

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

**FILED**  
2017 DEC -5 PM 1:20  
BOARD OF PROFESSIONAL  
RESPONSIBILITY  
*Rew* EXEC. SEC.

**IN RE: MICHAEL JOHN MCNULTY,  
BPR# 25974, Respondent,  
An Attorney Licensed to  
Practice Law in Tennessee  
(Davidson County)**

**DOCKET NO. 2017-2669-5-WM**

---

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

---

This matter came on for a hearing on October 24, 2017 before a Hearing Panel consisting of Craig Vernon Gabbert, Jr., Patrick Matthew Potempa and Gerald Charles Wigger, Chair, upon a Petition for Discipline and Supplemental Petition for Discipline. William C. Moody, Disciplinary Counsel, participated in the hearing. Mr. McNulty did not participate in the hearing despite being given notice.

**STATEMENT OF THE CASE**

The Petition for Discipline was filed January 4, 2017. Mr. McNulty failed to respond to the Petition for Discipline and on May 1, 2017 the Board filed a Motion for Default Judgment. This Hearing Panel entered its Order for Default Judgment granting the Board's motion on June 5, 2017. The Supplemental Petition for Discipline was filed August 1, 2017. Mr. McNulty failed to respond to the Supplemental Petition for Discipline and on August 29, 2017 the Board filed a Motion for Default Judgment. This Hearing Panel entered its Order for Default Judgment granting the Board's motion on September 1, 2017. There has been no further response from Mr. McNulty since entry of the second Order for Default Judgment.

**FINDINGS OF FACT**

**PETITION FOR DISCIPLINE**

**File No. 48256-5-ES – Complainant – Nicholas Hollingsworth**

Mr. McNulty represented Mr. Hollingsworth for a contingent fee as a result of injuries sustained by him in an automobile accident. Mr. McNulty did not obtain a written fee agreement signed by Mr. Hollingsworth.

In March, 2016, Mr. Hollingsworth accepted an offer to settle his claim for \$6,000.00. Mr. McNulty delivered a release to Mr. Hollingsworth who executed it and returned it to Mr. McNulty on March 21, 2016. When Mr. Hollingsworth failed to receive his portion of the settlement, his healthcare provider had not been paid, and he received no further communication from Mr. McNulty, he attempted to communicate with Mr. McNulty via email on numerous occasions. Mr. McNulty failed to adequately respond to Mr. Hollingsworth's efforts to communicate with him.

Mr. McNulty received the \$6,000.00 settlement check, made payable to Mr. McNulty and Mr. Hollingsworth, and deposited it to his trust account on March 22, 2016. Mr. McNulty endorsed the \$6,000.00 check on behalf of Mr. Hollingsworth without his knowledge and permission. Upon depositing the \$6,000.00 check to his trust account, Mr. McNulty withdrew \$100.00 of it in cash.

On April 27, 2016, May 9, 2016, and May 17, 2016, Mr. McNulty sent emails to Mr. Hollingsworth falsely claiming that he had not yet received the settlement check.

Of the \$6,000.00 received in settlement on behalf of Mr. Hollingsworth, \$1,800.00 was to be paid to Mr. Hollingsworth and \$2,500.00 was to be paid to his healthcare provider. Mr. McNulty did not pay Mr. Hollingsworth or his healthcare provider until August, 2016. Despite not paying their portions of the settlement until August, 2016, the balance in Mr. McNulty's trust

account dropped to \$216.03 by June 10, 2016. When Mr. McNulty finally paid their shares of the settlement to Mr. Hollingsworth and his healthcare provider he did so with checks drawn on his operating account.

Mr. McNulty's trust account records show him paying a number of personal bills from his trust account.

Mr. McNulty made two false statements to the Board in his initial response to Mr. Hollingsworth's complaint claiming that he did not distribute the proceeds of the settlement sooner because he was unaware that his assistant had deposited the settlement check to his trust account and he had been threatened with contempt in a pending divorce if he made withdrawals from his trust account. Mr. McNulty made two false statements to the Board in a later response to Mr. Hollingsworth's complaint claiming that he had a power of attorney allowing him to endorse the check on behalf of Mr. Hollingsworth and the reason he used his operating account to distribute the settlement was that he was out of trust account checks. All these statements were false.

### **SUPPLEMENTAL PETITION FOR DISCIPLINE**

#### **File No. 46911-5-ES – Complainant – Anthony Hammonds**

Around December, 2015, Mr. Hammonds retained Mr. McNulty to file a divorce for which he paid a \$750 fee. Mr. McNulty did not file the divorce until May 2, 2016. On May 2, 2016, a summons was issued to serve Mr. Hammond's wife by certified mail. A return on the summons was never made. No further summonses were issued. Mr. McNulty took no further action to prosecute the divorce after May 2, 2016.

