

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

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BOARD OF PROFESSIONAL RESPONSIBILITY  
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**IN RE:           JOSEPH BRENT NOLAN,                           DOCKET NO. 2012-2132-2-KB**  
**BPR No. 15237, Respondent,**  
**An Attorney Licensed to**  
**Practice Law in Tennessee**  
**(Knox County)**

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE HEARING PANEL**

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This matter came to be heard on June 10 and 11, 2014 before a Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee consisting of Carrie S. O'Rear, Carl P. McDonald, and Weldon E. Patterson, Chair, upon a Petition for Discipline, a Supplemental Petition for Discipline and a Second Supplemental Petition for Discipline by and through disciplinary counsel. Upon the evidence and testimony presented, the Hearing Panel makes the following findings of fact and conclusions of law and submits its judgment in this cause.

**FINDINGS OF FACT**

**Background**

Joseph Brent Nolan graduated from the University of Tennessee. Mr. Nolan passed the bar examination and was subsequently licensed to practice law in Tennessee in 1992. Mr. Nolan

worked as an attorney at Lewis King from 1992-1995. In 1995, with the help of his mother, Ramona St. James, and his stepfather, Adam St. James, Mr. Nolan opened his own practice, the Nolan Law Firm. The entire time that Mr. Nolan operated his law practice, his mother, Ramona St. James (aka Jane Lambert) was the bookkeeper for the practice. Her duties including maintaining Mr. Nolan's trust account. Adam St. James worked in the office performing work similar to that of a paralegal. At times, Mr. Nolan's sisters, Heather Nolan and Stephanie Best, worked in Mr. Nolan's practice as assistants. From 1995 to 2011 when Mr. Nolan closed his firm, he had no bookkeeper other than his mother. Ramona St. James had previously worked for a lawyer in Cleveland, Tennessee, doing collections. Ramona also had experience in banking. Ramona St. James, Adam St. James and Stephanie Best had signatory authority on Mr. Nolan's trust account.

When the law practice initially opened, all of the accounting was done in a hand-written ledger. Mr. Nolan and Ramona sat down on a weekly to monthly basis to review and balance the accounts together. During this time, Mr. Nolan explained to Ms. St. James how to balance the accounts and the general importance and responsibilities due with respect to the accounts, including the IOLTA account. As the practice grew and became busier, Mr. Nolan became less involved with the law firm bookkeeping, including the IOLTA account. At some point, the law office began using QuickBooks instead of the handwritten ledger. Ramona St. James was the only one in the office who knew how to use QuickBooks.

Mr. Nolan and his mother operated a business called Nolan Properties which engaged in the buying, selling and leasing of real property. Beginning in approximately 2008-2009, Nolan Properties began losing money. In 2008, Mr. Nolan started the Eye Site, a retail optical business. After the withdrawal of a partner, that business failed resulting in substantial financial losses to

Mr. Nolan. Mr. Nolan knew that Nolan Properties was operating at a loss. Mr. Nolan knew that the Eye Site was operating at a loss.

Ramona St. James “borrowed” client funds from the IOLTA account to pay bills for the other businesses. She did this without Mr. Nolan’s knowledge for over three years. Eventually, Ramona’s “borrowing” got out of control, and there were insufficient funds in the trust account to pay clients. Ms. St. James did not tell Mr. Nolan that she was using client funds in the trust account to pay the expenses of Nolan Properties, the Eye Site and his law practice. Ramona St. James assured Mr. Nolan that “everything was fine.” A minimal investigation, such as reviewing a bank statement, the client ledgers or trust account check stubs, would have revealed to Mr. Nolan Ramona St. James’ misuse of the trust account.

In 2010, Mr. Nolan began representing HR Comp. HR Comp offered Mr. Nolan a full-time position in 2011, and Mr. Nolan began closing down his law practice in anticipation of full-time work with HR Comp. In late 2011, Mr. Nolan discovered his mother’s mishandling of the trust accounts and that there was no money to make restitution to clients.

