

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

**IN RE: JASON DANIEL HOLLEMAN,  
BPR No. 019806, Respondent,  
an Attorney Licensed to Practice  
Law in Tennessee  
(Davidson County)**

**DOCKET NO. 2018-2836-5-AJ**

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**HEARING PANEL'S  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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**STATEMENT OF THE CASE**

This is a disciplinary proceeding against Jason Daniel Holleman, an attorney licensed to practice law in Tennessee in 1999. A Petition for Discipline was filed against Mr. Holleman on February 28, 2018. Mr. Holleman filed an Answer to the Petition on January 29, 2019.

The case was heard on February 12, 2019, before Brigid M. Carpenter, Hearing Panel Chair, William R. O'Bryan, Jr., Hearing Panel Member, and Michael Castellarin, Hearing Panel Member. Mr. Holleman was represented by Roger Maness. The Board of Professional Responsibility was represented by Alan D. Johnson.

The Board called the following witnesses: Larry Rains, Rick Rains, Dan Sumner Allen, Tim Walker, Metro Councilwoman Davette Blalock and Jason Holleman. Mr. Holleman called the following character witnesses: Judge Paul Summers, Jonathon Farmer and Laura Fox. The parties stipulated to the introduction of affidavits of Judy Rains Anderson, Marjorie Lynn Anderson and Eric Barnes. Thirteen exhibits were introduced into the record.

Following the hearing, and at the request of the Hearing Panel, both the Board and Mr.

Holleman submitted proposed Findings of Fact and Conclusions of Law. The Hearing Panel has reviewed both sets of proposed Findings and Conclusions and makes the following findings and conclusions.

### **FINDINGS OF FACTS**

#### **Proceedings to obtain adverse possession and relocate the Rains Cemetery**

1. The Respondent, Jason Daniel Holleman, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee. Mr. Holleman's most recent office address as registered with the Board of Professional Responsibility is 4800 Charlotte Avenue, Nashville, TN 37209-3495, being in Disciplinary District V. Mr. Holleman was licensed to practice law in Tennessee in 1999 and his Board of Professional Responsibility number is 019806.

2. On or about late March or early April 2015, Mr. Holleman was asked by Davette Blalock, a Metro Nashville Councilwoman, to represent the owners of a used car dealership located at 399 Ashgrove Drive, Nashville Tennessee, in taking adverse possession of the cemetery adjacent to the car lot with the address 5510 Nolensville Pike, Nashville Tennessee, terminating the cemetery and relocating it. The owners of the car dealership, who eventually became clients of Mr. Holleman, are David Ashkarari and Akbari Bariborz (referred to during the hearing as Dave and Fred).

3. Mr. Holleman agreed to take the case for a nominal fee on the basis that the matter was not contested, that Ms. Blalock would seek and contact descendants and he would prepare the pleadings. (Tr. pp. 130-132)

4. On April 29, 2015, Mr. Holleman and Ms. Blalock met with the clients at their place of business at 399 Ashgrove Drive, and the clients agreed to retain Mr. Holleman for a *de*

*minimis* flat fee.

5. An action to terminate a cemetery is governed by Tenn. Code Ann. § 46-4-101, et. seq. Termination of Use of Land as Cemetery.

6. Tenn. Code Ann. § 46-4-103 (b) requires that “all interested persons who are not complainants shall be made defendants.”

7. All Ms. Blalock wanted to do was to let descendants know what was going on. (Tr. p. 73)

8. Ms. Blalock testified that she understood the only legal requirement was to run an ad in the newspaper. (Tr. p. 72)

9. Mr. Holleman did not tell her anything about the legal significance of contacting the descendants. (Tr. p. 73)

10. In order to satisfy this statutory requirement, Mr. Holleman agreed that Ms. Blalock would search for interested persons, and to that end, he recommended that Ms. Blalock contact all property owners in Davidson County with the last name Rains and provided Ms. Blalock with letters to individuals with the last name Rains informing them that his clients had an interest in terminating the cemetery. (Exhibit 8)

11. After sending letters to individuals in Nashville with the last name Rains, Mr. Holleman heard from James Larry Rains. (Tr. p. 74)