Mr. Hammonds telephoned Mr. McNulty on numerous occasions in order to determine the status of the divorce but Mr. McNulty did not return Mr. Hammonds' calls. On June 3, 2016, Mr. Hammonds terminated Mr. McNulty's representation via email and requested a refund of the

\$750 fee but Mr. McNulty has not made any refund to Mr. Hammonds.

Mr. McNulty did not respond to the Board's request for a response to Mr. Hammonds' complaint.

**File No. 47121c-5-ES – Complainant – Ebony Woods**

In February, 2014, Ms. Woods retained Mr. McNulty to file a complaint for divorce. Mr. McNulty filed the complaint for divorce on March 3, 2014. On September 26, 2014, Mr. McNulty filed a motion for temporary parenting time and child support. The motion was heard by the court on October 10, 2014. Mr. McNulty submitted a proposed order granting the motion on November 4, 2014. The proposed order was defective and was not entered by the court. Mr. McNulty did not submit a corrected order granting the motion until February 23, 2015. An order was entered by the court granting the motion on May 29, 2015. Mr. McNulty took no further action to prosecute the divorce.

Ms. Woods telephoned Mr. McNulty on numerous occasions in order to determine the status of the divorce. Mr. McNulty did not return Ms. Woods' calls. On April 25, 2017, Ms. Woods filed a motion to substitute counsel in place of McNulty.

Mr. McNulty did not respond to the Board's request for a response to Ms. Woods' complaint.

**File No. 47296-5-ES – Complainant – Mary Patterson**

On July 27, 2011, Ms. Patterson retained Mr. McNulty to represent her as a result of personal injuries sustained by her on August 26, 2010. Mr. McNulty filed suit on behalf of Ms. Patterson in the Circuit Court for Williamson County against Premier Salons, Inc., on August 26, 2011. On March 9, 2015, an order was entered allowing the attorney for the defendant leave to withdraw. Mr. McNulty has taken no action since March 9, 2015 to prosecute the matter.

Ms. Patterson telephoned Mr. McNulty on numerous occasions in order to determine the

status of the case. Mr. McNulty did not return Ms. Woods' calls. Mr. McNulty abandoned his representation of Ms. Patterson.

Mr. McNulty was temporarily suspended by the Tennessee Supreme Court on March 9, 2017. As a result of his temporary suspension, Mr. McNulty was required by Tenn. Sup. Ct. R. 9, § 28.2, to notify Ms. Patterson by certified mail of his suspension within ten days of entry of the Supreme Court order. Mr. McNulty did not notify Ms. Patterson of his suspension. He was required by Tenn. Sup. Ct. R. 9, § 28.7, to file a motion to withdraw from all matters in which he was attorney of record within twenty days of entry of the Supreme Court's order. Mr. McNulty has not filed a motion to withdraw.

Mr. McNulty did not respond to a request for a supplemental response to the complaint.

**File No. 51167-5-ES – Complainant – Trina Jordan**

On June 27, 2014, Ms. Jordan retained Mr. McNulty to represent her in a products liability matter against the manufacturer of defective knee replacement parts. Mr. McNulty did not file a lawsuit on Ms. Jordan's behalf. As a result, her cause of action is barred by the statute of limitations.

Ms. Jordan telephoned Mr. McNulty on numerous occasions in order to determine the status of the matter. Mr. McNulty did not return Ms. Jordan's calls. Mr. McNulty abandoned his representation of Ms. Jordan. Ms. Jordan has made numerous requests of Mr. McNulty that he return her medical records to her but he has not done so. Mr. McNulty did not notify Ms. Jordan of his suspension nor did he return her file to her.

Mr. McNulty did not respond to the Board's request for a response to Ms. Jordan's complaint.

**File No. 51353-5-ES – Complainant – Laura Hurt**

Ms. Hurt retained Mr. McNulty to represent her in an action for personal injuries arising from a motor vehicle accident. In July, 2016, Ms. Hurt agreed to accept a settlement of \$25,000. On August 2, 2016, the responsible party's insurer issued a check in satisfaction of the settlement in the amount of \$25,000 made payable to Laura Owens and McNulty & Associates, PLLC. The check was sent to Mr. McNulty. Without the knowledge or permission of Ms. Hurt, Mr. McNulty endorsed her name on the check and deposited it to his trust account on August 8, 2016.

