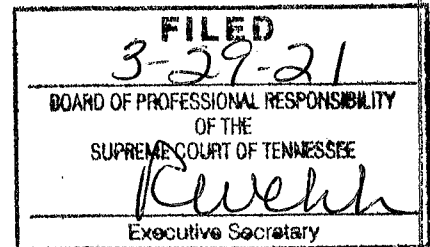


**IN DISCIPLINARY DISTRICT II  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE**



**IN RE: THOMAS FLEMING MABRY,  
BPR #009065, Respondent,  
An Attorney Licensed to  
Practice Law in Tennessee  
(Knox County)**

**DOCKET NO. 2019-2984-2-WM**

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**HEARING PANEL'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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**STATEMENT OF THE CASE**

1. On March 27, 2019, the Tennessee Board of Professional Responsibility (hereinafter "the Board") filed a Petition for Discipline against the Respondent, Thomas Fleming Mabry (hereinafter "Mr. Mabry").
2. On July 2, 2019, Mr. Mabry filed his First Amendment Response to Petition for Discipline.
3. On September 5, 2019, Mr. Mabry filed his Response to Petition for Discipline.
4. The Final Hearing was held on January 12, 2021. Mr. Mabry appeared by telephone to make an opening statement objecting to the Final Hearing on the grounds that he and the Board, acting through its previous counsel, had agreed that no further depositions would be taken when, in fact, the Board had taken depositions it intended to offer for proof, and that conducting the hearing by virtual means was not necessary and was unfair to him because it did not afford him the opportunity to cross examine witnesses live and in real time. He then advised

the Hearing Panel that he would not participate further. Mr. Mabry then left the Final Hearing.

### **INTRODUCTION**

The Petition for Discipline contains six complaints alleging misconduct by Mr. Mabry that occurred in the State of Tennessee and the State of North Carolina. In its case in chief, the Board introduced the telephonic deposition of Ronda Ingraham on August 27, 2020 taken for proof and the deposition of Linda Russell taken on September 24, 2020 for proof. The Hearing Panel found that the Board established that the depositions were taken in compliance with the Tennessee Rules of Civil Procedure and were admitted into evidence with their exhibits without reading them into the record. [Exhibits 5 and 6; and Late Filed Exhibits 1 and 2].

The Board called four witnesses who appeared by video means: Tim Proffitt, Jennifer Moore, Pat Wilhoit and Tonia Seargeant. The testimony and evidence presented to the Hearing Panel established the following facts.

### **FINDINGS OF FACT**

#### **FILE NO. 42435-2-PS – JENNIFER MOORE**

1. Around or about July 21, 2014, Ms. Moore retained Mr. Mabry to defend her in a petition for modification of child support in the Juvenile Court for Marion County. [Trial Exhibit 15]
2. Ms. Moore had previously retained Mr. Mabry for another matter around or about May 9, 2013. [Trial Exhibit 14].

3. Under the terms of the fee agreement, Mr. Mabry was required to notify her by writing or email of any "additional services" and bill Ms. Moore monthly.

4. Mr. Mabry did not regularly provide her with monthly statements, nor did he advise her in writing or by email of additional services for which he later billed her. Mr. Mabry did not provide any itemization of the fees he claims she owed him. [Tr. p. 50, lines 6-13]

5. Ms. Moore paid Mr. Mabry \$750 at his request as the advance payment of expenses for retaining a private investigator. Ms. Moore never saw any evidence that a private investigator was hired. Mr. Mabry did not refund this \$750 to Ms. Moore. [Tr. p. 59, lines 7-18; Tr. p. 75, lines 19-21]

6. Ms. Moore testified that she paid Mr. Mabry \$1,000 at his request as the advance payment of expenses for retaining a private process server. Ms. Moore never saw any evidence that a private process server was hired. Mr. Mabry did not refund the \$1,000 payment to Ms. Moore. [Tr. p. 59, line 19 – p. 60, line 6; Tr. p. 75, lines 19-21]

7. Checks for payments received by Mr. Mabry that were paid by Ms. Moore, were cashed by him, and there is no evidence that he deposited the money into his Trust account. [Trial Exhibit 16]

8. On December 12, 2014, by email to Ms. Moore from his assistant, Mr. Mabry advised Ms. Moore that the amount she owed for his services was \$9,875. [Trial Exhibit 26]

9. At no time prior to sending the December 12, 2014 email did Mr. Mabry advise Ms. Moore of any additional services for which Ms. Moore would be charged by him. [Tr. p. 63, lines 20-23]

10. Mr. Mabry was suspended by the Tennessee Supreme Court on December 30,

2014. [Trial Exhibit 4]

11. Mr. Mabry did not notify Ms. Moore of his suspension nor file a motion to withdraw from her case until he sent a letter on June 29, 2015 to Judge Ronnie Blevins.

