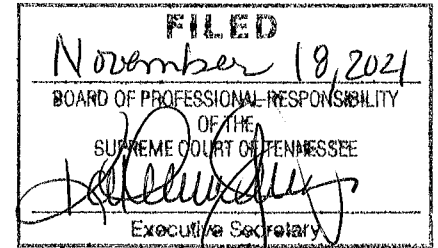


IN DISCIPLINARY DISTRICT VI
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: COLLEEN ANN HYDER
BPR # 029571, RESPONDENT,
an Attorney Licensed to Practice
Law in Tennessee
(Montgomery County)

DOCKET NO. 2020-3124-6-BL

JUDGMENT OF THE HEARING PANEL

This cause came for trial before this Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee on October 18, 2021, in Circuit Courtroom #404 at the Montgomery County Courts Complex in Clarksville, Tennessee. The Hearing Panel, Michael J. Fahey II (Chair), Eric Michael Larsen, and Elizabeth Noel Sitgreaves, after considering the entire file in this matter, testimonies of witnesses, exhibits, and arguments presented to this Panel, and after thorough deliberations, makes the following Findings of Fact, Conclusions of Law, and renders its judgment in this cause.

I. BACKGROUND

Respondent Colleen Ann Hyder is licensed to practice law in Tennessee with Board of Professional Responsibility No. 029571. A Petition of Discipline was filed against Ms. Hyder on September 11, 2020. On October 14, 2020, Ms. Hyder, by and through counsel, filed her Answer.

II. FINDINGS OF FACT

FILE NO. 63501-3-ES (Unauthorized Practice of Law)

1. On December 5, 2019, Ms. Hyder received an email from the Board of Professional Responsibility (hereinafter referred to as "the Board") providing her the Notice of Delinquency and Pending Summary Suspension for Non-Payment of Professional Privilege Tax. The email also provided Ms. Hyder with options for correcting the delinquency.
2. On December 10, 2019, Ms. Hyder received a certified letter from the Board containing the same Notice that was provided in the email.
3. On December 27, 2019, Ms. Hyder received another email from the Board providing Notice of the delinquency and options for avoiding suspension.
4. On January 16, 2020, Ms. Hyder received an email from the Board giving her notice that a Proposed Suspension Order had been forwarded to the Supreme Court and attached a copy of the proposed order to the email. This notice was also sent by certified mail, which was signed for on January 22, 2020.
5. On January 21, 2020, the Supreme Court entered an Order summarily suspending Ms. Hyder's law license for failure to pay professional privilege taxes. A copy of the Order was received by Ms. Hyder via email on that same day at 5:35 PM. The email informed Ms. Hyder that the suspension was effective immediately.
6. On January 22, 2020, Ms. Hyder appeared as counsel in Montgomery County Circuit Court before Judge Ted A. Crozier for a trial in *Rasmussen v. Rasmussen*, No. MC CH CV DI 17-390. Ms. Hyder did not mention the Order of Suspension to Judge Crozier.

7. On January 22, 2020, Ms. Hyder forwarded a Mediation Brief to mediator Jacob Mathis at 3:30 PM for a mediation the following day.
8. On January 23, 2020, Ms. Hyder participated in the mediation with mediator Jacob Mathis. Ms. Hyder did not mention the Order of Suspension to Mr. Mathis. During a break in the mediation, Ms. Hyder returned to the Montgomery County Court Complex to tend to another matter as legal counsel.
9. Ms. Hyder attended to other court matters as counsel between January 23, 2020, and January 27, 2020.
10. Ms. Hyder contacted her present counsel, Roger A. Maness, on Saturday, January 25, 2020. On Monday, January 27, 2020, Ms. Hyder contacted the Board inquiring how to have her license to practice law reinstated.
11. Ms. Hyder apparently paid all delinquent taxes and penalties on January 28, 2020.
12. On February 3, 2020, Ms. Hyder contacted the Board to obtain an informal opinion as to her ability to practice law until an order of reinstatement was issued by the Supreme Court.
13. On February 4, 2020, Ms. Hyder received an Order from the Supreme Court reinstating her license retroactive to January 28, 2020, the date on which her delinquent taxes and penalties were paid.

FILE NO. 63817-6-ES (Jade Chiara Complaint)

14. No evidence was presented on this complaint

FILE NO. 63622-6-ES (Andrew Ware Complaint)

15. In October 2019, Andrew Ware sought to hire Ms. Hyder to represent him in a matter involving the establishment of paternity and a parenting plan. Mr. Ware was in the U.S. Army and planned to begin serving in Germany. He had a child out of wedlock and was interested in being able to take the child to Germany also.
16. Mr. Ware paid \$300 to Ms. Hyder on November 19, 2019, and the remaining \$400 to Ms. Hyder on December 5, 2019.
17. Mr. Ware testified that Ms. Hyder never requested any documentation from him, and that he never received any pleadings from her office. Ware stated that he called her office 4-6 times per month, but only received one reply phone call.
18. Ms. Hyder testified that she remembers making two requests of Mr. Ware to provide her with the child's birth certificate.
19. Nichole Lambrecht, paralegal for Ms. Hyder, testified that she also communicated with Mr. Ware about missing information that was needed from him.
20. On December 13, 2019, Ms. Hyder prepared a draft paternity petition and parenting plan, and forwarded these items to Mr. Ware by email.
21. In early February 2020, Mr. Ware hired new counsel. He also visited the JAG Office at Ft. Campbell where he was stationed. An individual at the JAG Office told Ms. Hyder's office that a complaint would be filed against her unless her fee was refunded.

22. Also in February 2020, Mr. Ware came to Ms. Hyder's office in Clarksville. He demanded a refund of the money he had paid. He left her office after Ms. Hyder told him she would call the police if he did not leave.

