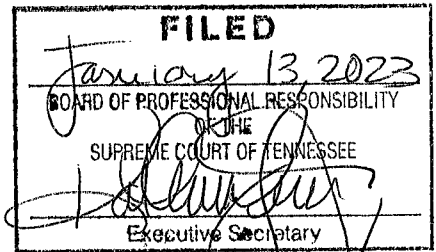


**IN DISCIPLINARY DISTRICT VII
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**IN RE: ROBERT HARRIS GOLDER
BPR No. 034911, Respondent,
An Attorney Licensed to Practice
Law in Tennessee
(Madison County)**

DOCKET NO. 2021-3209-7-JM

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND JUDGMENT OF THE HEARING PANEL**

STATEMENT OF THE CASE

1. This is a disciplinary proceeding against Robert H. Golder ("Respondent"), an attorney licensed to practice law in Tennessee in 2016.
2. On November 9, 2021, the Tennessee Board of Professional Responsibility ("the Board") filed a Petition for Discipline against the Respondent.
3. Respondent did not file an Answer or otherwise respond to the Petition. On March 31, 2022, the Board filed a Motion for Default Judgment and that the Charges in the Petition Be Deemed Admitted. Respondent did not file any response to the Motion.
4. On April 8, 2022, the Hearing Panel entered an Order granting a default judgment on the Petition for Discipline and holding that the charges contained therein were deemed admitted.
5. On April 8, 2022, the Board filed a Supplemental Petition for Discipline. Respondent did not file an Answer or otherwise respond to the Supplemental Petition.

6. On May 10, 2022, the Board filed a Motion for Default Judgment and that the Charges in the Supplemental Petition Be Deemed Admitted. Respondent did not file any response to the Motion.

7. On June 2, 2022, the Hearing Panel entered an Order granting a default judgment on the Supplemental Petition for Discipline and holding that the charges contained therein were deemed admitted. The Hearing Panel set a final hearing on sanctions for June 22, 2022.

8. Respondent filed a "Response to Petition for Discipline" on June 7, 2022, which was addressed to the issue of sanctions.

9. Respondent's father, Leonard Golder, a licensed Massachusetts attorney, filed a Motion to Appear *Pro Hac Vice* as Respondent's Counsel on June 16, 2022. The Hearing Panel entered an Order on June 24, 2022, granting the Motion for the senior Mr. Golder to appear *pro hac vice* with local co-counsel Brett Stein.

10. The Hearing Panel also considered motions to continue the hearing set for June 22nd, and to allow *pro hac vice* counsel to appear via Zoom. The Panel filed separate Orders on June 24, 2022, granting leave for Leonard Golder to appear via Zoom, and setting the hearing date on September 13, 2022.

11. On July 27, 2022, the Board's counsel filed a Motion to Continue the hearing date on account of a scheduling conflict. Following a telephone scheduling conference on August 23, 2022, the Hearing Panel granted the motion and filed an Order on August 24, 2022, setting a new hearing date on sanctions for November 21, 2022, at 10:00 a.m. (CST) in Jackson, Tennessee.

12. The final hearing was held on November 21, 2022, in Jackson. Three (3) witnesses were called who testified: Respondent Golder, Hope Vunk, and Kaitlyn Lawrence. A fourth witness, Lee Gerald, Esq., was present and available, but did not testify.

**STATEMENT OF ADMITTED FACTS CONTAINED IN THE PETITION
AND SUPPLEMENTAL PETITIONS FOR DISCIPLINE**

File No. 65407c-9-SC- Complainant – Kimberly Spencer

The Petition for Discipline concerns Respondent's conduct throughout his representation of Kenneth Spencer, whose wife, Kimberly Spencer, retained Respondent to challenge Kenneth Spencer's 2010 Shelby County murder conviction and resulting sentence of incarceration for life by filing a federal *habeas corpus* petition.

