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BOARD OF PROFESSIONAL
RESPONSIBILITY
RAW
EXEC. SECRETARY

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

**IN RE: Brent J. McIntosh, BPR #30259,
Respondent, An Attorney Licensed to Practice Law in Tennessee (Bradley County) DOCKET NO. 2013-2236-3-WM**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This cause came on to be heard on January 10, 2014, before the undersigned Hearing Panel ("Panel") upon the Petition for Discipline filed by the Board of Professional Responsibility, and the entire record. The Panel in this matter consisted of Leah Gerbitz, Lynne Swafford, and Alan Easterly, Chair. The Board of Professional Responsibility (the "Board") was represented by William C. Moody. Mr. McIntosh, the Respondent, was represented by Charles High. Mr. McIntosh was present.

The Panel left the proof open until January 27, 2014, by which the parties were to submit proposed findings of fact, and conclusions of law and judgment. The Panel has now received and reviewed the parties' proposals.

For the reasons set forth herein, the Panel unanimously finds that Mr. McIntosh did not commit a violation of Tennessee Supreme Court Rule 8, RPC 4.3. However, a majority of the Panel finds, for the reasons set forth herein, that Mr. McIntosh did violate Tennessee Supreme Court Rule 8, RPC 4.4(a)(2). As such, the Panel further finds that the appropriate sanction to be imposed is the least that may be imposed by this Panel, which is public censure/reprimand.

FINDINGS OF FACT

1. On November 26, 2012, the Board of Professional Responsibility received a Complaint of Disciplinary Misconduct by Ginamaria Albi alleging ethical misconduct by Mr. McIntosh. A true and exact copy of the November 26, 2012 complaint was attached to the Petition for Discipline as Exhibit A.
2. On November 27, 2012, Disciplinary Counsel sent a copy of the complaint and a request for a response in a letter to Mr. McIntosh. A true and exact copy of the November 27, 2012 letter was attached to the Petition for Discipline as Exhibit B.
3. Mr. McIntosh provided a response to the complaint on December 3, 2012. A true and exact copy of the response was attached to the Petition for Discipline as Exhibit C.
4. On July 9, 2013, the Board filed a Petition for Discipline against Mr. McIntosh. Mr. McIntosh filed an Answer on August 1, 2013.
5. Mr. McIntosh is an attorney licensed to practice law in Tennessee since October 12, 2011.
6. Mr. McIntosh attended the University of Alabama School of Law and graduated in 2011.
7. The ethics course taken there by Mr. McIntosh was based on the American Bar Association Model Rules of Professional Conduct.
8. Tennessee Rules of Professional Conduct (hereinafter referred to as RPC) 4.3 and 4.4 vary from the corresponding American Bar Association Model Rules of Professional Conduct.

9. The bar examination review course taken by Mr. McIntosh before sitting for the Tennessee Bar Examination did not include ethics. However, Mr. McIntosh passed the Multi-state Professional Examination prior to taking and passing the Tennessee Bar Examination.

10. Mr. McIntosh did not read the Tennessee Rules of Professional Conduct prior to beginning the practice of law in Tennessee.

11. As of November 12, 2012, Mr. McIntosh was not familiar with the contents of RPC 4.3 and 4.4.

12. Mr. McIntosh began the practice of law in 2012 as an associate in the Bilbo Law Office. The owner of that practice is Mr. Jimmy Bilbo, an attorney with substantial experience in the practice of law. Mr. Bilbo was not aware of the content of the letter sent by Mr. McIntosh prior to Ms. Albi's Complaint of Disciplinary Misconduct as to Mr. McIntosh, and Mr. McIntosh did not seek Mr. Bilbo's learned guidance with regard to the letter or its content.

13. Ginamaria Albi is a resident of Bradley County, Tennessee and was formerly employed as an investigator by the United States Air Force, the Internal Revenue Service and the United States Equal Employment Opportunity Commission.

