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2014 MAY 22 PM 3:46

IN DISCIPLINARY DISTRICT 0  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE

BOARD OF PROFESSIONAL  
RESPONSIBILITY

*Rew*  
EXEC. OFF.

IN RE: DAVID GARRETT MULLINS  
BPR # 024158, Respondent  
An Attorney Licensed and  
Admitted to the Practice of  
Law in Tennessee  
(Wise County, VA)

DOCKET NO. 2013-2262-0-AJ

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**JUDGMENT OF THE HEARING PANEL**

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This matter came to be heard on May 21, 2014, for final hearing on the Board's Petition for Discipline before Robert J. Mendes, Panel Chair; Daniel H. Puryear, Panel Member; and, Mark S. LeVan, Panel Member. Alan D. Johnson, Disciplinary Counsel, appeared for the Board. Mr. Mullins did not appear.

At the beginning of the hearing, Disciplinary Counsel corrected the record and moved to amend the Petition to conform to the proof, and the Hearing Panel granted the motion to amend. The amendment resulted in the following changes to the Petition for Discipline: the date in paragraph 10 was changed from April 12, 2012 to April 12, 2011; paragraphs 12, 13, 30, 31, 32, and 36 were removed from the Petition, and; the allegations that Mr. Mullins violated Rules of Professional Responsibility 3.3, 3.4, 4.1, 5.5 and 8.4 (b) (e) and (d) were removed. The allegations that Mr. Mullins violated Rules of Professional Responsibility 1.1, 1.4 and 8.4 (a) remain in the Amended Petition.

**FINDINGS OF FACT**

1. On December 29, 2011, Mr. Mullins was suspended from the practice of law

pursuant to Tenn. Sup. Ct. R. 8, § 4.3, for failing to respond to a complaint filed with the Board of Professional Responsibility ("Board").

2. Mr. Mullins has not taken any steps to dissolve his temporary suspension.

3. On November 30, 2012, Mr. Mullins was disbarred from the practice of law by the Tennessee Supreme Court.

4. A Petition for Discipline, Docket No. 2013-2262-0-AJ, was filed on October 25, 2013.

5. The Petition was sent to Respondent's most recent addresses, as registered with the Board of Professional Responsibility, Post Office Box 1191, Norton, Virginia 24273, by U. S. Mail and Certified Mail, Return Receipt Requested.

6. The envelope sent by U. S. Mail to P. O. Box 1191, Norton, Virginia 24273, was not returned to the Board. The envelope sent by Certified Mail, Return Receipt Requested to Post Office Box 1191, Norton, Virginia 24273, was received, and the United States Post Office returned the green card showing that it had been signed for by Danny Mullins on October 29, 2013.

7. The Respondent did not file an answer to the Petition, and the Board filed a Motion for Default.

8. On March 26, 2014, this Hearing Panel granted the Motion for Default and Ordered that the charges in the Petition for Discipline are deemed admitted.

**File No. 35524-0-AW – COMPLAINT OF CYNTHIA WITHERS**

9. Ms. Wither's son, James Marshall Wolfe, was indicted on April 12, 2011, by a federal grand jury for various drug related offenses.

10. Ms. WITHERS retained Mr. Mullins to represent her son and paid him \$11,000.00.

11. The prosecutor offered a plea, and Mr. Mullins recommended that his client not accept it.

12. The case went to trial on June 29, 2011, and Mr. Wolfe was convicted on all counts.

13. Ms. Withers terminated Mr. Mullins, and retained new counsel for her son.

14. The new lawyers thereafter filed a motion for a new trial that was granted by the Court.

15. The District Court held that Mr. Mullins' representation of Mr. Wolfe revealed a serious lack of understanding of the U. S. Sentencing Guidelines and Mr. Wolfe was prejudiced by Mr. Mullins' advice to reject the plea offer in that he faced a possible life term of imprisonment based upon the jury's verdict, whereas he faced a maximum of 15 years imprisonment had he accepted the original plea offer. The Court allowed Mr. Wolfe to accept the plea. (Exhibit E to the Petition)

16. As stated in Ms. Withers' complaint to the Board (Exhibit A to the Petition), Mr. Mullins seldom returned her phone calls, and when she was able to speak with him, he told her that he had been busy taking depositions in Mr. Wolfe's case.

17. According to Ms. Withers, Mr. Mullins met with Mr. Wolfe in jail only three times, and he was late for the few meetings she had with him.

#### CONCLUSIONS OF LAW

18. Pursuant to Tenn. S. Ct. R. 9, § 3<sup>1</sup>, 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

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<sup>1</sup> Because this case was initiated prior to January 1, 2014, it is governed by the pre-2014 version of Tenn. Sup. Ct R. 9.

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.

19. The Board of Professional Responsibility retains jurisdiction to address allegations of misconduct that occurred prior to Mr. Mullins's disbarment pursuant to Tenn. Sup. Ct. R. 9, § 1 (pre-2014 Rules) and § 8.1 (2014 Rules).

20. The admitted facts of this case establish by a preponderance of the evidence the following violations of the RPC:

- a. Mr. Mullins' representation of Mr. Wolfe violated RPC 1.1, Competence.
- b. Mr. Mullins violated RCP 1.4, Communication, in his dealings with Ms. Withers and Mr. Wolfe.
- c. Mr. Mullins violated RCP 8.4 (a) by violating the RCP cited above.

21. 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 8.4, Rule 9 of the Rules of the Supreme Court.

The following ABA Standards apply in this matter:

4.5 LACK OF COMPETENCE

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

4.4 LACK OF DILIGENCE

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

#### Aggravating Factors

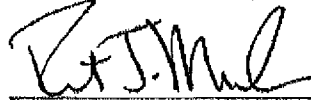
Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

- (b) dishonest or selfish motive (Mr. Mullins accepted \$11,000.00 to represent Mr. Wolfe when he knew or should have known he was not competent to handle the case);
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (the admitted facts establish the Respondent failed to respond to the Board);
- (i) substantial experience in the practice of law (Mr. Mullins was licensed to practice in 2005).

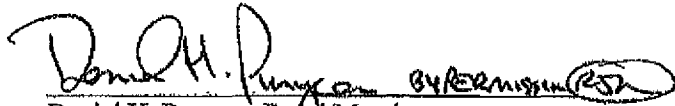
#### JUDGMENT

Application of the ABA Standards to the admitted facts warrants suspension from the practice of law, and payment of restitution as a condition of reinstatement to the practice of law. The Hearing Panel finds that Mr. Mullins should be suspended from the practice of law pursuant to Tenn. Sup. Ct. R. 9, § 4.2 for one (1) year, and the suspension shall be concurrent with his disbarment. Further, the Panel finds that Mr. Mullins must pay restitution to Ms. Withers in the amount of \$11,000.00, pursuant to Tenn. Sup. Ct. R. 9, § 4.7. Payment of restitution shall be a condition precedent to reinstatement. In the event restitution is made by the Tennessee Lawyers' Fund for Protection of Clients (TLFCP), Mr. Mullins will be responsible for reimbursement of TLFCP in the same amount.

IT IS SO ORDERED,



Robert J. Mendes, Panel Chair



Daniel H. Puryear, Panel Member



Mark S. LeVan, Panel Member

**NOTICE TO RESPONDENT**

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.