August 6, 2003 (Exhibit 32);
- (f) Public Censure on February 26, 2006 (Exhibit 33);
- (g) Thirty (30) day suspension on October 6, 2008 (Exhibit 34); and
- (h) Private Informal Admonition on May 28, 2010 (Exhibit 38).

ABA STANDARDS CITED BY DISCIPLINARY COUNSEL

Section 8.4 of Rule 9, Rules of the Supreme Court, provides, "In determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions." The ABA Standards applicable to this case are as follows:

4.4 LACK OF DILIGENCE

4.41 Disbarment is generally appropriate when:

- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.6 LACK OF CANDOR

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury to potential injury to the client.

6.2 ABUSE OF THE LEGAL PROCESS

6.22 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.

7.0 VIOLATIONS OF DUTIES OWED TO THE PROFESSION

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 a client, the public, or the legal system.

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

8.0 PRIOR DISCIPLINE ORDERS

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 legal system, or the profession.

COMPARATIVE DISCIPLINE CITED BY DISCIPLINARY COUNSEL

The Board has cited two comparative cases within Tennessee which it contends support the imposition of disbarment in this matter. A summary of the two cases is as follows:

On June 16, 2010, Deborah Fanning Graham was disbarred by the Tennessee Supreme Court for accepting fees, neglecting client matters and making misrepresentations to clients.

On May 24, 2006, Mark Pittman was disbarred by the Supreme Court of Tennessee for his pattern of neglect, failure to return unearned fees and false statements to clients and to the Board of Professional Responsibility.

CONCLUSIONS OF THE HEARING PANEL

The Respondent's appearance at the hearing on December 8, 2010 and the presentation of evidence did not yield any information to contradict the assertions of Disciplinary Counsel concerning the applicable ABA Standards, the Board's proposed discipline or any comparative discipline cases. The Respondent has provided the Hearing Panel with nothing to consider in this matter other than his statements made at the hearing.

At the hearing that occurred on December 8, 2010, the Respondent's efforts to challenge the allegations contained in the Petition were simply not credible nor did those efforts yield any information to mitigate the Respondent's conduct. Respondent advised the Hearing Panel on multiple occasions that, under the circumstances, he has conducted himself "as best I could" and no specific reason was provided for Respondent's continuing failure to abide by the Rules of Professional Conduct. Upon closer questioning by the Panel, Respondent stated that he does not suffer from any physical and/or mental impairment that would preclude him from complying with court orders, Rules of Civil Procedure or ethical rules. Throughout the hearing, Respondent objected to the motive attributed to the Complainant, Attorney Roy Neuenschwander; however, Respondent failed to present anything to the Hearing Panel to contradict the assertions of Disciplinary Counsel concerning the facts asserted within the Petition.

Respondent has simply failed to provide the Hearing Panel with any credible basis for Respondent's continuing failure to abide by the Rules of Civil Procedure, ethical rules and court orders designed to promote the administration of justice. It is evident from Respondent's presentation at the hearing and the total lack of evidence to contradict the factual information contained within the Petition that Respondent simply refuses to accept responsibility for his own conduct and, despite numerous efforts to curtail such activities, has chosen to disregard those efforts. In view of the aggravating factors present in this matter and the evidence supporting the Petition, the Panel deems disbarment as the appropriate remedy.

The aggravating factors are as follows:

1. The Respondent has substantial experience in the practice of law, having been licensed since 1981.

2. The Respondent is guilty of multiple offenses of misconduct, and in violating numerous disciplinary rules,

3. Respondent has demonstrated a pattern of misconduct and total disregard for the Rules of Civil Procedure, ethical rules, court orders and the rights of different clients.

4. The Respondent has failed to acknowledge the wrongdoing and/or wrongful nature of the conduct. Except for passing statements indicating that, "I have made some mistakes," Respondent did not offer any excuse for his conduct, other than the assertion that he "was doing the best I could."

5. Respondent exhibited dishonest and selfish motives during the course of the hearing when, on the one hand, Respondent indicated that he would need to maintain his license so that he could generate funds to repay the obligations owed to his clients; however, except for the payment of \$5,000 between May 6, 2004 and July 30, 2004 to the Clerk of the United States District Court for the Southern District of West Virginia in partial satisfaction of the sanctions entered in that proceeding, Respondent has ignored his financial obligations to the Court, litigants and his clients, to include a veiled effort to satisfy his obligation to Mr. Whitten by allegedly issuing a partial payment to Mr. Whitten in the sum of \$100 the day before the Hearing Panel convened to address the Petition for Discipline.

6. The record evidence conclusively established that Respondent is absolutely incompetent and such incompetence has caused substantial harm to his clients and interfered with the administration of justice.

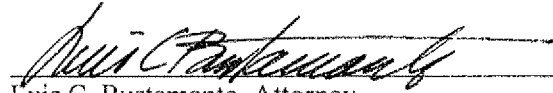
Throughout the proceedings, the Panel, on its own accord, sought to elicit information from the Respondent pertaining to any considerations or factors that may justify a reduction in the degree of discipline to be imposed. Respondent failed to present any evidence in support of the applicability of mitigating factors as set forth within Section 9.3 of the ABA Standards for Imposing Lawyer Sanctions.

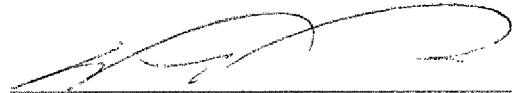
Based upon all the evidence presented, the Hearing Panel concurs that disbarment is the appropriate remedy. Specifically, the Hearing Panel finds that, due to the number of violations set forth in the Petition, the nature of the violations, the injuries sustained by clients and the continuing pattern of conduct on the part of the Respondent, despite numerous efforts to address and provide guidance to the Respondent, the Panel finds that disbarment is the appropriate remedy.

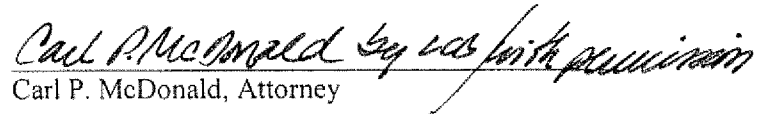
JUDGMENT

Based upon the entire record in this cause, it is the Judgment of the Hearing Panel that the Respondent should be disbarred from the practice of law.

SIGNATURES OF HEARING PANEL:


Luis C. Bustamante, Attorney


Weldon Evan Patterson, Attorney


Carl P. McDonald, Attorney