14. On October 14, 2012, Ms. Albi wrote a letter to five healthcare providers, including Sheryl B. Jagers, a nurse practitioner. In that letter, Ms. Albi expressed her reasons for believing she had a claim for medical malpractice against the addressees. In the letter, Ms. Albi made a demand that she receive compensation from the addressees and stated that she would report the addressees' conduct to various government agencies, including the Bradley County District Attorney, if her settlement demand was not met. The letter was introduced and accepted as Exhibit I.

15. Ms. Jagers consulted with Mr. McIntosh with regard to responding to Ms. Albi's letter.

16. On November 12, 2012, Mr. McIntosh wrote a letter to Ms. Albi on behalf of Ms. Jagers in response to Ms. Albi's letter. The letter was introduced and accepted as Exhibit 2. Mr. McIntosh did not state in the letter that it was written on behalf of Ms. Jagers. He did not state that he represented any person with regard to the letter. The letter stated that Ms. Albi's demand was extortion, a violation of T.C.A. § 39-14-112, a felony, and that she, and the letter, would be reported to the Bradley County District Attorney. The letter included the sentence, "Please cease and desist any actions related to this matter or face civil and possible criminal liability."

17. Prior to writing the letter, Mr. McIntosh did not review RPC 4.3 or 4.4, was unaware of the contents of RPC 4.3 and 4.4, and did not consult with Mr. Bilbo regarding the content of the letter.

18. A reasonable inference from the letter authored by Mr. McIntosh, sent to and received by Ms. Albi, is that Mr. McIntosh represented, at the time, one or more of the addressees of the letter of Ms. Albi.

19. Mr. McIntosh also authored a letter, sent to and received by the Bradley County District Attorney's office, enclosing Ms. Albi's letter (Exhibit 1), wherein he states "We have sent correspondence to this individual stating that her correspondence amounts to extortion under the law and requested that she not take any further action." The letter was introduced and accepted as Exhibit 3.

20. The parties stipulated that Richard A. Fisher is an expert in criminal law. Mr. Fisher testified that in his opinion the letter written by Ms. Albi contained the statutory elements of the crime of extortion as set out in T.C.A. § 39-14-112.

CONCLUSIONS OF LAW

21. Pursuant to Tenn. Sup. Ct. R. 9, § 3, 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 a condition 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.

22. Although Mr. McIntosh did not, with specificity, identify that he was writing his letter of November 12, 2012 on behalf Ms. Jagers, the letter cannot be read in a way to lead one to reasonably believe that he was disinterested. While it would be better, or preferred, that Mr. McIntosh be more specific, the only reasonable inference to be drawn from the letter is that Mr. McIntosh was of adverse interest to Ms. Albi, and represented one or more of the addressees of her letter.

23. As Mr. McIntosh's letter of November 12, 2012 was one that was on behalf of one or more clients, and clearly stated that Ms. Albi cease and desist "any actions" or face "possible criminal liability," it constitutes a threat to present a criminal charge for the purpose of obtaining an advantage in a civil matter. A violation of RPC 4.4(a)(2).

24. The preponderance of the evidence establishes that Mr. McIntosh has committed the following violations of the Rules of Professional Conduct:

- a. By threatening to present a criminal charge for the purpose of obtaining an advantage in a civil matter, Mr. McIntosh violated RPC 4.4(a)(2) (Respect for the Rights of Third Persons).

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

25. 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.

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

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

6.33 Reprimand¹ is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

28. Mr. McIntosh, by his own admission, failed to appreciate the nature of RPC 4.4(a)(2), or its existence, at the time the letter was authored and sent. He does, however, practice under the Rules, and failure to read and heed them is done at one's own peril. The letter did threaten Ms. Albi with criminal prosecution, and had the potential to intimidate her into abandoning her claims for civil damages. The learned eye of experienced counsel would likely have caught the unfortunate content, and remedied same before it was sent.

