

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

FILED

2013 DEC 16 PM 4:48

BOARD OF PROFESSIONAL  
RESPONSIBILITY

JCW EXEC. SEC.

**IN RE: PAUL JULIUS WALWYN  
Respondent, BPR No. 18263  
An Attorney Licensed  
to Practice Law in Tennessee  
(Davidson County)**

**DOCKET NO. 2012-2156-5-KH**

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**JUDGMENT OF THE HEARING PANEL**

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This cause came for trial before this Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee on December 4, 2013 in the Trial Court Room of the Belmont School of Law, 1901 15<sup>th</sup> Avenue South, Nashville, Tennessee. This cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court. This Hearing Panel, Daniel L. Clayton (Chair), Samuel D. Lipshie and Daniel C. Todd, after considering the entire file in this matter, testimonies of the witnesses, exhibits, and arguments presented to this Panel, and after thorough deliberations, makes the following Findings of Fact, Conclusions of Law, and renders its Judgment in this cause.

## **I. BACKGROUND**

Respondent Paul Julius Walwyn is licensed to practice law in Tennessee, with Board of Professional Responsibility Number 18263. A Petition for Discipline was filed against Mr. Walwyn on September 7, 2012. Mr. Walwyn requested and received permission for an extension to file his answer, which was filed on October 10, 2012. On March 28, 2013, the parties filed a Joint Motion to Permit Supplemental Petition for Discipline. An Order allowing the Supplemental Petition was entered on April 1, 2013. The Supplemental Petition was filed on April 1, 2013. Mr. Walwyn filed an answer to the Supplemental Petition.

## **II. FINDINGS OF FACT**

### **FILE NO. 34955-5-PS (Cristobal Lara case)**

1. Mr. Walwyn represented Cristobal Lara on a criminal charge in the Circuit Court for Williamson County and following his conviction Mr. Walwyn filed, on May 26, 2010, a notice of appeal to the Court of Criminal Appeals (hereinafter sometimes referred to as "the CCA") at Nashville, Tennessee.
2. On August 3, 2010, the Court of Criminal Appeals received notice from the trial court clerk that no transcript had been filed.
3. On September 1, 2010, the CCA issued an Order directing Mr. Walwyn to notify the CCA about the status of the appeal.
4. Mr. Walwyn did not respond.

5. On October 15, 2010, the Clerk of the CCA sent notice to Mr. Walwyn advising him of his failure to file a brief.
6. Mr. Walwyn did not respond.
7. On December 3, 2010, the CCA issued an Order directing Mr. Walwyn to file a brief or a motion to dismiss within twenty days.
8. Mr. Walwyn did not file a brief or a motion to dismiss with the CCA by the deadline.
9. On April 18, 2011, Mr. Walwyn filed a motion for extension of time, which the CCA denied.
10. On June 21, 2011, Mr. Walwyn filed another motion for extension of time.
11. On August 15, 2011, the CCA issued an Order permitting Mr. Walwyn twenty (20) days to file a brief or a motion to dismiss.
12. Once again, Mr. Walwyn failed to do either.
13. On January 20, 2012, the CCA issued a "SHOW CAUSE" order, ordering that Mr. Walwyn appear on February 22, 2012 to show cause why he should not be held in contempt of court.
14. On February 22, 2012, Mr. Walwyn filed a notice of dismissal of the *Lara* appeal.
15. Mr. Walwyn asserted that he filed an appeal on Mr. Lara's behalf to preserve his rights, and following the filing of the notice of appeal, Mr. Walwyn had difficulty communicating and/or locating Mr. Lara to clarify his intention regarding the appeal. Apparently, on or about the day before the Show Cause hearing, Mr.

Walwyn was able to locate and meet with Mr. Lara to secure Mr. Lara's written approval of dismissing the appeal. According to the testimony of Mr. Walwyn, from the time of the filing of the notice of appeal to the time of the Show Cause hearing (a time period of approximately 21 months), Mr. Lara had served enough time to soon be released on parole, and thus did not wish to pursue an appeal.

