

FILED

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

BOARD OF PROFESSIONAL  
RESPONSIBILITY  
*kw*  
EXEC. SEC'Y

IN RE: JACK LESTER MEWBORN, JR.,  
BPR #019832, Respondent,  
An Attorney Licensed and  
Admitted to the Practice of  
Law in Tennessee  
(Shelby County)

DOCKET NO. 2011-2034-9-KB

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**JUDGMENT**

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This matter came on for hearing before a duly appointed Hearing Panel on August 17, 2011, upon a Petition for Discipline filed April 18, 2011, by the Board of Professional Responsibility ("Board") against Jack Lester Mewborn, Jr., Respondent, and upon an Order of Default entered on June 16, 2011. Present were Gregory Mangrum, Panel Chair; Charles Harrell, Panel Member; Felisa Cox, Panel Member; Kevin D. Balkwill, Disciplinary Counsel; and Jack Lester Mewborn, Jr., who made an appearance in the cause. Upon testimony of Respondent, argument of counsel, evidence presented, and upon the entire record in this cause, the Hearing Panel makes the following findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 9, Section 8.

**STATEMENT OF THE CASE**

On November 10, 2010, the Tennessee Supreme Court suspended Respondent pursuant to Rule 9, Section 4.3, for Respondent's failure to respond to two (2) disciplinary complaints against him. On March 11, 2011, the Board authorized the filing of a Petition for Discipline against Respondent.

A Petition for Discipline was filed in this cause on April 18, 2011. Respondent failed to respond to the Petition and the Board filed a Motion for Default Judgment and that Allegations in the Petition Be Deemed Admitted on May 17, 2011. The Board referred Respondent to the Tennessee Lawyer's Assistance Program on June 9, 2011. This Panel granted the Board's Motion for Default Judgment on June 16, 2011. The Board submitted a pre-trial brief for the Panel's consideration on July 27, 2011.

### **FINDINGS OF FACT**

The allegations in the Petition for Discipline have been deemed admitted due to the Respondent's failure to answer. Those facts are incorporated herein and the Panel's conclusions are based fully on each allegation deemed admitted. Additionally, Respondent testified under oath that had he filed an Answer to the Petition, he would have admitted to all of the allegations contained therein.

#### **File No. 33461-9-RW – Informant – Stephen Libby, Esq.**

1. Respondent was a former associate in the law firm of Informant, Stephen Libby. On or about January 18, 2009, Respondent forged the name of his client, Yolanda Motley, on an oath attached to discovery responses. Respondent forged the name of Mr. Libby on the Notary Public line of Ms. Motley's discovery responses. Respondent accessed Mr. Libby's Notary stamp without authorization and affixed an impression of the stamp on Ms. Motley's discovery responses. On or about February 19, 2009, Respondent filed Ms. Motley's discovery responses with the Shelby County Circuit Court.

2. On or about January 20, 2009, Respondent forged the name of his client, John Copper, on an oath attached to discovery responses. Respondent forged the name of Mr. Libby on the Notary Public line of Mr. Copper's discovery responses. Respondent accessed Mr.

Libby's Notary stamp without authorization and affixed an impression of the stamp on Mr. Copper's discovery responses.

3. On July 27, 2010, Respondent made an unauthorized charge toward Mr. Libby's checking account in the amount of \$44.00.

4. On August 2, 2010, Respondent made unauthorized charges toward Mr. Libby's checking account in the amounts of \$22.00, \$34.33, and \$15.33.

5. On August 3, 2010, Respondent made an unauthorized charge toward Mr. Libby's checking account in the amount of \$10.00.

6. On August 4, 2010, Respondent made an unauthorized charge toward Mr. Libby's checking account in the amount of \$23.57.

7. On August 16, 2010, Respondent made an unauthorized charge toward Mr. Libby's checking account in the amount of \$15.00.

8. Upon discovery of the unauthorized checking account charges, Mr. Libby contacted the parties to whom payments were issued and Respondent's name was disclosed as the party who initiated the charges.

9. On August 8, 2010, Respondent made unauthorized charges toward Mr. Libby's PayPal account in the amounts of \$120.06 and \$107.87. PayPal is an online account allowing payments and money transfers to be made through the internet.

10. On August 9, 2010, Respondent made an unauthorized charge toward Mr. Libby's PayPal account in the amount of \$349.85.

11. Upon discovery of the unauthorized PayPal account charges, Mr. Libby contacted the parties to whom payments were issued and Respondent's name was disclosed as the party who initiated the charges.

**File No. 33488-9-RW – Complainant – Board of Professional Responsibility**

12. On or about September 16, 2010, the Board discovered during its investigation of File No. 33488-9-RW that the Respondent had been charged with felony drug offenses. The Board received confirmation from Assistant District Attorney Perry McClew with the Shelby County Drug Court that Respondent had been charged with Promoting the Manufacturing of Methamphetamines, Initiation of the Methamphetamine Manufacturing Process, Possession of Methamphetamines with Intent to Manufacture, Deliver or Sell, and Possession of Drug Paraphernalia, and was presently in an 18-month drug court residential treatment program.