13. According to the allegations of the Petition, which are deemed admitted, Ms. Spencer paid Respondent a \$2,500.00 retainer toward his attorney's fees in the case on April 9, 2019. Respondent filed a *habeas* petition on behalf of Mr. Spencer on November 29, 2019, in the United States District Court for the Western District of Tennessee, which was styled *Spencer v. Genovese*, Case No. 2:19-cv-02825-JTF-atc (W.D. Tenn.); however, Respondent failed to pay the *habeas* filing fee or submit an affidavit for leave to proceed *in forma pauperis* with the Court.

14. Respondent was sent a deficiency notice by the clerk of the federal court, which he ignored. Respondent received an Order from the federal court dated April 15, 2020, directing him to file an affidavit for leave to proceed *in forma pauperis* and a certified copy of his trust fund account showing all activity for the six (6) months preceding the filing of the *habeas* petition, or pay the *habeas* filing fee within thirty (30) days. When Respondent did not respond to the court's order, the court entered an Order of Dismissal Without Prejudice on July 22, 2020.

15. Both Mr. and Ms. Spencer experienced great difficulty communicating with Respondent. Ms. Spencer placed multiple phone calls to Respondent between the time she retained him and the time Respondent filed the *habeas* petition, but Respondent did not return her calls. She also mailed two letters to his office address which were returned as "Undeliverable." The only

time Mr. Spencer spoke to Respondent was the time when Respondent visited him in prison, but none of Mr. Spencer's calls to Respondent were returned.

16. On October 13, 2020, Mr. Spencer himself filed a "Motion for Withdrawal of Counsel of Record Robert Golder, and for Permission to Proceed *Pro Se*." He also filed a Motion for Leave to Amend the Petition and an Amended Petition.

17. On December 3, 2020, the federal court granted the Motion to Withdraw, but denied permission to file an Amended Petition. The court ordered Mr. Spencer to "cure the deficiency" that resulted in the dismissal of his *habeas* petition by filing a Motion for Relief from Judgment under Fed. R. Civ. P. 60(b).

18. On April 6, 2021, the court entered an Order directing Respondent to file a "factual affidavit" and invited the Warden to respond to the Rule 90(b) motion filed by Mr. Spencer. The Order instructed Respondent to file his affidavit within twenty-eight (28) days and to serve a copy upon Mr. Spencer. Respondent was directed in the Order to:

address the following, at a minimum: (i) any understanding he had with Spencer about the filing fee for this matter and any communications with Spencer about payment of the fee; (ii) the reasons why he failed to comply with the deficiency notice issued by the Clerk on December 2, 2019 and the order issued on April 15, 2020; (iii) all communications with Spencer since he was retained, including when he was provided copies of the habeas petition and the Court's orders; (iv) any understanding he had with Spencer about the issues to be included in the petition; (v) his reasons for failing to include the issues urged by Spencer; and (vi) the reason why he did not file a second petition for Spencer like he did for Kenneth Brown.

See Petition for Discipline, Collective Exhibit H, Order Directing Robert Golder to File Factual Affidavit, at p. 2.

19. Respondent did not seek any extension of time to file the Affidavit if he could not file it on time, as required by the federal court in its order. On June 1, 2021, Respondent filed his

“Affidavit in Support of Petitioner’s Motion for Reconsideration” twenty-eight (28) days late under the terms of the federal court order entered April 6, 2021.

20. Respondent explained the circumstances surrounding the non-payment of the filing fee in his affidavit as follows:

3. No provision was made to cover the filing fee, as I expected that the fee could be waived due to Petitioner’s indigence. Petitioner has minimal financial resources of his own, and the retainer fee was paid by family members.

4. The process for filing a waiver of the filing fee on the ECF system is extremely complicated, and is not addressed anywhere in the ECF manual. When the district court ordered us to file the waiver, I worked diligently to identify the correct paperwork, a process which required significant online research and several phone calls.

5. Once I identified the proper paperwork, I mailed a copy of the petition and fee waiver to Mr. Spencer for his required signature, but did not receive his response. All of our correspondence is attached as an exhibit to the affidavit¹.

See Petition for Discipline, Collective Exhibit J, Affidavit in Support of Petitioner’s Motion for Reconsideration, at p. 2.

