

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

FILED

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BOARD OF PROFESSIONAL
RESPONSIBILITY

JW
EXEC. SECRETARY

**IN RE MICHAEL JOHN McNULTY
BPR No. 025974, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Bradley County)**

DOCKET NO. 2018-2821-3-KH

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This matter came to be heard on August 17, 2018, for a final hearing. Present were John Francis Kimball, Hearing Panel Chair; John McCormick Carson, Hearing Panel Member; Howard Chris Trew, Hearing Panel Member; and Krisann Hodges, Deputy Chief Disciplinary Counsel for the Board of Professional Responsibility. Mr. McNulty did not appear.

STATEMENT OF THE CASE

On January 29, 2018, the Tennessee Board of Professional Responsibility (the "Board") filed a Petition for Discipline against the Respondent, Michael John McNulty. A Motion for Default and That Charges Be Admitted was filed on July 13, 2018, noting the attempts at service and showing that on June 8, 2018, Mr. McNulty was personally served process at 1590 N. Ocoee Street, Cleveland, Tennessee, 37311 by the Sheriff's Department of Bradley County. On August 2, 2018, the hearing panel entered an Order of Default. A Notice of Hearing was sent by the Executive Secretary for the Board to all parties and, specifically, to Mr. McNulty at 1590 N. Ocoee Street, Cleveland, Tennessee, 37311 and attempted by email to michael@mcnultyassociatestn.com. A final hearing was held on August 17, 2018 in Athens, Tennessee.

FINDINGS OF FACT

The following facts have been deemed admitted pursuant to the Order of Default entered on August 2, 2018.

1. Michael John McNulty is an attorney admitted by the Supreme Court of Tennessee in 2008 to practice law in the State of Tennessee. Mr. McNulty's most recent primary address as registered with the Board of Professional Responsibility is 1590 North Ocoee Street, Cleveland, TN 37311, being in Disciplinary District III. The Respondent's Board of Professional Responsibility number is 25974.

File No. 51550c-5-ES- Complaint of Wade Thomas

2. On February 24, 2017, the Board of Professional Responsibility ("Board") received a complaint in its Consumer Assistance Program ("CAP") department from Wade Thomas alleging unethical conduct by Mr. McNulty. The complaint was forwarded by letter to Mr. McNulty on March 22, 2017 for his response within ten (10) days. See Exhibit 1.

3. After preliminary investigation in the CAP department, the file was transferred to the Board's Investigations department on May 2, 2017. The Board forwarded the original complaint and CAP file to Mr. McNulty by letter dated May 2, 2017 and again requested a response within ten (10) days. See Exhibit 2.

4. Having received no response, the Board sent a reminder letter to Mr. McNulty on May 22, 2017, requesting a response within seven (7) days to its May 2, 2017 letter. The May 22, 2017 letter was also emailed to Mr. McNulty on May 23, 2017. The Board received confirmation from the server that their email had been delivered and read. See Exhibit 3.

5. On June 14, 2017, the Board sent a Notice of Petition for Temporary Suspension to Mr. McNulty via regular and Certified Mail. On August 11, 2017, the Board's Certified Mail to

Mr. McNulty was returned with reason "Unclaimed". See Exhibit 4.

6. On September 12, 2017, the Board received additional information from Mr. Thomas which was forwarded by letter to Mr. McNulty on September 18, 2017 for his response within ten (10) days. This information included a PayPal request for payment from Mr. McNulty, sent on April 1, 2015, to Mr. Thomas stating that "[T]his is a request for the retainer to being work on your custody case. Once this retainer has been paid, we will begin work on your case." The information also included proof of payment by Mr. Thomas to Mr. McNulty in the amount of \$1,125.00, paid on April 3, 2015. See Exhibit 5.

7. The Board has not received a response from Mr. McNulty to any of the disciplinary inquiries in this matter.

8. On or about April 3, 2015, Wade Thomas retained Mr. McNulty to represent him to establish a visitation schedule for his son on an existing parenting plan.

9. Despite numerous attempts to contact Mr. McNulty, Mr. Thomas could not get a substantive response.

10. Mr. Thomas scheduled a meeting with Mr. McNulty for July 13, 2015.

11. On July 13, 2015, Mr. McNulty emailed Mr. Thomas and advised that he was in a car accident and had to cancel the meeting.

