

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
06/27/2023
Clerk of the
Appellate Courts

IN RE: A. SAIS PHILLIPS FINNEY, BPR #028845

Board of Professional Responsibility
No. 2022-3255-9-DB

No. M2023-00539-SC-BAR-BP

ORDER OF ENFORCEMENT

In this matter filed by the Board of Professional Responsibility pursuant to Tennessee Supreme Court Rule 9, section 15.4(b), we consider the appropriate discipline for Tennessee attorney A. Sais Phillips Finney.

I. Background

On June 22, 2022, the Board of Professional Responsibility (“Board”) filed a petition for discipline against Finney alleging that she violated the Rules of Professional Conduct during her representation of two clients. As to the first client the Board alleged in the petition that Finney (1) knowingly failed to file a petition for bankruptcy after she accepted a fee from for that purpose; (2) knowingly failed to deposit the fee into a trust account or IOLTA account; (3) knowingly failed to communicate information about the case to the client; (4) failed to perform the services for which the client paid her, which resulted in harm to the client; (5) failed to tell the client that the paralegal with whom the client had been communicating no longer worked for her; and (6) knowingly misled the client to believe that she would issue a refund but never provided the refund. Regarding the second client, the Board alleged in the petition that Finney (1) stopped communicating with the client after she was retained to represent the client on a criminal charge of carjacking; (2) knowingly failed to file any pleadings or appear for any court settings on the client’s behalf; (3) knowingly failed to respond to written communications the client sent her; (4) either knowingly failed to be aware of a trial setting on the client’s case or knowingly failed to communicate the trial setting to the client; and (5) essentially abandoned her representation of the client. The Board further alleged in the petition that Finney’s client suffered both potential and actual harm because Finney’s conduct delayed his criminal case and necessitated him locating and engaging substitute counsel.

Finney failed to file an answer to the petition, so the Board moved for a default judgment and asked the hearing panel to deem the factual allegations of the petition

admitted. Tenn. Sup. Ct. R. 9, § 15.2(b). On October 10, 2022, the hearing panel granted the Board's motion and deemed admitted the factual allegations of the petition and the exhibits thereto. At a hearing on November 29, 2022, the hearing panel addressed as the sole issue the appropriate disciplinary sanction. Despite receiving notice of the final hearing, Finney did not participate in it.

On December 29, 2022, the hearing panel issued its final judgment including findings of fact and conclusions of law. The hearing panel found that the preponderance of evidence established that Finney

knowingly committed the following violations of the Rules of Professional Conduct:

Failed to act diligently in representation of each of these complainants in violation of Tennessee Rule of Professional Conduct 1.3¹ due to her action and/or inaction

Failed to reasonably communicate with either complainant in violation of Tennessee Rule of Professional Conduct 1.4.²

Charged an unreasonable fee in violation of Tennessee Rule of Professional Conduct 1.5³ in failing to perform any work on behalf of [the first client complainant].

Failed to deposit [the first client complainant's] funds into an IOLTA and/or trust account in violation of Tennessee Rule of Professional Conduct 1.15.⁴

¹ RPC 1.3 provides: “**Diligence** – A lawyer shall act with reasonable diligence and promptness in representing a client.”

² RPC 1.4 provides:

Communication – (a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

³ RPC 1.5(a) provides in relevant part as follows: “**Fees** – (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.”

⁴ RPC 1.15 provides in relevant part as follows:

Safekeeping Property and Funds – (a) A lawyer shall hold property and funds of

Failed to return client funds in the [first client complainant] matter in violation of Tennessee Rule of Professional Conduct 1.16.⁵

Failed to respond to the disciplinary complaint, knowingly failed to respond to inquiries of the Board’s disciplinary counsel, and failed to participate in this disciplinary proceeding in violation of Tennessee Rule of Professional Conduct 8.1.⁶

Knowingly violated the Rules of Professional Conduct, and in doing so, violated Tennessee Rule of Professional Conduct 8.4(a).⁷

The hearing panel next considered the appropriate sanction by turning to the ABA Standards for Imposing Lawyer Sanctions (“ABA Standards”). Tenn. Sup. Ct. R. 9, § 15.4(a). Five ABA Standards identified suspension as the presumptive sanction for Finney’s misconduct, and five ABA Standards identified disbarment as the presumptive sanction. The hearing panel then next considered whether any aggravating factors applied to “justify an increase in the degree of discipline to be imposed against” Finney. The hearing panel found the proof established six aggravating factors: (1) a pattern of misconduct; (2) Finney’s refusal to acknowledge the wrongful nature of her misconduct; (3) Finney’s multiple offenses; (4) Finney’s substantial experience in the practice of law since her 2010 licensure in Tennessee; (5) Finney’s indifference to making restitution; and (6) Finney’s prior disciplinary history, consisting of (a) a December 5, 2022 four-year suspension involving client complaints similar to these; (b) an August 18, 2022 private reprimand; (c) a March 14, 2022 temporary suspension; (d) an October 29, 2020 temporary suspension; and (e) a January 28, 2020 public censure. The hearing panel found no mitigating factors.

clients or third persons that are in a lawyer’s possession in connection with a representation separate from the lawyer’s own property.

. . . .

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.”

⁵ RPC 1.16(d) (Declining or Termination Representation) provides in relevant part: “(d) A lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client’s interests. Depending on the circumstances, the client’s interests may include: . . . (6) promptly refunding any advance payment of fees that have not been earned or expenses that have not been incurred.”

⁶ RPC 8.1 (Bar Admission and Disciplinary Matters) provides in relevant part: “[A] lawyer in connection . . . with a disciplinary matter, shall not: (a) . . . knowingly fail to respond to a lawful demand for information from . . . disciplinary authority”

⁷ RPC 8.4(a) (Misconduct) provides in relevant part: “It is professional misconduct for a lawyer to: (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. . . .”