13. On or about August 23, 2010, police officers were called to 7788 Sunny Trail Drive, Bartlett, Tennessee, in regard to a Trespassing/Emergency Commitment complaint. Respondent was found in a vehicle located at 7788 Sunny Trail Drive, Bartlett, Tennessee. While talking with Respondent, police officers noticed several syringes and two (2) empty packs of pseudoephedrine in Respondent's vehicle. Police officers also noticed a mason jar containing lithium batteries and a coffee filter with a white powdery substance in the center console of Respondent's vehicle. Police officers conducted a thorough search of Respondent's vehicle and found the following items commonly used in the manufacture of methamphetamine: hydrogen peroxide, plastic tubing, lithium batteries, mason jars, camping fuel, pseudoephedrine blister packs, measuring cups, salt, ammonium nitrate, coffee filters, and sodium hydroxide. Police officers tested a white powdery substance present in the plastic tubing and coffee filter which tested positive for methamphetamine. Respondent was arrested by the City of Bartlett Police Department for the charges referenced above. On or about August 27, 2010, Respondent appeared in Bartlett City Court and waived his right to a preliminary hearing and bound his case over to the Shelby County Grand Jury. Prior to indictment, Respondent entered into the Shelby

County Drug Court program and is currently undergoing an 18-month residential treatment program.

### **CONCLUSIONS OF LAW**

Pursuant to Tenn. S. Ct. R. 9, Section 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 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.

As noted above, Respondent has failed to answer the Petition for Discipline. The Hearing Panel has already entered an Order of Default and, therefore, pursuant to Tenn. S. Ct. R. 9, Section 8.2 the charges are deemed admitted. Further, the Panel finds that the Board has demonstrated ethical misconduct by Respondent as alleged in the Petition for Discipline by a preponderance of the evidence.

### **Violation of Duty Owed to the Public**

Respondent engaged in the illegal possession and manufacture of methamphetamine. Respondent testified that he has been addicted to methamphetamine for the past 14 years, which preceded his licensure to practice law in Tennessee. Additionally, Respondent made numerous unauthorized charges and accessed funds which did not belong to him for his own personal use and benefit and to the deprivation of his former employer, Stephen Libby. Respondent's conduct is in violation of RPC 8.4(a) and (b) (Misconduct).

### **Violation of Duty Owed to the Legal System**

Respondent breached his duty owed the legal profession by forging legal documents and, in one instance, filing a forged document with the court. Respondent's conduct was deceptive, prolonged the affected civil actions, and was prejudicial to the clients involved. Respondent's conduct violated RPC 8.4(a), (c), and (d) (Misconduct).

### **Violation of Duty Owed to the Profession**

Respondent breached his duty owed to the profession by failing to respond to the complaints against him, which ultimately led to his suspension pursuant to Tenn. S. Ct. R. 9, Section 4.3. Respondent's conduct is in violation of RPC 8.1(b) (Bar Admission and Disciplinary Matters).

### **ABA Standards**

After hearing arguments from the Board and Respondent, the Panel concludes that ABA Standard 5.11(a), recommending disbarment, does not apply because there was no finding that Respondent intended to sell, distribute, or import methamphetamine as required by the provision. Further, the Panel has determined that ABA Standard 5.11(b) is inapplicable because "any other intentional conduct" does not refer to criminal offenses, whereas Section 5.11(a) does refer to criminal offenses. The Panel has determined, therefore, that the serious crime of possession and manufacture of methamphetamine does not fit within either subsection of ABA Standard 5.11.

The Panel finds that ABA Standard 5.12, recommending suspension, does apply to Respondent's disciplinary misconduct because it specifically refers to "criminal conduct." The Panel further finds that Respondent's conduct seriously adversely reflects on his fitness to practice law.

### **Aggravating and Mitigating Factors**

The Panel finds that the Board has shown the following aggravating factors:

- 1) dishonest or selfish motive; and
- 2) multiple offenses.

The Panel finds that Respondent has shown the following mitigating factors:

- 1) personal or emotional problems;
- 2) physical or mental disability or impairment; and
- 3) interim rehabilitation.

### **JUDGMENT**

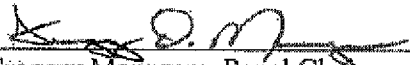
Accordingly, it is the decision of the Panel that Respondent should be suspended from the practice of law for four (4) years, which relates back to Respondent's temporary suspension on November 10, 2010. As a condition of reinstatement, Respondent must provide restitution to Stephen Libby in the amount of \$742.01 or, in the alternative, provide proof from Mr. Libby showing that the restitution or debt has been forgiven. As a further condition of reinstatement, Respondent must successfully complete his drug court program, enter into a Monitoring Agreement with the Tennessee Lawyer's Assistance Program, and adhere to the conditions therein.

Payment of restitution or the forgiveness of same and payment of the Board's costs shall be a condition precedent to reinstatement. Further, in light of the disposition of this disciplinary proceeding, the Hearing Panel recommends that the temporary suspension pursuant to Section 4.3 of Supreme Court Rule 9 be dissolved upon entry of the Order of Enforcement.

### **NOTICE**

This judgment may be appealed pursuant to Tenn. S. Ct. R. 9, Section 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.

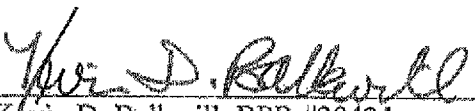
  
Gregory Mangrum, Panel Chair

  
Charles Harrell, Panel Member

  
Felisa Cox, Panel Member

Respectfully Submitted:

Nancy S. Jones, BPR #16369  
Chief Disciplinary Counsel

By:   
Kevin D. Balkwill, BPR #20424  
Disciplinary Counsel  
TN Board of Professional Responsibility  
10 Cadillac Drive, Suite 220  
Brentwood, TN 37027  
(615) 695-0943