12. On July 29, 2015, Mr. McNulty sent a draft proposal letter to Mr. Thomas.

13. July 29, 2015 was the last time Mr. Thomas heard from Mr. McNulty despite numerous attempts to contact him.

14. As a result of Mr. McNulty's lack of communication and action, Mr. Thomas was forced to hire other counsel.

15. Mr. McNulty has not refunded to Mr. Thomas any portion of the \$1,125.00 fee.

16. Although Mr. McNulty provided professional services to Mr. Thomas, he did not provide sufficient services to exhaust the \$1,125.00 fee.

File No. 54701-3-ES – Informant Lucas Bottorff, Esq.

17. On October 25, 2017, the Board received a letter from Lucas Bottorff, Esq. alleging unethical conduct by Mr. McNulty, and the same was forwarded to Mr. McNulty by letter on October 31, 2017, for response within ten (10) days. See Exhibit 6.

18. On November 14, 2017, the Board sent a reminder letter via regular mail and email to Mr. McNulty requesting his response to the October 31, 2017 letter. The email was sent with a delivery receipt and on November 14, 2017, the server indicated that delivery was delayed. On November 16, 2017, the server indicated that email delivery had failed. See Exhibit 7.

19. Mr. McNulty has failed to respond to the Board concerning this matter.

20. On March 3, 2017, Mr. McNulty was temporarily suspended from the practice of law by Order of the Supreme Court of Tennessee, Docket No. M2017-00462-SC-BAP-BP, for misappropriation and for posing a threat of substantial harm to the public. See Exhibit 8.

21. On or about October, 2017, Lucas Bottorff, Esq. received a call from Dr. Joseph Gebhardt.

22. Dr. Gebhardt advised that he had received an email from Mr. McNulty's email account; however, the email contained Mr. Bottorff's signature instead of Mr. McNulty's.

23. The email, dated September 21, 2016, indicated that Mr. Bottorff will be handling a case in Mr. McNulty's absence.

24. Mr. Bottorff advised the Board that he had not sent this email to Dr. Gebhardt nor had he given permission to anyone to send the email on his behalf.

25. Mr. Bottorff has not worked with Mr. McNulty since his departure from Mr.

McNulty's firm in early 2015.

26. The email from Mr. McNulty's account was fraudulently sent, claiming it was from Mr. Bottorff.

27. It contains reference to Mr. McNulty's email account and is clearly sent through his law firm. See Exhibit 6.

28. Mr. McNulty has a prior disciplinary history. On February 15, 2018, Mr. McNulty was disbarred for misappropriation, misrepresentation to clients, lack of diligence, and failure to communicate with clients or the Board. See Exhibit 9.

CONCLUSIONS OF LAW

Pursuant to Tenn. Sup. Ct. R. 9, 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 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 (hereinafter "RPC") of the State of Tennessee shall constitute misconduct and be grounds for discipline. Mr. McNulty has failed to respond to the Petition for Discipline. Further, he has failed to conduct herself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited within the Petition for Discipline.

A. Violations of the Rules of Professional Conduct

The acts and omissions by Mr. McNulty constitute ethical misconduct in violation of Rules of Professional Conduct.

We find that Mr. McNulty has violated the following RPCs with respect to the complaint filed by Wade Thomas: 1.3, Diligence; 1.4, Communication; 1.5(a), Fees; 1.16 (d), Declining and Terminating Representation; 3.2, Expediting Litigation; and 8.4(a), Misconduct. Mr. McNulty

requested and received \$1,125.00 for legal services, paid by Mr. Thomas on April 3, 2015. Thereafter, Mr. McNulty performed minimal services and he abandoned the representation of Mr. Thomas. Despite numerous attempts to contact Mr. McNulty, Mr. Thomas could not get a substantive response. Mr. McNulty cancelled the July meeting and, after a letter sent by Mr. McNulty on July 29, 2015, Mr. Thomas was not able to communicate with Mr. McNulty any further. Mr. Thomas was forced to find new counsel.

We find that Mr. McNulty has violated the following RPCs with respect to the complaint filed by Luke Bottorff, Esq.: 4.1(a), Truthfulness in Statements to Others; and 8.4(a) and (c), Misconduct. Mr. Bottorff has not worked with Mr. McNulty since his departure from Mr. McNulty's firm in early 2015. The email provided to the Board clearly shows that Mr. McNulty sent this email on September 21, 2016. The email falsely represents that Mr. Bottorff is representing and communicating with Dr. Gebhardt.

