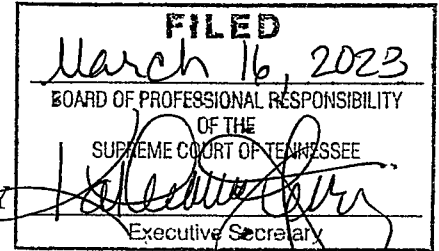


**IN DISCIPLINARY DISTRICT V
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**IN RE: NEWTON S. HOLIDAY, III
 BPR # 012990, Respondent
 An Attorney Licensed to
 Practice Law in Tennessee
 (Davidson County)**

DOCKET NO. 2021-3167-5-JM

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for a hearing on sanctions via Zoom on September 6, 2022, before a Hearing Panel consisting of Christopher B. Fowler, Panel Chair; Lee Pope, Panel Member; and Luther Wright, Jr., Panel Member. Respondent Newton S. Holiday, III, is an attorney, currently under suspension, who was licensed in 1988 as a Tennessee lawyer. Respondent was present on Zoom for the hearing and appeared *pro se*. Respondent has previously been represented in this matter by attorney Dana L. Nero; however, she did not appear or participate in the hearing despite being notified in advance of the time and date for the hearing by Ms. Katherine Jennings, Executive Secretary for the Board. The Board of Professional Responsibility of the Supreme Court of Tennessee (the “Board”) is represented by James W. Milam as Disciplinary Counsel.

Procedural Posture of the Case at time of Sanctions Hearing on September 6, 2022

The Hearing Panel had entered an order on February 15, 2022, granting the Board’s Motion for Summary Judgment on the ethical violations set forth in the Petition for Discipline. In its Order, the Hearing Panel stated that the Board was entitled to summary judgment on the following claims:

1. The Respondent has violated RPC 1.3 (Diligence) by failing to appear for his client, Lanetta Carson-Bell for a court date in General Sessions Court on October 17, 2017, thereby resulting in the case being dismissed.

2. The Respondent has violated RPC 1.4 (Communication) by failing to notify Ms. Carson-Bell of the October 17, 2017, court date and then by failing promptly to notify her that he had missed the court date causing her case to be dismissed.

3. The Respondent has violated RPC 1.4(a) (Communication) by failing to keep Ms. Carson-Bell informed of the status of her case from October 2017 until February 2019, when he saw her during a chance encounter and told her that her case had been dismissed.

4. The Respondent has violated RPC 1.3 (Diligence) by failing to take any action after October 17, 2017, to attempt to re-file Ms. Carson-Bell's case or to petition the Court to set aside the order of dismissal, thereby allowing the statute of limitations to run on her claim.

5. The Respondent has violated RPC 1.5 (Fees) by making a contingent fee agreement to represent Ms. Carson-Bell on her personal injury claim, then failing to reduce the fee agreement to writing.

6. The Respondent has violated RPC 1.8(h) (Conflict of Interest) by contacting Ms. Carson-Bell and offering her \$3,500.00 as compensation for his attorney malpractice in the handling of her case, without informing her that she had a right to independent counsel to explain all the terms and conditions of the agreement, and without advising her in writing of the desirability of seeking independent legal advice or giving her a reasonable opportunity to do so.

7. The Respondent has violated RPC 8.4(a) (Misconduct) by violating the Rules of Professional Conduct as set forth hereinabove.

Thereafter, the Executive Secretary sent the parties a Notice of Hearing on May 16, 2022, and an Amended Notice of Hearing on May 17, 2022, advising the parties of a hearing date set for June 17, 2022, at 1:00 p.m., to be held via Zoom format. On June 14, 2022, the Board filed a Motion to Continue the hearing date due to the unavailability of a witness, Lanetta Carson-Bell, on account of a death in her immediate family. The Hearing Panel granted the motion in an Order entered on June 15, 2022, in which the Panel directed counsel for the parties to submit proposed dates to reschedule the hearing within fifteen (15) days of the date of the Order. The Executive Secretary sent the parties Notice of Hearing dated July 25, 2022, advising that the hearing date was reset for September 6, 2022, at 1:00 p.m. via Zoom.

