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

IN RE: THOMAS FLEMING MABRY, DOCKET NO. 2015-2412-2-WM
BPR #9065, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Knox County)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT
OF THE HEARING COMMITTEE PANEL

This matter came on for hearing on April 25, 2019 before a Hearing Panel consisting of Christopher Alan Hall, Panel Member; Eric Jay Morrison, Panel Member; and Gordon Keith Alley, Panel Chair. The Board of Professional Responsibility (the "Board") was represented by William C. Moody. Mr. Mabry did not appear despite receiving notice of the hearing. This cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court, and after considering the entire file in this matter, including the depositions of Mr. Mabry and Mr. and Mrs. Robert Miller, and after thorough deliberations, the Hearing Panel makes the following findings of fact, conclusions of law and renders its judgment as follows.

STATEMENT OF THE CASE

On January 6, 2015, the Tennessee Board of Professional Responsibility (the "Board") filed a Petition for Discipline against the Respondent, Thomas Fleming Mabry. On March 9, 2015, Mr. Mabry filed his Response to Petition and Motion for More Definite Statement and Motion to Dismiss on Constitutional Grounds. On June 19, 2015, the Board filed a Supplemental Petition for Discipline. Mr. Mabry filed an Answer to Supplemental Petition for Discipline on October 23, 2015. The matter contained within the Petition for Discipline was initiated before the Board prior

to January 1, 2014 and is governed by Tenn. Sup. Ct. R. 9 (2006). The matter contained within the Supplemental Petition for Discipline was initiated before the Board after January 1, 2014 and is governed by Tenn. Sup. Ct. R. 9 (2014).

On October 27, 2015, by Order of the Tennessee Supreme Court, Mr. Mabry was transferred to disability inactive status pursuant to Tenn. Sup. Ct. R. 9, § 27.4(a). On December 4, 2018, by Judgment of the Tennessee Supreme Court, Mr. Mabry's disability inactive status was removed.

On March 19, 2019, Mr. Mabry filed a Motion for Bill of Particulars, List of Witnesses and Motion in Limine. On April 23, 2019, Mr. Mabry filed a Motion for Joinder of Claims. Inasmuch as Mr. Mabry failed to appear at the hearing, Mr. Mabry is deemed to have waived these motions and they are denied.

FINDINGS OF FACT

FILE NO. 36784c-2-PS – EVE HASLAM

Mr. Mabry is only licensed to practice law in Tennessee and has never been licensed in North Carolina.

Eve Haslam was president of Giving Voice Network, Inc., a North Carolina corporation. Ms. Haslam was a resident of Waynesville, North Carolina. Mr. Mabry began advising Ms. Haslam about her business organization. He then began representing Giving Voice Network, Inc., in a contract dispute with Steam Online Marketing. He entered into a written retainer agreement with Giving Voice Network, Inc.

Mr. Mabry met with Ms. Haslam on a number of occasions in Waynesville to discuss the matter. Mr. Mabry wrote a letter to Steam Online Marketing on behalf of Ms. Haslam and Giving Voice Network, Inc., in an effort to negotiate a resolution to the dispute. Mr. Mabry prepared a

complaint for Ms. Haslam styled *Giving Voice Network, Inc. v. Michael Cody d/b/a Steam Online Marketing* that Ms. Haslam filed on behalf of her corporation, *pro se*, in the Superior Court for Haywood County, North Carolina.

After the filing of the complaint, Mr. Mabry again wrote to Steam Online Marketing attempting to negotiate a resolution to the dispute. Steam Online Marketing filed a motion to dismiss the suit and Mr. Mabry prepared a response to the motion that Ms. Haslam filed for the corporation, *pro se*.

A hearing was held on the motion to dismiss on December 9, 2013. Mr. Mabry accompanied Ms. Haslam to the hearing. When the case was called, Ms. Haslam was quite frantic and did not understand that Mr. Mabry would be unable to appear in court for her. The motion to dismiss was granted.

Ms. Haslam paid Mr. Mabry a total of \$2,775 in fees for his representation.

FILE NO. 37731-2-PS – ROBERT MILLER

Mr. Miller was charged with a criminal offense in Haywood County, North Carolina. Mr. Mabry was acquainted with Mr. Miller's wife because she was a teller where he banked in North Carolina. The Millers paid Mr. Mabry \$250 of a \$500 agreed upon fee. In exchange for the \$250, Mr. Mabry agreed to obtain a continuance of a September 3, 2014 hearing because the Millers were going to be out of town. The Millers were to pay the balance of \$250 prior to the next setting if the charges were not dismissed at the first hearing. Mr. Mabry did not appear at the May 9 hearing, it was not continued and a warrant was issued for Mr. Miller's arrest. At no time did Mr. Mabry advise the Millers that he was not licensed in North Carolina.

