

# Original

DISCIPLINARY BOARD OF THE LOUISIANA STATE BAR ASSOCIATION

IN RE JAMES MICHAEL TOBIN

NUMBER 95-DB-032

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## DECISION OF THE DISCIPLINARY BOARD

Respondent was charged in Count 1 with failing to complete the representation of his client, and failing to act with diligence, promptness or proper communication. In Count 2, respondent was charged with failing to provide a proper accounting for the fee paid to him and failing to cooperate in a disciplinary investigation.

When respondent failed to file responsive pleadings or an answer in a timely fashion, the Hearing Committee Chair signed an order that the substantive counts were deemed admitted and the Hearing Committee really only dealt with the appropriate sanction. It appears that respondent notified the Bar Association of his change of address in June of 1995; however, the new information was not updated and therefore the charges were mailed to his old address for which a clerk signed a return, thus properly commencing the process of formal charges. Notices in the record do indicate that respondent received notice that the Hearing Committee charges would be deemed admitted if he took no further action during the twenty (20) days following the Hearing Committee Chair's order, and apparently respondent despite notice took no action. It was only during the briefing process concerning the sanction that respondent began to defend himself and from the information presented certainly appeared to have more than earned the fee he charged the complainant and set forth strong reasons why representation of the claimant had been difficult.

The Hearing Committee recommended that respondent be suspended for a period of thirty

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(30) days with reinstatement contingent upon an accounting to complainant and return of any unearned fees. The accounting would be a vain procedure at this point since it was clear that respondent was paid \$425.00 by claimant, out of which respondent paid \$176.00 in court costs leaving approximately \$250.00 as a fee for meeting with the client, filing a divorce petition, calling on the client on more than one occasion and visiting the client's place of employment.

The mitigating circumstances in the present formal charges are as follows: respondent has no prior disciplinary record, he was inexperienced in the practice of law, having only been admitted one year at the time he undertook representation of complainant and there was an absence of dishonest motive by complainant. Aggravating factors consist of multiple offenses and failure to cooperate with the disciplinary system. The Disciplinary Board finds that despite the charges being deemed admitted due to inadequate actual notice to respondent through faulty Bar Association records, respondent still had adequate opportunity to defend himself and introduce evidence at the appropriate time to absolve the charges. His failure to do so represents a serious failure of his obligation to the disciplinary process and therefore the Disciplinary Board recommends that respondent be publicly reprimanded and assessed with all costs of these proceedings.

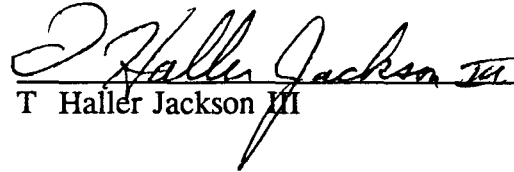
Signed in Shreveport, Louisiana this 18<sup>th</sup> day of November, 1996

THE DISCIPLINARY BOARD OF THE  
LOUISIANA STATE BAR ASSOCIATION

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**DISCIPLINARY BOARD OF THE  
LOUISIANA STATE BAR ASSOCIATION**

**NO 95-DB-032**

**IN RE JAMES MICHAEL TOBIN**

**CONCURRENCE**

This case is a good example of the problem with the "deemed admitted" rule. Technically, respondent must be considered guilty of the underlying charge although in point of fact, he was NOT. Never-the-less, respondent deserves the reprimand for failure to cooperate with the investigation. The Panel is to be congratulated for appreciating this fact.

Orlando N. Hamilton, Jr  
BOARD MEMBER