¹ ABA Standard 2.5 equates "reprimand" with "public censure."

29. It is immaterial whether or not Ms. Albi's letter constitutes extortion.

30. Pursuant to ABA Standard 9.32, mitigating factors are present in this case. These include:

- a. Absence of a prior disciplinary record.
- b. Absence of a dishonest or selfish motive.
- c. Inexperience in the practice of law.

31. Based upon the evidence and admissions in this matter, the Panel finds that public censure is the appropriate discipline.

JUDGMENT

Based upon the foregoing, it is the opinion of the Panel, and the Panel finds that the Respondent, Brent McIntosh, did not violate RPC 4.3, that the Respondent, Brent McIntosh, did violate RPC 4.4 (a)(2), and that there are sufficient mitigating factors to warrant the imposition of the minimum discipline available to the Panel. It is therefore,

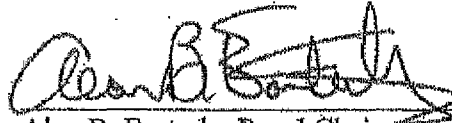
ORDERED, ADJUDGED, and DECREED that the Respondent receive a public censure/reprimand for violation of Tennessee Supreme Court Rule 8, RPCs 4.4(a)(2), and 8.4(a); it is further

ORDERED, ADJUDGED, and DECREED that the claim that the Respondent violated Tennessee Supreme Court Rule 8, RPC 4.3, be, and the same is hereby, dismissed; finally, it is

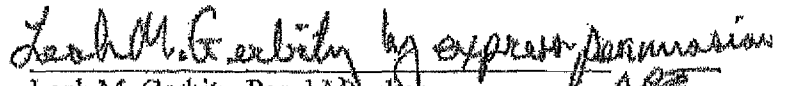
ORDERED that the Respondent, Brent McIntosh, and the Board of Professional Responsibility each bear their own costs and expenses resulting from this disciplinary hearing.

This the 11th day of February, 2014.

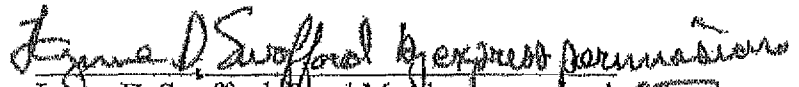
IT IS SO ORDERED.



Alan B. Easterly, Panel Chair
TN BPR# 013225
801 Broad Street, Suite 300
Chattanooga, TN 37402



Leah M. Gerbitz, Panel Member
TN BPR# 016698
832 Georgia Avenue, Suite 1000
Chattanooga, TN 37402



Lynne D. Swafford, Panel Member
TN BPR# 012820
276 Frazier Street
P. O. Box 169
Pikeville, TN 37367

NOTICE: This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 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.

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

IN RE: Brent J. McIntosh, BPR #30259,
Respondent, An Attorney Licensed to Practice Law in Tennessee (Bradley County) DOCKET NO. 2013-2236-3-WM

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Came the Panel upon Motion of the Board to Alter and Amend Judgment by removing the final paragraph of the Judgment regarding the parties' fees and expenses. The Board's Motion was well taken, and the Judgment is amended by removing the former final paragraph, and the Judgment of the Panel, as amended, is as follows:

This cause came on to be heard on January 10, 2014, before the undersigned Hearing Panel ("Panel") upon the Petition for Discipline filed by the Board of Professional Responsibility, and the entire record. The Panel in this matter consisted of Leah Gerbitz, Lynne Swafford, and Alan Easterly, Chair. The Board of Professional Responsibility (the "Board") was represented by William C. Moody. Mr. McIntosh, the Respondent, was represented by Charles High. Mr. McIntosh was present.

The Panel left the proof open until January 27, 2014, by which the parties were to submit proposed findings of fact, and conclusions of law and judgment. The Panel has now received and reviewed the parties' proposals.