21. In his affidavit, Respondent explained why he did not include all the claims in the *habeas* petition that Mr. Spencer wanted him to include, stating that Petitioner’s claims for ineffective assistance of post-conviction counsel based on *Martinez v. Ryan* were totally without merit since there is no constitutional right to effective assistance of counsel in a post-conviction case.

22. Respondent admitted that he never returned any of the retainer that he was paid, even after the court dismissed the *habeas* petition due to Respondent’s errors in failing to pay the filing fee or file an appropriate waiver based on an IFP affidavit from Mr. Spencer.

¹ It is unknown what, if any, correspondence Respondent attached to his affidavit since it was not included with the copy of the affidavit forwarded to disciplinary counsel.

23. Respondent also failed to provide Ms. Spencer with a written employment agreement after accepting the retainer.

24. The Respondent failed to include in the *habeas* petition some claims that the client Mr. Spencer wanted him to pursue.

File No. 56138c-7-ES – Complainant – Alvin Stewart

The Supplemental Petition for Discipline concerns two complaints, the first of which involved Alvin Stewart, who filed a disciplinary complaint on May 4, 2021.

25. Respondent had been appointed by the court in October 2017 to represent Mr. Stewart in a post-conviction proceeding in Shelby County Criminal Court. The case was styled *Alvin A. Stewart v. State of Tennessee*, Case No. 13-01980. Mr. Stewart was initially housed in the Shelby County Jail, but was later transferred to the Trousdale Turner Correctional Facility in Hartsville, TN.

26. Respondent filed a Motion to continue the hearing date from February 2018, to a later date, because he had not filed an Amended Post-Conviction Petition.

27. Respondent did not file an Amended Petition until June 30, 2019, over one and one-half years after he was appointed to represent Mr. Stewart.

28. The court set the hearing in the post-conviction case for November 2020, however it was continued upon Respondent's motion. No new hearing date was set.

29. Respondent filed a Motion to Withdraw from the representation in February 2021, based on his acceptance of new employment with the District Public Defender's office in Jackson.

File No. 66759c-9-ES – Complainant – Jimmy T. Brown

The other complaint filed against Respondent that is contained in the Supplemental Petition for Discipline involves a federal *habeas corpus* petition that was to be filed for Mr. Jimmy T. Brown in the Northern District of Mississippi.

30. Mr. Brown's wife retained Respondent and his supervising partner, Brett Stein, on August 24, 2017, and paid Mr. Stein a \$1,500.00 retainer to file a federal *habeas corpus* petition seeking relief for Mr. Brown from his Mississippi conviction.

31. Neither Respondent nor Mr. Stein were licensed in Mississippi or licensed to practice in the U.S. District Court for the Northern District of Mississippi.

32. Respondent filed a *habeas corpus* petition for Mr. Brown on August 15, 2018, in the federal district court for the Northern District of Mississippi. Prior to filing the *habeas* petition, Respondent signed the name of Tennessee attorney Brett Stein as *pro hac vice* counsel and Robert Chamoun, a licensed Mississippi attorney, who had agreed to serve as co-counsel, to the petition. Both attorneys gave Respondent permission to sign their names to the petition.

33. The local rules of the U.S. District Court for the Northern District of Mississippi required that any filing by *pro hac vice* counsel must have a "wet" signature of the local counsel in order to be accepted for filing. The *habeas corpus* petition filed by Respondent for Mr. Brown had not been signed by Robert Chamoun.

34. In August 2018, the United States magistrate assigned to Mr. Brown's case issued an Order denying the *Pro Hac Vice* admission to Mr. Stein for failure to follow the local rules regarding the requirement of a "wet" signature of the local attorney serving as co-counsel on the case.

35. Respondent never corrected the filing or performed any other work on the case.

36. Respondent admitted he was unaware of the requirement for the “wet” signature for local counsel under the Local District Court Rules and that he had failed to obtain the signature of Mr. Chamoun on the document before filing it with the court.

37. Respondent completely failed to communicate to Mr. Brown or his wife that the Application for Admission *Pro Hac Vice* had been denied, that the *habeas corpus* petition had not been filed, and failed to check on the status of the Application for Admission *Pro Hac Vice* with the Clerk.