12. On multiple occasions between the time of suspension and June 29, 2015, Mr. Mabry consulted with Ms. Moore regarding the child custody matter and otherwise practiced law by continuing to represent her. [Tr. p. 71, line 22 – Tr. p. 72, line 7; Tr. p. 74, lines 8-20]

13. The case was set for hearing on July 2, 2015 and on June 29, 2015, Mr. Mabry sent a letter to the Hon. Ronnie Blevins, Juvenile Court Judge for Marion County, advising the court of his suspension and Ms. Moore was required to retain new counsel. [Trial Exhibit 17; Tr. p. 75, lines 6-18]. Ms. Moore hired new counsel and requested that Mr. Mabry provide a copy of his file to the new attorney. Mr. Mabry failed to provide a complete file to the new attorney.

**FILE NO. 49957-2-PS – LINDA RUSSELL**  
**FILE NO. 44972-2-PS – GEN. RUSSELL JOHNSON, ESO.**

14. Mr. Mabry was licensed in Tennessee to practice law but was not licensed to practice law in North Carolina. [Trial Exhibit 22]

15. Around or about October 21, 2014, Mr. Mabry prepared a Will for Kenneth McKeon, a resident of North Carolina who was domiciled there. [Trial Exhibit 5, Transcript of Deposition for Proof of Linda Russell, Exhibit 1]

16. The Will was signed, witnessed, and notarized in North Carolina. [Trial Exhibit 5, Transcript of Deposition for Proof of Linda Russell, Exhibit 1]

17. Although the Will states that Mr. McKeon owned property in Meigs County, Tennessee, testimony of Mr. Tim Proffitt, the Clerk and Master for Meigs County, Tennessee

confirmed that as provided in Section 4.4 of the Will, Mr. McKeon only had an interest in a promissory note in the amount of \$28,000 and an associated Deed of Trust for property he sold to Tonia Jean Seargeant. [Tr. p. 33, line 25 – Tr. p. 34, line 12; Trial Exhibit 5, Transcript of Deposition for Proof of Linda Russell, Exhibit 1]

18. Prior to Mr. McKeon's death, Ms. Seargeant made her mortgage payments for the home directly to Mr. McKeon. [Tr. p. 135, lines 11-14]

19. Mr. McKeon passed away around or about November of 2014. [Trial Exhibit 5, Transcript of Deposition for Proof of Linda Russell, p. 11, lines 1-5]

20. On October 6, 2015, Mr. Mabry filed Letters of Petition for Kenneth McKeon and issued an IOLTA check made payable to the Meigs County Clerk and Master in the amount of \$344.50 in payment of court costs related to the probate of the estate of Kenneth McKeon. [Tr. p. 38, line 11- Tr. p. 39, line 22; Trial Exhibit 18]

21. The check was returned to the office of the Clerk and Master unpaid because it was drawn on a closed IOLTA account. [Tr. p. 39, lines 8-22]

22. In his Will, Mr. McKeon bequeathed Ms. Russell the proceeds of the promissory note between Tonia Jean Seargeant and Mr. McKeon whereby Ms. Seargeant was to repay \$28,000 in \$500 monthly installments. [Trial Exhibit 5, Transcript of Deposition for Proof of Linda Russell, Exhibit 1]

23. Mr. Mabry hand delivered a letter to Ms. Seargeant directing her to send all payments pursuant to the Promissory Note with Mr. McKeon to his office and that he would send the payments along to Ms. Russell. Ms. Seargeant made the payments to Mr. Mabry. [Tr. p. 137, lines 2- 19; Trial Exhibit 8]

24. About August 2016, Ms. Russell began to receive payments in the amount of \$500 each month from Ms. Seargeant directly. [Trial Exhibit 5, Transcript of Deposition for Proof of Linda Russell, p. 29, lines 8-25]

25. At a minimum, from May 1, 2015 until around or about August 2016, Ms. Seargeant made payments of \$500 per month to Mr. Mabry for a total of \$8,000 that was the property of Ms. Russell and that at no time did he pay those funds over to Ms. Russell.