16. Mr. Walwyn appeared at the show cause hearing before the CCA on February 22, 2012.
17. On February 24, 2012, the CCA issued an Order finding Mr. Walwyn to be in intentional and willful contempt of court.
18. Mr. Walwyn was sentenced to forty-eight (48) hours in the Davidson County Jail.
19. On March 5, 2012, Mr. Walwyn filed a Petition to Re-Hear with the CCA.
20. On March 20, 2012, the CCA denied the Petition to Re-Hear.
21. On March 22, 2012, Mr. Walwyn filed a Rule 11 Application for Permission to Appeal to the Tennessee Supreme Court, which was denied by the Supreme Court by Order dated May 16, 2012.
22. Mr. Walwyn then reported to the Davidson County Jail and served his sentence.
23. The Board has asserted Mr. Walwyn's acts and omissions constitute ethical misconduct in violation of the following Rules of Professional Conduct: 1.3, Diligence; 3.2, Expediting Litigation; 3.4(c) Fairness to Opposing Party and Counsel; and 8.4(a) and (d), Misconduct.

24. The Respondent, in paragraph 4 and 32 of his answer filed October 10, 2012, to the Original Petition for Discipline admits that he “has fallen short on at least some of his obligations under the standards imposed upon members of the bar as conditions for the privilege to practice law;” has admitted that his “acts and omissions have violated the Rules of Professional Conduct,” but denied that he has violated all the Rules of Professional Conduct specified in the Petition for Discipline.

**FILE NO. 34956-5-PS (Deonta Alesio Matthews)**

25. Mr. Walwyn represented Deonte Alesio Matthews (“Matthews”) in the Criminal Court for Davidson County. Following his conviction, Mr. Walwyn represented Matthews in an appeal before the Court of Criminal Appeals at Nashville, Tennessee.

26. Mr. Walwyn failed to file an appeal before the filing deadline.

27. Mr. Walwyn filed a motion with the CCA to excuse the untimely filed notice of appeal, which the CCA granted on March 26, 2010.

28. On April 12, 2010, Mr. Walwyn filed the notice of appeal.

29. On August 10, 2010, the CCA received notice from the trial court clerk that no transcript had been filed.

30. On October 5, 2010, the CCA issued an order directing Mr. Walwyn to notify the CCA about the status of appeal.

31. Mr. Walwyn filed a motion requesting an extension of time to file the transcript.
32. On October 18, 2010, the CCA granted the motion and allowed Mr. Walwyn until November 10, 2010 to file the transcript.
33. On January 6, 2011, the CCA received a second notice from the trial court clerk stating that the transcript had not yet been filed.
34. On February 2, 2011, the CCA issued another order directing Mr. Walwyn to notify the CCA about the status of the appeal within twenty days of the Order.
35. Mr. Walwyn failed to timely respond.
36. On April 18, 2011, Mr. Walwyn filed a motion requesting additional time to file the transcript of evidence.
37. On April 29, 2011, the CCA issued an order granting Mr. Walwyn fifteen days to file the transcript.
38. The appellate record was filed with the CCA on September 12, 2011.
39. On October 20, 2011, the Clerk of the CCA mailed Respondent a notice of his failure to timely file a brief.
40. Mr. Walwyn did not respond.
41. On November 21, 2011, the CCA issued an order directing Mr. Walwyn to file a brief or a motion to dismiss within twenty days.
42. Mr. Walwyn still did not respond.
43. On January 20, 2012, the Court issued a Show Cause order, scheduling a hearing on the contempt of court show cause on February 22, 2012.