#### **Nikki Lunsford – File No. 33916-2-PS**

In July of 2005, a car in Pigeon Forge, Tennessee, hit Ms. Lunsford’s seven-year-old daughter, Haven Lunsford. Ms. Lunsford hired Mr. Nolan to represent Haven Lunsford. That lawsuit settled in 2008 for \$47,500. The Order for Approval of Minor Settlement and Appointment of Guardianship of Minor’s Funds stated that \$15,833.33 would be paid to Mr. Nolan for attorney’s fees, \$9,989.05 would be paid to Mr. Nolan for reasonable expenses, \$2,000.00 would be paid to Blue Cross Blue Shield for medical liens, and the remaining \$19,677.62 was to be held in Mr. Nolan’s trust account until Haven’s parents set up an interest-

bearing savings account for Haven's future use. No written settlement statement was provided to Ms. Lunsford. Beginning in June, 2010, Ms. Lunsford made several attempts to communicate with Mr. Nolan by telephone about the distribution of the settlement proceeds. On multiple occasions, she talked with Mr. Nolan's mother who promised that someone would return her call but no one ever did. On multiple occasions, she received only a recorded message and no one answered the telephone. Mr. Nolan never communicated with Ms. Lunsford after October 22, 2008.

Rita Baldwin is an Indiana attorney who represented Ms. Lunsford in a divorce and attempted to expedite the distribution of Haven Lunsford's settlement proceeds. Ms. Baldwin telephoned Mr. Nolan's office in January, 2011, and left a voicemail message in an effort to determine why the settlement proceeds had not yet been distributed. Mr. Nolan's mother returned the call. On February 22, 2011, Ms. Baldwin wrote a letter to Mr. Nolan describing her unsuccessful efforts to communicate with him and requesting an accounting of funds held by him for Haven Lunsford. Mr. Nolan did not respond to the letter. On April 19, 2011, Mr. Nolan's mother telephoned Ms. Baldwin. She would not answer Ms. Baldwin's questions about whether or not Mr. Nolan still had Haven Lunsford's funds in his trust account. On June 2, 2011, Rita Baldwin filed the guardianship paperwork in Indiana. The final guardianship order was filed on August 12, 2011. A check for \$19,677.62, addressed to the Davies Circuit Court in Indiana, was written on August 25, 2011 out of the Nolan Law Firm's IOLTA Account with The People's Bank. Unknown to Mr. Nolan, at one or more times from 2008 to 2011, Ramona St. James had used the funds belonging to Haven Lunsford for other purposes.<sup>1</sup> Unknown to Mr. Nolan, in

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<sup>1</sup> Throughout this decision mention is made to the Respondent being "unaware of" or "without knowledge of" or "unknown to" as it relates to the actions of non-attorneys in his office and their dealings with the Trust Account of his firm. Unless specified otherwise, the undisputed reason for Respondent not being aware of or without

August of 2011, the IOLTA account had insufficient funds to process the payment for Nikki Lunsford. All amounts belonging to Haven Lunsford were eventually paid to, or on behalf of, Haven Lunsford or the guardianship account set up in her behalf.

The acts and omissions by the Respondent as set forth in paragraphs above related to the complaint filed by Ms. Lunsford constitute ethical misconduct in violation of the following Rules of Professional Conduct: 1.4, Communication, 1.5(c), Fees; 1.15(a), Safekeeping Property and Funds; and 1.15(d), Safekeeping Property and Funds.

**Complaint of Rodney Smith – File No. 33927-2-PS**

Rodney Smith sustained injuries in a motorcycle accident in October of 2007 and retained Mr. Nolan to represent him. Mr. Smith's lawsuit settled in 2008 for \$100,000. Mr. Smith received sporadic payments from Mr. Nolan totaling \$38,000 in partial distribution of the settlement proceeds to which he was entitled. Mr. Smith made numerous telephone calls to Mr. Nolan's office inquiring about the status of the settlement proceeds. Occasionally, he would speak with Mr. Nolan's mother or Adam St. James but Mr. Nolan never returned his calls. Mr. Smith wrote multiple emails to Mr. Nolan's email address inquiring about the status of the settlement proceeds, but Mr. Nolan never responded. Mr. Smith made two visits to Mr. Nolan's office to inquire about the status of the settlement proceeds while traveling between his home in Texas and Virginia. On one occasion, no one was present at the office. On the other occasion, Mr. Nolan's mother told him he could not meet with Mr. Nolan without an appointment.

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knowledge of or unknown to him is his simple failure to instruct, oversee and/or supervise those to whom he had given authority over his Trust Account where those non-attorneys had signature authority and were the ones who made the deposits and withdrawals for the firm and were the only person(s) who were aware of the system of accounts used by the firm. The essential issue in the transactions of the Trust Account was the complete abandonment of instruction, supervision and oversight by the Respondent. The undisputed evidence is that a minimal review by the Respondent would have resulted in the discovery of the misuse of the account, but he simply never took the time to look.