**FILE NO. 45184-2-PS – RONDA INGRAHAM**

26. For a time, Ms. Ingraham was a resident of Sylva, North Carolina and Mr. Mabry was living at least part of the time in Waynesville, North Carolina. [Trial Exhibit 9, Transcript of Deposition for Proof of Ronda Ingraham, p. 5, lines 7-19]

27. The Authorized Practice Committee of the North Carolina Bar Association made a finding that while on disability inactive status in Tennessee and not licensed to practice law in North Carolina, Mr. Mabry held himself out to Ms. Ingraham, a North Carolina resident at the time, as able to provide her legal services in North Carolina. Mr. Mabry charged her nearly \$5,000 for legal services but provided Ms. Ingraham no beneficial services. Mr. Mabry refused to refund any of her money. [Trial Exhibit 22].

28. Mr. Mabry held himself out to Ms. Ingraham as a practicing attorney in North Carolina and around or about January 2015 she retained him to prepare her will and to represent her in the termination of a domestic partnership. [Trial Exhibit 9, Transcript of Deposition for Proof of Ronda Ingraham, p. 7, lines 1-11]

29. From about January through November 2015, Mr. Mabry provided Ms. Ingraham with legal advice concerning her will and the termination of her domestic partnership, prepared legal documents on her behalf and negotiated with opposing counsel. [Trial Exhibit 9, Transcript of Deposition for Proof of Ronda Ingraham, p. 8, lines 3-9]

30. Mr. Mabry billed Ms. Ingraham for legal services he provided to her in North Carolina. [Trial Exhibit 9, Transcript of Deposition for Proof of Ronda Ingraham, p. 11, lines 10-21; Exhibit 1]

31. Ms. Ingraham paid Mr. Mabry a total of \$5,175 in legal fees. Mr. Mabry has not refunded any amount to Ms. Ingraham. [Trial Exhibit 9, Transcript of Deposition for Proof of Ronda Ingraham, p. 13, lines 1-4]

32. In addition to preparing estate documents for Ms. Ingraham, Mr. Mabry held himself out as a licensed attorney to the attorney who represented Ms. Ingraham's domestic partner and negotiated for Ms. Ingraham in the termination of the domestic partnership. [Trial Exhibit 9, Transcript of Deposition for Proof of Ronda Ingraham, p. 7, lines 6-11; Exhibit 2]

33. While engaged in the representation of Ms. Ingraham, Mr. Mabry did not qualify to practice law in North Carolina as set out in North Carolina General Statutes § 84-4.

34. In his representation of Ms. Ingraham, Mr. Mabry was guilty of a misdemeanor in violation of North Carolina General Statutes § 84-8.

**FILE NO. 46462-2-PS – JEFF AND PAT WILHOIT**

35. Ms. Pat Wilhoit and her husband were the prior owners of real estate located at 2211 East Broadway, Maryville, Tennessee (the "real estate"). [Tr. p. 91, line 15-p. 92, line 5; p. 94, lines 1-7]

36. The Wilhoits sold the real estate to Randy and Sandy Kincaid and recorded a deed of trust to secure the payment of the purchase price by the Kincaids. Sometime later the Kincaids defaulted on their obligations so the Wilhoits retained Mr. Mabry to foreclose on the real estate. Tr. p. 94, line 12 – p. 96, line 21]

37. The Internal Revenue Service ("IRS") recorded a \$176,000 lien on the real estate for monies owed by the Kincaids, and Mr. Mabry failed to properly notify the IRS in writing in advance of the foreclosure and the IRS lien became primary to the rights of the Wilhoits. [Tr. p.



103, lines 5-25]

38. After foreclosing on the real estate, the Wilhoits contracted to sell the real estate to a third party. When a title search performed on behalf of the purchaser of the real estate was completed, it revealed the existence of the IRS lien that was unsatisfied. [Tr. p. 103, lines 5-25]

39. Upon learning the results of the title search, Ms. Wilhoit communicated with Mr. Mabry, and his assistant "Mel," regarding the IRS lien. [Tr. p. 107, lines 3-24]

40. In emails, Mr. Mabry made false statements in responses to the emails of Ms. Wilhoit claiming the IRS was properly notified. [Tr. p. 119, line 17 – p. 120, line 5; Trial Exhibit 12].

