

**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

few EXEC. DIR.

**IN RE: M. JOSIAH HOOVER, III,
BPR No. 9494,
Attorney Licensed to
Practice Law in Tennessee
(Knox County)**

DOCKET NO. 2012-2111-2-KB

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came before the assigned Hearing Committee members of Disciplinary District II of the Board of Professional Responsibility of the Tennessee Supreme Court ("Hearing Panel") on August 13, 2013, for a hearing on the Board's Petition for Discipline. After considering the arguments of counsel for the Board and the record as a whole, the hearing panel finds by clear and convincing evidence that Mr. Hoover should be suspended from the practice of law. Such suspension is to run a period of one year concurrent with his disbarment.

FINDINGS OF FACT

1. Respondent M. Josiah Hoover, III (hereinafter "Hoover") is an attorney originally licensed to practice law in Tennessee in 1981.
2. A Petition for Discipline was filed on March 26, 2012 against Hoover. An Answer was filed on May 30, 2012.
3. The Board filed Requests for Admission on June 6, 2013. Hoover did not respond to the Requests for Admission. At the hearing, the Board made an oral motion that the Requests be deemed admitted and the motion was granted.
4. This matter came for hearing at 9:00 a.m. and Hoover failed to appear for the hearing. Hoover had notice of the hearing and was telephoned the morning of the hearing but failed to appear. A voice message was left on Hoover's cellular telephone, but Hoover did not return the call. The hearing panel delayed the start of the hearing until approximately 9:40 a.m.

5. No witnesses appeared at the hearing.

FILE NO. 33429-2-PS – Complainant – Chambless R. Johnston, III

6. The Petition for Discipline alleges in paragraph 29 that Respondent presented “Mr. Johnston with an itemized billing which contained improper and excessive charges amounting to \$6,541.96, which were above and beyond Mr. Hoover’s \$7,500 retainer fee. Specifically, Mr. Hoover charged excessively for reviewing correspondence and preparing simple pleadings, double billed for preparing a Motion for New Trial, and charged a fee for client meetings while Mr. Johnston was in Virginia.”

7. Those allegations were admitted by the Respondent in paragraph 29 of the Answer to Petition for Discipline.

8. Mr. Johnston did not appear and declined to participate as a witness at the hearing. The Board failed to prove by a preponderance of the evidence the specific amount of restitution that may be due to Mr. Johnston.

FILE NO. 33712-2-PS – Self-Report

9. Hoover self-reported conduct to the Board of Professional Responsibility on December 27, 2010. Hoover alleged in that self-report that on December 17, 2010, he had received correspondence from another attorney who was opposing him in a case advising him that his license had been suspended for failure to pay his Tennessee Privilege Tax.

10. During this suspension, of which Hoover claims he was unaware, he made an appearance before Senior Judge John K. Blackwood.

FILE NO. 33877-2-PS – Complainant – Michael Holober

11. On March 4, 2011, the Board notified Hoover of a complaint filed by Mr. Holober alleging that a portion of his retainer fee should be returned.

12. Mr. Holober did not appear at this hearing. No fee agreement was introduced into evidence and no proof regarding the amount of the bill that was excessive was introduced.

CONCLUSIONS OF LAW

13. Based on the record and unopposed documentary evidence offered by the Board, the hearing panel finds by clear and convincing evidence, un-rebutted by the Respondent as follows:

- a. Hoover charged excessive and improper fees to Dr. Johnston which violated RPC 1.5(a) (Fees).
- b. Hoover practiced law while administratively suspended violating RPC 5.5 (Unauthorized Practice of Law).
- c. Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a) (Misconduct).

14. The hearing panel finds that since the Board failed to prove any allegations of misconduct relative to Mr. Holober's complaint of attorney misconduct, that portion of the Board's petition regarding Mr. Holober's claims will be dismissed.

15. Based upon the evidence and admissions in this matter, the panel finds that suspension is the appropriate discipline in this matter. ABA Standards for Imposing Lawyer Sanctions 4.62 and 7.2.

16. Pursuant to ABA Standard 9.22 a number of aggravating factors are present in this case. Specifically, Hoover had the following prior disciplinary offenses:

- a. Public censure in 1997 for failing to adequately communicate with his clients.
- b. Private informal admonition in 1997 for failing to adequately communicate with a client.
- c. Private informal admonition in 1998 for failing to adequately communicate with a client.
- d. Private informal admonition in 1999 for trust account overdrafts.

e. Private reprimand in 2003 for an improper relationship with a woman who appeared before him while acting as a substitute jurisdictional commissioner.

f. Public censure in 2006 for failing to respond to requests for information from disciplinary counsel.

g. A 30 day probated suspension in 2008.

h. Private informal admonition in 2010 for a conflict of interest.

i. Disbarment in 2012.

17. Hoover has shown a pattern of failing to respond in this action and failed to appear at his hearing. Additionally, he has had multiple offenses and had substantial experience in the practice of law. No proof of mitigating factors was introduced at the trial, although the hearing panel notes that Hoover offered unsworn testimony of his personal health issues during at least one pre-trial conference.

JUDGMENT

It is the Judgment of this hearing panel that the Board has proven by clear and convincing evidence that Hoover should be suspended from the practice of law for one year. Such suspension to run concurrent with his disbarment on November 16, 2012.

Although proof of overbilling was introduced into the record, there was no proof of the amount of such overbilling. Accordingly, this panel feels constrained by the record. Accordingly, no restitution is ordered.

Hoover shall be ordered to pay the cost of these proceedings pursuant to Tenn. Sup. Ct. R. 9, § 24.3

Enter this 27 day of August, 2013.

FOR THE PANEL:

Heidi A. Barcus

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NOTICE: This 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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing document has been served upon the following:

M. J. Hoover, III, Esq.
7205 Woods Crossing Dr.
Roanoke, Va. 24018

William C. Moody
Disciplinary Counsel
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

This 27th day of August, 2013.

Rita Welch