On September 6, 2022, the Respondent appeared for the hearing without counsel and requested a continuance based on his attorney's alleged unavailability due to a medical condition but offered no evidence to substantiate the nature or duration of the alleged medical claim. Coincidentally, the Respondent's attorney's license had been administratively suspended on August 19, 2022. The Board's witness, Ms. Carson-Bell, was available and was prepared to testify at the hearing. After conferring privately, the Hearing Panel decided to receive any evidence the Board was prepared to offer on the issue of sanctions. Disciplinary Counsel presented Ms. Carson-Bell's testimony via Zoom and offered supporting exhibits. The Respondent requested additional time to present evidence on his own behalf. The Hearing Panel ruled in an Order entered September 20, 2022, that Respondent would be allowed thirty (30) days from the hearing date to obtain new counsel who would be prepared to resume the hearing, and to provide dates when his new counsel would be able to complete the hearing. The Hearing Panel stipulated that Respondent's failure to comply with the thirty (30) day deadline for retaining new counsel would result in the Hearing Panel deciding the case based on the record from the September 6th hearing.

The Respondent failed to retain new counsel within the allotted time set by the Hearing Panel and has not requested any further relief.

FINDINGS OF FACT

Based upon the entry of the Order granting Summary Judgment and the testimony of Lanetta Carson-Bell, the following facts were established by a preponderance of the evidence.

Material Facts as to Which There Was No Genuine Issue for Trial

1. Respondent agreed to represent Ms. Lanetta Carson-Bell in June 2016 on a personal injury claim and timely filed a civil suit on her behalf in Davidson County General Sessions Court, Case No. 16GS10997, *Lanetta Carson-Bell v. Daniel Stubbs*.

2. Respondent verbally agreed to represent Ms. Carson-Bell for a one-third (33%) contingent fee; however, no written employment agreement was made.

3. Service of process was obtained on Mr. Stubbs on December 22, 2016.

3. Respondent failed to appear for a court date in Ms. Carson-Bell's case, which resulted in the case being dismissed on October 17, 2017.

4. Respondent did not act with reasonable diligence and promptness in his representation of Ms. Carson-Bell, in violation of Rule of Professional Conduct (RPC) 1.3.

5. Respondent did not communicate with his client, Ms. Bell, until he encountered her sixteen (16) months later in February 2019, when he told her that the case had been dismissed, in violation of RPC 1.4 (a).

6. Respondent entered into a contingent fee agreement with Ms. Bell but did not reduce the agreement to writing or comply with the requirements of RPC 1.5(c) regarding contingent fee agreements, in violation of RPC 1.5.

7. Respondent contacted Ms. Bell and offered to pay her \$3,500.00 as compensation for his negligence in allowing her case to be dismissed, without informing Ms. Bell of her right to seek independent legal counsel before discussing a negotiated resolution of her legal malpractice claim against Respondent with him, in violation of RPC 1.8 (h).

8. Respondent did not advise Ms. Bell in writing of the desirability of seeking the advice of independent counsel in connection with her legal malpractice claim against Respondent, or give her a reasonable opportunity to do so, in violation of RPC 1.8 (h).

9. Respondent violated RPC 8.4(a) by violating the Rules of Professional Conduct.

Facts Presented at the Sanctions Hearing

The uncontradicted testimony of Lanetta Carson-Bell given at the Sanctions Hearing established the following facts:

10. Respondent was retained to represent Ms. Carson-Bell on a personal injury claim arising from an automobile accident in June 2016 and he entered a verbal agreement with her which entitled him to a one-third (33%) contingency fee paid out of any recovery she received.

11. Respondent filed suit for Ms. Carson-Bell in Davidson County General Sessions Court and obtained service of process on the Defendant driver.

12. Ms. Carson-Bell was struck in the face during the accident, when her airbag deployed causing injuries to her mouth and teeth, which required substantial dental work costing over \$9,000.00 to repair.

13. In February 2019, Ms. Carson-Bell encountered Respondent at the courthouse in Murfreesboro where he told her that her case had been dismissed, and that the statute of limitations for re-filing it had expired.

14. The Respondent offered to pay Ms. Carson-Bell \$3,500.00 because her suit had been dismissed; however, Respondent did not advise her that she had the right to seek independent legal advice regarding her claim against him.

15. The Respondent has ignored Ms. Carson-Bell's repeated inquiries about the \$3,500.00 payment he promised her, and he has never paid her anything.

16. Ms. Carson-Bell asked the Hearing Panel to order \$9,500.00 restitution from Respondent for dental expenses which she paid for by credit card, on which she still owed \$500.00.