In both cases, Mr. McNulty has violated RPC 8.1(b), Bar Admission and Disciplinary Matters, for failure to respond to the Board in these disciplinary matters.

B. Application of the ABA Standards

When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, ("ABA Standards") pursuant to Section 15.4, Rule 9 of the Rules of the Supreme Court.

The following ABA Standards apply in this matter:

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.
- 4.61 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.
- 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.
- 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.
- 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.

The hearing panel finds no evidence of mitigating factors. The following aggravating factors have been demonstrated by a preponderance of the evidence:

Prior Disciplinary Offenses: Mr. McNulty was disbarred on February 15, 2018, for misappropriation, misrepresentation to clients, lack of diligence, and failure to communicate with clients or the Board. See Exhibit 9.

Pattern of Misconduct and Multiple Violations: Mr. McNulty demonstrated a pattern of misconduct and multiple violations for failure to communicate, failure to exercise appropriate diligence, improper retention of an unearned fee, failure to respond to the Board, and misrepresentation.

Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency: Mr. McNulty failed to respond to either disciplinary complaint.

Indifference to making restitution: Mr. McNulty has not made restitution to Mr. Thomas.

Refusal to acknowledge wrongful nature of conduct: Similarly, Mr. McNulty has failed to acknowledge the wrongful nature of his conduct.

Dishonest or selfish motive: Mr. McNulty's conduct in the Bottorff complaint demonstrates a dishonest motive.

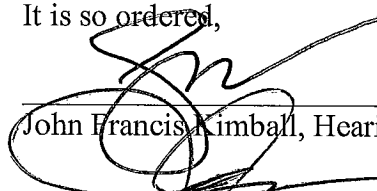
Substantial experience in the practice of law: Mr. McNulty has been licensed to practice law for ten (10) years.

JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, the hearing panel finds that Mr. McNulty should be disbarred.

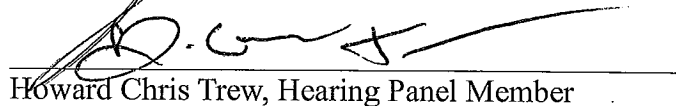
Further, Mr. McNulty shall be required to pay restitution to Mr. Wade Thomas in the amount of \$1,125.00 prior to any application for reinstatement. To the extent restitution is paid by the Tennessee Lawyer's Fund for Client Protection ("TLFCP"), Mr. McNulty shall reimburse TLFCP for said amount and shall remain obligated to the individual(s) listed above for any unpaid restitution.

It is so ordered,



John Francis Kimball, Hearing Panel Chair

John McCormick Carson, Hearing Panel Member

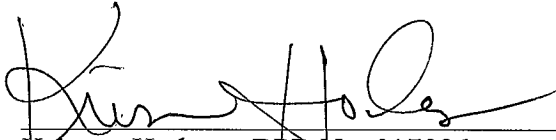


Howard Chris Trew, Hearing Panel Member

NOTICE OF APPEAL

The findings and judgment of the hearing panel may be appealed pursuant to Tenn. Sup. Ct. R. 9, Section 33. See also Tenn. Sup. Ct. R. 9, Section 31(a).

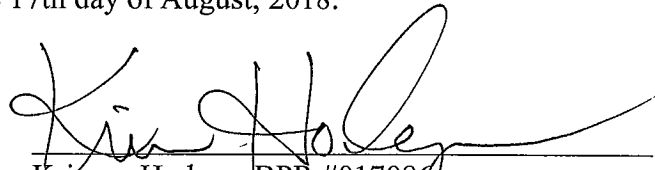
Prepared by:



Krisann Hodges, BPR No. 017086
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10 Cadillac Drive, Suite 220
Brentwood, Tennessee 37027
(615) 361-7500

Certificate of Service

I certify that a copy of the foregoing *FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT* has been served upon Respondent, Michael John McNulty, by First Class U. S. Mail, at 1590 North Ocoee Street, Cleveland, Tennessee, 37311 and by email address michael@mcnultyassociatestn.com on this the 17th day of August, 2018.



Krisann Hodges, BPR #017086
Deputy Chief Disciplinary Counsel
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027
(615) 361-7500

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, and hand-delivered to Krisann Hodges, Disciplinary Counsel, on this the 17th day of August, 2018.



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.