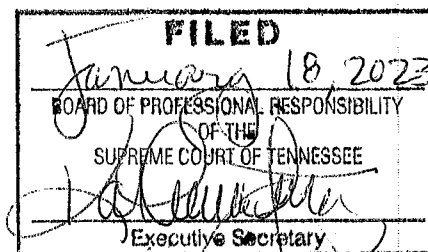


**IN DISCIPLINARY DISTRICT V  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE**



**IN RE: ROBERT R. REXRODE,  
BPR No. 016508, Respondent,  
an Attorney Licensed to Practice  
Law in Tennessee  
(Winchester, Virginia)**

**DOCKET NO. 2022-3232-5-DB**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

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This matter came on for a final hearing on November 1, 2022 before a Hearing Panel consisting of Jeffrey Spark, Abby Rubenfeld, and Lucas Jerkins, Panel Chair, upon a Petition for Discipline. Douglas R. Bergeron, Disciplinary Counsel for the Board of Professional Responsibility, participated in the hearing. Respondent did not participate in the hearing despite being given proper notice. The hearing was conducted via Zoom electronic video Conference.

**STATEMENT OF THE CASE**

The Petition for Discipline was filed by the Tennessee Board of Professional Responsibility (hereinafter sometimes referred to as "the Board") on March 2, 2022. A Motion for Default Judgment and that the allegations of the Petition be deemed admitted was filed by the Board on July 26, 2022 due to Respondent failing to respond to the Petition for Discipline. This Hearing Panel entered an Order on September 6, 2022 granting the Board's Motion for Default and finding that the allegations of the Petition for Discipline are to be deemed admitted. A final hearing was set for November 1, 2022 with the only issue to be addressed was the appropriate disciplinary sanction.

**FINDINGS OF FACT**

The Petition for Discipline in this matter was served via certified mail and also via

electronic service pursuant to Tennessee Rule of Civil Procedure 5.02. Both the certified mailing and the electronic service were to addresses listed on the Board's website as required to be kept and updated by Respondent. Additional unsuccessful attempts by the Board were made to serve Mr. Rexrode by certified mail at an address located, after additional investigation, that was not an address listed by Mr. Rexrode on his registration information. We conclude that the Board took reasonable steps to serve Mr. Rexrode and that he had proper notice of all hearings relative to the findings being made herein. Mr. Rexrode failed to participate in the final hearing and failed to participate at any other stage of this disciplinary proceeding. The allegations and exhibits contained in the Petition for Discipline filed by the Board were deemed admitted pursuant to the Order of Default entered in this matter and we so find by preponderance of the evidence the following facts have been proven by preponderance of evidence:

**File No. 64534-0-MS – Informant Anita Casey, West Virginia State Bar**

The Respondent, Robert R. Rexrode, has a suspended Tennessee law license from 2015 and 2020. Mr. Rexrode, at all times pertinent to this proceeding, resided in Virginia and was/is the President and Director of a non-profit prison ministry, Freebird Prison Ministries that helps prisoners in Virginia, West Virginia, and Maryland by providing ministry and aid to inmates. Mr. Rexrode was originally suspended on January 6, 2015 for a one-year period for various RPC violations and entered a conditional guilty plea. The Respondent failed to apply for reinstatement of his law license at the expiration of the suspension period, as required by Supreme Court Rule and the Order of Suspension. On September 25, 2020, the Respondent was temporarily suspended for failing to provide a response to this disciplinary complaint filed with the Board.

In May 2020, the West Virginia State Bar notified the Board of a complaint filed with them by Stacy Nowicki, Director of Legal Services, with the West Virginia Department of Corrections and Rehabilitation. Ms. Nowicki alleged that Mr. Rexrode was engaged in the unauthorized

practice of law in West Virginia. The Respondent had contacted Ms. Nowicki asking about the codification of a statute that allowed for the release of an inmate on parole for good behavior. The Respondent told Ms. Nowicki he was an attorney working with an inmate in the West Virginia prison system who possibly could be released on parole under the new statute for good behavior. The Respondent also referred to himself as “semi-retired” Tennessee lawyer. Ms. Nowicki also received a voice mail message from the Respondent where he identified himself as an “attorney” as well as the Executive Director of a non-profit organization helping prisoners. The Respondent never told Ms. Nowicki that his license in Tennessee had been suspended.

The West Virginia State Bar informed the Mr. Rexrode that he was involved in the unauthorized practice of law in West Virginia and asked him to provide a response and summary of the nature and extent of his work in West Virginia. The Respondent provided a response and claimed his license in Tennessee was put on “Suspended/Disabled” status following a heart attack in May 2013 and he was currently working as the Executive Director of a prison ministry and aids inmates. Mr. Rexrode further provided, in the response to the West Virginia Bar, that his ministry “enjoys the friendship and support of other retired attorneys, as I am”. Mr. Rexrode's Order of Summary Suspension entered in 2016 was in full force and effect in 2019 and beyond, prohibiting the practice of law. At no time during the events described herein did Mr. Rexrode remedy his administrative suspensions of his Tennessee license law license that began in 2016 and, at all times relevant hereto, Mr. Rexrode's Tennessee license was suspended for failure to comply with Continuing Legal Education requirements and failure to pay bar dues. Mr. Rexrode's law license was never on disability status in the State of Tennessee, and Mr. Rexrode never applied for disability status in Tennessee. Additionally, it is factually concluded that the events that gave rise to this Disciplinary proceeding were for actions taken by Mr. Rexrode in West Virginia. Mr. Rexrode also has knowingly failed to participate in this disciplinary proceeding. We find by a

preponderance of the evidence, that Mr. Rexrode practiced law while suspended.