41. During the period that Mr. Mabry was suspended from the practice of law in Tennessee he required a fee from Ms. Wilhoit to locate and provide his "proof" that he properly notified the IRS about the foreclosure. [Tr. p. 113, line 1 – p. 114, line 19; Tr. p. 115, line 24 – p. 117, line 2; Trial Exhibits 12 and 4].

42. In order to preserve the priority of their rights over those of the IRS, and in order to avoid having to satisfy the \$176,000 lien, Ms. Wilhoit and her husband were required to retain the law firm of Kizer and Black to negotiate a resolution with the IRS costing them at least \$2,894 in legal fees. The Wilhoits also were unable to collect \$3,000 in rent from the third party. [Tr. p. 125, line 12 – p. 128, line 18; Trial Exhibits 13 and 23]

**FILE NO. 47786-2-PS – DAVID JOHNSON, ESO.**

43. No evidence was presented as to this file.

**CONCLUSIONS OF LAW**

44. The jurisdiction and authority of this Panel is derived from Tenn. Sup. Ct. R. 9,

and the specific provisions prescribed therein. 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. (Tenn. Sup. Ct. R. 9, § 8 (2014)).

45. 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. (Tenn. Sup. Ct. R. 9, § 1 (2014)).

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

47. Pursuant to Tenn. Sup. Ct. R. 8, § 8.5(b)(2), for conduct not in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the lawyer's conduct occurred or where the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. The alleged misconduct of Mr. Mabry in the various complaints occurred both in Tennessee and North Carolina.

#### **Violations of Tennessee Rules of Professional Conduct**

Pursuant to Tenn. Sup. Ct. R. 8, § 8.5(b)(2), for conduct not in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the lawyer's conduct occurred or where the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. Accordingly, the Hearing Panel finds the following

misconduct of Mr. Mabry in Tennessee and North Carolina and the pertinent rules to his actions are applied below.

**Tennessee Rule 1.1**  
**COMPETENCE**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

48. By failing to properly notify the IRS in advance of the foreclosure of the property owned by Jeff and Pat Wilhoit, Mr. Mabry did not provide competent representation to them nor demonstrate legal knowledge, skill, thoroughness, and preparation reasonably necessary to provide legal services for which he was retained.

49. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence Mr. Mabry violated Tennessee RPC 1.1.

**Tennessee Rule 1.3**  
**DILIGENCE**

A lawyer shall act with reasonable diligence and promptness in representing a client.

50. By failing to properly notify the IRS in writing prior to the foreclosure on the Wilhoit property, Mr. Mabry did not act with reasonable diligence and promptness.

51. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence Mr. Mabry violated Tennessee RPC 1.3.

**Tennessee Rule 1.4(a)**  
**COMMUNICATION**

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with

respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these Rules;

- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

52. By failing to timely notify Ms. Moore of his suspension prior to June 29, 2015 and continuing to provide legal advice to her, Mr. Mabry failed to consult with Ms. Moore about the relevant limitation on the lawyer's conduct as a suspended lawyer, knowing that Ms. Moore expected assistance that he was not permitted to provide by the Rules of Professional Conduct, the Hearing Panel finds by a preponderance of the evidence Mr. Mabry violated Tennessee RPC 1.4(a).

**Tennessee Rule 1.5(a)**  
**FEES**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved, and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent;

(9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and

(10) whether the fee agreement is in writing.

53. By charging Ms. Moore a fee of \$9,875, when the fee agreement provided for a fee of \$300 absent additional written provisions, Mr. Mabry charged an unreasonable fee or an unreasonable amount for expenses. The Record is unclear as to how much of this amount was paid and how much was earned.

54. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence Mr. Mabry violated Tennessee RPC 1.5(a)

**Tennessee Rule 1.15(c)**  
**SAFEKEEPING PROPERTY**

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

55. Based upon the evidence presented and the record as a whole, the Hearing Panel finds that the Board failed to prove, by a preponderance of the evidence, Mr. Mabry violated Tennessee RPC 1.15(c).

**Tennessee Rule 1.16(d)(1), (2), (4) and (6)**  
**DECLINING OR TERMINATING REPRESENTATION**

(d) A lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client's interests. Depending on the circumstances, protecting the client's interests may include: (1) giving reasonable notice to the client; (2) allowing time for the employment of other counsel; (4) promptly surrendering papers and property to which the client is entitled and any work product prepared by the lawyer for the client and for which the lawyer has been compensated; and (6) promptly refunding any advance payment of fees that have not been earned or expenses that have not been incurred.