44. Mr. Walwyn testified he filed the brief on behalf of Matthews on February 21, 2012.
45. Mr. Walwyn appeared at the Show Cause hearing before the CCA on February 22, 2012.
46. On February 24, 2012, the CCA issued an Order finding Mr. Walwyn to be in intentional and willful contempt of court, and sentenced him to forty-eight (48) hours in the Davidson County Jail to run concurrent with the sentence imposed in the *Lara* case.
47. Mr. Walwyn filed a Petition to Re-Hear, which was denied by the CCA, followed by a Rule 11 Application for Permission to Appeal to the Tennessee Supreme Court, which was also denied.
48. The Board has asserted Mr. Walwyn's acts and omissions constitute ethical misconduct in violation of the following Rules of Professional Conduct: 1.3, Diligence; 3.2, Expediting Litigation; 3.4(c) Fairness to Opposing Party and Counsel; and 8.4(a) and (d), Misconduct.
49. In paragraphs 63 and 64 of his Answer to the Petition for Discipline, Mr. Walwyn admitted that his "acts and omissions have violated the Rules of Professional Conduct," but denied that he has violated all the Rules of Professional Conduct specified in the Petition for Discipline.

**FILE NO. 35736c-5-KH (James Tremelle Hunt)**

50. Mr. Walwyn represented James Tremelle Hunt (“Hunt”) in a criminal trial before the Criminal Court for Davidson County, Tennessee.
51. On November 17, 2010, Hunt was convicted of the charges brought against him.
52. The sentencing hearing was held in late January 2011.
53. On February 2, 2011, Mr. Walwyn filed a Motion for New Trial and requested additional time for the possibility of amending his allegations.
54. On March 14, 2011, Mr. Walwyn amended the Motion for New Trial and requested additional time to locate phone records and a witness.
55. On April 20, 2011, Mr. Walwyn told the trial judge that the additional records and witness could not be located.
56. On April 25, 2011, an Order was entered denying the Motion for New Trial.
57. Mr. Hunt contacted the Consumer Assistance Program of the Board of Professional Responsibility (“CAP”) in October 2011 regarding Mr. Walwyn.
58. As of October 2011, Mr. Walwyn had not filed a Notice of Appeal in Hunt’s case.
59. Mr. Walwyn sent a letter to CAP on December 1, 2011, admitting that as of that date he had not filed a notice of appeal and blamed it on a clerical error.
60. In the December 1, 2011, letter Mr. Walwyn states “[A]t this time, a Motion to Accept a Late Filed Appeal is going to be filed and an appeal to follow.”
61. Mr. Walwyn did not file a motion to accept a late appeal until April 17, 2012.



62. The CCA denied Mr. Walwyn's motion on May 10, 2012. The CCA found that Mr. Walwyn failed to provide critical information in order for it to determine whether waiver was appropriate.
63. Ultimately, Hunt obtained new counsel.
64. On July 3, 2013, Judge Randall Wyatt granted the filing of a notice of appeal in the case of State v. James T. Hunt.
65. The Board asserts that, with regards to the Hunt matter, Mr. Walwyn violated the following Rules of Professional Conduct: 1.1, Competence; 1.3 Diligence; 1.4, Communication; 3.2 Expediting Litigation; and 8.4(a) and (d), Misconduct.

#### **DECEMBER 4, 2013 HEARING**

At the December 4, 2013 hearing, the Board presented testimony from the Respondent, Paul Walwyn and introduced multiple exhibits. Respondent presented his own testimony, as well as that of General Sessions Judge Bill Higgins, Assistant District Attorney Amy Hunter, Criminal Court Judge Mark Fishburn (by telephone), Attorney Stan Davis, General Sessions Judge Gale Robinson and attorney John Webb. In general, the testimony elicited from these witnesses showed Mr. Walwyn to be a respected attorney who is an asset to the legal community. These witnesses were credible. The Judges testified that Mr. Walwyn is always respectful to the Courts and that the Judges have no reason to doubt his competency. Judge Fishburn testified that Mr. Walwyn is considered one of the nicest and easiest attorneys to work with on matters. ADA Hunter

testified that Mr. Walwyn is competent, and from her perspective, investigates his cases thoroughly. The Judges and ADA Hunter testified that Mr. Walwyn is candid and truthful. The Judges testified, and Mr. Walwyn acknowledged in Court document Exhibit 3, that he carried a heavy caseload.