12. Ms. Blalock then went to see Mr. Rains to tell him about the lawsuit and Fred and Dave’s desire to relocate the cemetery and the impending legal action. (Tr. p. 74)

13. Mr. Rains was not at home the first three times she went to his house, but he was there on the fourth visit. (Tr. p. 99-100)

14. Ms. Blalock told Mr. Rains that she had spoken with a judge and that her

constituents were going to win their lawsuit to relocate the cemetery, but he could oppose it if he wanted to. (Tr. p. 100)

15. Mr. Rains told Ms. Blalock and Mr. Holleman that one of his brothers and his mother were in an assisted living facility and could not take care of themselves. (Tr. p. 12; p. 138)

16. Mr. Rains told her he did not want the cemetery moved but that he would speak with his family. (Tr. p. 9)

17. Ms. Blalock then learned that Captain James Rains had donated property on which the fairgrounds is now located. (Tr. p. 75)

18. She then approached Mr. Rains and asked if he would agree to not oppose the lawsuit if the bodies could be moved to the fairgrounds. (Tr. pp. 75-76)

19. After speaking with his immediate family, Mr. Rains agreed to the relocation of the cemetery provided certain conditions were met including that the cemetery would be relocated to the fairgrounds. (Tr. p. 11)

20. Mr. Rains sent a letter dated March 16, 2016, to Mr. Holleman expressing the terms that he would agree to, which included the promises made by Ms. Blalock, and stating that he was “speaking for [his] immediate family and there may be others that may see this differently.” (Tr. p. 11; Exhibit 1)

21. Mr. Rains placed a phone call to Mr. Holleman after he sent the March 16, 2016, letter and asked him if the cemetery was going to be moved to the fairgrounds, and Mr. Rains testified that Mr. Holleman told him that it would be. (Tr. pp. 11, 17)

22. Mr. Holleman testified that he does not “actually have a specific recollection of discussing these provisions [in the March 16, 2016 letter] with Mr. Rains;” however, based upon

his experience with the Metro Council, he “would never have warranted to him that the fairgrounds relocation would occur.” (Tr. p. 135)

23. Mr. Holleman also testified that he did not offer a comment on Mr. Rains’ letter when speaking with him. (Tr. p. 136)

24. On March 4, 2016, Mr. Holleman filed a Petition to Quiet Title and Termination of Cemetery. (Exhibit 10)

25. The Petition mis-identified the address of the cemetery as 399 Ashgrove Drive, which is the address of his clients.

26. The address of the cemetery is 5510 Nolensville Pike, Nashville, TN 37211.

27. Mr. Holleman attached a copy of the Deed to the Petition to Quiet Title.

28. The hand-written deed is virtually illegible.

29. The Petition was thereafter served upon Mr. Rains by personal service and mail. (Tr. p. 15-16)

30. On March 31, 2016, Mr. Holleman filed a motion and memorandum to allow further service by publication. (Exhibit 10)

31. In that motion, Mr. Holleman wrote: “Petitioner’s counsel was contacted by Mr. James L. (Larry) Rains who stated that he was, in fact, a descendant of the persons buried in the cemetery in question and that, under certain identified circumstances, he did not oppose the termination of the cemetery.

32. The motion further noted that Mr. Rains had provided a “phone number of the only other known potential descendant, Mr. Rick Rains in Murfreesboro,” but the Petitioners have been unable to successfully contact Mr. Ricky Rains.

33. Finally, the motion stated the “Petitioners have no knowledge of other potential interested parties or how to ascertain such person(s) identity.”

34. Mr. Holleman testified that he called Rick Rains several times and left voice mail messages for him. (Tr. p. 133)

35. Rick Rains testified at the hearing that he had never received a phone call from Mr. Holleman or a voice mail message on his phone. (Tr. p. 30)

36. The Hearing Panel finds that Mr. Holleman was aware of other descendants and misrepresented to the court that there was no knowledge of other potential interested parties.