On December 9, 2010, Mr. Smith wrote an email to Mr. Nolan terminating his representation, demanding an accounting and demanding distribution of the remaining settlement proceeds. Mr. Nolan did not respond to the December 9, 2010, email with an accounting nor did he distribute any further settlement proceeds to Mr. Smith. Mr. Nolan never provided Mr. Smith with a settlement statement. The parties stipulated that Mr. Smith should have received another \$23,232.67 as his share of the settlement. Unknown to Mr. Nolan, the Nolan Law Firm's trust account failed to hold Mr. Smith's proceeds. On March 17, 2009, the balance in Mr. Nolan's trust account was \$112.74. Ramona St. James admitted to using such funds to pay other expenses. Mr. Nolan was obligated to distribute a portion of Mr. Smith's settlement to UNUM in satisfaction of a subrogation lien. Mr. Nolan did not do so. Mr. Nolan was obligated to distribute \$13,312.33 to the Department of the Navy. A check in that amount was mailed to the Department of the Navy on October 11, 2011. The parties have stipulated that that check was never negotiated. Mr. Nolan has stipulated that Mr. Smith, or his bankruptcy estate, is owed a total of \$36,945.00 in restitution.

The acts and omissions by the Respondent as set forth in paragraphs above related to the complaint filed by Mr. Smith constitute ethical misconduct in violation of the following Rules of Professional Conduct: 1.4, Communication, 1.5(c), Fees; 1.15(a), Safekeeping Property and Funds; and 1.15(d), Safekeeping Property and Funds.

**Complaint of Michelle Collins-Hill – File No. 34529 –2–PS**

Michelle Collins-Hill retained Mr. Nolan to represent the interests of her son, Dakota, in a wrongful death/worker's compensation suit filed as a result of the death of Dakota's father in a

trucking accident. An agreement was reached in February, 2004, to settle the claim for \$85,428.33. Due to the insolvency of an insurer, the amount payable as a result of the settlement was \$73,690.33. Ms. Collins-Hill received sporadic payments from Mr. Nolan totaling \$19,164.68 in partial distribution of the settlement proceeds to which her son was entitled. The balance in Mr. Nolan's trust account on August 31, 2008, was \$63.07. Unknown to Mr. Nolan, Ramona St. James misappropriated some of the settlement funds. Mr. Nolan has stipulated that the settlement sheet was incorrect and that Michelle Collins-Hill's minor child, Dakota, is owed restitution in the amount of \$29,747.04.

The acts and omissions by the Respondent as set forth in paragraphs above related to the complaint filed by Ms. Collins-Hill constitute ethical misconduct in violation of the following Rules of Professional Conduct: 1.5(c), Fees; 1.15(a), Safekeeping Property and Funds; and 1.15(d), Safekeeping Property and Funds.

#### **Complaint of Angela Miller – File No. 34577-2-PS**

In March of 2008, Ms. Miller hired Mr. Nolan to represent her in a personal injury case. In December of 2009, Ms. Miller's case settled for \$26,500.00. From the proceeds of that settlement, Mr. Nolan was obligated to satisfy a State Farm Insurance subrogation lien in the amount of \$5,000 and pay \$5,754 to West Knoxville Chiropractic Group. Mr. Nolan did not timely pay these amounts. On August 25, 2011, the balance in Mr. Nolan's trust account was \$637.74. Unknown to Mr. Nolan, Ramona St. James misappropriated Ms. Miller's settlement funds. Mr. Nolan belatedly paid Ms. Miller's chiropractor bill in October of 2011, and paid to

Ms. Miller \$5,000 because State Farm Insurance had by this time written-off its subrogation claim. All amounts belonging to Ms. Miller were eventually paid to, or on behalf of, Ms. Miller.

The acts and omissions by the Respondent as set forth in paragraphs above related to the complaint filed by Mr. Smith constitute ethical misconduct in violation of the following Rules of Professional Conduct: 1.15(a), Safekeeping Property and Funds; and 1.15(d), Safekeeping Property and Funds.

**Complaint of Dale and Debbie Peterson – File No. 34625-2-PS**

Dale and Debbie Peterson were involved in two separate car accidents, both occurring in a relatively short time frame. Dale and Debbie Peterson retained Mr. Nolan to represent them in connection with these accidents. The lawsuit involving the first accident was settled in July of 2009. The suit settled for \$65,000 for Debbie Peterson and \$8,000 for Dale Peterson. During a pre-trial conference, Mr. Nolan announced a voluntary dismissal of the Petersons' other case. There were no pending motions to dismiss. Mr. Nolan did not consult with the Petersons prior to doing so. He did not advise them that he had done so. The Petersons learned of the dismissal of their lawsuit from a neighbor.

