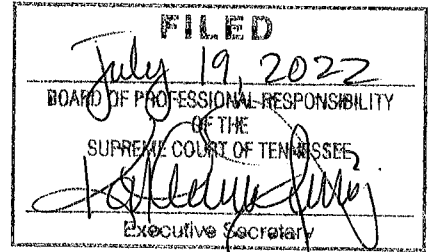


**IN DISCIPLINARY DISTRICT IX
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**IN RE: A. SAIS PHILLIPS FINNEY
BPR No. 028845, Respondent,
an Attorney Licensed to
Practice Law in Tennessee
(Shelby County)**

DOCKET NO. 2021-3172-9-DB

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for a final hearing on June 7, 2022 before a Hearing Panel consisting of Leslie R. Isaacman, Adam H. Johnson and Robbin W. Hutton, 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 telephonically.

STATEMENT OF THE CASE

The Petition for Discipline was filed by the Board of Professional Responsibility (hereinafter sometimes referred to as "the Board") on May 26, 2021. A motion to enlarge time to Answer was filed by the Respondent on July 1, 2021. An Order granting Respondent's Motion to enlarge time to Answer was entered on July 6, 2021. A Motion for Default Judgment and that the allegations of the Petition be deemed admitted was filed by the Board on August 12, 2021 due to Respondent failing to respond to the Petition for Discipline. On August 30, 2021 the Board filed a Motion to Compel responses to interrogatories and requests for production of documents. After a hearing on the Default Motion and Motion to Compel this Hearing Panel entered an Order on December 8, 2021 denying the Board's Motion for Default and in separate Order entered on

December 8, 2021 granted the Board's Motion to Compel. After Respondent failed to comply with this Hearing Panel's Order on the Board's Motion to Compel, the Board filed a Motion for Sanctions for such non-compliance on January 10, 2022. The Respondent did not respond to the Motion. A hearing on the Board's Motion for Sanctions was held on February 23, 2022. The Respondent did not participate in the hearing after receiving Notice of said hearing. This Hearing Panel entered an Order on March 7, 2022 granting the Board's Motion for Sanctions and as sanction striking the Answer of the Respondent and finding that the allegations of the Petition for Discipline are to be deemed admitted. The Order further set a final hearing for June 7, 2022 with the only issue to be addressed was the appropriate disciplinary sanction.

FINDINGS OF FACT

The allegations and Exhibits contained in the Petition for Discipline filed by the Board were Ordered as deemed admitted and we so find by preponderance of the evidence the following facts have been proven by preponderance of evidence:

File No. 62602-5-ES – Complainant - Christopher Jayne

On August 27, 2018 Christopher Jayne and his wife, Amanda Kaye Jayne, paid a \$125 consultation fee and met with Respondent to discuss some child custody issues. On October 4, 2018, Respondent was retained by Christopher Jayne and his wife, Amanda Kaye Jayne for assistance in a child custody matter. Respondent was paid an additional \$1,416.25 on this date for the representation. Immediately after making payment Respondent became difficult to contact. The admitted allegations indicate that Respondent filed no pleadings on behalf of the Jaynes', Respondent failed to respond to any communication sent by the Jaynes' between October 2018 and January 2019, Respondent constructively terminated her representation without any notice to clients, Respondent after agreeing to provide a refund failed to do so, and soon after agreeing to representation the Respondent vacated her then Nashville, Tennessee office and relocated to

Memphis, Tennessee failing to advise Mr. or Mrs. Jayne of the relocation.

After responding to the Board's initial request for a response to the disciplinary complaint, Respondent failed to respond to a request for additional information from the Board.

File No. 63747-9-ES – Complainant – Denise Gann

Respondent was retained by Ms. Gann in a child custody matter on or about September 6, 2018. The Fee Agreement required a refundable \$1,650.00 retainer to be paid to Respondent. Ms. Gann made total payments to Respondent in the amount of \$1,709.50 which included the retainer and a separate amount for the filing fee for the Petition to Modify. On September 6, 2018, Respondent entered a Note to her Clio File system indicating the plan is to: "file for modification of parenting time and mediation". There are no Clio notes or entries relative to the Gann file at any time after September 6, 2018. Respondent never provided any billing statements to Ms. Gann. Respondent did not deposit the refundable fee in a Trust account and/or IOLTA. At some point during representation of Ms. Gann, Respondent moved her law practice from Davidson County to Shelby County. Respondent did not advise Ms. Gann she had left Davidson County, Tennessee until February 12, 2020. Respondent has no written communication to Ms. Gann prior to February 12, 2020 relative to her office location move. In or around June of 2019, prior to Respondent moving from Davidson County, Tennessee, Respondent, in representation of Ms. Gann, prepared a Petition to Modify Parenting Plan and for a Preliminary Injunction. That Petition to Modify was never filed with any Court.

