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

BOARD OF PROFESSIONAL
RESPONSIBILITY

REW EXEC. SEC'Y

**IN RE: DAVID GARRETT MULLINS,
BPR # 24158, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Sullivan County)**

DOCKET No. 2011-2095-1-SG

JUDGMENT OF THE HEARING PANEL

Pursuant to Tenn. Sup. Ct. R. 9, § 8.2, this Hearing Panel heard this matter on September 6, 2012, with Mr. Mullins (appearing pro se) and Disciplinary Counsel Sandy Garrett present. Based upon the record, testimony of Mr. Mullins at the hearing, exhibits, and arguments of Mr. Mullins and of Disciplinary Counsel, the Hearing Panel makes the following findings of fact and conclusions of law and submits the following judgment:

FINDINGS OF FACT

1. The following findings of fact have been deemed admitted by this Panel's Orders entered March 29, 2012, June 7, 2012, and August 6, 2012:
2. Ms. Willette retained Mr. Mullins on approximately August 9, 2010 to handle two (2) cases concerning Ms. Willette's rental property.
3. Ms. Willette paid Mr. Mullins approximately \$1,400.00 for his representation.

4. Ms. Willette obtained a \$4,000.00 Judgment in General Sessions Court of Sullivan County against Sammy Smile on September 13, 2010.

5. Mr. Mullins advised Ms. Willette to appeal the General Session Court's decision and a Notice of Appeal was filed approximately September 13, 2010.

6. Mr. Mullins agreed to represent Ms. Willette on her second case, but failed to take any action on behalf of Ms. Willette.

7. Mr. Mullins neglected Ms. Willette's cases.

8. Ms. Willette wrote letters to Mr. Mullins asking Mr. Mullins to communicate with her and to take action on her cases.

9. Mr. Mullins failed to keep Ms. Willette informed and failed to respond to requests for information from Ms. Willette.

10. On October 31, 2011, Disciplinary Counsel wrote Mr. Mullins for additional information regarding this complaint. Mr. Mullins failed to respond to the Board's October 31, 2011 request for information.

11. Mr. Mullins was hired in late April, 2011 and/or early May, 2011 to represent Joyce White in Federal Court on drug charges.

12. Mr. Mullins was paid \$1,000.00 for his representation of Joyce White in the United States District Court.

13. When Mr. Mullins failed to appear on behalf of Ms. White, the United States Magistrate Judge appointed Guy Blackwell to represent Joyce White in *U.S.A. v. White*, No. 2:11-CR-47.

14. Mr. Mullins failed to take any action to represent Joyce White.

15. The Magistrate Judge attempted but was unable to contact Mr. Mullins about whether he represented Ms. White.

16. Mr. Mullins failed to refund any of the \$1,000.00 paid to him for his representation of Joyce White.

17. Mr. Mullins failed to communicate with and/or respond to requests for information from Joyce White and/or her family.

18. Mr. Mullins accepted a fee to represent Joyce White and then abandoned her case.

19. On August 22, 2011, the Tennessee Supreme Court suspended Mr. Mullins for non-payment and failure to comply with IOLTA requirements.

20. On August 31, 2011, while suspended, Mr. Mullins appeared in General Sessions Court in Bristol, Tennessee on behalf of Ronnie Lee Tolbert.

21. On August 31, 2011, Mr. Mullins failed to request any continuance of Mr. Tolbert's case and/or failed to advise the Assistant District Attorney or the Judge that Mr. Mullins was suspended.

22. Mr. Tolbert retained Mr. Mullins on approximately August 12, 2011 to represent him in *State of Tennessee v. Tolbert*.

23. Mr. Mullins was paid \$500.00 to represent Mr. Tolbert.

24. On August 22, 2011, Mr. Mullins was suspended by the Tennessee Supreme Court for non-payment and failure to comply with IOLTA requirements.

25. On approximately September 21, 2011, Mr. Mullins advised Mr. Tolbert that his law license had been suspended and Mr. Mullins would telephone Mr. Tolbert when Mr. Mullins had the suspension straightened out.