Based on these findings, the hearing panel imposed a six-year suspension, with five years served on active suspension and one year served on probation with a practice monitor. The hearing panel also purported to delay the effective date of Finney's six-year suspension until the expiration of any suspension she was then serving, presumably the December 5, 2022 four-year suspension.

Neither the Board nor Finney appealed the hearing panel's decision. After the time for appeal expired, and as required by Tennessee Supreme Court Rule 9, section 15.4(b), the Board filed a notice of submission along with copies of the petition for discipline, the hearing panel's judgment, a protocol memorandum, and a proposed order of enforcement. The Board asked this Court to enforce the hearing panel's judgment. Although section 15.4(b) permits respondents to file a response within ten days, Finney did not do so.

We reviewed the matter "with the purpose of attaining uniformity of punishment throughout the State and appropriateness of punishment under the circumstances of each particular case." Tenn. Sup. Ct. R. 9, §15.4(b). On April 24, 2023, the Court filed an order expressing concern that the sanction imposed by the hearing panel was too lenient, given the nature of Finney's misconduct, the applicable ABA Standards, and the aggravating factors. The order proposed to increase the sanction to permanent disbarment. The Court's order directed Finney to file a brief within twenty days and directed the Board to file a response brief within twenty days of the filing of Finney's brief or, if she failed to file a brief, within twenty days of the expiration of the time for filing Finney's brief. Tenn. Sup. Ct. R. 9, section 15.4(c). The order delayed a final decision on whether to order the transcript and record of the proceeding before the hearing panel until briefs were filed but noted that the matter would be submitted to the Court on briefs and without oral argument. The order also emphasized that hearing panels have no authority to delay the effective date of a suspension until a future event; Tennessee Supreme Court Rule 9, section 28.1 states clearly that orders imposing suspensions are effective immediately.

Finney did not file a brief and offered no response to the Court's order. The Board timely filed its brief on June 2, 2023. In its brief, the Board explained that it proposed permanent disbarment as the proper sanction before the hearing panel, given the applicable ABA Standards and aggravating factors. The Board agrees suspension is too lenient and permanent disbarment is the appropriate sanction.

II. Standard of Review

We review the hearing panel's recommended punishment de novo. *In re Walwyn*, 531 S.W.3d 131, 137 (Tenn. 2017). We consider "all of the circumstances of the particular case and also, for the sake of uniformity, sanctions imposed in other cases presenting similar circumstances." *In re Cope*, 549 S.W.3d at 74 (quoting *Bd. of Pro. Resp. v. Allison*, 284 S.W.3d 316, 327 (Tenn. 2009)). We "may modify the judgment of the hearing panel . . . in such manner as [we] deem[] appropriate." Tenn. Sup. Ct. R. 9, § 15.4(c). Petitions for rehearing are not permitted. *Id.*

III. Analysis

Upon consideration of the Board's notice of submission, the protocol memorandum, the hearing panel's judgment, and the supporting documents provided with the notice of submission, and noting the absence of any response from Finney, we conclude that this matter may be fully resolved without ordering the transcript and record of the proceedings before the hearing panel. The hearing panel deemed the factual allegations of the petition and its exhibits admitted, and there is no factual dispute in this Court. These admitted facts establish that Finney violated seven Rules of Professional Conduct.

Additionally, we agree with the hearing panel's determination concerning the applicable ABA Standards. Tenn. Sup. Ct. R. 9, § 15.4. We also agree that five of these applicable ABA Standards identify suspension as the presumptive sanction, ABA Standards 4.12, 4.42, 4.62, 6.22, and 7.2, and five of the applicable ABA Standards identify disbarment as the presumptive sanction, ABA Standards 4.11, 4.41, 4.61, 6.21, and 7.1.

Our only disagreement with the hearing panel's judgment is its decision to choose suspension rather than disbarment. Once a presumptive sanction is determined, ABA Standard 9 provides that the presumptive sanction may and should be increased or decreased in response to the presence or absence of aggravating and mitigating factors. *Bd. of Pro. Resp. v. Cowan*, 388 S.W.3d 264, 268 (Tenn. 2012). Here, the proof clearly established six aggravating factors, including Finney's significant disciplinary history, and no mitigating factors. As applied to the particular facts of this case, including the consistent misconduct that pervaded Finney's handling of the two client matters from which this disciplinary proceeding arose, the aggregate weight of the six aggravating factors, and the absence of any mitigating factors, the ABA Standards clearly warrant permanent disbarment, not suspension. Accordingly, the judgment of the hearing panel is modified to permanently disbar A. Sais Phillips Finney. Tenn. Sup. Ct. R. 9, § 12.1.

A. Sais Phillips Finney shall comply in all respects with Tenn. Sup. Ct. R. 9, §§ 28 regarding the obligations of disbarred attorneys.

The March 14, 2022 order of temporary suspension entered in case No. M2022-00313-SC-BAR-BP is hereby dissolved.

Pursuant to Tenn. Sup. Ct. R. 9, § 31.3, Finney shall pay the Board expenses and costs it has incurred to date in this matter in the amount of \$1,845.00, which includes \$100.00 for the cost of filing in this Court and shall pay to the Clerk of this Court any additional court costs incurred herein. All costs, fees, and expenses awarded or assessed herein shall be paid within ninety days of the entry of this Order for which execution, if necessary, may issue.

The Board shall cause notice of this discipline to be published as required by Tenn. Sup. Ct. R. 9, § 28.11.

Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.

It is so ORDERED.

PER CURIAM