In the case that was settled on their behalf, the Petersons disputed the amounts of the liens against them. Between May 10, 2010 and August 2, 2010, the BCBS lien figure of \$16,380.71 was negotiated down to \$4,662.67. Between January and April, 2010, Mr. Peterson called Mr. Nolan's personal cell phone three times. Each time he left a message inquiring why Ms. Peterson had not yet received the proceeds of her settlement. Mr. Nolan did not return any of the phone calls. The balance in Mr. Nolan's trust account on January 29, 2010, was \$117.43. Unknown to Mr. Nolan or the Petersons, Ramona St. James misappropriated and then returned



the settlement funds belonging to the Petersons. Ms. Peterson did not receive her share of that settlement until August 2, 2010. All amounts owed to the Petersons were eventually paid to them or on their behalf.

The acts and omissions by the Respondent as set forth in paragraphs above related to the complaint filed by Dale and Debbie Peterson constitute ethical misconduct in violation of the following Rules of Professional Conduct: 1.2, Scope of Representation; 1.4, Communication; and 1.15(a), Safekeeping Property and Funds.

The acts and omissions by the Respondent as set forth in paragraphs above related to the complaint filed by Dale and Debbie Peterson do not constitute ethical misconduct in violation of the following Rule of Professional Conduct: 1.15(d), Safekeeping Property and Funds.

#### **Complaint of Andrea Ball – File No. 35390-2-PS**

HR Comp, Mr. Nolan's employer at the time, loaned Mr. Nolan money in 2011. The parties stipulated that while employed as general counsel for HR Comp, Mr. Nolan entered into loans with it without documenting in writing the terms of the transactions, the desirability of obtaining outside counsel nor its informed consent. The Board asserts that a purpose in obtaining at least a portion of the loans from HR Comp was to replenish the client funds missing from Mr. Nolan's trust account. Mr. Nolan asserts that these loans were used partially to clean up HR Comp's credit, and partially to help Mr. Nolan close out his law practice.

The acts and omissions by the Respondent as set forth in paragraphs above related to the complaint filed by Andrea Ball constitute ethical misconduct in violation of the following Rule of Professional Conduct: 1.8(a), Conflict of Interest.

**Trust Account – File No. 35900-25-PS**

The entire time that Mr. Nolan operated his law practice, his mother, Ramona St. James (aka Jane Lambert) was the bookkeeper for the practice. Her duties included maintaining Mr. Nolan's trust account. The entire time that Mr. Nolan operated his law practice, Adam St. James, the husband of Ramona St. James, worked for the practice performing marketing and paralegal functions. For approximately five or six years after opening his law practice, Mr. Nolan actively supervised Ramona St. James' maintenance of the trust account. After that time, Mr. Nolan never reviewed the trust account checks she wrote, he never reviewed the client ledgers maintained in QuickBooks and he never reviewed the trust account bank statements. Following the first five or six years after opening his law practice, the extent of Mr. Nolan's supervision of Ramona St. James' maintenance of the trust account was to ask her from time to time, "is everything OK?"

Ramona St. James misappropriated client funds beginning at least in 2008, if not earlier. Ramona St. James "borrowed" money from the trust account, intending to "pay it back" before the clients needed it. Ramona St. James knew this was inappropriate handling of the trust accounts. Ramona St. James had previously been instructed and supervised by Mr. Nolan in the correct handling of client funds. The parties stipulated to the authenticity of copies of the bank records of Mr. Nolan's trust accounts at Home Federal Bank, SunTrust and The People's Bank. Ramona St. James wrote numerous checks on Mr. Nolan's trust accounts utilizing client funds to pay the expenses of additional businesses owned by Mr. Nolan. Ramona St. James wrote numerous checks on Mr. Nolan's trust accounts utilizing client funds to pay the expenses of Mr. Nolan's law practice. Ramona St. James wrote numerous checks to her family members on Mr. Nolan's trust accounts. There was no legitimate purpose for the checks written by Ms. St. James as described above.

Ms. St. James did not tell Mr. Nolan that she was using client funds in the trust account to pay the expenses of his businesses and his law practice. A minimal investigation, such as reviewing a bank statement, the client ledgers or trust account check stubs, would have revealed to Mr. Nolan Ramona St. James' misuse of the trust account. Mr. Nolan did not find out until late 2011 that Ramona St. James had misappropriated client funds and lied to him. At that time, there was no money left to make restitution to the clients.

The acts and omissions by the Respondent as set forth in paragraphs above related to the complaint filed by the Board pertaining to the Respondent's Trust Account constitute ethical misconduct in violation of the following Rule of Professional Conduct: 5.3(b), Responsibilities Regarding Nonlawyer Assistants.

