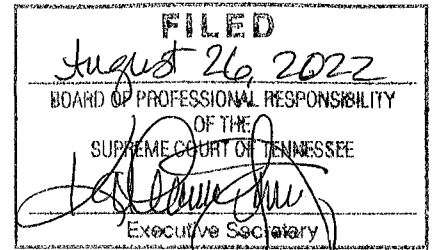


**IN DISCIPLINARY DISTRICT V
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**IN RE: DAVID DWAYNE HARRIS,
Respondent, BPR No. 032607,
An Attorney Licensed to
Practice Law in Tennessee
(Davidson County)**

DOCKET NO. 2022-3221-5-DB

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for a final hearing on August 5, 2022 before a Hearing Panel consisting of Daniel Puryear, Jad Duncan and Robert Boston, 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 via Zoom electronic video Conference.

STATEMENT OF THE CASE

The Petition for Discipline was filed by the Board of Professional Responsibility (hereinafter sometimes referred to as “the Board”) on January 31, 2022. A Motion for Default Judgment and that the allegations of the Petition be deemed admitted was filed by the Board on June 15, 2022 due to Respondent failing to respond to the Petition for Discipline. After a hearing on the Default Motion this Hearing Panel entered an Order on July 9, 2022 granting the Board’s Motion for Default and finding that the allegations of the Petition for Discipline are to be deemed admitted. Following a Motion to Amend the Default Order an Amended Order granting the Default was entered on July 11, 2022. A final hearing was set for August 5, 2022 with the only issue to be addressed was the appropriate disciplinary sanction. On August 15, 2022 this Panel issued an

interim Order requesting the Board provide proposed Findings of fact and conclusions of law.

FINDINGS OF FACT

The allegations and exhibits contained in the Petition for Discipline filed by the Board were deemed admitted pursuant to the Order of Default entered in this matter and we so find by preponderance of the evidence the following facts have been proven by preponderance of evidence:

File No. 67874c-5-ES – Complainant Jordan Arlondo Curry

This disciplinary matter arises from Respondent's representation of Mr. Curry that began on or about October 13, 2020, when Mr. Harris, per written agreement, was retained by Complainant Curry to file a writ of error coram nobis. The written agreement provided for a refundable deposit. It has been admitted in this case that Mr. Harris never deposited the funds received from Mr. Harris into a trust and/or IOLTA account. Following the two (2) payments of \$500.00 each, Mr. Harris, on January 25, 2021, advised the client of his plan to work on the matter. Following the January 25, 2021 letter from Mr. Harris to his client there was no further communication from Mr. Harris to his client. Mr. Curry and his family members attempted to reach Mr. Harris both by phone, leaving voicemail messages for return calls and emailed numerous times after January 25, 2021 with no response from Mr. Harris. Mr. Harris never filed a writ of error coram nobis on behalf of his client as contracted to do and never explained anything to client as to why no filing was made. From the admitted record in this cause, Mr. Harris performed no work for Mr. Curry and provided no refund of any fees.

File No. 68073c-5-ES – Complainant Felicia Bailey

Mr. Harris, in and around April 2021, contracted with the family of a prisoner to represent the prisoner in obtaining treatment and accommodation for a mental health issue that arose while

client was in prison. The point of contact in these discussions was Ms. Bailey. The fee agreement sets forth in specific detail the courses of action Mr. Harris agreed to undertake in his representative capacity. Mr. Harris charged a refundable \$1,500 fee for his legal services. Evidence preponderates that the \$1,500.00 refundable fee was paid by Ms. Bailey to Mr. Harris. Following payment of the retainer Complainant was unable, over a two (2) month period, to contact Mr. Harris to discuss the status of the case or issues relative to the representation agreement. Mr. Harris did no work on the case in this two month period. After discovering no professional services had been performed, client and his family terminated Mr. Harris on June 16, 2021, and demanded a refund of the refundable retainer fee. Mr. Harris has never refunded any money to the complainant.

Lastly, and in both complaints at issue herein, Mr. Harris has knowingly failed to participate in this disciplinary proceeding.