MR. MABRY'S DISCIPLINARY HISTORY

1. May 2, 1991 – Public Censure.

2. September 22, 1993 – Public Censure.
3. July 16, 2001 – Private Informal Admonition.
4. January 7, 2002 – Private Reprimand.
5. June 20, 2002 – Private Informal Admonition.
6. July 15, 2008 – Eleven-month, twenty-nine-day probated suspension.
7. July 7, 2011 – Private Informal Admonition.
8. December 30, 2014 – Forty-five-day suspension.

CONCLUSIONS OF LAW

1. Pursuant to Tenn. Sup. Ct. R. 9, § 1, 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.

2. Mr. Mabry violated RPC 1.1 (Competence) in the Haslam matter by preparing pleadings to be filed in a North Carolina court, based on North Carolina law, when not learned in North Carolina law and by preparing pro se pleadings to be filed by a corporation.

3. Mr. Mabry violated RPC 1.2 (Scope of Representation) in the Haslam matter. RPC 1.2(c) requires that a client give informed consent, preferably in writing, when a lawyer limits the scope of his representation. Mr. Mabry significantly limited the scope of his representation by preparing pleadings for Ms. Haslam's corporation but not being able to assist her corporation in court and failed to adequately communicate that fact to her.

4. Mr. Mabry failed to adequately communicate with Ms. Haslam in violation of RPC 1.4 (Communication) by not making her understand that he would not be allowed to represent her corporation in court.

5. Mr. Mabry failed to adequately communicate to the Millers the fact that he was not licensed in North Carolina in violation of RPC 1.4 (Communication).

6. In his representation of Ms. Haslam and Giving Voice Network, Inc., and Mr. Miller, Mr. Mabry's practice of law in North Carolina was in violation of the regulation of the legal profession in that jurisdiction and, consequently, a violation of RPC 5.5(1) (Unauthorized Practice of Law).

7. The preponderance of the evidence establishes that Mr. Mabry has committed the following violations of the Rules of Professional Conduct.

a. RPC 1.1 (Competence).

b. RPC 1.2 (Scope of Representation).

c. RPC 1.4 (Communication).

d. RPC 5.5(1) (Unauthorized Practice of Law).

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

8. 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.

9. Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

10. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

Mr. Mabry engaged in corporate and litigation practice under the laws of North Carolina, areas in which he should have known he was not competent, which caused injury to Ms. Haslam, Giving Voice Network, Inc., and Mr. Miller.

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.

Mr. Mabry failed to adequately make Ms. Haslam aware of his limited scope of representation. He failed to adequately communicate to both Ms. Haslam and the Millers the unauthorized nature of his representation. Mr. Mabry's actions caused injury to Ms. Haslam, Giving Voice Network, Inc., and Mr. Miller.

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.

In two separate matters, Mr. Mabry knowingly practiced law in a jurisdiction where he was not authorized to do so. Mr. Mabry's actions caused injury to Ms. Haslam, Giving Voice Network, Inc., and Mr. Miller.

11. Pursuant to ABA Standard 9.22, the Hearing Committee Panel finds, by a preponderance of the evidence, the following aggravating factors are present in this case:

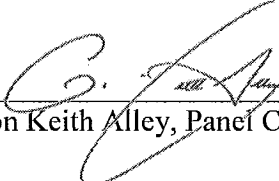
- a. Prior disciplinary offenses;
 - b. Dishonest or selfish motive;
 - c. A pattern of misconduct;
 - d. Multiple offenses; and
 - e. Substantial experience in the practice of law.
12. Pursuant to ABA Standard 9.32, no mitigating factors are present in this case.
13. Based upon the evidence and admissions in this matter, the Hearing Committee Panel finds that a two (2) year suspension is the appropriate discipline.

JUDGMENT

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Committee Panel is of the opinion that Mr. Mabry has violated the Rules of Professional Conduct as discussed above and should be suspended from the practice of law for a period of two (2) years. Mr. Mabry shall pay all costs of this disciplinary proceeding which shall be a condition precedent to reinstatement.

This 24th day of May, 2019.

IT IS SO ORDERED.



Gordon Keith Alley, Panel Chair

NOTICE TO RESPONDENT

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Thomas F. Mabry, 415 Chunns Cove Road, Suite 800F, Asheville, NC 28805, via U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 24th day of May, 2019.



Rita Webb
Executive Secretary

NOTICE

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