#### **Complaint of David Morgan – File No. 3614c-2-PS**

Mr. Nolan represented David Morgan in Mountainview Architectural, Inc. v. Nichols in the Circuit Court for Sevier County. During Mr. Nolan's representation of Mr. Morgan, Mr. Nolan left private practice to work for HR Comp. Mr. Nolan thus transferred Mr. Morgan's file to Gerald Gulley. Mr. Morgan wrote Mr. Nolan a series of emails between May 20, 2011, and August 11, 2011 inquiring about the status of the case. Mr. Nolan did not respond to any of the emails. During the same timeframe, Mr. Morgan telephoned Mr. Nolan's personal cell phone on multiple occasions, leaving messages inquiring about the status of the case. Mr. Nolan did not respond to any of the calls. Mr. Nolan never advised Mr. Morgan that he was leaving the practice of law and terminating his representation of him. Mr. Morgan first learned that Mr. Gulley was taking over the case through a phone call from Mr. Gulley in August of 2011. At the time Mr. Nolan ceased representing Mr. Morgan, a Motion for Partial Summary Judgment was pending.

Mr. Nolan talked with opposing counsel about continuing the motion hearing. When Adam St. James called opposing counsel, opposing counsel's secretary confirmed that the change in date for the motion hearing had been "taken care of". However, the motion for partial summary judgment was granted because opposing counsel showed up to the hearing. Mr. Nolan did not file a Motion to Withdraw or be substituted as counsel as is required by the Sevier County Local Rules, Rule 9.

Mr. Gulley filed a Motion to Set Aside, supported by affidavits from Mr. Nolan and Adam St. James. Mr. Nolan suggested to Mr. Gulley that payment of the opposing attorney's fees for attending the hearing would be appropriate, in order to increase the likelihood of the Motion to Set Aside being granted. The Motion to Set Aside was granted and an order was entered in Mountainview Architectural, Inc. v. Nichols on February 26, 2012 setting aside the partial summary judgment. That order awarded sanctions against Mr. Morgan and Mr. Nolan in the amount of \$2,907.50. Mr. Morgan has paid the sanction and Mr. Nolan has not reimbursed him. David Morgan was satisfied with Mr. Gulley's representation. The parties stipulated that Mr. Morgan is entitled to restitution in the amount of \$2,907.50.

The acts and omissions by the Respondent as set forth in paragraphs above related to the complaint filed by Mr. Morgan constitute ethical misconduct in violation of the following Rules of Professional Conduct: 1.4, Communication; and 1.16(c), Declining or Terminating Representation.

The acts and omissions by the Respondent as set forth in paragraphs above related to the complaint filed by Mr. Morgan do not constitute ethical misconduct in violation of the following Rules of Professional Conduct: 1.3, Diligence and 1.16(d), Declining or Terminating Representation.

## **CONCLUSIONS OF LAW**

Pursuant to Tenn. Sup. Ct. R. 9, § 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 or herself 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.

### **A. Alleged Violations Established By A Preponderance Of The Evidence**

The Hearing Panel heard evidence and testimony during a hearing on June 10 and June 11, 2014 and find that the preponderance of the evidence establishes that Mr. Nolan has committed the following violations of the Rules of Professional Conduct, such misconduct as is described more completely in each of the factual summaries above:

1. Mr. Nolan violated RPC 5.3(b) (Responsibilities Regarding Non-lawyer Assistants) by failing to make reasonable efforts to ensure that Ramona St. James' conduct in handling his trust account was compatible with his professional obligations. The panel further concludes that it was the clear and consistent position of Mr. Nolan that all of the issues with regard to the management of the Trust Account of his law firm rested at the foot of his mother, Ramona St. James, in whom he had delegated not only signature authority but full responsibility. Not only did Ramona St. James have signature authority on the Trust Account,