37. On April 27, 2016, the court entered an order allowing Mr. Holleman to serve notice by publication. (Exhibit 10)

38. Mr. Holleman thereafter gave Ms. Blalock the Notice to be published in the *Nashville Ledger* which mis-identified the location of the property as 399 Ashgrove Drive, Nashville, and directed her to have it published in the *Nashville Ledger*.

39. Ms. Blalock then sent the Notice to the *Nashville Ledger* by email and provided her credit card number for payment. (Tr. p. 87)

40. Ms. Blalock did not thereafter confirm that the Notice was published in the four weeks she requested that it be published or confirm that her credit card had been charged for the publication. (Tr. p. 88)

41. The Notice was not published in the *Nashville Ledger*.

42. Mr. Holleman instructed Ms. Blalock to provide him with copies of the *Nashville Ledger* in which the Notice was allegedly published to support the motion for default judgment that he subsequently filed. (Tr. p. 88)

43. Ms. Blalock gave him the four issues of the *Nashville Ledger* in which the Notice

was to be published. (Tr. p. 88

44. Prior to filing the motion for default judgment, Mr. Holleman did not look at the issues of the *Nashville Ledger* to verify that they contained the Notice or that the language to be published was correct. (Tr. p. 159)

45. Mr. Holleman relied on Ms. Blalock's representation that the Notice was published. (Tr. p. 159)

46. By August 2016, it became clear to Ms. Blalock that the cemetery could not be moved to the fairgrounds. (Tr. pp. 104-105)

47. Mr. Holleman directed Ms. Blalock to inform Mr. Rains that the cemetery would not be moved to the fairgrounds. (Tr. p. 104-105)

48. Ms. Blalock testified that after going to Mr. Rains' home to tell him that the fairgrounds relocation was not going to work, and finding that he was not at home, Mr. Holleman told her to send a letter. (Tr. p. 107)

49. Ms. Blalock further testified that she hand-delivered the undated letter to Mr. Rains' house advising him of this fact. (Tr. p. 108)

50. Mr. Rains acknowledged that the letter was given to his wife. (Tr. p. 22)

51. The evidence establishes that the letter was delivered in December 2016, approximately three months after Mr. Holleman and Ms. Blalock learned that the cemetery would not be moved to the fairgrounds. (Tr. p. 125)

52. Ms. Blalock testified that she did not have Mr. Rains' phone number and her only communications with him were in person. (Tr. p. 76)

53. She also testified that after she delivered the letter, she did not speak with Mr. Rains. (Tr. p. 128)

54. Mr. Holleman testified that Ms. Blalock told him that Mr. Rains supported relocating the cemetery to a perpetual care cemetery. (T. p. 151)

55. While he did not have a specific recollection of Ms. Blalock telling him that, he testified that he would not have stated it in the motion for default judgment had she not done so. (Tr. p. 148-149, 151)

56. Mr. Holleman did not call Mr. Rains to verify his position on the move to Mt. Olivet Cemetery. (Tr. p. 152)

57. On January 6, 2017, Mr. Holleman filed a Motion for Default Judgment against Mr. Rains and the unknown descendants. (Exhibit 10)

58. In the Memorandum in Support of Motion for Default Judgment Mr. Holleman wrote: "Prior to initiating such action, Petitioners diligently investigated the potential identities of all interested persons. Such investigation only yielded one person, Mr. James Rains, who expressed his support for the relocation of the interred bodies to a perpetual care cemetery and has not entered an appearance or otherwise defended this action."

59. The Hearing Panel finds that Mr. Holleman was aware of Mr. Rains' infirm brother who should have been noticed and represented in the proceedings (see ¶ 15).

60. The Hearing Panel finds that Mr. Rains did not express support for relocating the cemetery to a perpetual care cemetery and that Mr. Holleman did not verify that fact appropriately prior to making the assertion in the motion for default.

61. Despite information received during the pendency of the Petition (see below), Mr. Holleman did not revisit the cemetery before he filed the Motion for Default Judgment. (Tr. p. 139)

62. The motion for default shows on the certificate of service that it was mailed to



Larry Rains.

63. Mr. Holleman affirmatively stated in the Memorandum and Motion in Support of Further Service by Publication that notice of the lawsuit was published in the *Nashville Ledger* on four consecutive weeks in August 2016, and that no person came forward or entered an appearance in the matter.