Mr. Walwyn testified that during part of the time frame in question, his father was very ill, he was especially close to his father, and that he would stay overnight with him in the hospital. Mr. Walwyn's father passed away on July 11, 2012, after a lengthy illness. Mr. Walwyn further testified that he has changed his practice and has stopped filing appellate matters. Finally, Mr. Walwyn admitted in his testimony, and in his pretrial brief, a lack of oversight and control over his office's operations during the time in question.

## **BURDEN OF PROOF**

Tennessee Supreme Court Rule 9, Section 8.2 states the following:

In hearing on formal charges of misconduct, Disciplinary Counsel must prove the case by a preponderance of the evidence.

Mr. Walwyn concedes in his Pre-Trial brief that his conduct fell short of his ethical duties with respect to Rules 1.3 (Diligence), 1.4 (Communication) and 3.2 (Expediting Litigation). Pre-Trial Brief at page 6, filed June 25, 2013.

Once disciplinary violations have been established, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court.

**The *Lara* Case (FILE NO. 34955-5-PS)**

**1.3: Diligence**

Rule 1.3 states:

A lawyer shall act with reasonable diligence and promptness in representing a client.

Furthermore, comment [2] of Rule 1.3 states:

A lawyer's work load must be controlled so that each matter can be handled competently.

Mr. Walwyn filed an appeal on May 26, 2010. By December 2010, Mr. Walwyn had failed to respond to the CCA regarding the status of the case and the filing of his brief. Even though Mr. Walwyn requested an extension of time in April 2011 and June 2011, he still did not file a brief or a motion to dismiss. In January 2012, the CCA entered a "Show Cause" order. On February 24, 2012, the CCA issued an Order finding Mr. Walwyn to be in intentional and willful contempt of court.

We find the actions of Mr. Walwyn in the *Lara* matter violated Rule 1.3.

**3.2: Expediting Litigation**

Rule 3.2 states:

A lawyer shall make reasonable efforts to expedite litigation.

We find the actions of Mr. Walwyn in the *Lara* matter, as set forth in Findings of Fact numbered 1-15, violate Rule 3.2.

**3.4(c): Fairness to Opposing Party and Counsel**

Rule 3.4(c) states:

A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

Comment [1] states:

The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

We understand that the Comment accompanying each Rule “explains and illustrates the meaning and purpose of the Rule” and Comments are “intended as guides to interpretation, but the text of each Rule is authoritative.” Tennessee Supreme Court Rule 8, Preamble and Scope, [23]. Upon review of Rule 3.4 in its entirety, and based upon the particular facts and circumstances of this case, it appears that the proper application of this Rule relates to evidentiary matters and harm visited upon the opposing party and adverse counsel, and is not applicable to the wrongs complained of against Mr. Walwyn<sup>1</sup> in the instant case.

#### **Rule 8.4 (a) and (d) Misconduct**

Rule 8.4 states:

It is professional misconduct for a lawyer to:

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<sup>1</sup> Even if we are wrong in our interpretation that 3.4(c) is not applicable to this matter, the finding of it being applicable in either the *Lara* and/or *Matthews* matters would not alter the Sanctions imposed in this matter.

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(d) engage in conduct that is prejudicial to the administration of justice;

Mr. Walwyn's actions in *Lara* as described herein violate Rule 1.3 and Rule 3.2 of the Rules of Professional Conduct. Such violations are a violation of Rule 8.4(a) of the Tennessee Rules of Professional Conduct.

Mr. Walwyn's actions violate Rule 8.4(d) of the Rules of Professional Conduct. Mr. Walwyn repeatedly ignored Orders from the Appellate Court. Mr. Walwyn's actions were so egregious [intentional and willful contempt] in the eyes of the Court of Criminal Appeals that it sentenced him to forty-eight (48) hours in the Davidson County Jail. Mr. Walwyn's actions were prejudicial to the administration of justice. As Comment [9] of 8.4 states:

Normally, a lawyer who knowingly fails to obey a court order demonstrates disrespect for the law that is prejudicial to the administration of justice.