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, in both of the complaints at issue in this disciplinary matter, establishes that Mr. Harris has knowingly committed the following violations of the Rules of Professional Conduct:

Mr. Harris by his action and/or inaction failed to act diligently in representation of each of these complainants in violation of Tennessee Rule of Professional Conduct 1.3. It could be better stated that Mr. Harris by preponderance of the evidence did nothing for either of these complainants after receiving funds from them. Mr. Harris failed to reasonably communicate with

either complainant in violation of Tennessee Rule of Professional Conduct 1.4. Mr. Harris, in failing to perform any work on behalf of these complainants charged an unreasonable fee in violation of Tennessee Rule of Professional Conduct 1.5. Mr. Harris also failed to deposit client funds, pursuant to his refundable fee agreement, into an IOLTA and/or trust account in violation of Tennessee Rule of Professional Conduct 1.15. In failing to return client funds in both matters, Mr. Harris violated Tennessee Rule of Professional Conduct 1.16. Mr. Harris knowingly 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. Lastly, pursuant to our conclusions to this point, Mr. Harris knowingly violated the Rules of Professional Conduct and in doing so has violated Tennessee Rule of Professional Conduct 8.4(a).

APPLICATION OF ABA STANDARDS

With disciplinary violations having been established by preponderance of the evidence, the Panel shall next consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

The following ABA Standards have application to the findings in this case:

4.1 Failure to Preserve Client Property

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

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.

This ABA standard is applicable to Mr. Harris' violation of RPC 1.15.

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.

This ABA standard is applicable Mr. Harris's violations of RPC 1.3 and 1.4.

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.

This ABA standard is applicable Mr. Harris's violation of RPC 1.5.

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.

This ABA standard is applicable Mr. Harris's violations of RPC 8.4.

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.

This ABA standard is applicable Mr. Harris's violations of RPC 1.16, 8.1, and 8.4.

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. Mr. Harris' pattern of misconduct is an aggravating circumstance justifying an increase in discipline.
2. Mr. Harris' failure to acknowledge the wrongful nature of her conduct is an aggravating circumstance justifying an increase in discipline to be imposed.
3. Mr. Harris' multiple offenses are an aggravating circumstance justifying an increase in discipline.
4. Mr. Harris' substantial experience in the practice of law, having been licensed in Tennessee in 2013, is an aggravating circumstance justifying an increase in discipline.

5. Mr. Harris' bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders the disciplinary agency is an aggravating circumstance justifying an increase in discipline.

6. Mr. Harris' actions over multiple complainants shows a pattern of misconduct and is an aggravating circumstance justifying an increase in discipline.

7. Mr. Harris' prior disciplinary history.

Mitigating Factors

Mr. Harris did not participate in the final hearing of this matter after Notice of same and, as such, there was no evidence of mitigating factors presented. The evidence therefore preponderates that there are no mitigating factors applicable in this cause.

JUDGMENT

In light of the Findings of Fact and Conclusions of Law herein and the applicable ABA Standards for Imposing Lawyer Sanctions, the Hearing Panel has determined that the actions of Mr. Harris were knowing violations of disciplinary Rules and the appropriate baseline sanction is either suspension or disbarment. Having established the appropriate baseline sanction the Hearing Panel, upon consideration of the significant aggravating factors in this case, finds by a preponderance of the evidence that Mr. Harris committed disciplinary misconduct and should be permanently disbarred from the practice of law.

NOTICE

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33, by filing a Petition for Review in the Circuit or Chancery Court within sixty (60) days of the date of entry of the hearing panel's judgment.

IT IS SO ORDERED.


Robert Earl Boston by Jud A. Duncan
Robert Earl Boston, Panel Chair *with express permission*

Jud Andrew Duncan *panel chair*
Jud Andrew Duncan, Panel Member

Daniel Hays Puryear by Jud A. Duncan
Daniel Hays Puryear, Panel Member *with express permission*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to David Dwayne Harris, 300 James Robertson Pkwy., Ste. 103, Nashville TN 37201, by U.S. First Class Mail, by email to attorneydavidharris@gmail.com and hand-delivered to Douglas R. Bergeron, Disciplinary Counsel, on this the 26th day of August 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.