For the reasons set forth herein, the Panel unanimously finds that Mr. McIntosh did not commit a violation of Tennessee Supreme Court Rule 8, RPC 4.3. However, a majority of the

Panel finds, for the reasons set forth herein, that Mr. McIntosh did violate Tennessee Supreme Court Rule 8, RPC 4.4(a)(2). As such, the Panel further finds that the appropriate sanction to be imposed is the least that may be imposed by this Panel, which is public censure/reprimand.

FINDINGS OF FACT

1. On November 26, 2012, the Board of Professional Responsibility received a Complaint of Disciplinary Misconduct by Ginamaria Albi alleging ethical misconduct by Mr. McIntosh. A true and exact copy of the November 26, 2012 complaint was attached to the Petition for Discipline as Exhibit A.
2. On November 27, 2012, Disciplinary Counsel sent a copy of the complaint and a request for a response in a letter to Mr. McIntosh. A true and exact copy of the November 27, 2012 letter was attached to the Petition for Discipline as Exhibit B.
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5. Mr. McIntosh is an attorney licensed to practice law in Tennessee since October 12, 2011.
6. Mr. McIntosh attended the University of Alabama School of Law and graduated in 2011.
7. The ethics course taken there by Mr. McIntosh was based on the American Bar Association Model Rules of Professional Conduct.

8. Tennessee Rules of Professional Conduct (hereinafter referred to as RPC) 4.3 and 4.4 vary from the corresponding American Bar Association Model Rules of Professional Conduct.

9. The bar examination review course taken by Mr. McIntosh before sitting for the Tennessee Bar Examination did not include ethics. However, Mr. McIntosh passed the Multi-state Professional Examination prior to taking and passing the Tennessee Bar Examination.

10. Mr. McIntosh did not read the Tennessee Rules of Professional Conduct prior to beginning the practice of law in Tennessee.

11. As of November 12, 2012, Mr. McIntosh was not familiar with the contents of RPC 4.3 and 4.4.

12. Mr. McIntosh began the practice of law in 2012 as an associate in the Bilbo Law Office. The owner of that practice is Mr. Jimmy Bilbo, an attorney with substantial experience in the practice of law. Mr. Bilbo was not aware of the content of the letter sent by Mr. McIntosh prior to Ms. Albi's Complaint of Disciplinary Misconduct as to Mr. McIntosh, and Mr. McIntosh did not seek Mr. Bilbo's learned guidance with regard to the letter or its content.

13. Ginamaria Albi is a resident of Bradley County, Tennessee and was formerly employed as an investigator by the United States Air Force, the Internal Revenue Service and the United States Equal Employment Opportunity Commission.

14. On October 14, 2012, Ms. Albi wrote a letter to five healthcare providers, including Sheryl B. Jagers, a nurse practitioner. In that letter, Ms. Albi expressed her reasons for believing she had a claim for medical malpractice against the addressees. In the letter, Ms. Albi made a demand that she receive compensation from the addressees and stated that she would report the addressees' conduct to various government agencies, including the Bradley

County District Attorney, if her settlement demand was not met. The letter was introduced and accepted as Exhibit 1.

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17. Prior to writing the letter, Mr. McIntosh did not review RPC 4.3 or 4.4, was unaware of the contents of RPC 4.3 and 4.4, and did not consult with Mr. Bilbo regarding the content of the letter.

18. A reasonable inference from the letter authored by Mr. McIntosh, sent to and received by Ms. Albi, is that Mr. McIntosh represented, at the time, one or more of the addressees of the letter of Ms. Albi.

19. Mr. McIntosh also authored a letter, sent to and received by the Bradley County District Attorney's office, enclosing Ms. Albi's letter (Exhibit 1), wherein he states "We have sent correspondence to this individual stating that her correspondence amounts to extortion under the law and requested that she not take any further action." The letter was introduced and accepted as Exhibit 3.