STATEMENT OF ADDITIONAL FACTS ADMITTED AT HEARING

38. Respondent Robert H. Golder testified he was employed as an associate by the law firm of Finley & Stein in Memphis, Tennessee, at all times relevant to the events which give rise to these disciplinary complaints.

39. Respondent testified he practiced law with the District Public Defender’s office in Jackson from February, 2021, to November, 2021, when he was terminated as a result of these disciplinary proceedings.

40. Respondent testified he accepted a job in March 2022 with a small finance business in Shelby County, and that he enjoys the work he is doing there.

41. Respondent identified himself as a resident of Shelby County, with current address of 401 Conwell Rd., Memphis, Tennessee.

42. Respondent admitted that in the Spencer case, he never asked the client for the filing fee, which he “assumed” was in the range of \$400 to \$500. He acknowledged he did not read the court rules or go to the court’s website to look up the correct amount for the filing fee. He explained that he found the ECF electronic filing system used in federal court to be “difficult”

and “complex”, and even challenged the hearing panel to go on the ECF system and see if they could figure out how to navigate the electronic filing system for filing a petition *in forma pauperis*.

43. Respondent testified there was no support staff available to help him in the Finley & Stein firm, and that he lacked access to standard office equipment such as a photocopier.

44. Respondent testified that after Covid hit in March 2020, he almost never went to the office, and basically “didn’t have” a physical office. It appears he went for long periods of time in 2020 when he ceased checking both his regular mail and much of the e-mail correspondence relating to his law practice. He commented that the courts were nearly completely shut down during that time.

45. Respondent testified on cross-examination that he felt like he had provided at least \$2,500.00 worth of legal services in the Spencer case due to the amount of time he spent visiting the client at Turney Center and drafting the *habeas corpus* petition, notwithstanding the petition was dismissed without prejudice for failure to pay the \$5.00 filing fee.

46. Respondent testified the federal court had appointed Lee Gerald to represent Mr. Spencer solely on the Rule 60(b) Motion, which was very unusual in federal court.

47. Respondent admitted he had testified at a hearing in federal court on the Rule 60(b) motion in the Spencer case, and his testimony from that hearing was admitted as an exhibit to this hearing².

48. Respondent testified the Spencers were hostile toward him and very difficult to communicate with. He stated that Ms. Spencer obstructed his efforts to represent Mr. Spencer with her aggressive attitude toward him.

² At the time of the hearing on November 21, 2022, the federal court had not ruled on the Motion to Vacate the Order of Dismissal Without Prejudice in the Spencer *habeas* case.

49. In response to a question from one of the Hearing Panel members, Respondent admitted he was not competent to handle federal *habeas corpus* cases. He stated the main reason he had not refunded any portion of the retainer fee in the Spencer case was he did not have the money available to return.

50. Respondent testified that on the Stewart case, Judge Campbell held a status conference every four to six weeks, and that he had attended those. He did not give a reason why he delayed from October 2017 to June 2019 to file an Amended Post-Conviction Petition.

51. Respondent testified that he believed he had a “decent argument” in the Jimmy Brown case regarding a suppression issue which he intended to raise in the federal *habeas corpus* petition. He admitted he did not know about the local rule of the Mississippi federal court requiring a “wet” signature of the local Mississippi attorney who was supporting the Application for Admission *Pro Hac Vice* of Mr. Stein.

52. Respondent denied he had received any of the e-mail notices from the federal court clerk informing him that the filing had been rejected, despite the clerk having his correct e-mail address.

53. Hope Vunk testified for Respondent that she had known him from his work in the Public Defender’s office in Jackson, and that Respondent had been very helpful to the Drug Recovery Court program for the City of Jackson.

54. Kaitlyn Lawrence testified she was a probation officer assigned to Jackson City Court and she estimated Respondent had represented approximately three hundred (300) clients who were assigned to her for probation supervision.

55. Ms. Lawrence testified that eight (8) defendants who were referred to the Recovery Court program had been represented by the Respondent, and that all eight had successfully completed the program.