but also did Mr. Nolan's sister and his Step-father with no evidence of instruction or supervision as to the sister or Step-father's access to the Trust Account. No explanation was given as to why three (3) non-attorneys were given signature authority on the Trust Account of an essentially one-attorney practice. There was evidence of checks on the Trust Account being signed by Mr. Nolan's sister and Step-father for reasons which could not be explained. The only instruction between Mr. Nolan and his mother was in the early stages of his practice in Clinton, Tennessee, when they would monthly discuss remitting funds from his efforts as a collection attorney. The evidence of Ramona St. James history in banking and former law office employment was not specific as to what she did in those positions, but it was clear Ms. St. James did not manage a trust account when she worked at the former law firm. When the law firm installed computer software (Quick Books) to replace hand-recorded accounting, Ms. St. James was the only person at Mr. Nolan's firm who knew how to operate the Quick Books system, including the Trust Account records; thus, there was no way for Mr. Nolan to instruct, oversee or supervise the Trust Account without his mother's access. By all accounts, there was absolutely no involvement by Mr. Nolan in any Trust Account matters after the first five (5) to six (6) years of his private practice of law. Ms. St. James fully managed the Trust Account after that initial period with no supervision or oversight by Mr. Nolan. Mr. Nolan never asked to review Trust Account records, including review of checks, statements or Quick Book entries, until the first reported irregularity by the Board of Professional Responsibility in March 2011. Whenever Mr. Nolan had a question as to the Trust Account, he would simply ask his mother if things were, "okay," and would accept without follow up her responses that everything was "fine." Nothing in the Trust Account records hid the misuses of its proceeds; Mr. Nolan simply never asked.

The monies taken from the Trust Account were used to pay bills of the firm, of Nolan Properties (a partnership of Mr. Nolan and Ms. St. James involved in real estate); and in an ill-fated optometrist business (Eye Site) in which Mr. Nolan was the investor. During the relevant period, Mr. Nolan was aware both Nolan Properties and Eye Site were losing money. Had Mr. Nolan made an examination of the status of the Trust Account, he would have seen the irregularities and misuses as they were plainly present to be seen. Mr. Nolan admitted at the hearing that if he had done even this cursory look at the Trust Account, "we would not be here today." The total amount of restitution owed the several victims in this matter totals \$69,599.54 not including any interest from and after the dates of the misuse of client funds or court ordered sanctions awarded against a client due to actions of Mr. Nolan.

2. Mr. Nolan violated RPC 1.5(c) (Fees) by failing to provide Nikki Lunsford with a settlement statement, as the Order entered by the court is not properly construed as a written settlement statement as required by this rule.

3. Mr. Nolan violated RPC 1.5(c) (Fees) by failing to provide Rodney Smith with a settlement statement as the matter had concluded such that written settlement statement was required and Mr. Nolan Disbursed proceeds without providing a written settlement statement to Mr. Smith.

4. Mr. Nolan violated RPC 1.5(c) (Fees) by failing to provide Michelle Collins-Hill with a timely and accurate written settlement statement.

5. Mr. Nolan violated RPC 1.15(a) (Safekeeping Property and Funds) by failing to maintain Nikki Lunsford's settlement funds in his trust account.

6. Mr. Nolan violated RPC 1.15(a) (Safekeeping Property and Funds) by failing to maintain Rodney Smith's settlement funds in his trust account.

7. Mr. Nolan violated RPC 1.15(a) (Safekeeping Property and Funds) by failing to maintain Michelle Collins-Hill's settlement funds in his trust account.

8. Mr. Nolan violated RPC 1.15(a) (Safekeeping Property and Funds) by failing to maintain Angela Miller's settlement funds in his trust account.

9. Mr. Nolan violated RPC 1.15(a) (Safekeeping Property and Funds) by failing to maintain Debbie Peterson's settlement funds in his trust account.

10. Mr. Nolan violated RPC 1.15(d) (Safekeeping Property and Funds) by failing to promptly deliver the funds to which Nikki Lunsford was entitled.

11. Mr. Nolan violated RPC 1.15(d) (Safekeeping Property and Funds) by failing to promptly deliver the funds to which Rodney Smith was entitled.

12. Mr. Nolan violated RPC 1.15(d) (Safekeeping Property and Funds) by failing to promptly deliver the funds to which Michelle Collins-Hill was entitled.

13. Mr. Nolan violated RPC 1.15(d) (Safekeeping Property and Funds) by failing to promptly deliver the funds to which the Department of the Navy was entitled from Rodney Smith's settlement.

14. Mr. Nolan violated RPC 1.15(d) (Safekeeping Property and Funds) by failing to promptly deliver the funds to which UNUM was entitled from Rodney Smith's settlement.



15. Mr. Nolan violated RPC 1.15(d) (Safekeeping Property and Funds) by failing to promptly deliver the funds to which State Farm was entitled from Angela Miller's settlement.

16. Mr. Nolan violated RPC 1.15(d) (Safekeeping Property and Funds) by failing to promptly deliver the funds to which West Knoxville Chiropractic Group was entitled from Angela Miller's settlement.