64. Mr. Holleman certified the same representation of service publication in the Default Judgment Certificate.

65. A hearing on the Motion for Default Judgment took place on January 20, 2017.

66. The Order granting the Motion for Default Judgment was entered on January 25, 2017.

67. After the expiration of the time to appeal, Mr. Holleman's clients had the Rains family' graves moved to Mt. Olivet Cemetery.

68. Some of the Rains family descendants learned that the bodies were re-interred at Mt. Olivet Cemetery without their knowledge and filed a Motion to Set Aside the Default Judgment. (Exhibit 173)

69. On July 11, 2017, the Default Judgment was set aside in part because there was no service by publication. (Exhibit 13)

#### **Restoration of the cemetery**

70. The cemetery at issue was known as the Rains Cemetery.

71. John Rains is a historical Nashville figure whose father helped defend Nashville from a Cherokee attack at the Battle of Buchanan Station in 1792.

72. Mr. Rains and other family members were buried in the historical cemetery at what is now 5510 Nolensville Pike, near the intersection with Old Hickory Boulevard in

Davidson County, Tennessee.

73. By February 2016 the condition of the cemetery had deteriorated, and some of the cemetery headstones were broken and laid over the cemetery plots. (Tr. p. 36; Exhibit 4)

74. Before the Petition to Quiet Title was filed, Ms. Blalock met with Tim Walker, Executive Director of the Metro Historical Commission, who had sent newly elected Councilwoman Blalock a letter welcoming her to the Council and offering to meet with her to tell her about the Historical Commission.

75. The Metro Historical Commission is Nashville's historical preservation agency that, among other responsibilities, is involved in maintaining the county's rural cemeteries. (Tr. pp. 54-56)

76. The Historical Commission also works with the Davidson County Cemetery Survey project that, over the past twenty-five years, has surveyed rural cemeteries in Davidson County and determined the identities of individuals buried in them. (Tr. p. 46-47)

77. The Historical Commission also works with the Nashville City Cemetery Association that raises funds and promotes the city cemetery. (Tr. p. 46)

78. Mr. Walker testified that if someone wanted to locate descendants of individuals buried in a historic cemetery, he would recommend they contact the Colonial Dames, and specifically Fletch Coke as a point person. (Tr. p. 48)

79. Mr. Holleman at one time served on the Board of the Nashville City Cemetery Association and as its president. (Tr. p. 69)

80. After sending the introductory letter to new members of the Metro Council, Mr. Walker met with Ms. Blalock and Ms. Blalock mentioned that there was an old cemetery in her district that she wanted to know about. (Tr. pp. 49-50)

81. In December 2015 and January 2016, Ms. Blalock and Mr. Walker exchanged emails. (Exhibit 6)

82. In one email to Mr. Walker, Ms. Blalock asked him to look around for a place to relocate the bodies entered at the cemetery.

83. Mr. Walker acknowledged that he received the email, but testified Ms. Blalock never told him about her constituents filing a Petition seeking to relocate the cemetery. (Tr. pp. 51-52)

84. Ms. Blalock testified that she told Mr. Walker about the Petition; however, in her deposition, she testified that the meeting with Mr. Walker had nothing to do with the lawsuit. (Tr. p. 78)

85. The Hearing Panel finds that Ms. Blalock did not tell Mr. Walker about the lawsuit in their first meeting.

86. Based upon Ms. Blalock's inquiry about finding a location to relocate the individuals buried at the Rains Cemetery, and her statement that the cemetery was in poor condition, Mr. Walker notified Fletch Coke. (Tr. p. 52)

87. Fletch Coke found some descendants and, together with the Historical Commission and Rains family descendants, raised money for the restoration of the cemetery. (Tr. p. 52)

88. The Historical Commission and descendants of the Rains family subsequently employed Dan Allen, an archaeologist and stone conservator, to undertake restoration, and his work began in February 2016. (Tr. p. 34)

89. Mr. Allen completed restoration of the cemetery in August 2016. (Tr. pp. 34-35)

90. Mr. Allen testified that he viewed the remains at Mt. Olivet after the cemetery

was relocated and some of the headstones were broken and pieces of others were missing. (Tr. pp. 39-40)