56. By failing to provide Ms. Moore with a refund of the \$750 paid to him for retaining a private investigator and failing to provide her with a refund of the \$1,000 paid to him for retaining a private process server or, in the alternative, provide documentation that he had hired those experts, Mr. Mabry failed to promptly refund any advance payment of fees that were not earned or expenses that have not been incurred in violation of Tennessee RPC 1.16(d)(6).

57. By failing to timely notify Ms. Moore of his suspension prior to June 29, 2015, Mr. Mabry failed to give reasonable notice to her and failed to allow time for her to employ other counsel in violation of Tennessee RPC 1.16(d)(1) and (2) (Declining and Terminating Representation).

58. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence Mr. Mabry violated Tennessee RPC 1.16.

**Tennessee Rule 5.5**  
**UNAUTHORIZED PRACTICE OF LAW;**  
**MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

59. Comment 4 of Tennessee RPC 5.5 provides that a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) by establishing a continuous presence in this jurisdiction for the practice of law and may not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

60. By continuing to practice law in providing legal services to Ms. Moore following his suspension, Mr. Mabry violated Tennessee RPC 5.5(b) (Unauthorized Practice of Law).

61. By attempting to charge a legal fee to the Wilhoits to provide proof of notice to the IRS while he was suspended, Mr. Mabry violated RPC 5.5(b) (Unauthorized Practice of Law).

62. By providing legal services to Ronda Ingraham and Kenneth McKeon in North Carolina where he was not admitted to practice law, Mr. Mabry violated Tennessee RPC 5.5(a) (Unauthorized Practice of Law).

63. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence Mr. Mabry violated Tennessee RPC 5.5.



**Tennessee Rule 8.4(a), (b), (c) and (g)**  
**MISCONDUCT**

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

64. In the matter of Jennifer Moore, Mr. Mabry violated Tennessee RPC 8.4(g) by 1) failing to account to Ms. Moore for the funds that were advanced for expert services; 2) failing to provide Ms. Moore or her new attorney with a complete copy of his file; 3) continuing to practice law following his suspension; 4) failing to notify Ms. Moore, the court and opposing counsel of his suspension; and 5) failing to withdraw from the case following his suspension.

65. By attempting to pay court costs to Meigs County Clerk and Master with a check drawn on a closed account, Mr. Mabry violated Tennessee RPC 8.4(c) (Misconduct).

66. By making misrepresentations in his emails to Ms. Wilhoit intending to make her believe that he had notified the IRS of the filing of foreclosure action, Mr. Mabry violated Tennessee RPC 8.4(c) (Misconduct).

67. By misappropriating the payments made by Tonia Jean Seargeant that should have been paid over to Linda Russell calculated at least at \$8,000, Mr. Mabry violated Tennessee RPC 8.4(a), (b) and (c) (Misconduct).

68. Based upon the evidence presented and the record as a whole, the Hearing Panel

finds by a preponderance of the evidence Mr. Mabry violated Tennessee RPC 8.4.

### **Violations of North Carolina Rules of Professional Conduct**

69. North Carolina General Statutes § 84-2.1 defines the practice of law in North Carolina as follows:

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition.

70. The actions of Mr. Mabry in the representation of Ms. Ingraham, providing her legal services in North Carolina and holding himself as licensed to practice law in North Carolina to Ms. Ingraham and his conduct as described in the Letter of Caution from the Authorized Practice Law Committee of the North Carolina Bar, constituted the practice of law as defined by North Carolina General Statutes § 84-2.1.

71. North Carolina General Statutes § 84-4 in pertinent part describes those persons qualified to engage in the practice of law in North Carolina:

Except as otherwise permitted by law, it shall be unlawful for any person or association of persons, except active members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys-at-law, to appear as attorney or counselor at law in any action or proceeding before any judicial body . . . to maintain, conduct, or defend the same, except in his own behalf as a party thereto; or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or

counseling in law or acting as attorney or counselor-at-law, or in furnishing the services of a lawyer or lawyers; and it shall be unlawful for any person or association of persons except active members of the Bar, for or without a fee or consideration, to give legal advice or counsel, perform for or furnish to another legal services, or to prepare directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust, or to organize corporations or prepare for another person, firm or corporation, any other legal document. . . .

