

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

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BOARD OF PROFESSIONAL
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**IN RE: ARTHUR WAYNE HENRY,
BPR# 9484, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Loudon County)**

DOCKET NO. 2017-2771-2-WM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for a hearing on December 21, 2017 before a Hearing Panel consisting of Hearing Panel members Brian Kingsley Krumm, Mary Ann Stackhouse, and Virginia Louise Couch (Chair), upon a Petition for Discipline. William C. Moody, Disciplinary Counsel, appeared on behalf of the Board of Professional Responsibility. Respondent Arthur Wayne Henry appeared *pro se*.

STATEMENT OF THE CASE

The Petition for Discipline was filed October 3, 2017. Mr. Henry failed to respond to the Petition for Discipline and on November 17, 2017 the Board filed a Motion for Default Judgment. This Hearing Panel entered its Order for Default Judgment granting the Board's motion on December 4, 2017. Mr. Henry did not file a written response or object to the entry of the Order for Default Judgment. Pursuant to the Order for Default Judgment, all allegations contained in the Petition for Discipline are deemed admitted.

Disciplinary Counsel presented the Board's proof, which consisted primarily of the facts in the Petition for Discipline deemed admitted. Mr. Henry testified after Disciplinary Counsel's presentation of proof.

FINDINGS OF FACT

The Findings of Fact consist of the admitted allegations of the Petition for Discipline, copies of prior disciplinary actions Disciplinary Counsel submitted as proof that were admitted into evidence, and Mr. Henry's testimony.

File No. 50959-2-PS – Complainant – Delores Stafford

On June 28, 2013, Delores Stafford and her husband, Tony Stafford, retained Mr. Henry to represent them as a result of an allegedly defective roof. On December 4, 2013, Mr. Henry filed suit on behalf of the Staffords in the Chancery Court for Loudon County. Thereafter, Mr. Henry failed to prosecute the suit with reasonable diligence. Mr. Henry failed to adequately communicate with the Staffords regarding the status of the case.

On or about June 26, 2016, Mr. Henry agreed to accept a settlement offer of \$5,000. Mr. Henry did not advise the Staffords that he was engaged in settlement negotiations with the defendant, he did not tell them that the defendant offered \$5,000, he did not have their authority to accept the offer, and he did not advise the Staffords that he agreed to settle their case for \$5,000.

On June 27, 2017, the defendant's attorney mailed Mr. Henry a check for \$5,000, a release, and an order of compromise and settlement. Mr. Henry did not advise the Staffords of receipt of the \$5,000 check. Mr. Henry did not deposit the \$5,000 check to his trust account.

On September 29, 2016, the court entered a show cause order for Mr. Henry to appear in court on December 5, 2016 and show cause why the order of compromise and settlement had not been entered. Mr. Henry did not advise the Staffords of the show cause order. Mr. Henry did not respond to the show cause order nor did he appear in court on December 5, 2016. As a result of Mr. Henry's failure to appear in court or otherwise respond to the show cause order, an order was entered on December 15, 2016 dismissing the suit with prejudice. Mr. Henry did not advise the Staffords of the dismissal of the suit.

During his testimony at this hearing on the Petition for Discipline, Mr. Henry testified that his delay in the handling of the Staffords matter was due to problems with office personnel and conflicting expert opinions as to the actual damages suffered and that he discussed a possible settlement with defendant's counsel but was unsure why he received the \$5,000 settlement check. Mr. Henry testified that he mailed the \$5,000 check to the Staffords. He further testified that the Staffords had paid him a retainer, which he believed to be \$2,000, and that he had not refunded the retainer. Mr. Henry ultimately testified that he did not respond to the show cause order and did not appear in court on December 5, 2016.

File No. 52328-2-PS – Complainant – Rachel Sanchez

On March 8, 2016, Ms. Sanchez retained Mr. Henry to file a complaint for divorce on her behalf. On August 9, 2016, Mr. Henry filed the complaint for divorce and on August 10, 2016, Ms. Sanchez's husband was served. On June 7, 2017, the court entered the final decree of divorce. Between August 9, 2016 and May, 2017, Mr. Henry took little if any action to prosecute the case. Between August 9, 2016 and May, 2017, Mr. Henry failed to respond to numerous attempts by Ms. Sanchez to communicate with him regarding the status of the case.