Having not informed Ms. Hurt of receipt of the check, on September 21, 2016, Ms. Hurt emailed Mr. McNulty inquiring about the status of the settlement. On September 23, 2016, Mr. McNulty emailed Ms. Hurt falsely telling her that the insurance company had mistakenly made the check payable to him personally instead of his law firm and that it would be necessary to obtain a replacement check. Having heard nothing from him in the interim, Ms. Hurt again emailed Mr. McNulty on October 24, 2016 inquiring about the status of the settlement. Beginning October 27, 2016, Ms. Hurt began receiving a series of emails from Mr. McNulty pretending to be his wife and giving false reasons for why Ms. Hurt had not yet received any proceeds from the settlement.

Mr. McNulty misappropriated the \$25,000 settlement.

Mr. McNulty did not respond to the Board's request for a response to Ms. Hurt's complaint.

**File No. 51385c-5-ES – Complainant – Phillip Crews**

Mr. Crews filed suit in the Circuit Court for Davidson County against Hazel Shadrick on March 27, 2013. On July 8, 2015, Mr. McNulty entered an appearance on behalf of Mr. Crews. In late August or early September, 2016, Mr. Crews was deposed by the defendant. Mr. McNulty has taken no action since Mr. Crews' deposition to prosecute the matter.

Mr. Crews telephoned Mr. McNulty on numerous occasions in order to determine the

status of the case. Mr. McNulty did not return Mr. Crews' calls. On July 20, 2017, Mr. Crews' lawsuit was dismissed for failure to prosecute. Mr. McNulty abandoned his representation of Mr. Crews.

Mr. McNulty did not notify Mr. Crews of his suspension and has not filed a motion to withdraw. Mr. McNulty did not respond to the Board's request for a response to Mr. Crews' complaint.

**File No. 42819c-5-ES – Complainant – Irma Schonborg**

Around February, 2012, Ms. Schonborg retained Mr. McNulty to defend her in a domestic relations matter pending in the Circuit Court for Davidson County. Beginning about September, 2015, Ms. Schonborg telephoned Mr. McNulty on numerous occasions in order to determine the status of the matter. Mr. McNulty did not return Ms. Schonborg's calls. Mr. McNulty abandoned his representation of Ms. Schonborg. Ms. Schonborg and her new attorney have made numerous requests of Mr. McNulty that he return her file but he has not done so.

Mr. McNulty did not respond to the Board's request for a response to Ms. Schonborg's complaint.

As a result of the Orders for Default Judgment, all the facts contained in the Petition for Discipline and Supplemental Petition for Discipline are deemed admitted.

**CONCLUSIONS OF LAW**

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.

The preponderance of the evidence establishes that Mr. McNulty has committed the

following violations of the Rules of Professional Conduct.

### **PETITION FOR DISCIPLINE**

#### **File No. 48256-5-ES – Complainant – Nicholas Hollingsworth**

By failing to obtain a written fee agreement, signed by his client, Mr. McNulty violated RPC 1.5(c) (Fees). By endorsing the \$6,000.00 on behalf of Mr. Hollingsworth without his knowledge or consent, Mr. McNulty violated RPC 1.2(a) (Scope of Representation) and 8.4(c) (Misconduct). By failing to respond to Mr. Hollingsworth's efforts to communicate with him regarding the settlement, Mr. McNulty violated RPC 1.4 (Communication). By failing to promptly deliver their shares of the settlement to Mr. Hollingsworth and his healthcare provider, Mr. McNulty violated RPC 1.15(d) (Safekeeping Property and Funds). By using his trust account to pay personal expenses, Mr. McNulty violated RPC 1.15(d) (Safekeeping Property and Funds). By failing to maintain the proceeds of the settlement in his trust account until it was properly distributed, and by misappropriating the proceeds of the settlement, Mr. McNulty violated RPC 1.15(a) (Safekeeping Property and Funds) and 8.4(b) and (c) (Misconduct). By making false statements of material fact to the Board in its investigation of this matter, Mr. McNulty violated RPC 8.1(a) (Bar Admission and Disciplinary Matters). By falsely telling Mr. Hollingsworth that he had not received the settlement check when in fact he had, Mr. McNulty violated RPC 8.4(c) (Misconduct).

### **SUPPLEMENTAL PETITION FOR DISCIPLINE**

#### **File No. 46911-5-ES – Complainant – Anthony Hammonds**

By failing to timely file and prosecute the complaint for divorce, Mr. McNulty violated RPC 1.3 (Diligence) and 3.2 (Expediting Litigation). By failing to respond to Mr. Hammonds' efforts to communicate with him, Mr. McNulty violated RPC 1.4 (Communication). By failing to provide Mr. Hammonds with a refund, Mr. McNulty violated RPC 1.16(d)(6) (Declining and



Terminating Representation). By failing to respond to the Board's request for a response to the complaint, Mr. McNulty violated RPC 8.1(b) (Bar Admission and Disciplinary Matters).