17. The Respondent's misconduct caused actual injury to Ms. Carson-Bell consisting of substantial out-of-pocket expenses for dental bills totaling approximately \$9,500.00 and caused the forfeiture of her right to recover for pain and suffering resulting from the injuries she received in the accident.

CONCLUSIONS OF LAW

1. The Respondent violated RPC 1.3 (Diligence) by failing to inform the General Sessions Court that he would be unable to appear for a scheduled court date in Ms. Carson-Bell's case on October 17, 2017; failing to file a motion or lodge a request with the court seeking a continuance of the court date; failing to notify Ms. Carson-Bell that he could not appear in court that day and asking her to be present; and failing to appear in court himself on October 17, 2017, resulting in the court's dismissal of the case.

2. The Respondent violated RPC 1.3 (Diligence) by failing to re-file the suit on behalf of Ms. Carson-Bell before October 17, 2018, within the one (1) year period allowed by the savings statute, thereby forfeiting Ms. Carson-Bell's claim and resulting in the expiration of her right to obtain relief.

3. The Respondent violated RPC 1.4 (Communication) by failing to notify Ms. Carson-Bell of the court date on October 17, 2017; failing to inform his client that her case had been dismissed because of his failure to appear in court; failing to respond to repeated inquiries from his client during 2017 and 2018 about the status of her case; and failing to explain to Ms. Carson-Bell her legal options after the savings statute had expired and her cause of action against him for legal malpractice had accrued.

4. The Respondent violated RPC 1.5(c) (Fees) by failing to reduce to writing his contingent fee agreement with Ms. Carson-Bell.

5. The Respondent violated RPC 1.8(h) by failing to advise Ms. Carson-Bell, either verbally or in writing, of the desirability for her to seek independent legal advice and by not giving her an opportunity to do so, before presenting her with an offer to settle her legal malpractice claim against him.

6. The Respondent violated RPC 1.8(h) by agreeing to settle Ms. Carson-Bell's malpractice claim against him for \$3,500.00 in settlement of her liability claim against him.

7. The Respondent violated RPC 8.4(a) by violating or attempting to violate the Rules of Professional Conduct as outlined hereinabove.

Factors to be Considered in Imposing Sanctions

8. The ABA Standards for Imposing Lawyer Sanctions set forth the factors to be considered in imposing sanctions in ABA Standard 3.0, which provides as follows:

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

Presumptive Sanction for the Respondent's Ethical Violations

9. With respect to the appropriate sanction, the following ABA Standards are applicable to this case:

- 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client that possible effect of that conflict, 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 causes injury or potential injury to a client.

10. Accordingly, the Panel finds that Suspension is the appropriate baseline sanction applicable to this disciplinary action.

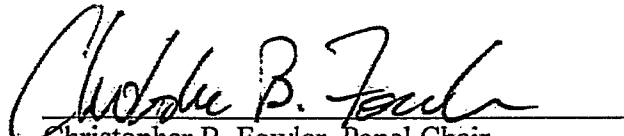
11. Having determined Suspension to be the appropriate baseline sanction, the Panel must consider any relevant and material evidence of aggravating or mitigating factors introduced into the record. The evidence before the Panel established that Mr. Holiday had been actively practicing law since receiving his license in 1988. The evidence further established that Mr. Holiday violated multiple disciplinary rules in his representation of Ms. Carson-Bell. Accordingly, the Panel finds the Board established two (2) aggravating factors: (1) multiple offenses, and (2) substantial experience in the practice of law. The Panel finds no mitigating factors were proven.

JUDGMENT

Based on the facts and evidence presented in this disciplinary action, the Rules of Professional Conduct, the ABA Standards for Imposing Lawyer Sanctions, and the presence of two (2) aggravating factors, the Hearing Panel finds by preponderance of the evidence that Mr.

Holiday has committed disciplinary misconduct and should receive a two (2) year suspension from the practice of law, with six (6) months active, followed by eighteen (18) months on probation pursuant to Tenn. Sup. Ct. R. 9, § 12.2. Respondent shall be required to make restitution to Lanetta Carson-Bell in the amount of \$9,500.00 and/or to reimburse the Tennessee Lawyers Fund for Client Protection for any sums that it has paid or may pay in the future on Ms. Carson-Bell's claim. 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 plaintiffs' personal injury 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.


Christopher B. Fowler, Panel Chair


Lee Pope, Panel Member


Luther Wright, Panel Member