During Respondent's representation of Ms. Gann, Respondent's office used a Clio Connect. Prior to February 12, 2020, there is no documentation noting any correspondence from Respondent to Ms. Gann relative to signing the Petition to Modify pleading nor any communications relative to remaining retainer funds or status of filing fee check for Petition to Modify, paid separately by

Ms. Gann. On January 10, 2020, Ms. Gann emailed Respondent advising she could no longer get into the Clio client file system. On February 12, 2020, Respondent responded to Ms. Gann's email of January 10, 2020 and advised Ms. Gann, for the first time, of her change of business locations and her position relative to not signing Motion to Modify pleading. Throughout the representation, Respondent provided no accounting to Ms. Gann of the retainer fee paid, amounts billed against the retainer, nor indications as to the remaining retainer balance.

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.

The preponderance of the evidence establishes that Ms. Finney has knowingly committed the following violations of the Rules of Professional Conduct:

File No. 62602-5-ES – Complainant - Christopher Jayne

By failing to respond to numerous efforts on the part of Mr. and Mrs. Jayne to communicate with Ms. Finney and by Ms. Finney failing to advise Mr. and Mrs. Jayne of her office relocation, Ms. Finney violated RPC 1.4(a) (Communication). Ms. Finney violated RPC 1.5(a) (Fees) by charging an excessive fee for the work performed or, in this case, for the lack of work performed. By failing to refund all or a portion of the \$1,416.25 retainer, Ms. Finney violated 1.16(d)(6) (Declining and Terminating Representation). Lastly, by committing the aforementioned ethical violations Ms. Finney has also violated 8.4(d) (Misconduct).

File No. 63747-9-ES – Complainant – Denise Gann

By failing to respond to numerous efforts on the part of Ms. Gann to communicate with Ms. Finney and by Ms. Finney failing to advise Ms. Gann of her office relocation, Ms. Finney violated RPC 1.4(a) (Communication). Ms. Finney violated RPC 1.5(a) (Fees) by charging an excessive fee for the work performed or, in this case, for the lack of work performed. By failing to refund all or a portion of the \$1,709.50 retainer, Ms. Finney violated 1.16(d)(6) (Declining and Terminating Representation). Lastly, by committing the aforementioned ethical violations Ms. Finney has also violated 8.4(d) (Misconduct).

APPLICATION OF ABA STANDARDS

Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards have application to this case:

4.4 Lack of Diligence

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 a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when: (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious 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 causes injury or potential injury to a client.

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.

6.0 Violations of Duties Owed to the Legal System

6.2 Abuse of the Legal Process

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 failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

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.

As outlined in the proven facts in this case, Ms. Finney knowingly violated numerous duties as a professional. She failed to undertake the steps necessary to represent these

complainants in a timely manner, if at all. She charged an unreasonable fee and failed to refund her fee, she failed to reasonably communicate with these clients, and she failed to respond to requests for information from the Board. The facts demonstrate that Ms. Finney benefited financially from her inaction in representation of these complainants. It is also noted that financial injury to the complainants occurred, as admitted to by Ms. Finney, and was caused by the actions of Ms. Finney.

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. Ms. Finney has prior disciplinary conduct having received a Public Censure on January 28, 2020 for Rule of Professional Conduct violations which included RPC 1.1, 1.3, 1.4(a), 1.5(a), 1.16, 3.4(c), and 8.4(d). It is noted that the 2020 RPC violations also occurred in the Petition at issue herein.
2. Ms. Finney's pattern of misconduct is an aggravating circumstance justifying an increase in discipline.
2. Ms. Finney's failure to acknowledge the wrongful nature of her conduct is an aggravating circumstance justifying an increase in discipline to be imposed.
3. Ms. Finney's multiple offenses are an aggravating circumstance justifying an increase in discipline.
4. Ms. Finney's substantial experience in the practice of law, having been licensed in Tennessee in 2010, is an aggravating circumstance justifying an increase in discipline.

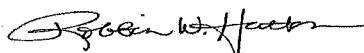
Mitigating Factors

Ms. Finney did not participate in the final hearing of this matter after Notice of same and there was no evidence of mitigating factors presented. The evidence preponderates that there are no mitigating factors applicable in this cause.

JUDGMENT

In light of the Findings of Fact and Conclusions of Law herein, the applicable ABA Standards for Imposing Lawyer Sanctions, and the aggravating factors set forth above, the Hearing Panel hereby finds that Ms. Finny should be suspended from the practice of law for a period of three (3) years from the practice of law pursuant to Tenn. Sup. Ct. R. 9, § 12.2. The start date of this suspension shall begin upon the expiration of any currently pending suspension being served by Ms. Finney and that as a condition of any Reinstatement being granted to Ms. Finney that a practice monitor be required for the one (1) year from the date of reinstatement.

IT IS SO ORDERED.



Robbin W. Hutton, Panel Chair

s/ Adam H. Johnson

Adam H. Johnson, Panel Member

s/ Leslie R. Isaacman

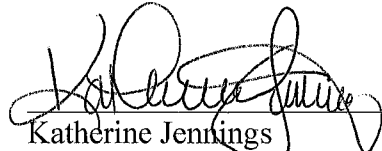
Leslie R. Isaacman, Panel Member

NOTICE TO RESPONDENT

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.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to A. Sais Phillips Finney, P.O. Box 94, Memphis, TN 38101, by U.S. First Class Mail, and hand-delivered to Douglas R. Bergeron, Disciplinary Counsel, on this the 19th day of July 2022.


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.