91. He further stated that the marble used for the headstones is no longer available and they cannot be restored to the post-restoration condition. (Tr. p. 40)

92. At some point after the Rains family became involved in the restoration project, or shortly before, Marjorie Lynn Anderson and her mother, Judy Rains Anderson, sent emails to Tim Walker, Executive director of the Metro Historical Commission, expressing their opposition to the move and asked that the Historical Commission oppose the move. (Joint Stipulation of the Parties)

93. Mr. Walker sent emails to the mother and daughter and assured them that he would notify Ms. Blalock of their position and that he would be sure to contact them if “the owner decides to petition the court to remove the graves.” (Joint Stipulation of the Parties)

94. Mr. Walker testified that he told Ms. Blalock in a phone conversation that family members opposed the relocation of the cemetery. (Tr. p. 54)

95. On one occasion, Ms. Blalock saw Mr. Allen working on the restoration of the cemetery and asked him what he was doing. (Tr. p. 82)

96. Mr. Allen testified that he met Ms. Blalock while he was working on the cemetery and that it was “very early in the process.” (Tr. p. 37)

97. Mr. Allen told her that he was restoring the cemetery and being paid for the work by the Historic Commission and some family members. (Tr. p. 38)

98. Ms. Blalock testified that she called Mr. Holleman “right when I pulled off [from the cemetery]” and told him “exactly” the conversation with Mr. Allen. (Tr. p. 83)

99. Mr. Holleman testified that he does “recall a conversation where she [Ms. Blalock] told me she encountered someone at the cemetery.” (Tr. pp. 138-139)

100. He further testified that he has “no reason to doubt or confirm” if the conversation occurred the day she spoke with Mr. Allen. (Tr. p. 139)

101. Mr. Holleman testified that Ms. Blalock told him that she saw someone at the cemetery at the behest of the Historical Commission but denies that there was any mention of family. (Tr. pp. 139-140)

102. Because Mr. Allen completed the restoration work on the cemetery in August 2016, the Hearing Panel finds that Ms. Blalock’s conversation with Mr. Allen, and phone call to Mr. Holleman on the same day as the conversation, occurred as early as February – March 2016, but in any event no later than August 2016.

103. After speaking with Mr. Allen, Ms. Blalock contacted Tim Walker, Executive Director of the Nashville Historical Commission, with whom she had previously discussed the possibility of relocating the Rains Cemetery. (Tr. p. 83)

104. According to Ms. Blalock, Mr. Walker would not discuss the ongoing work at the cemetery with her. (Tr. p. 113)

105. On another occasion, Ms. Blalock spoke with Mr. Walker, who told her that he knew of family members who were opposed to moving the cemetery. (Tr. p. 83)

106. Mr. Walker told Ms. Blalock that Fletch Coke had the names of additional family members, but that she did not want to speak with Ms. Blalock. (Tr. p. 83)

107. Mr. Walker testified that he spoke with Ms. Coke, who told him the descendants did want to talk with Ms. Blalock about moving the cemetery because they didn’t want it moved. (Tr. pp. 54, 68)

108. Ms. Blalock also told Mr. Holleman about the conversation with Mr. Walker. (Tr. p. 84)

109. Mr. Holleman denied that he was told anything about members of the Rains family being involved with the work on the cemetery. (Tr. pp. 140-141; 146)

110. At no time did Mr. Holleman take steps to communicate with Mr. Walker about the restoration work at the cemetery. (Tr. p. 142)

111. Although he was told that Fletch Coke was involved in the cemetery work, and he knows Ms. Coke, Mr. Holleman never contacted her to learn more about it. (Tr. p. 142)

#### **Character witness testimony**

112. Judge Paul Summers testified as a character witness for Mr. Holleman. (Tr. p. 178)

113. Although Judge Summers did not have a lot of interaction with Mr. Holleman, he testified that Mr. Holleman is a competent, professional and ethical lawyer based upon the interaction he did have. (Tr. pp. 181-183)