56. Ms. Lawrence stated her opinion that Respondent cared about people and would go the extra mile to help his clients who were battling drug addiction and trying to complete recovery.

57. Respondent's testimony is credible on many points, but not all. He admits to numerous shortcomings in his representation of Mr. Spencer, Mr. Stewart, and Mr. Brown, but tries to deflect responsibility from himself to others to avoid taking responsibility for his actions. While admitting generally that he was not competent to handle federal *habeas corpus* cases, Respondent offers various excuses for his numerous flagrant omissions of basic duties that attorneys are called upon to perform when representing clients in court.

58. For example, Respondent ignored an order from a federal court to file a factual Affidavit within twenty-eight (28) days and only filed it after repeatedly being asked for a copy of it by Investigative Disciplinary Counsel in several e-mails. Respondent testified in federal court he did not receive the court's order from the clerk despite the fact that the clerk was sending the court filings to his correct e-mail address on file with the Court.

CONCLUSIONS OF LAW

59. The jurisdiction and authority of this Panel is derived from Tenn. Sup. Ct. R. 9, and the specific provisions prescribed therein. Attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts. (Tenn. Sup. Ct. R. 9, § 8).

60. 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 (Tenn. Sup. Ct. R. 9, § 1). Acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. (Tenn. Sup. Ct. R. 9, § 11).

61. The Board alleges that the acts and omissions by Respondent constitute ethical misconduct in violation of the relevant portions of the Rules of Professional Conduct 1.1 (competence), 1.2 (scope of representation and allocation of authority between client and lawyer), 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property and funds), 3.2 (expediting litigation), 3.4(c) (fairness to opposing party or counsel), and 8.4(a) and (d) (misconduct).

62. The Respondent failed to render competent representation in the Spencer and Brown cases, in which he accepted representation to file and handle federal *habeas corpus* cases.

RULE 1.1: COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

63 The Respondent failed to consult with Kenneth Spencer about the means by which the client's objectives were to be accomplished and failed to take the actions which were impliedly authorized to carry out the representation, by not paying the \$5.00 filing fee to accomplish the filing of the *habeas corpus* petition.

**RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF
AUTHORITY BETWEEN CLIENT AND LAWYER**

- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and as required by RPC 1.4, shall consult with the client about the means by which the client's objectives are to be accomplished. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

64. Respondent failed to represent Mr. Spencer, Mr. Stewart, or Mr. Brown diligently by letting their cases languish for long periods without any positive actions, in addition to neglecting them to such an extent as to constitute willful neglect.

RULE 1.3: DILIGENCE

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

65. Respondent failed to keep Mr. Spencer, Mr. Stewart, and Mr. Brown reasonably informed about the status of their cases and failed to promptly comply with reasonable requests for information.

RULE 1.4: 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.

66. Respondent failed to deposit into his trust account legal fees paid in advance by Ms. Spencer on behalf of her husband and hold them in trust until earned.

RULE 1.15: SAFEKEEPING PROPERTY AND FUNDS

- (a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds.

- (b) Funds belonging to clients or third persons shall be deposited in a separate account maintained in a financial institution, deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC) and/or National Credit Union Association (NCUA), having a deposit accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the required overdraft notification program as required by Supreme Court Rule 9, Section 35.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

- (1) ~~Except as provided by subparagraph (b)(2), interest earned on accounts in which the funds of clients or third persons are deposited, less any deduction for financial institution service charges or fees (other than overdraft charges) and intangible taxes collected with respect to the deposited funds, shall belong to the clients or third persons whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.~~

- (2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or third persons in excess of the costs incurred to secure such income in one or more pooled accounts known as an "Interest on Lawyers'

Trust Account" ("IOLTA"), in accordance with the requirements of Supreme Court Rule 43. A lawyer shall not deposit funds in any account for the purpose of complying with this sub-section unless the account participates in the IOLTA program under Rule 43.

- (3) The determination of whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) rests in the sound discretion of the lawyer. No charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in making such a determination.
- (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.
- (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such funds or other property.
- (e) When in the course of representation, a lawyer is in possession of property or funds in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property or funds as to which the interests are not in dispute.