26. After advising Mr. Tolbert of his suspension, Mr. Mullins failed to accept or return Mr. Tolbert's telephone calls.

27. Mr. Mullins abandoned his representation of Mr. Tolbert.

28. Mr. Mullins failed to make any refund of the \$500.00 fee paid to Mr. Mullins for his representation of Mr. Tolbert.

29. The Supreme Court suspended Mr. Mullins for non-payment and IOLTA noncompliance on August 22, 2011.

30. On September 6, 2011, Mr. Mullins appeared in the Sullivan County Criminal Court, while suspended, on behalf of Brian Miller in *State v. Miller*.

31. On September 6, 2011, Mr. Mullins, while suspended, re-set Mr. Miller's case and spoke with Assistant District Attorney Kent Chitwood to negotiate a plea for Mr. Mullins's client, Mr. Miller.

32. Mr. Mullins failed to request a continuance and/or advise Assistant District Attorney Chitwood and/or the Court of Mr. Mullins's suspension.

33. The Supreme Court suspended Mr. Mullins for non-payment and IOLTA noncompliance on August 22, 2011.

34. On September 1, 2011, Judge Montgomery appointed Mr. Mullins to represent Nicolas Overbay in Sullivan County Criminal Court.

35. On September 6, 2011, Mr. Mullins appeared in Sullivan County Criminal Court, while suspended, to represent Mr. Overbay and another client of Mr. Mullins, Brian Miller.

36. Mr. Mullins failed to advise Judge Montgomery of his suspension.
37. After learning of Mr. Mullins's suspension, Judge Montgomery contacted Mr. Mullins and instructed him to self-report to the Board of Professional Responsibility his appearance as an attorney while suspended and to provide the Judge with a copy of his self-report letter.
38. Mr. Mullins did not self-report to the Board as instructed by Judge Montgomery.
39. Mr. Mullins misrepresented to Judge Montgomery that he had self-reported by sending to the Judge a copy of Respondent's self-report which Mr. Mullins never sent to the Board.
40. Mr. Mullins was retained to represent Ms. McNamara's son, Brian Miller, in *State v. Miller*, in the Criminal Court for Sullivan County, TN.
41. Mr. Mullins was paid approximately \$2,820.00 for his representation of Brian Miller.
42. Mr. Mullins neglected Brian Miller's case.
43. Mr. Mullins failed to communicate with his client and/or the client's family and failed to respond to Brian Miller's and his family's questions about Brian Miller's case.
44. Mr. Mullins failed to advise his client, Brian Miller, of Mr. Mullins's suspensions on August 22, 2011.
45. On September 6, 2011, Mr. Mullins appeared in Sullivan County Criminal Court, while suspended, on behalf of Brian Miller.
46. Ms. McNamara requested but did not receive from Mr. Mullins any refund regarding the fees paid Mr. Mullins for representation of Brian Miller.
47. On approximately July 7, 2010, Mr. Weston retained Mr. Mullins to represent him in a divorce.

48. Mr. Weston paid Mr. Mullins \$1,000.00 for his representation.
49. After preparing a Complaint and Marital Dissolution Agreement, Mr. Mullins failed to take any further action on Mr. Weston's divorce.
50. Mr. Mullins failed to accept or return telephone calls, failed to respond to letters from Mr. Weston, and missed scheduled appointments with Mr. Weston.
51. Mr. Weston wrote Mr. Mullins on October 27, 2011 asking for a refund due to Mr. Mullins' fifteen (15) months of ignoring the Plaintiff's calls and missing appointments.
52. Mr. Mullins abandoned Mr. Weston's case.
53. Ms. Yow retained Mr. Mullins on approximately January 30, 2008 to obtain grandparent visitation rights and/or custody of her grandchild.
54. Ms. Yow paid Mr. Mullins \$1,500.00 for his representation.
55. Mr. Mullins prepared a Motion to Divest Jurisdiction which Mr. Mullins never filed.
56. Mr. Mullins failed to keep Ms. Yow informed and failed to accept or return Ms. Yow's telephone calls.
57. Mr. Mullins abandoned Ms. Yow's case.
58. Mr. and Mrs. Brown retained Mr. Mullins on approximately August 27, 2010 regarding a property dispute.
59. Mr. and Mrs. Brown paid Mr. Mullins \$75.00, \$1,000.00 in July 2010, and \$100.00 in December, 2010.
60. Mr. Mullins failed to respond to Mr. and Mrs. Brown's request for information and failed to keep Mr. and Mrs. Brown informed about their case.
61. On May 20, 2011, the Chancery Court for Sullivan County, TN entered an Order for Injunction in favor of Mr. and Mrs. Brown.