114. Judge Summers testified that the only thing he knew about this case is what Mr. Maness told him. (Tr. p. 184)

115. He testified that he had not read the pleadings, but he understood the issues related to the fact that the Notice was not published, and that Mr. Holleman denied that he had any knowledge that it had not been published when he presented the default judgment to the court. (Tr. p. 185)

116. Metro lawyer Lora Fox testified as a character witness for Mr. Holleman. (Tr. p. 190)

117. Ms. Fox has known Mr. Holleman for about fifteen years, both as adversary counsel and as a Metro Councilman. (Tr. p. 192)

118. She testified that Mr. Holleman is a very good lawyer who never pushes arguments that are not supportable. (Tr. p. 193)

119. In her opinion, Mr. Holleman is professional and collegial. (Tr. pp. 193-194)

120. She testified that Mr. Holleman told her that he had relied on the representation of his client that the Notice was published. (Tr. p. 195)

121. Jonathon Farmer testified as a character witness for Mr. Holleman. (Tr. p. 195)

122. Mr. Farmer worked with Mr. Holleman for a period of eight to ten years on two separate occasions in two small law firms. (Tr. 196-197)

123. During the time he and Mr. Holleman worked together, they had an opportunity to discuss their cases. (Tr. p. 197)

124. Mr. Farmer testified that Mr. Holleman has very high ethics and a very high level of professionalism. (Tr. p. 198)

125. Mr. Farmer testified that he understands that the issue has to do with publication that was supposed to happen but did not. (Tr. p. 199)

#### **CONCLUSIONS OF LAW**

126. Pursuant to Tenn. Sup. Ct. R. 9, § 8.1, attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the hearing panel, hereinafter established, and the Circuit and Chancery Courts.

127. 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 act at all times, both

professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

128. Pursuant to Tenn. Sup. Ct. R. 9, § 11.1, acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and grounds for discipline.

129. Mr. Holleman's conduct occurred during his representation of Fred and Dave in their effort to terminate a historic cemetery.

130. The Hearing Panel notes that such actions are governed by. Tenn. Code Ann. § 46-4-101, *et. seq.* (Termination of Use of Land as Cemetery)

131. Tenn. Code Ann. § 46-4-103 (b) states: "In the suit, all interested persons who are not complainants shall be made defendants, and the owner or owners of the land or of any right of reversion or other right or interest in the land, if the owner or owners shall be or include other than the interested persons, shall also be made defendants. Interested persons who are minors or otherwise incompetent or under disability may become complainants by guardian or next friend. All known defendants who are minors or otherwise incompetent or under disability shall be represented by guardian ad litem. Nonresident and unknown defendants may be proceeded against by order of publication, and publication, in the manner provided by law."

132. Tenn. Code Ann. § 21-1-203 authorizes service by publication when the name and residence of the defendant "is unknown and cannot be ascertained upon diligent inquiry."

133. The Hearing Panel finds that the Board has met its burden of proving by the preponderance of the evidence that Mr. Holleman violated the Rules of Professional Conduct (RPC) as more fully set forth below.



## 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.

134. “Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve.” RPC 1.1, Comment [2]

135. “Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and the use of methods and procedures meeting standards of competent practitioners.” RPC 1.1, Comment [5]

136. “The required attention and preparations are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequences.” RPC 1.1, Comment [5]

137. Mr. Holleman violated RPC 1.1 when he misidentified the address of the Rains Cemetery as 399 Ashgrove Drive, Nashville in the Petition to Quiet Title, the Notice to be published in the *Nashville Ledger* and the Default Judgment Order.

138. Mr. Holleman violated RPC 1.1 when he failed to thoroughly review and verify that the Notice to be published was actually published in the *Nashville Ledger*, and failed to verify that the correct notice had been published in the *Nashville Ledger*.

139. Mr. Holleman violated RPC 1.1 when he failed to avail himself of available resources for locating Rains family descendants, for example, by contacting Fletch Coke who actually located members of the family.

140. Mr. Holleman violated RPC 1.1 when he failed to recognize the significance of notifying all interested persons, and failed to follow-up with Larry Rains about Mr. Rains’

incapacitated brother who, pursuant to T. C. A. § 46-4-102, was an interested person required to be served with the Petition to Quiet Title.