**File No. 47121c-5-ES – Complainant – Ebony Woods**

By failing to timely prosecute the complaint for divorce, Mr. McNulty violated RPC 1.3 (Diligence) and 3.2 (Expediting Litigation). By failing to respond to Ms. Woods' efforts to communicate with him, Mr. McNulty violated RPC 1.4 (Communication). By failing to respond to the Board's request for a response to the complaint, Mr. McNulty violated RPC 8.1(b) (Bar Admission and Disciplinary Matters).

**File No. 47296-5-ES – Complainant – Mary Patterson**

By failing to timely prosecute the case after March 9, 2015, Mr. McNulty violated RPC 1.3 (Diligence) and 3.2 (Expediting Litigation). By failing to respond to Ms. Patterson's efforts to communicate with him, Mr. McNulty violated RPC 1.4 (Communication). By abandoning his representation of Ms. Patterson, Mr. McNulty violated RPC 1.16(d) (Declining and Terminating Representation). By failing to respond to the Board's request for additional information, Mr. McNulty violated RPC 8.1(b) (Bar Admission and Disciplinary Matters). By failing to notify Ms. Patterson of his suspension, and by failing to file a motion to withdraw, Mr. McNulty knowingly failed to comply with the Supreme Court order in violation of RPC 8.4(g) (Misconduct).

**File No. 51167-5-ES – Complainant – Trina Jordan**

By failing to timely file a case on behalf of Ms. Jordan, Mr. McNulty violated RPC 1.1 (Competence) and 1.3 (Diligence). By failing to respond to Ms. Jordan's efforts to communicate with him, Mr. McNulty violated RPC 1.4 (Communication). By abandoning his representation of Ms. Jordan, and by failing to return her medical records to her, Mr. McNulty violated RPC 1.16(d) (Declining and Terminating Representation). By failing to respond to the Board's request for a response to the complaint, Mr. McNulty violated RPC 8.1(b) (Bar Admission and

Disciplinary Matters). By failing to notify Ms. Jordan of his suspension, and by failing to return her file to her, Mr. McNulty knowingly failed to comply with the Supreme Court order in violation of RPC 8.4(g) (Misconduct).

**File No. 51353-5-ES – Complainant – Laura Hurt**

By misappropriating the settlement, Mr. McNulty violated RPC 1.15(a) and (d) (Safekeeping Property and Funds) and 8.4(b) and (c) (Misconduct). By forging Ms. Hurt's endorsement to the settlement check, Mr. McNulty violated RPC 8.4(b) and (c). By making false statements to Mr. Hurt about why she had not received the funds of the settlement, Mr. McNulty violated RPC 8.4(c). By failing to respond to the Board's request for a response to the complaint, Mr. McNulty violated RPC 8.1(b) (Bar Admission and Disciplinary Matters).

**File No. 51385c-5-ES – Complainant – Phillip Crews**

By failing to timely prosecute the case after Mr. Crews' deposition, Mr. McNulty violated RPC 1.3 (Diligence) and 3.2 (Expediting Litigation). By failing to respond to Mr. Crews' efforts to communicate with him, Mr. McNulty violated RPC 1.4 (Communication). By abandoning his representation of Mr. Crews, Mr. McNulty violated RPC 1.16(d) (Declining and Terminating Representation). By failing to respond to the Board's request for a response to the complaint, Mr. McNulty violated RPC 8.1(b) (Bar Admission and Disciplinary Matters). By failing to notify Mr. Crews of his suspension, and by failing to file a motion to withdraw, Mr. McNulty knowingly failed to comply with the Supreme Court order in violation of RPC 8.4(g) (Misconduct).

**File No. 42819c-5-ES – Complainant – Irma Schonborg**

By failing to respond to Ms. Schonborg's efforts to communicate with him, Mr. McNulty violated RPC 1.4 (Communication). By abandoning his representation of Ms. Schonborg, and by failing to return her file to her, Mr. McNulty violated RPC 1.16(d) (Declining and Terminating Representation). By failing to respond to the Board's request for a response to the complaint, Mr.

McNulty violated RPC 8.1(a) (Bar Admission and Disciplinary Matters)

**Rule 8.4(a)**  
**MISCONDUCT**

Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a), Misconduct.

**APPLICATION OF ABA STANDARDS**

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

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

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

Mr. McNulty misappropriated Mr. Hollingsworth's \$6,000 settlement and Ms. Hurt's \$25,000 settlement.