In his response to Ms. Sanchez's complaint, Mr. Henry falsely told Disciplinary Counsel that his delay in prosecuting the divorce was due to a delay in obtaining service on Ms. Sanchez's husband when he stated, "The process server had problem (sic) locating Mr (sic) Sanchez and the case was in limbo for several months." In actuality, the husband was served the day after filing the complaint for divorce.

During his testimony at this hearing on the Petition for Discipline Mr. Henry stated that he did not intend to mislead Disciplinary Counsel regarding the delay.

File No. 52498c-2-PS – Complainant – Malissa Taylor

In or about March, 2016, Ms. Taylor retained Mr. Henry to represent her in a child support matter concerning her autistic son for which she paid a fee of \$1,500. On April 1, 2015, Mr. Henry filed a Petition to Enforce and Modify Divorce Decree and Permanent Parenting Plan in the General Sessions Court for Loudon County. The petition was first set for hearing on June 30, 2016 and the parties discussed a potential settlement but did not agree to a modification of the child support payments. After the June 30, 2016 hearing, Mr. Henry took no further action to prosecute the petition.

After June 30, 2016, Ms. Taylor telephoned Mr. Henry's office on numerous occasions in order to learn the status of the case. Mr. Henry did not respond to any of Ms. Taylor's telephone calls nor did he otherwise communicate with her regarding the status of the case. On July 13, 2017, Ms. Taylor terminated Mr. Henry's engagement.

Mr. Henry's Disciplinary History

On May 25, 1998, Mr. Henry received a private informal admonition as a result of a conflict of interest. On November 14, 1996, Mr. Henry received a private informal admonition for failing to act diligently in the representation of a client and failing to adequately communicate with the client. On April 16, 2010, Mr. Henry received a public censure, again for his lack of diligence and communication. On April 21, 2015, Mr. Henry received a private informal admonition, once again for his lack of diligence. On January 25, 2016, Mr. Henry received a public censure, yet again for his lack of diligence and communication which resulted in the dismissal of his client's case as it did with the Staffords. Most recently, Mr. Henry received a public censure on April 11, 2017 for his lack of diligence and communication.

As a result of the Order for Default Judgment, all the facts contained in the Petition for Discipline are deemed admitted.

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 Mr. Henry has committed the following violations of the Rules of Professional Conduct.

File No. 50959-2-PS – Complainant – Delores Stafford

By agreeing to the \$5,000 settlement without authority to do so, Mr. Henry violated RPC 1.2(a) (Scope of Representation). By failing to prosecute the suit with reasonable diligence, Mr. Henry violated RPC 1.3 (Diligence) and 3.2 (Expediting Litigation). By failing to appear in court in response to the show cause order, Mr. Henry violated RPC 1.3 (Diligence). By failing to communicate with the Staffords regarding the status of the suit, failing to advise the Staffords of the settlement negotiations, entry of the show cause order, and entry of the order of dismissal, Mr. Henry violated RPC 1.4(a) (Communication). By failing to deposit the check for \$5,000 to his trust account, and by failing to promptly advise the Staffords of receipt of the check, Mr. Henry violated RPC 1.15(b) and (d) (Safekeeping Property and Funds).

File No. 52328-2-PS – Complainant – Rachel Sanchez

By failing to prosecute the complaint for divorce with reasonable diligence, Mr. Henry violated RPC 1.3 (Diligence) and 3.2 (Expediting Litigation). By failing to respond to Ms. Sanchez's efforts to communicate with him, Mr. Henry violated RPC 1.4(a) (Communication). By falsely attributing a delay in the case to difficulty serving Ms. Sanchez's husband, Mr. Henry violated RPC 8.1(a) (Bar Admissions and Disciplinary Matters).

File No. 52498c-2-PS – Complainant – Malissa Taylor

By failing to pursue the petition with reasonable diligence, Mr. Henry violated RPC 1.3 (Diligence) and 3.2 (Expediting Litigation). By failing to respond to Ms. Taylor's efforts to communicate with him, Mr. Henry violated RPC 1.4 (Communication).

Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a), 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 apply to this case:

4.42 Suspension is generally appropriate when:

- (a) a lawyer engages in a pattern of neglect with respect to client matters and causes injury or potential injury to a client.