62. Mr. Mullins neglected the Complainant's case.
63. Mr. Mullins failed to respond to Mr. and Mrs. Brown's letters requesting information and Mr. Mullins's attention to the case.
64. On August 2, 2011, Mr. and Mrs. Brown wrote to Judge Moody requesting his assistance and intervention with their counsel, Mr. Mullins.
65. Mr. Mullins abandoned Mr. and Mrs. Brown's case.
66. Mr. Smith retained Mr. Mullins on approximately May 23, 2011 to revise a parenting plan.
67. Mr. Smith paid Mr. Mullins \$750.00 for the representation.
68. Mr. Mullins met with Mr. Smith to review changes to the parenting plan and advised Mr. Smith that he would make those changes and then contact Mr. Smith.
69. After this meeting, Mr. Smith was unable to contact Mr. Mullins.
70. Mr. Mullins abandoned Mr. Smith's case.
71. On approximately June 28, 2011, Mr. Sons hired Mr. Mullins to represent him on a real estate case.
72. Mr. Sons paid Mr. Mullins the requested fee of \$1,200.00.
73. Mr. Sons sent text messages to Mr. Mullins on several occasions inquiring about his case, however, Mr. Mullins failed to respond to Mr. Sons' requests for information.
74. Mr. Sons went to Mr. Mullins's office on Volunteer Parkway in Bristol, Tennessee, to request information about his case; however, Mr. Mullins's office was vacant.
75. On August 17, 2011, Mr. Mullins contacted Mr. Sons by text advising that Mr. Mullins was preparing paperwork for Mr. Sons that would be available the next day.

76. Mr. Mullins failed to prepare Mr. Sons' paperwork as promised.
77. Mr. Mullins failed to communicate with Mr. Sons from August 17, 2011, until November, 2011.
78. On November 13, 2011, Mr. Mullins texted Mr. Sons advising that he would return Mr. Sons's payment in full.
79. Mr. Mullins failed to provide Mr. Sons with any refund as promised.
80. Carolyn Spivey retained Mr. Mullins on approximately December 7, 2010, to represent her son, Adam Dwight Spivey, in Criminal Court in Sullivan County, Tennessee.
81. Mr. Mullins's initial retainer agreement with Mr. Spivey was a \$5,000.00 flat fee; however, Mr. Mullins reduced the total fee to \$1,200.00 and agreed to represent Mr. Spivey at no charge on an Order of Protection.
82. Ms. Spivey paid Mr. Mullins \$1,200.00.
83. After agreeing to represent Mr. Spivey on the Order of Protection, Mr. Mullins failed to appear for Mr. Spivey's hearing on September 9, 2011.
84. Mr. Mullins failed to contact the Spiveys or the Court to explain his failure to appear at the September 9, 2011, hearing.
85. Mr. Mullins would not accept or return the Spiveys' telephone calls.
86. The Spiveys eventually retained other counsel, Greg Francisco, paying him \$750.00 to complete the representation that Mr. Mullins had agreed to provide.
87. Ms. Spivey wrote to Mr. Mullins on September 20, 2011 and on November 21, 2011, requesting the return of Adam Spivey's files and other belongings.
88. Mr. Mullins failed to return Mr. Spivey's clothes, shoes, and paperwork provided to him regarding Mr. Spivey's military service, divorce, child support and medical records.

89. Mr. Mullins was attorney of record for Johnny Eugene Monk in State v. Monk.

90. The Brief in State v. Monk was due to be filed with the Court of Criminal Appeals on or before August 29, 2011.

91. On August 31, 2011, the Tennessee Supreme Court suspended Mr. Mullins for Continuing Legal Education (CLE) non-compliance.