17. Mr. Nolan violated RPC 1.4 (Communication) by failing to adequately communicate with Nikki Lunsford.

18. Mr. Nolan violated RPC 1.4 (Communication) by failing to adequately communicate with Rodney Smith.

19. Mr. Nolan violated RPC 1.4 (Communication) by failing to adequately communicate with Dale Peterson.

20. Mr. Nolan violated RPC 1.4 (Communication) by failing to adequately communicate with David Morgan.

21. Mr. Nolan violated RPC 1.2 (Scope of Representation) by failing to consult with Dale and Debbie Peterson before voluntarily nonsuiting their lawsuit.

22. Mr. Nolan violated RPC 1.16(c) (Declining or Terminating Representation) by withdrawing from his representation of David Morgan without obtaining leave of court.

23. Mr. Nolan violated RPC 1.8(a) (Conflict of Interest) by entering into loan transactions with HR Comp while employed as its general counsel without reducing the terms of

the transactions to writing, advising it of the desirability of seeking outside counsel and obtaining its written, informed consent.

24. Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a) (Misconduct).

The above findings constitute a violation of the RPC Misconduct under R 8.4(a).

The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has carried its burden and proven the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence.

**B. Alleged Violations Not Established By A Preponderance of the Evidence**

1. The preponderance of the evidence failed to establish that Mr. Nolan violated 5.3(c) (Responsibilities Regarding Nonlawyer Assistants) and the Respondent's Motion to Dismiss that allegation, made at the conclusion of the Board's proof, is granted.

2. The preponderance of the evidence failed to establish that Mr. Nolan violated RPC 1.15(d) (Safekeeping Property and Funds) by failing to promptly deliver the funds to which Debbie Peterson was entitled.

3. The preponderance of the evidence failed to establish that Mr. Nolan violated RPC 1.3 (Diligence) and 1.16(d) (Declining or Terminating Representation) by terminating his representation of David Morgan without taking steps to protect his interests.

The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has failed to carry its burden and has not proven the

aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence.

**C. ABA Standards for Imposing Lawyer Sanctions**

Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions. (“Standards”). *Board of Professional Responsibility of Supreme Court of Tennessee v. Maddux*, 148 S.W. 3d 37, 4 (Tenn. 2004). The Standards state that discipline “should depend upon the facts and circumstances of the case, should be fashioned in light of the purpose of lawyer discipline, and may take into account aggravating or mitigating circumstances.” ABA Standards §7.1.

1. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

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.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.

- 2. Pursuant to ABA Standard 9.22, aggravating factors are present in this case:
  - a. a pattern of misconduct;
  - b. multiple offenses;
  - c. vulnerability of victims (Lunsford and Collins-Hill minor children); and
  - d. substantial experience in the practice of law.
- 3. Pursuant to ABA Standard 9.23, mitigating factors are present in this case:
  - a. no prior disciplinary record;
  - b. no evidence that Mr. Nolan acted dishonestly or selfishly;
  - c. Mr. Nolan was cooperative with the Board; and
  - d. personal problems at the time of the events at times pertinent to the Complaint including his diagnosis of lupus and hypertension, health problems of his family members, failure of two businesses and the loss of his firm and employment with HR Comp.

#### **D. Discipline**

Based upon the evidence and admissions in this matter, the appropriate discipline is a suspension from the practice of law. Pursuant to ABA Standard 2.3, a suspension should be for a period of time equal to or greater than six months. Considering the seriousness of the misconduct, the lengthy period over which it occurred, the harm to his clients and the numerous

aggravating factors as well as the mitigating factors set forth above, Mr. Nolan should be suspended for two years, and for an indefinite period thereafter until the restitution provided for herein has been paid. The second year of said suspension may be suspended in conjunction with a fixed period of probation of one year conditioned upon the restitution provided for herein having been paid in its entirety and sufficient proof of payment of full restitution being provided to the Board of Professional Responsibility

**E. Restitution**

1. Mr. Nolan should be required to make restitution to Rodney Smith, his Bankruptcy Trustee or to the Lawyer's Fund for Client Protection if appropriate, in the total amount of \$36,945.00. As a condition precedent to any subsequent readmission to the practice of law, Mr. Nolan must show proof that this restitution has been paid.

2. Mr. Nolan should be required to make restitution to Michelle Collins-Hill, as legal guardian and for the benefit of Dakota Hill, or to the Lawyer's Fund for Client Protection if appropriate, in the total amount of \$29,747.04. As a condition precedent to any subsequent readmission to the practice of law, Mr. Nolan must show proof that this restitution has been paid.

3. Mr. Nolan should be required to make restitution to David Morgan, or to the Lawyer's Fund for Client Protection if appropriate, in the total amount of \$2,907.50. As a condition precedent to any subsequent readmission to the practice of law, Mr. Nolan must show proof that this restitution has been paid.