We find Mr. Walwyn knowingly failed to obey a court order on multiple occasions, and his actions were disrespectful for the law that is prejudicial to the administration of justice.

**The *Matthews* case (FILE NO. 34956-5-PS)**

The Board of Professional Responsibility has asserted the same violations in the *Matthews* matter as were asserted in the *Lara* matter.

**Rule 1.3: Diligence**

Mr. Walwyn's actions, as set forth in Findings of Fact 25-49, violated **Rule 1.3, Diligence**. Mr. Walwyn failed to act with reasonable diligence and promptness to his client when he failed to file an appeal before the filing deadline and when he, on multiple occasions, failed to comply with Orders from the Court of Criminal Appeals and Notices from the Clerk of the CCA.

**Rule 3.2: Expediting Litigation**

We are not persuaded, however, that the Board met its burden of proof with regards to **Rule 3.2, Expediting Litigation**. Clearly, there was a delay in the appeal of the *Matthews* matter, but, from the evidence presented at the hearing, the actions of the court reporter substantially contributed to the long delay. The transcript was not filed until September 12, 2011. The Board failed to prove by a preponderance of the evidence that the delay in the filing of the transcript was the fault of Mr. Walwyn.

**Rule 3.4(c): Fairness to Opposing Party and Counsel**

For the reasons set forth in the *Lara* matter above, we do not find a violation of 3.4(c).

**Rule 8.4(a) and (d): Misconduct**

Mr. Walwyn's actions in *Matthews* as described herein violate Rule 1.3 of the Rules of Professional Conduct. Such a violation in itself is a violation of Rule 8.4(a) of the Tennessee Rules of Professional Conduct.

Mr. Walwyn's actions violate Rule 8.4(d) of the Rules of Professional Conduct.

The Criminal Court of Appeals sentenced him to forty-eight (48) hours in the Davidson County Jail. Mr. Walwyn's actions were prejudicial to the administration of justice. See Comment [9] of Rule 8.4. We find Mr. Walwyn knowingly failed to obey court orders, and his actions were disrespectful for the law that is prejudicial to the administration of justice.

**The *Hunt* case (FILE NO. 35736c-5-KH)**

**Rule 1.1: Competence**

We find that the Board failed to prove by a preponderance of evidence a lack of competence on the part of Mr. Walwyn in his representation of Mr. Hunt.

**Rule 1.3: Diligence**

We find that the actions of Mr. Walwyn, as set forth in Findings of Fact 50-64, do constitute a violation of Rule 1.3.

**Rule 1.4: Communication**

Mr. Walwyn has acknowledged a violation of 1.4, in his pretrial brief. The *Hunt* matter was the only action wherein the Board alleged a violation of Rule 1.4. We also agree that the Respondent's actions violate Rule 1.4.

**Rule 8.4(a) and (d)**

Respondent's actions in *Hunt* as described herein violate Rule 1.3 and Rule 1.4 of the Rules of Professional Conduct. Such violations are violations of Rule 8.4(a) of the Tennessee Rules of Professional Conduct. We also find Respondent violated 8.4(d).

## **APPLICATION OF ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS**

Section 8.4 of Rule 9 of the Rules of the Supreme Court state:

“In determining the appropriate type of discipline, the Hearing Panel shall consider the applicable provisions of the ABA standards for imposing lawyer sanctions.”

Section 1.1 of the ABA standards provides:

- 1.1 Purpose of lawyer discipline proceedings. The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.

The following Sections of the ABA Standards apply in this matter:

- 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 injuries to a client.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system.
- 8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

Respondent has taken the position that his actions did not produce any



injury or potential injury. We disagree. The potential injury to a client from violating the rules set forth herein is clear. Comment [9] of Rule 8.4 sets forth the injury to the legal system when an attorney fails to obey a court order.