92. On September 9, 2011, the Court of Criminal Appeals in State v. Monk issued an Order directing counsel to file the Brief within twenty days or show cause why the Appeal should not be dismissed based upon Counsel's failure to file the Brief.

93. Mr. Mullins failed to file any Response or Brief based upon the Court of Criminal Appeals' September 9, 2011 Order in State v. Monk.

94. On approximately October 3, 2011, a Clerk in the Knoxville office of the Appellate Clerk's Office telephoned Mr. Mullins for the second time inquiring about his filing a Brief in State v. Monk. During this telephone conversation Mr. Mullins advised the Clerk that he had been suspended due to Continuing Legal Education non-compliance and he was awaiting an Order reinstating his license before filing a Brief.

95. On October 3, 2011, the Supreme Court entered an Order lifting Mr. Mullins' CLE Suspension.

96. On October 28, 2011, a Deputy Clerk in the Knoxville office of the Appellate Court Clerk's Office telephoned Mr. Mullins regarding the Monk Brief which still had not been filed. There was no answer and no voice-mail upon which the Clerk could leave a message for Mr. Mullins.

97. On November 1, 2011, the Criminal Court of Appeals issued an Order in State v. Monk for Mr. Mullins to file a Brief on or before November 21, 2011, or file a Motion to Withdraw as Counsel for the Defendant.

98. Mr. Mullins failed to file a Brief and failed to file a Motion to Withdraw pursuant to the Court of Criminal Appeals Order filed November 1, 2011, in State v. Monk.

99. After receiving no response from Mr. Mullins to the November 1, 2011 Order, a Deputy Clerk in the Knoxville office of the Appellate Court Clerk's Office telephoned Mr. Mullins to inquire again about the status of the Monk Brief. There was no answer and no voice-mail upon which the Clerk could leave a message for Mr. Mullins.

100. On December 6, 2011, the Court of Criminal Appeals in State v. Monk issued an Order for Mr. Mullins to appear on January 24, 2012, in the Courtroom of the Tennessee Supreme Court Building in Knoxville, Tennessee, and show cause why he should not held in contempt of the Court.

101. On December 29, 2011, the Tennessee Supreme Court temporarily suspended Mr. Mullins for failing to respond to the Board.

102. Mr. Mullins failed to appear before the Court of Criminal Appeals on January 24, 2012, as ordered by the Court in State v. Monk on December 6, 2011.

103. By Order filed January 24, 2012, the Court of Criminal Appeals in State v. Monk found that the facts presented justified a finding of contempt; however, the Court withheld such a finding and, instead, reported Mr. Mullins's continuing misconduct to the Board of Professional Responsibility.

104. Robert Coady states he paid \$2,200 to Mr. Mullins to represent him in Washington and Sullivan County Courts.

105. Mr. Mullins was suspended and unable to represent Mr. Coady when he accepted the representation.

106. Mr. Mullins provided no legal services for Mr. Coady.

107. Mr. Mullins failed to respond to Mr. Coady's telephone messages or return his calls.

108. Mr. Mullins failed to refund to Mr. Coady the fee paid.

109. Mr. Fralin states he paid Mr. Mullins \$650.00 to represent him in a criminal case.

110. Mr. Mullins arrived an hour and one-half late to the Complainant's court appearance and the case was reset.

111. On the morning of Mr. Fralin's second court appearance, Mr. Mullins telephoned Mr. Fralin and advised him that he was suspended and would not be appearing in Court.

112. At Mr. Fralin's third court appearance, Mr. Mullins again appeared late and advised Mr. Fralin to go to trial.

113. Mr. Fralin has been unable to contact or locate Mr. Mullins and has hired new counsel to represent him in his case.

114. Mr. Story paid Mr. Mullins \$4,000 on December 22, 2010, for Mr. Mullins' representation.

115. Mr. Mullins notified Mr. Story fifteen minutes prior to his court date that Mr. Mullins was suspended and could not represent him in Court.