67. Respondent failed to make reasonable efforts to expedite litigation in the Spencer and Stewart cases.

RULE 3.2: EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation.

68. Respondent willfully ignored a federal court order in the Spencer case without any legitimate excuse, and willfully failed to inform himself of the local rules of court in the Mississippi federal court regarding applications for admission *pro hac vice*.

RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL

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;

69. Respondent violated the Rules of Professional Conduct by engaging in conduct that is prejudicial to the administration of justice by causing the dismissal of a client's cause of action in Spencer, injecting unnecessary delay into judicial proceedings in Stewart, and causing a client adverse consequences in both the Spencer and Brown cases, with the potential injury to the clients.

RULE 8.4: MISCONDUCT

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;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence a tribunal or a governmental agency or official on-grounds unrelated to the merits of, or the procedures governing, the matter under consideration;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

APPLICATION OF THE ABA STANDARDS

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

2. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential 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 causing injury or potential injury to a client.
- 4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential 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.
- 6.22 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 client or a party, or causes interference or potential interference with a legal proceeding.
- 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

70. The panel finds that the presumptive baseline sanction in this matter is a suspension under 4.21, 4.42, 4.52, 4.62, and 6.22. Mr. Golder basically ignored his obligation to comply with the court rules and procedural requirements for filing federal *habeas* petitions in the Spencer and Brown cases. He failed to check to see if or when the petitions had been filed and if not, why not, failed to insure that he was receiving important legal communications from the federal court clerks, failed to keep all three clients informed about the status of their cases, failed to expedite litigation in the Stewart case, and failed to comply with the federal court orders in the Spencer case after his client filed *pro se* motions that culminated in the hearing where Respondent was called to testify.

AGGRAVATING FACTORS

71. After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanctions to impose. The following aggravating factors are applicable in this matter:

- (a) prior disciplinary offenses;
- (b) a pattern of misconduct;
- (c) multiple offenses;
- (d) vulnerability of victim;
- (e) substantial experience in the practice of law;

JUDGMENT

Based on the facts in these cases, the application of the Rules of Professional Conduct and considering the ABA Standards for Imposing Lawyer Sanctions, the Hearing Panel finds by preponderance of the evidence that Mr. Golder committed disciplinary misconduct and should receive a two (2) year suspension from the practice of law, with three (3) months active, followed by one (1) year and nine (9) months on probation pursuant to Tenn. Sup. Ct. R. 9, § 12.2. Respondent shall be required to make restitution to Kimberly Spencer in the amount of \$2,500.00 at a minimum rate of \$125.00 per month, and to reimburse the Tennessee Lawyers Fund for Client Protection for any sums that it has paid for claims arising from Respondent's misconduct. The restitution and/or reimbursement must be fully satisfied prior to the reinstatement of Respondent's law license. As a condition of probation, Respondent shall engage a practice monitor who has experience in a legal field in which the Respondent will practice and who shall meet with Respondent at least bi-monthly and submit monthly reports to the Board describing Respondent's progress in meeting deadlines and consulting with clients.

IT IS SO ORDERED, this the 13th day of January, 2023.

Shaun A. Brown
Shaun A. Brown, Panel Chair

Lisa A. Houston with permission
Lisa A. Houston, Panel Member by Shaun A. Brown

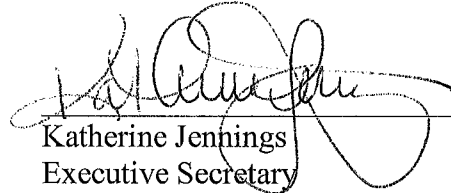
William J. Morrow with permission
William J. Morrow, Panel Member by Shaun A. Brown

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 Robert H. Golder, c/o Leonard H. Golder, Counsel, 67 Old Bolton Road, Stow MA 01775, and Brett B. Stein, Counsel, 5380 Brantford Avenue, Memphis, TN 38120, by U.S. First Class Mail, and hand-delivered to Douglas R. Bergeron, Disciplinary Counsel, on this the 13th 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.