Section 9.21 and 9.22 of the ABA Standards provide:

9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify and increase in the degree of discipline to be imposed.

9.22 Factors which may be considered an aggravation. Aggravating factors include:

- (a) Prior disciplinary offenses;
- (b) Dishonest or selfish motive;
- (c) Pattern of misconduct;
- (d) Multiple offenses;
- (e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (f) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) Refusal to acknowledge wrongful nature of conduct;
- (h) Vulnerability of victims;
- (i) Substantial experience in the practice of law;
- (j) Indifference to making restitution;
- (k) Illegal conduct, including that involving the use of controlled substances.

Existing aggravating factors in Respondent's case include:

- (a) Prior disciplinary offenses<sup>2</sup>;
- (c) A pattern of misconduct;

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<sup>2</sup>

The prior disciplinary offenses we found relevant were:

- (1) Public Censure - filed July 22, 2004 (Trial Exhibit 34); and
- (2) Order of Enforcement - filed June 19, 2008 (Trial Exhibit 35).

- (d) Multiple offenses;
- (i) Substantial experience in the practice of law.

Section 9.31 and 9.32 of the ABA Standards provide:

9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Factors which may be considered in litigation. Mitigating factors include:

- (a) Absence of a prior disciplinary record;
- (b) Absence of a dishonest or selfish motive;
- (c) Personal or emotional problems;
- (d) Timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) Inexperience in the practice of law;
- (g) Character or reputation;
- (h) Physical disability;
- (i) Mental disability or chemical dependency including alcoholism or drug abuse when:
  - (1) There is medical evidence that the Respondent is affected by a chemical dependency or mental disability;
  - (2) The chemical dependency or medical disability caused the misconduct;
  - (3) The Respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
  - (4) The recovery arrested the misconduct and recurrence of that misconduct is unlikely.
- (j) Delay in disciplinary proceedings;
- (k) Imposition of other penalties or sanctions;
- (l) Remorse;
- (m) Remoteness of prior offenses.

The Hearing Panel finds, by a preponderance of the evidence, the existing mitigating factors in Respondent's case to include:

- (b) Absence of a dishonest or selfish motive;
- (c) Personal or emotional problems;
- (e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and
- (g) Character or reputation.

The Hearing Panel finds that section (k): Imposition of other Penalties or Sanctions, does not apply. Respondent asserted the 48 hour jail sentence for contempt of court imposed by the Criminal Court of Appeals, should be considered a mitigating circumstance. However, following the reasoning in *Board of Professional Responsibility v. Cowan*, 388 S.W. 3d 264 (Tenn. 2012), we find Respondent's position without merit. The Court in *Cowan* stated:

Although Mr. Cowan has suffered penalties (including imprisonment) for his conviction, this factor is inapplicable here because the criminal penalties were imposed as punishment. "The consideration of other penalties or sanctions imposed on a respondent attorney is appropriate when **those penalties or sanctions arise out of the disciplinary proceedings themselves or have been imposed by another jurisdiction's disciplinary board for the same conduct.**"

*Cowan*, at p. 270 (Emphasis Supplied).

### JUDGMENT

The preamble of the Tennessee Rules of Professional Conduct provides, in part, the following:

A lawyer is an expert in law pursuing a learned art and service to clients and in the spirit of public service and engaging at these pursuits as part of a common calling to promote justice and public good. Essential characteristics of a lawyer are knowledge of the law, skill in applying the

applicable law to the factual context, thoroughness of preparation, practical and prudential wisdom, ethical conduct, and integrity, and dedication to justice and the public good.

\* \* \*

The legal profession's relative autonomy carries with it special responsibilities of self government. . . . Every lawyer is responsible for observing the Rules of Professional Conduct. . . . Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.

Tenn.Sup.Ct. Rule 8, Preamble.