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.

Mr. McNulty abandoned his practice. He abandoned his representation of: Mr. Hammonds when he took a fee, filed a divorce and did nothing else; stopped working on Ms. Woods' divorce; abandoned Ms. Patterson's personal injury case; never filed Ms. Jordan's products liability case; did nothing to prosecute Mr. Crews' lawsuit; and, did nothing to represent

Ms. Schonborg in her domestic relations case. In each instance, he knowingly failed to perform services for his clients.

- 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.

Mr. McNulty knowingly deceived Mr. Hollingsworth when he sent him three separate emails telling him that he had not yet received the settlement check in an effort to cover up his misappropriation. He also knowingly deceived Ms. Hurt by claiming he had not yet deposited the settlement check when he had, and then pretending to be his wife and making excuses for why the settlement had not yet been distributed, again all in an effort to cover up his misappropriation.

- 5.11 Disbarment is generally appropriate when:

- (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.

Mr. McNulty engaged in acts of dishonesty when he made four separate false statements to the Board in his responses to the Hollingsworth complaint in an effort to cover up his misappropriation.

- 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.

Mr. McNulty violated his duty as a professional when: he failed to respond to a request for information from the Board in seven different complaints; he failed to comply with the Supreme Court's order temporarily suspending him by notifying his clients, returning their files and withdrawing from their cases; and, he failed to obtain a written fee agreement in Mr. Hollingsworth's contingency fee case.

Pursuant to ABA Standard 9.22, aggravating factors are present in this case. The following aggravating circumstances justify an increase in the degree of discipline to be imposed against Mr. McNulty:

1. Dishonest or selfish motive: Mr. McNulty had a dishonest and selfish motive when he misappropriated funds from Mr. Hollingsworth and Ms. Hurt, as well as when he made false statements to Mr. Hollingsworth, Ms. Hurt and the Board.

2. Pattern of Misconduct: Mr. McNulty displayed patterns of misconduct by abandoning his clients in several different matters, by misappropriating from two different clients, by attempting to deceive two different clients and by failing to respond to the Board's requests for information in seven different complaints.

3. Multiple offenses: Mr. McNulty committed violations of RPC 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, 8.1 and 8.4.

4. Bad faith obstruction of the disciplinary proceeding: Mr. McNulty obstructed the disciplinary proceeding by not responding to the Board's requests for information.

5. Submission of false evidence: Mr. McNulty submitted false statements to the Board in the form of his responses to the Hollingsworth complaint.

6. Respondent's substantial experience in the practice of law: Mr. McNulty was licensed to practice law in 2008.

Mr. McNulty's lack of a prior disciplinary history is the only mitigating circumstance.

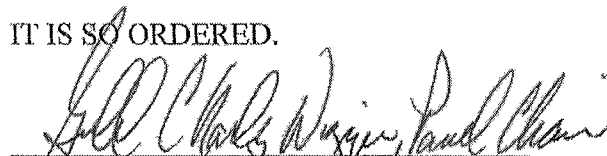
Based upon the evidence and admissions in this matter, the appropriate discipline is a disbarment from the practice of law. In addition, pursuant to Tenn. Sup. Ct. R. 9, 12.7, Mr. McNulty shall be required to make restitution to Anthony Hammonds in the amount of \$750.00 and to Laura Hurt in the amount of \$25,000.00. In the event restitution is paid by the Tennessee Lawyers Fund for Client Protection (TLFCP), Mr. McNulty shall reimburse TLFCP the amount

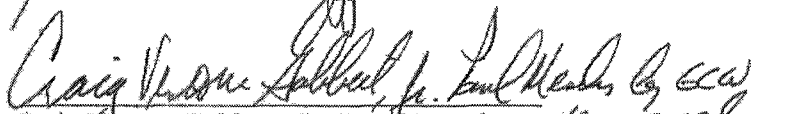
so paid. Full payment of restitution by Mr. McNulty shall be a condition precedent to the consideration of reinstatement.


**JUDGMENT**

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Mr. McNulty should be disbarred from the practice of law. As a condition of reinstatement, Mr. McNulty shall make restitution as set forth above.

IT IS SO ORDERED.

  
Gerald Charles Wigger, Panel Chair

  
Craig Vernon Gabbert, Jr., Panel Member *not experienced*

  
Patrick Matthew Potempa, Panel Member *not experienced*

**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, Michael John McNulty, 1590 North Ocoee Street, Cleveland, TN 37311, via U.S. First Class Mail, and hand-delivered to Disciplinary Counsel, William C. Moody, this the 5<sup>th</sup> day of December, 2017.

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

Rita Webb  
Executive Secretary