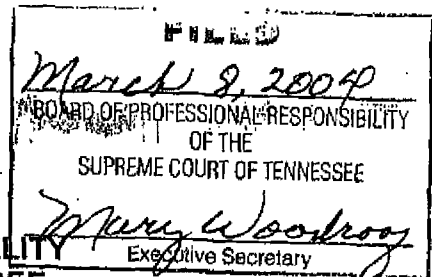


IN DISCIPLINARY DISTRICT VII  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE SUPREME COURT OF TENNESSEE



IN RE: TOM ANTHONY NACARATO,  
BRP #15236, Respondent An  
Attorney Licensed and  
Admitted to the Practice of  
Law in Tennessee  
(Henderson County)

DOCKET NO. 2002-1322-7-SG

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**FINDINGS AND RECOMMENDATIONS OF HEARING PANEL**

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The Board of Professional Responsibility properly designated a Hearing Panel consisting of Frankie E. Wade, Chairperson; Carol Gish and Frederick N. McLean. On January 19, 2004, this Hearing Panel convened with Disciplinary Counsel for the Board of Professional Responsibility present. When the hearing was convened at 10:00 a.m., the Respondent did not appear. The hearing was temporarily adjourned until 10:15 a.m. The Respondent still did not appear. Thus the Hearing Panel finds the Respondent received proper notice of the hearing but failed to appear.

The Board filed a Petition for Discipline against the Respondent on July 16, 2002. On August 19, 2002, the Respondent filed an Answer. On July 1, 2003, the Board filed a Motion that Facts Be Taken As Established due to the Respondent's failure to attend his own deposition pursuant to proper notice. On October 6, 2003, this Panel entered an Order Granting Motion That Facts Be Taken As Established.

The Panel, after hearing argument of disciplinary Counsel and after reviewing the pleadings, entire record and exhibits tendered, makes the following findings:

**FILE NO. 25082-7-SG - COMPLAINT OF LORETTA & MARLTON RUSSOM**

Regarding the complaint filed against the Respondent by Loretta and Marlton Russom, the Panel has determined that the Respondent has violated DR 1-102(A)(1)(5)(6); DR 6-101(A)(3) and DR 7-101(A)(1)(2)(3)(4) of the Code of Professional Responsibility. The Panel finds the following aggravating circumstances apply: 1) the Respondent's failure to refund Mr. and Mrs. Russom's fee for work he admitted not performing; 2) thus requiring Mr. and Mrs. Russom to sue the Respondent; 3) Respondent's appeal after the Russoms obtaining a judgment against him when he failed to appear for trial; 4) which the Respondent then appealed to Circuit Court; and 5) then Respondent failed to appear for the trial on appeal.

**FILE NO. 24616-7-SG - COMPLAINT OF RODNEY OWENS**

Regarding Rodney Owens' complaint, this Panel finds the Respondent has violated DR 1-102(A)(1)(4)(5)(6); DR 6-101(A)(3) and DR 7-

101(A)(1)(2)(3)(4) of the Code of Professional Responsibility. While this Panel does not require the Respondent to make restitution to Mr. Owens prior to the his filing any Petition for Reinstatement, this Panel suggests that a reinstatement Panel consider the facts and circumstances then existing as to Respondent's ability to make restitution, and if proper under those circumstances, require the Respondent's restitution to Rodney Owens.

**AGGRAVATING CIRCUMSTANCES BOTH MATTERS**

In addition to the aggravating circumstances of the Respondent's failure to refund Mr. and Mrs. Russom's fee and protracting unnecessary litigation in that matter as previously mentioned, the Panel makes the following additional findings of aggravating circumstances warranting an increase in the degree of discipline to be imposed against the Respondent:

1. The Respondent's prior discipline of a private informal admonition in August, 1994, and a public censure in February, 2002;
2. The Respondent's untruthfulness and efforts to cover up his actions when these matters were investigated by the Board of Professional Responsibility;
3. The Respondent's summary suspension for non-payment of fees on July 29, 2002;
4. The Respondent's summary suspension for CLE non-compliance on October 18, 2002;

5. The Respondent's 4.3 temporary suspension on August 25, 2003 for failure to respond to additional inquiry and matter, thus reflecting the Respondent's disrespect for the Board of Professional Responsibility.

### RECOMMENDATION

THEREFORE, the hearing Panel recommends the following discipline be imposed against the Respondent:

1. A three (3) year suspension;
2. The Respondent's satisfaction of the following conditions be completed prior to the Respondent's filing a Petition for Reinstatement:
  - a. Proof of the Respondent's mental and emotional stability; and
  - b. Proof of the Respondent's contacting Tennessee Lawyers Assistance Program (TLAP) and Respondent's compliance with any and all recommendations made by TLAP; and
  - c. Proof of Respondent's contacting a law practice assistance expert, agreed to in advance by Disciplinary Counsel, and the Respondent's compliance with any and all recommendations made by the expert; and
  - d. Proof of the Respondent's payment of Mr. And Mrs. Russom's judgment, including any court costs and accrued interest; and

e. Proof of payment of all costs to the Board of Professional Responsibility, including all costs associated with the Respondent's deposition on June 30, 2003.

ENTERED this 4<sup>th</sup> day of March, 2004

Frankie E. Wade  
Frankie E. Wade, Chairperson

Carol Gish  
Carol Gish

Frederick N. McLean  
Frederick N. McLean