## JUDGMENT

In light of the Findings of Fact and Conclusions of Law, including the aggravating and mitigating factors set forth above, the Hearing Panel hereby concludes that the established violations of the Rules of Professional Conduct justify suspension, and that Mr. Nolan should be suspended from the practice of law for two years, conditioned upon full payment of the restitution as provided herein, and thereafter for an indefinite period should said condition not be satisfied. The Hearing Panel further concludes that the second year of said suspension may be suspended in conjunction with a fixed period of probation of one year conditioned upon the restitution provided for herein having been paid in its entirety and sufficient proof of payment of full restitution being provided to the Board of Professional Responsibility {Tenn. Sup. Ct. R. 9, § 4.2 and § 8.5} Restitution shall be a condition precedent of Mr. Nolan's suspension being probated. Mr. Nolan shall make restitution to Rodney Smith, his Bankruptcy Trustee, or to the Lawyer's Fund for Client Protection if appropriate, in the total amount of \$36,945.00. Mr. Nolan shall make restitution to Michelle Collins-Hill, as legal guardian and for the benefit of Dakota Hill, or to the Lawyer's Fund for Client Protection if appropriate, in the total amount of \$29,747.04. Mr. Nolan shall make restitution to David Morgan, or to the Lawyer's Fund for Client Protection if appropriate, in the total amount of \$2,907.50. {Tenn. Sup. Ct. R. 9, §4.7} The suspension will continue for an indefinite period if proof of restitution is not sufficiently established by Mr. Nolan. {Tenn. Sup. Ct. R. 9, § 4.2}

IT IS, THEREFORE, ORDERED by this Disciplinary Hearing Committee empanelled by the Tennessee Supreme Court as follows:

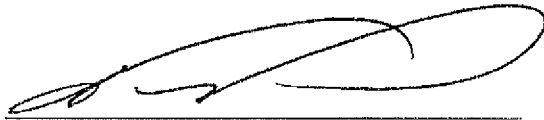
1. The Respondent, Joseph Brent Nolan, shall be suspended from the practice of law in Tennessee for a period of TWO (2) YEARS, with the second year of said suspension being suspended in conjunction with a one year period of probation, pending strict compliance by Respondent with the terms of probation and pending proof of restitution as set forth below. The suspension will continue indefinitely if the restitution as set forth herein is not made.
2. The Respondent, Joseph Brent Nolan, shall make restitution to Rodney Smith, his Bankruptcy Trustee, or to the Lawyer's Fund for Client Protection if appropriate, in the total amount of \$36,945.00.
3. The Respondent, Joseph Brent Nolan, shall make restitution to Michelle Collins-Hill, as legal guardian and for the benefit of Dakota Hill, or to the Lawyer's Fund for Client Protection if appropriate, in the total amount of \$29,747.04.
4. The Respondent, Joseph Brent Nolan, shall make restitution to David Morgan, or to the Lawyer's Fund for Client Protection if appropriate, in the total amount of \$2,907.50.
5. The Respondent, Joseph Brent Nolan, shall serve the second year of his suspension on probation, which probation may be revoked and the remainder of the suspension set forth above imposed, should Respondent fail to comply with any of the following terms of his probation:
  - A. Restitution fully satisfied as set forth herein; and
  - B. Respondent shall obtain and utilize the services of a mentor to monitor the operation of his law practice and provide advice and suggestions regarding

same at his expense, which monitor shall comply with the reporting requirements prescribed by the Board.

6. Respondent shall be ordered to pay the costs of these proceedings, including the Board's costs and expenses, pursuant to Tenn. Sup. Ct. R. 9, § 24.3. within ninety days of the entry of this Order.
7. The Respondent, Joseph Brent Nolan, shall comply with the requirements of Tennessee Supreme Court Rule 9, Section 18 (2006) or Section 28 (2013) as applicable, and Section 19 (2006) or Section 30 (2013) as applicable, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

**NOTICE: 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.**

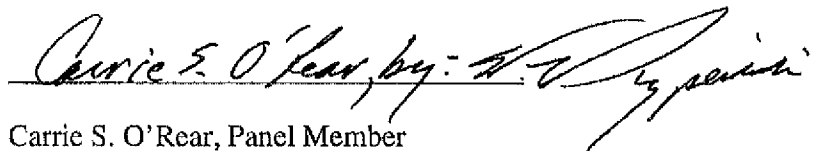
IT IS SO ORDERED.



Weldon E. Patterson, Panel Chair



Carl P. McDonald, Panel Member



Carrie S. O'Rear, Panel Member