141. Mr. Holleman violated RPC 1.1 when he failed to recognize the significance of notifying all interested persons and failed to reach out to Larry Rains to verify how to reach Rick Rains in order to ascertain where he could be served with the Petition to Quiet Title.

142. Mr. Holleman violated RPC 1.1 when, having undertaken a case that would involve diligent efforts to locate and serve descendants of persons who passed away one hundred and fifty years ago, he delegated the important legal requirement of locating “interested persons” to a non-lawyer without informing her of the importance of the need to locate interested persons and providing her legal guidance to perform the necessary work.

### **Rule 1.3: DILIGENCE**

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

143. Mr. Holleman violated RPC 1.3 when he failed to exercise reasonable diligence to confirm that the notice to be published was actually published in the *Nashville Ledger*, and failed to verify that the correct notice had been published in the *Nashville Ledger*.

144. Mr. Holleman violated RPC 1.3 when he failed to exercise reasonable diligence to ascertain the identity and location of follow-up with of Larry Rains’ incapacitated brother who, pursuant to T. C. A. § 46-4-102, was an interested person required to be served with the Petition to Quiet Title.

145. Mr. Holleman violated RPC 1.3 when he failed to exercise reasonable diligence to contact Ricky Rains in order to ascertain where he could be served with the Petition to Quiet Title.

146. Mr. Holleman violated RPC 1.3 when he failed to avail himself of available resources for locating Rains family descendants, for example, by contacting Fletch Coke who actually located members of the family.

147. Mr. Holleman violated RPC 1.3 when, after being placed on notice that the Historical Commission and family members were restoring the cemetery, he filed a motion for default judgment without exercising reasonable diligence to ascertain whether the condition of the cemetery had changed since the time he file the Petition to Quiet Title.

### **RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.

148. “The advocate has a duty to use legal procedure for the fullest benefit of the client’s cause, but also has a duty not to abuse the legal procedure.” RPC 3.1, Comment [1]

149. “The law, both procedural and substantive, establishes the limits within which an advocate may proceed.” RPC 3.1, Comment [1]

150. “What is required of lawyers, however, is that they act reasonably to inform themselves of the facts of their client’s case and the law applicable to the case and then act reasonably in determining that they can make good faith arguments in support of the client’s position.” RPC 3.1, Comment [2]

151. Mr. Holleman violated RPC 3.1 when he failed to act reasonably to inform himself that the notice had been published in the *Nashville Register* before representing to the court that it had been published.

152. Mr. Holleman violated RPC 3.1 when represented to the Court in the motion and memorandum to allow further service by publication that “Petitioners have no knowledge of other potential interested parties or how to ascertain such person(s) identity.”

153. Mr. Holleman violated RPC 3.1 when he represented to the Court in the motion for default that Larry Rains supports the relocation of the cemetery to a perpetual care cemetery without making a reasonable inquiry into whether Mr. Rains actually supported moving the cemetery to a perpetual care cemetery.

154. In *Hines v. State*, 126 Tenn. 1, 149 S.W. 1058 (1911), the Court held “there can be no actual ouster or adverse possession [of a cemetery], to put in operation the statute of limitations, so long as the dead are there buried, their graves are marked, and any acts are done tending to preserve their memory and mark their last resting place.”

155. Mr. Holleman violated RPC 3.1 for failing to make a reasonable inquiry into the condition of the Rains Cemetery before filing a motion for default judgment ten months after filing the Petition to Quiet Title, and after being placed on notice that the Historic commission and family members were restoring the cemetery.

### **RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS**

(c) a lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved;

156. “A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client.” RPC 5.3, Comment [3]

157. “When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that

the nonlawyer's conduct is compatible with the professional obligations of the lawyer." RPC 5.3, Comment [3]

158. Mr. Holleman did not explain to Ms. Blalock the legal significance of locating descendants of the Rains family.

159. Mr. Holleman violated RPC 5.3 when he delegated the responsibility of locating Rains Family descendants to Ms. Blalock without communicating directions appropriate under the circumstances to give reasonable assurance that Ms. Blalock's conduct was compatible with his professional obligations.