116. Mr. Mullins failed to advise Mr. Story of his second suspension from the practice of law.

117. Mr. Mullins failed to appear for Mr. Story's court date.

118. Mr. Story has made repeated attempts to contact Mr. Mullins; however, Mr. Mullins fails to accept or return Mr. Story's phone calls.

119. Mr. Mullins failed to provide any representation to Mr. Story.
120. Mr. and Mrs. Otey retained Mr. Mullins to represent their son in a criminal case.
121. Mr. and Mrs. Otey state they paid Mr. Mullins \$2,000 to represent their son.
122. Mr. Mullins failed to take any action to represent Mr. and Mrs. Otey's son.
123. Mr. Mullins failed to refund Mr. and Mrs. Otey's fees.
124. Mr. and Mrs. Otey have been unable to contact and/or locate Mr. Mullins.
125. Mr. Mullins abandoned his practice.

CONCLUSIONS OF LAW

1. Mr. Mullins' actions violated Rules of Professional Conduct 1.1; 1.3; 1.4; 1.5; 1.16; 3.2; 3.4; 5.5; 8.1; and 8.4.
2. Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, this Panel has considered the ABA Standards for Imposing Lawyer Sanctions (ABA Standards) and finds ABA Standard 4.41 (a) and (c) applicable in this case.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

1. The Panel has considered the following aggravating factors under ABA Standard 9.2
 - 1) Mr. Mullins's pattern of misconduct (ABA Standard 9.22 (c));
 - 2) Mr. Mullins's multiple offenses (ABA Standard 9.22(d)); and
 - 3) Mr. Mullins's submission of false statements (i.e., Mr. Mullins's representation to Judge Montgomery that he had self-reported to the Board and then failed to do so) (ABA Standard 9.22(f)).

2. The Panel has considered all of the mitigating factors under ABA Standard 9.3, including the following:

- 1) Mr. Mullins's absence of a prior disciplinary record (ABA Standard 9.32(a));
- 2) Mr. Mullins's personal problems (ABA Standard 9.32(c));
- 3) Mr. Mullins's remorse (ABA Standard 9.32(l); and
- 4) Mr. Mullins's timely good faith restitution (ABA Standard 9.32(d)).

3. The Panel finds that the aggravating factors outweigh the mitigating factors.

DISCIPLINE

The Hearing Panel concludes that the Respondent, Mr. Mullins, should be disbarred and pay \$15,445.00 in restitution to the complainants or to Tennessee Lawyers' Fund for Client Protection as follows, giving credit to Mr. Mullins for \$5,950 previously paid in restitution:

<u>Complainant</u>	<u>Restitution Claimed</u>	<u>Restitution Paid</u>
Marcia Willette	\$1,400.00	\$1,000.00
Robert White	\$1,000.00	\$1,000.00
Ronnie Lee Tolbert	\$500.00	
Joni McNamara	\$2,820.00	
Jerry Weston	\$1,000.00	\$1,000.00
Linda Yow	\$1,500.00	\$1,000.00
John and Mary Brown	\$1,175.00	
Anthony Smith	\$750.00	\$750.00
Billy Sons	\$1,200.00	\$1,200.00
Adam and Carolyn Spivey	\$1,200.00	
Robert Coady	\$2,200.00	
Joseph Fralin	\$650.00	
Aaron Story	\$4,000.00	
Willis and Jeanette Otey	\$2,000.00	
Total	\$21,395.00	\$5,950.00

Pursuant to Tenn. Sup. Ct. R. 9, § 8, notice is hereby given that 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.

Entered this 17 day of September, 2012.

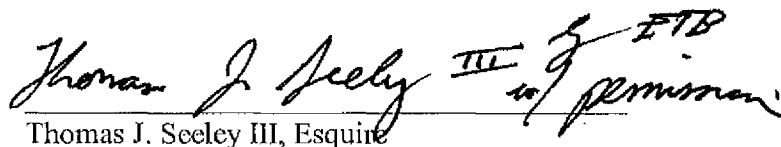
FOR THE PANEL:



Edward T. Brading, Esquire
Hearing Panel Chair



Andrew T. Wampler, Esquire



Thomas J. Seeley III, Esquire