

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

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

**DOCKET NO. 2004-1413-7-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 William Lee Lackey, Chairman; Linda Sesson Taylor and Phillip Gordon Hollis. On May 14, 2004, this Hearing Panel convened by conference call with Disciplinary Counsel for the Board of Professional Responsibility present. The Respondent was sent notice of the hearing but failed to participate.

The Board filed a Petition for Discipline against the Respondent on January 7, 2004. The Respondent did not file an Answer. On February 4, 2004, the Board filed a Motion for Default Judgment and that the Charges Be Deemed Admitted. On May 11, 2004, this Panel entered an Order Granting Motion for Default Judgment.

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

**FILE NO. 26219-7-SG – COMPLAINT OF HELEN WESTROPE**

Regarding the complaint filed against the Respondent by Helen Westrope, the Panel has determined the Respondent has violated DR 1-102(A)(1)(5)(6); DR 6-101(A)(3); DR 7-101(A)(1)(2)(3)(4); DR 2-110(A)(2)(3) and DR 9-102(B)(4) of the Code of Professional Responsibility.

**AGGRAVATING CIRCUMSTANCES**

The Panel makes the following findings of aggravating circumstances warranting an increase in the degree of discipline to be imposed against the Respondent:

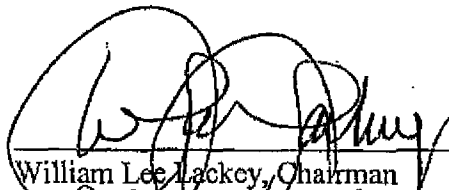
1. The Respondent's prior discipline of a private informal admonition in August, 1994, and a public censure in February, 2002;
2. The Respondent's bad faith obstruction of the disciplinary process by intentionally failing to respond to the Board of Professional Responsibility;
3. The Respondent's summary 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 failing to respond to this complaint;
6. A Hearing Panel's March 8, 2004 recommended discipline of a three (3) year suspension to be imposed against the Respondent.

**RECOMMENDATION**

THEREFORE, the Hearing Panel recommends the Respondent receive a three (3) year suspension, to run concurrent with any other disciplinary suspension imposed by the Supreme Court.

ENTERED this 14<sup>th</sup> day of May, 2004.

  
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William Lee Lackey, Chairman

  
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Phillip G. Hollis

  
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Linda Sesson Taylor