160. Mr. Holleman violated RPC 5.3 when he delegated the responsibility of informing Mr. Rains that the cemetery would not be relocated to the fairgrounds.

#### **RULE 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER**

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

161. Mr. Holleman violated RPC 5.4 when he delegated the responsibility of locating Rains Family descendants to Ms. Blalock and permitted her to make legal judgments that should have been made by him.

#### **Application of the ABA Standards**

When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, ("ABA Standards") pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court.

Generally speaking, "[t]he ABA Standards suggest the appropriate baseline sanction, and aggravating and mitigating factors may justify an increase or reduction in the degree of

punishment to be imposed.” *In re Vogel*, 482 S.W.3d 520, 534 (Tenn. 2016) (citing *Maddux v. Bd. of Prof'l Responsibility*, 148 S.W.3d 37, 41 (Tenn. 2004). The Supreme Court has made clear that “any analysis of the proper discipline involves two steps: first, identify the presumptively appropriate sanction applicable to the established misconduct, and then consider whether that sanction should be increased or decreased due to aggravating and mitigating circumstances, if any.” *Bd. of Prof'L Responsibility v. Cowan*, 388 S.W.3d 264, 268 (Tenn. 2012).

The following ABA Standards apply in this matter:

- 4.43 Reprimand [Public Censure] is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
- 4.53 Reprimand is generally appropriate when a lawyer:
  - (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
  - (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.
- 5.13 Reprimand [Public Censure] is generally appropriate when a lawyer engages in any other conduct that involves dishonesty, fraud deceit, or misrepresentation and that adversely reflects on the lawyer’s fitness to practice law.
- 6.13 Reprimand [Public Censure] is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
- 6.23 Reprimand [Public Censure] 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.

- 7.3 Reprimand is generally appropriate when a lawyer negligently 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.

Having identified the appropriate baseline Standards, the Hearing Panel finds the following aggravating and mitigating factors:

Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

1. Mr. Holleman's multiple offenses are an aggravating circumstance justifying an increase in discipline.
2. Mr. Holleman's pattern of negligent misconduct is an aggravating circumstance justifying an increase in discipline.
3. Mr. Holleman's refusal to acknowledge the wrongful nature of his conduct is an aggravating circumstance justifying an increase in discipline. Throughout the course of the hearing, Mr. Holleman projected blame on others and accepted none of it.
4. Mr. Holleman's substantial experience in the practice of law, having been licensed in Tennessee in 1999, is an aggravating circumstance justifying an increase in discipline.
5. The vulnerability of the Rains descendants is an aggravating circumstance justifying an increase in discipline.

Pursuant to ABA Standard 9.32, the following mitigating factors are present in this case:

1. Mr. Holleman's absence of a prior disciplinary record is a mitigating circumstance justifying a decrease in discipline.

**Appropriate Sanction**

After considering the applicable ABA Standards and the aggravating and mitigating circumstances, the Hearing Panel finds that Mr. Holleman should be subject to reprimand in the form of Public Censure pursuant to Section 12.4 of Rule 9 of the Tennessee Supreme Court Rules.

It is so ORDERED this 3rd day of May, 2019.

Brigid M. Carpenter  
Brigid M. Carpenter, Hearing Panel Chair

William R. O'Bryan, Jr. by BMC  
William R. O'Bryan, Jr., Hearing Panel Member *w/ permission*

Michael Castellari by BMC  
Michael Castellari, Hearing Panel Member *w/ permission*


**NOTICE OF APPEAL**

**The findings and judgment of the hearing panel may be appealed pursuant to Tenn. Sup. Ct. R. 9, Section 33. See also Tenn. Sup. Ct. R. 9, Section 31(a).**



**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to Respondent, Jason Daniel Holleman, 4800 Charlotte Pike, Nashville, TN 37209, and to his counsel, Roger Maness, 233A. Dunbar Cave Road, PO Box 1149, Clarksville, TN 37041-1149, via U.S. First Class Mail, and hand-delivered to Alan Johnson, Disciplinary Counsel, on this the 6<sup>th</sup> day of May, 2019.

  
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.**