20. The parties stipulated that Richard A. Fisher is an expert in criminal law. Mr. Fisher testified that in his opinion the letter written by Ms. Albi contained the statutory elements of the crime of extortion as set out in T.C.A. § 39-14-112.

CONCLUSIONS OF LAW

21. Pursuant to Tenn. Sup. Ct. R. 9, § 3, 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 a condition 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.

22. Although Mr. McIntosh did not, with specificity, identify that he was writing his letter of November 12, 2012 on behalf Ms. Jagers, the letter cannot be read in a way to lead one to reasonably believe that he was disinterested. While it would be better, or preferred, that Mr. McIntosh be more specific, the only reasonable inference to be drawn from the letter is that Mr. McIntosh was of adverse interest to Ms. Albi, and represented one or more of the addressees of her letter.

23. As Mr. McIntosh's letter of November 12, 2012 was one that was on behalf of one or more clients, and clearly stated that Ms. Albi cease and desist "any actions" or face "possible criminal liability," it constitutes a threat to present a criminal charge for the purpose of obtaining an advantage in a civil matter. A violation of RPC 4.4(a)(2).

24. The preponderance of the evidence establishes that Mr. McIntosh has committed the following violations of the Rules of Professional Conduct:

a. By threatening to present a criminal charge for the purpose of obtaining an advantage in a civil matter, Mr. McIntosh violated RPC 4.4(a)(2) (Respect for the Rights of Third Persons).

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

25. 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.

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

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

6.33 Reprimand¹ is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

28. Mr. McIntosh, by his own admission, failed to appreciate the nature of RPC 4.4(a)(2), or its existence, at the time the letter was authored and sent. He does, however, practice

¹ ABA Standard 2.5 equates "reprimand" with "public censure."

under the Rules, and failure to read and heed them is done at one's own peril. The letter did threaten Ms. Albi with criminal prosecution, and had the potential to intimidate her into abandoning her claims for civil damages. The learned eye of experienced counsel would likely have caught the unfortunate content, and remedied same before it was sent.

29. It is immaterial whether or not Ms. Albi's letter constitutes extortion.

30. Pursuant to ABA Standard 9.32, mitigating factors are present in this case. These include:

- a. Absence of a prior disciplinary record.
- b. Absence of a dishonest or selfish motive.
- c. Inexperience in the practice of law.

31. Based upon the evidence and admissions in this matter, the Panel finds that public censure is the appropriate discipline.

JUDGMENT

Based upon the foregoing, it is the opinion of the Panel, and the Panel finds that the Respondent, Brent McIntosh, did not violate RPC 4.3, that the Respondent, Brent McIntosh, did violate RPC 4.4 (a)(2), and that there are sufficient mitigating factors to warrant the imposition of the minimum discipline available to the Panel. It is therefore,

ORDERED, ADJUDGED, and DECREED that the Respondent receive a public censure/reprimand for violation of Tennessee Supreme Court Rule 8, RPCs 4.4(a)(2), and 8.4(a); it is further

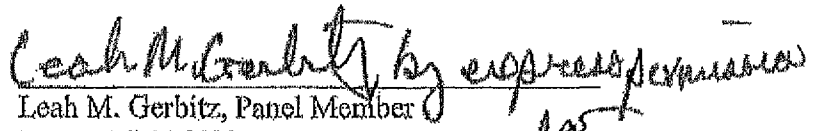
ORDERED, ADJUDGED, and DECREED that the claim that the Respondent violated Tennessee Supreme Court Rule 8, RPC 4.3, be, and the same is hereby, dismissed.

This the 27th day of February 2014.

IT IS SO ORDERED.



Alan B. Eastorly, Panel Chair
TN BPR# 013225
801 Broad Street, Suite 300
Chattanooga, TN 37402



Leah M. Gerbitz, Panel Member
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Lyntie D. Swafford, Panel Member
TN BPR# 012820
276 Frazier Street
P. O. Box 169
Pikeville, TN 37367

NOTICE: This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 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.