Mr. Henry has evidenced a pattern of neglect throughout the three cases giving rise to the Petition for Discipline by virtue of his lack of diligence and communication. Most serious is the manner in which he handled the Staffords' case by settling it without their permission and not even bothering to tell them he had done so. But then, by failing to follow through with the settlement and not showing up for the show cause hearing, his actions resulted in the dismissal of their lawsuit, a serious injury indeed.

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.

Even though he had no authority to agree to the settlement, Mr. Henry was required by RPC 1.15(b) (Safekeeping Property and Funds) to deposit the check he received on behalf of the

Staffords to his trust account. He was required by RPC 1.15(d) (Safekeeping Property and Funds) to promptly notify them of its receipt. He failed on both accounts contributing to the dismissal of their case.

- 8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

Mr. Henry received a public censure on April 16, 2010 and again on January 25, 2016 for lack of diligence and communication. Again, Mr. Henry has evidenced a pattern of neglect throughout the three cases giving rise to the Petition for Discipline by virtue of his lack of diligence and communication. His lack of diligence and communication resulted in the dismissal of the Staffords's case and potential injury to Ms. Sanchez and Ms. Taylor.

5.11 Disbarment is generally appropriate when:

- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Mr. Henry lied to the Board in the Sanchez matter falsely claiming the delay was due to the husband not being served. Thereby, Mr. Henry engaged in an act of dishonesty in an effort to conceal his lack of diligence. Such dishonesty seriously reflects adversely on his fitness to practice law.

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 Mr. Henry:

1. Prior disciplinary offenses: Mr. Henry's disciplinary history is the most significant aspect of this case. He has displayed a lack of diligence and communication throughout his career.

It has accelerated recently with Mr. Henry having been disciplined once in each of the last three years.

2. Dishonest or selfish motive: Mr. Henry displayed a dishonest motive when he made a false statement to the Board.

3. Pattern of Misconduct: Mr. Henry displayed a pattern of a lack of diligence and communication, not only in his history of previous discipline, but throughout these three matters.

4. Multiple offenses: Mr. Henry committed violations of RPC 1.2, 1.3, 1.4, 1.15, 3.2, 8.1 and 8.4.

5. Submission of false evidence: Mr. Henry's false statement to the Board is in itself an aggravating factor.

6. Respondent's substantial experience in the practice of law: Mr. Henry was licensed to practice law in 1981.

Mitigating Factor

Pursuant to ABA Standard 9.32, the following mitigating factor is present in this case:

(1) remorse.

Mr. Henry showed remorse for his actions at the disciplinary hearing.

Based upon the evidence and admissions in this matter, the appropriate discipline is suspension from the practice of law for a period of one year plus one day.

JUDGMENT

In light of the Findings of Fact and Conclusions of Law and the aggravating and mitigating factors set forth above, the Hearing Panel hereby finds that Mr. Henry should be suspended from the practice of law for a period of one year plus one day. The Hearing Panel further recommends that should Mr. Henry apply for reinstatement after the expiration of his suspension that the following conditions be place on his reinstatement:

(i) that Mr. Henry be evaluated under the Tennessee Lawyer Assistance Program (TLAP) to determine whether Mr. Henry may be suffering from an impairment that could be contributing to his lack of diligence and communication with the results of the evaluation being provided to the Board;

(ii) that Mr. Henry be required to complete 6 hours of Continuing Legal Education on law practice management;

(iii) that Mr. Henry be required to obtain and maintain sufficient professional liability insurance; and

(iv) that a practice monitor be appointed to supervise Mr. Henry for a period of a minimum of 6 months after his reinstatement to monitor Mr. Henry's compliance with trust account rules, proper accounting procedures, and proper office management procedures and to review Mr. Henry's case load, with the practice monitor providing the Board with monthly reports.

IT IS SO ORDERED.


Virginia Louise Couch, Panel Chair

 by 
w/ permission
Brian Kingsley Krumm, Panel Member

 by 
w/ permission
Mary Ann Stackhouse, Panel Member

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Arthur Wayne Henry, PO Box 366, Loudon, Tennessee 37774-0366, via U.S. First Class Mail, and hand-delivered to Disciplinary Counsel, William C. Moody, this the 27th day of December, 2017.

A handwritten signature in cursive script, appearing to read "Rita Webb", written over a horizontal line.

Rita Webb
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.