72. Mr. Mabry was not licensed to practice law in North Carolina and pursuant to North Carolina General Statutes § 84-8, any person engaged in the practice of law in North Carolina not qualified to do so is guilty of a misdemeanor:

(a) Any person, corporation, or association of persons violating any of the provisions of G.S. 84-4 through G.S. 84-6 or G.S. 84-9 shall be guilty of a Class 1 misdemeanor.

(b) No person shall be entitled to collect any fee for services performed in violation of G.S. 84-4 through G.S. 84-6, G.S. 84-9, or G.S. 84-10.1.

73. The actions of Mr. Mabry in the representation of Ms. Ingraham and as described in the Letter of Caution from the Authorized Practice Committee of the North Carolina Bar was a misdemeanor under North Carolina statutes.

#### **North Carolina Rule 1.5(a)**

##### **FEES**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

- (4) the amount involved, and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent;
- (9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
- (10) whether the fee agreement is in writing.

74. By charging and accepting legal fees from Ms. Ingraham while he was not authorized to practice law in North Carolina, Mr. Mabry charged an unreasonable fee in violation of North Carolina RPC 1.5(a) (Fees).

75. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence Mr. Mabry violated North Carolina RPC 1.5

**North Carolina Rule 5.5(a) and (b)(2)**  
**UNAUTHORIZED PRACTICE OF LAW;**  
**MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

76. In holding himself out to Ms. Ingraham and her domestic partner's attorney that he was admitted to practice in North Carolina when Mr. Mabry was, in fact,

not admitted to practice law in North Carolina, Mabry violated North Carolina RPC 5.5(b)(2) (Unauthorized Practice of Law).

77. By holding himself out as authorized to practice law in North Carolina as set forth in the Letter of Caution by Authorized Practice Committee of the North Carolina Bar, Mr. Mabry violated North Carolina RPC 5.5(b)(2) (Unauthorized Practice of Law).

78. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence Mr. Mabry violated North Carolina RPC

**North Carolina Rule 8.4(a), (b) and (c)**  
**MISCONDUCT**

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

79. By holding himself out to Ms. Ingraham as authorized to practice law, Mr. Mabry violated North Carolina RPC 8.4(c) (Misconduct).

80. By holding himself out to Ms. Ingraham as authorized to practice law in North Carolina, Mr. Mabry violated North Carolina General Statutes § 84-8, which provides that the unauthorized practice of law is a misdemeanor. Accordingly, Mr. Mabry also violated North Carolina RPC 8.4(b) (Misconduct).

81. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence Mr. Mabry violated North Carolina RPC

### **APPLICATION OF THE ABA STANDARDS**

Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, (“ABA Standards”). Pursuant to Tenn. Sup. Ct. R. 9, § 15.4(a), “[i]f the hearing panel finds one or more grounds for discipline of the respondent attorney, the hearing panel’s judgment shall specify the type of discipline imposed: disbarment (Section 12.1), suspension (Section 12.2), or public censure (Section 12.4).”

In imposing a sanction after a finding of lawyer misconduct, the Panel should consider the following factors: (a) the duty violated; (b) the lawyer’s mental state; (c) the actual or potential injury caused by the lawyer’s misconduct; and d) the existence of aggravating or mitigating factors. (ABA Standard 3.0). Under the ABA Standards, intent is defined as “the conscious objective or purpose to accomplish a particular result” and knowledge is defined as “the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.”

The ABA Standards suggest the appropriate baseline sanction and aggravating and mitigating factors provide a basis for increasing or reducing the sanction imposed. ABA Standard 3.0. See also *Hancock v. Bd. of Prof’l Responsibility*, 447 S.W.3d 844, 857 (Tenn. 2014) (length of an attorney’s suspension, however, depends in large part on the aggravating and mitigating circumstances).

82. Based upon the facts and misconduct previously cited, the Hearing Panel finds the following ABA Standards applicable and relevant to its determination of the appropriate

discipline to be imposed upon Mr. Mabry.

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

4.41 Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

(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.

4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another and causes serious injury or potential serious injury to a client.

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of

these offenses; 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.

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional 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.

83. Applying the ABA Standard to the facts of this case, the Hearing Panel finds that disbarment is the appropriate baseline sanction.