Rule 9, Section 8.5 of the Tennessee Supreme Court Rules states the following:

8.5 Probation. In the discretion of a hearing panel or a reviewing court, the imposition of a suspension for a fixed period (section 4.2) may be suspended in conjunction with a fixed period of probation. The conditions of probation shall be stated in writing in the judgment of a hearing panel or court. Probation shall be used only in cases where there is little likelihood that the Respondent will harm the public during the period of rehabilitation and where the conditions of probation can be adequately supervised. A probation monitor may be designated to supervise the Respondent's compliance with the conditions of probation. The Respondent shall pay the costs associated with probation, including, without limitation, a reasonable fee for the probation monitor.

The Hearing Panel finds that Mr. Walwyn violated the Rules of Professional Conduct as discussed above.

After considering the actions of Respondent, the aggravating and mitigating factors, the entire record and testimony in this case, it is the opinion of this Hearing Panel that Respondent shall be suspended from the practice of law for a period of six (6) months. Pursuant to Rule 9, Section 8.5, five (5) months of this suspension ordered herein shall be suspended in conjunction with a five month period of probation. In other

words, after thirty (30) days of suspension, Mr. Walwyn may begin practicing under a probationary period of time for five (5) months. During that probationary period of time, Mr. Walwyn is required to have a practice monitor. The duties and responsibilities of the practice monitor in this situation shall include:

1. Supervision of Mr. Walwyn.
2. Review/Implementation of office management procedures to include:
  - A. Ensuring Respondent's Contracts set forth, in part, the following:
    1. The subject matter and nature of Mr. Walwyn's representation including providing the client with a written description of such representation, the fee to be paid, and the agreed billing arrangements.
    2. A new client's written consent to the subject matter and nature of Respondent's representation, the fee to be paid, and the agreed billing arrangements.
  - B. If Mr. Walwyn withdraws from a matter, protocol regarding documentation of nonrepresentation and providing a copy of such documentation to the client with a copy retained in the file.
  - C. A docket/work control system which tracks, at a minimum, statutory and self imposed deadlines as well as adequate reminders of approaching deadlines.
  - D. A written step by step procedure for using the firm's docket/work control system.
  - E. Documentation that Mr. Walwyn's staff has been trained in the procedures for using the docket/work control system.
  - F. Respondent's docket/work control system that prominently marks all final deadlines so as to draw immediate attention to them.
  - G. At least one identical, complete back up for Mr. Walwyn's

docket/work control system.

- H. One person who is designated to oversee the docket/work control system for Mr. Walwyn.
- I. A docket/work control system that insures that deadlines are caught when Respondent or responsible staff member is absent.
- J. Matters needing docketing are entered into Mr. Walwyn's docket/work control system in a regular and timely manner.

The practice monitor shall be approved by the Board of Professional Responsibility and shall report to the Board every thirty (30) days whether Respondent is compliant with his probation. Pursuant to 8.5, Respondent shall pay the costs associated with probation, including without limitation a reasonable fee for the practice monitor.

Further, Mr. Walwyn is required to complete six (6) hours of continuing legal education on subjects related to client relations, the management of a law practice, and/or Rules of Professional Conduct regarding disciplinary action of the Board of Professional Responsibility, in addition to the mandatory fifteen (15) hours required by the Tennessee Commission on Continuing Legal Education in the calendar year of taking the courses. The six (6) hours of courses must be completed by the end of the probationary period.

IT IS SO ORDERED.

**THIS JUDGMENT MAY BE APPEALED PURSUANT TO § 1.3 OF RULE 9 OF THE TENNESSEE SUPREME COURT RULES BY FILING A PETITION FOR WRIT OF CERTIORI, WHICH PETITION SHALL BE MADE UNDER OATH OR AFFIRMATION AND SHALL STATE THAT IT IS THE FIRST APPLICATION FOR THE WRIT.**

ENTER on this the 16<sup>th</sup> day of December, 2013.

Daniel L Clayton  
Daniel L. Clayton (Chair)

Samuel D. Lipshie (by D/C  
w/pen)  
Samuel D. Lipshie

Daniel C. Todd (by D/C w/pen)  
Daniel C. Todd