### CONCLUSIONS OF LAW

Pursuant to Tenn. Sup. Ct. R. 9, § 1, 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 of the State of Tennessee shall constitute misconduct and be grounds for discipline. It is further concluded that the applicable Rules of Professional Conduct are those from the State of West Virginia.

The preponderance of the evidence, in both of the complaints at issue in this disciplinary matter, establishes that Mr. Rexrode has knowingly committed the following violations of the West Virginia Rules of Professional Conduct:

Mr. Rexrode knowingly violated the West Virginia Rule of Professional Conduct 5.5 (b)(2) (Unauthorized Practice) by holding himself out to clients and the public that he was admitted and able to practice law in West Virginia. Mr. Rexrode knowingly, while suspended pursuant to a Tennessee Supreme Court Order, undertook the representation of new clients in violation of West Virginia Rule of Professional Conduct 8.4(d). Mr. Rexrode knowingly misled the public relative to his status as a licensed attorney and/or the reasons as to why he was suspended as an attorney and, as such, is in violation of West Virginia Rule of Professional Conduct 8.4(c). Mr. Rexrode, while suspended from the practice of law by the Tennessee Supreme Court, knowingly misrepresented his status as an active attorney and misled the public in violation of West Virginia Rule of Professional Conduct 8.4(c) and 8.4(d). Lastly, Mr. Rexrode knowingly failed to comply with the investigation into this matter in violation of West Virginia Rule of Professional Conduct 8.1.

## APPLICATION OF ABA STANDARDS

With disciplinary violations having been established by preponderance of the evidence, the Panel is now required to consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

### Application of the ABA Standards

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. In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

As the admitted allegations prove knowing conduct and based upon the lack of any response from Respondent, the following ABA Standards are potentially applicable to the Rules violated in this matter:

### ABA Standard 4.6 Lack of Candor

#### **4.6 Lack of Candor**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

### ABA Standard 5.1– Failure to Maintain Personal Integrity

#### **5.1 Failure to Maintain Personal Integrity**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.11 Disbarment is generally appropriate when: (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

#### **ABA Standard 6.0 Violations of Duties Owed to the Legal System**

##### **6.1 False Statements, Fraud, and Misrepresentation**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

#### **ABA Standard 7.0 Violations of Other Duties as a Professional**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client,

unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

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

### **Aggravating Factors**

Pursuant to ABA Standard 9.22, aggravating factors are present in this case. The following aggravating circumstances justify an increase in the degree of discipline to be imposed against Ms. Finney:

1. Mr. Rexrode's failure to acknowledge the wrongful nature of his conduct;
2. Mr. Rexrode's multiple offenses;
3. Mr. Rexrode's substantial experience in the practice of law;
4. Mr. Rexrode's prior disciplinary offenses;
5. Mr. Rexrode's failure to respond to Disciplinary Counsel investigation; and
6. Mr. Rexrode's pattern of misconduct is an aggravating circumstance justifying an increase in discipline.

### **Mitigating Factors**

Mr. Rexrode did not participate in the final hearing of this matter, after Notice of same, and, as such, there was no evidence of mitigating factors presented. The evidence therefore preponderates that there are no mitigating factors applicable in this cause.

### **JUDGMENT**


In light of the Findings of Fact and Conclusions of Law herein and with consideration to the applicable ABA Standards for Imposing Lawyer Sanctions, the Hearing Panel has determined that the actions of Mr. Rexrode were knowing violations of disciplinary Rules referenced herein and the appropriate baseline sanction is either suspension or disbarment. Having established the appropriate baseline sanction the Hearing Panel, upon consideration of the significant aggravating factors in this case, finds by a preponderance of the evidence that Mr. Rexrode committed disciplinary misconduct and should be permanently disbarred from the practice of law.


**NOTICE**

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33, by filing a Petition for Review in the Circuit or Chancery Court within sixty (60) days of the date of entry of the hearing panel's judgment.

**IT IS SO ORDERED.**

  
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Lucas E. Jerkins, Panel Chair

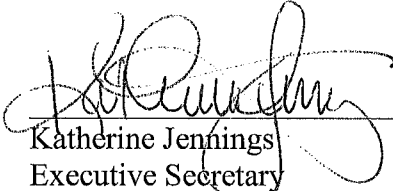
  
\_\_\_\_\_  
Abby R. Rubinfeld, Panel Member

  
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Jeffrey Spark, Panel Member



**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to Robert R. Rexrode, 2110 Martinsburg Pike, Winchester, VA 22603, by U.S. First Class Mail, and hand-delivered to Douglas R. Bergeron, Disciplinary Counsel, on this the 18<sup>th</sup> day of January 2023.

  
Katherine Jennings  
Executive Secretary

**NOTICE**

**This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.**