#### **Aggravating Factors**

Having determined disbarment is the appropriate baseline sanction, the Panel must consider the existence of any aggravating or mitigating factors and their applicability to this disciplinary matter. Pursuant to ABA Standard 9.22, the following aggravating factors were considered by the Hearing Panel to determine the appropriate discipline to be imposed against Mr. Mabry:

1. **Prior disciplinary offenses.** Mr. Mabry's prior disciplinary offenses are aggravating circumstances that justify an increase in the degree of discipline to be imposed. Mr. Mabry received private informal admonitions in 2001, 2002 and 2011. [Trial Exhibit 2] He received a private reprimand in 2002. He received public censures in 1991 and 1993. [Trial Exhibit 2] On July 15, 2008, Mr. Mabry was suspended for 11 months 29 days, with 60 days



active suspension. [Trial Exhibit 3] On December 30, 2014, he received a 45-day active suspension. [Trial Exhibit 4] On September 23, 2019, he was suspended for two years. [Trial Exhibit 4]

2. **Dishonest or selfish motive.** Mr. Mabry's selfish motive in his actions justify an increase in the degree of discipline to be imposed.

3. **Pattern of misconduct.** Mr. Mabry's pattern of misconduct justifies an increase in the degree of discipline to be imposed committed the unauthorized practice of law in two separate matters.

4. **Multiple offenses.** Mr. Mabry's multiple offenses as set forth herein justify an increase in the degree of discipline to be imposed.

5. **Refusal to Acknowledge Wrongful Nature of Conduct.** Mr. Mabry's refusal to acknowledge the wrongful nature of his conduct justifies an increase in the degree of discipline to be imposed.

6. **Substantial experience in the practice of law:** Mr. Mabry has been licensed to practice law since 1980 and his substantial experience in the practice of law justifies an increase in the degree of discipline to be imposed.

7. **Indifference to Making Restitution.** Mr. Mabry's indifference to make restitution as demonstrated in refusing to refund fees for the Complainants as set forth herein justifies an increase in the degree of discipline to be imposed.

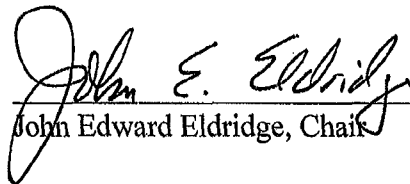
### **JUDGMENT**

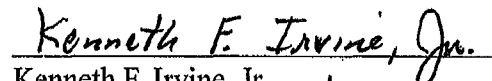
Based upon the testimony and evidence presented at the Final Hearing, application of the Rules of Professional Conduct, and consideration of the applicable ABA Standards and the

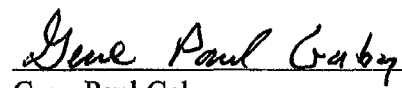
aggravating circumstances in this matter, the Hearing Panel finds by a preponderance of the evidence that Mr. Mabry committed disciplinary misconduct and should be permanently disbarred from the practice of law pursuant to Tenn. Sup. Ct. R. 9, § 12.1. The Hearing Panel further finds

Pursuant to Tennessee Supreme Court Rule 9 §12.7, Mr. Mabry shall be required to make restitution to the following individuals: \$1,750.00 to Ms. Moore; \$8,000 to Ms. Russell; \$5,175.00 to Ms. Ingraham; and \$5,894.00 to Mr. and Ms. Wilhoit. Payment of restitution is a condition precedent to reinstatement. In the event restitution is made by the Tennessee Lawyer's Fund for Client Protection (TLFCP), Mr. Mabry will be responsible for reimbursement to the TLFCP of the same amount.

ENTERED ON THIS THE 29<sup>th</sup> DAY OF March, 2021.

  
John Edward Eldridge, Chair

  
Kenneth F. Irvine, Jr. by permission, JEE

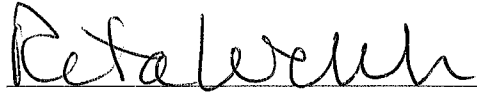
  
Gene Paul Gaby by permission, JEE

**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.

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to Respondent, Thomas Fleming Mabry, 1070-1 Tunnel Road, Suite 10 #332, Asheville, NC 28805, by U.S. First Class Mail, and hand-delivered to Joseph K. Byrd, Disciplinary Counsel, on this the 30<sup>th</sup> day of March 2021.

A handwritten signature in cursive script, appearing to read "Rita Webb", written over a horizontal line.

Rita Webb  
Executive Secretary

**NOTICE**

**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.**