III. BURDEN OF PROOF

Preponderance of the Evidence

IV. CONCLUSIONS OF LAW

FILE NO. 63817-6-ES (JADE CHIARA COMPLAINT)

The Panel received no evidence regarding this Complaint, and Disciplinary Counsel announced at the hearing that this Complaint was being withdrawn.

Therefore, the Panel finds that File No. 63817-6-ES is dismissed.

FILE NO. 63622-6-ES (Andrew Ware Complaint)

The Board argues that Ms. Hyder violated Rule 1.4 of the Tennessee Rules of Professional Conduct in that she failed to adequately communicate with her client. The testimony before the Panel is not conclusive. Mr. Ware testified that he called Ms. Hyder's office 4-6 times per month and received only one return phone call. Mr. Ware also testified that he was never sent any documents by Ms. Hyder and was never asked to provide his child's birth certificate.

Conversely, Ms. Hyder testified that she twice requested a birth certificate from Mr. Ware. Ms. Hyder's paralegal, Nichole Lambrecht, also testified that she communicated with Mr.

Ware, and remembers asking him for further documents as well. Further, the evidence supports that Ms. Hyder did email Mr. Ware a draft of a paternity petition and parenting plan in December.

The Panel finds that there is insufficient evidence to prove that Ms. Hyder violated Rule 1.4 of the Tennessee Rules of Professional Conduct.

Therefore, the Panel finds that File No. 63622-6-ES is dismissed.

FILE NO. 63501-3-ES (Unauthorized Practice of Law)

The Board in this case asserts that Ms. Hyder violated Rule 5.5 of the Tennessee Rules of Professional Conduct because she negligently practiced law after having her license summarily suspended by the Tennessee Supreme Court. The Panel agrees.

There are no significant facts in dispute in this case. The Tennessee Department of Revenue advised the Board that Ms. Hyder's professional privilege taxes had been unpaid for 90 days or more. As required by Tennessee Supreme Court Rule 9, Section 26.3, the Board provided Ms. Hyder with proper notice of this delinquency and a potential suspension of her license to practice law due to that deficiency. As shown by Exhibit 6 at the hearing in this case and Ms. Hyder's testimony, Ms. Hyder received an email on December 5, 2019, certified mail on December 10, 2019, an email on December 27, 2019, and an email on January 16, 2020. Each communication notified her that her professional privilege taxes were delinquent, advised how those taxes and fees could be paid, and warned that failure to rectify the situation could result in the suspension of her license to practice law.

Ms. Hyder took no action in response to these notifications.

On January 21, 2020, at 5:35 PM, Ms. Hyder received an email from the Board informing her the Tennessee Supreme Court had issued an order summarily suspending her license to practice law. The email indicated that the suspension was "effective immediately." A copy of the Supreme Court's Order was attached to the email, as well as mailed to Ms. Hyder that day.

The Supreme Court's Order reads, in part, as follows: "[T]he license to practice law in this State of each of the following listed attorneys is summarily suspended upon representation of the Board of Professional Responsibility that the required notices pursuant to Tennessee Supreme Court Rule 9, Section 26.3, have been given and that the listed attorneys have failed to pay the Professional Privilege Tax for 90 (ninety) days or more as required by Tennessee Code Annotated 67-4-1702." (See Hearing Exhibit 4, p. 1) After listing the names of all suspended attorneys, including Ms. Hyder's, the Supreme Court's Order concludes: "...[E]ach such suspension shall be effective immediately upon entry of this Order and that notice of this suspension be sent by the Board of Professional Responsibility to all judges of courts of record in this State for enforcement." (See Hearing Exhibit 4, p. 8)

Ms. Hyder testified that upon receiving the Order of Summary Suspension, she was aware the suspension was effective immediately. However, she did not call the Board after receiving the order on the afternoon of January 21, 2020. Instead, she read Rule 9 of the Rules of Professional Conduct in its entirety "for context." Ms. Hyder testified that she had a trial set for the next morning, and harming her clients was a consideration in her decision to proceed with that trial. The trial had been reset multiple times, and there were witnesses that had travelled from out of town. Ms. Hyder testified that she did not mention the Order of Summary Suspension to Judge Ted Crozier on January 22, 2020, because she assumed he would be aware of it due to

the language in the Order itself mandating the Board to send copies of the Order to all courts of record in the State. Ms. Hyder testified that she understood that the Rule required fee payments and a re-instatement request, but that she did not act on it on January 22, 2020, because she was in a trial in front of Judge Crozier.

Ms. Hyder further testified that she submitted a Mediation Brief to Mediator Jacob Mathis in the afternoon following the trial before Judge Crozier. Ms. Hyder then participated in that mediation the following day, January 23, 2020. Ms. Hyder did not inform Mediator Jacob Mathis of the order of summary suspension. Ms. Hyder also left the mediation at one point in the day to make an appearance in court on behalf of another client.

Ms. Hyder did not seek the advice of counsel, Roger Maness, until Saturday, January 25, 2020, and did not contact the Board until Monday, January 27, 2020, to inquire about re-instatement. Ms. Hyder testified that she had previously been in contact with the Department of Revenue, but in hindsight, should have been in touch with the Board as well. Ms. Hyder admits that she made various court appearances between January 22, 2020, and January 27, 2020. After paying her delinquent taxes and fees on January 28, 2020, she finally sought an informal opinion from the Board on February 3, 2020, regarding whether she should practice law before the filing of an order re-instating her license. And on February 4, 2020, she received notice that the Supreme Court had re-instated her license to practice law retroactive to January 28, 2020, the date all fees and taxes were paid.

The question before this Panel is, therefore, whether Ms. Hyder improperly practiced law between January 23, 2020, and January 28, 2020, while her license to do so was summarily suspended. The preponderance of the evidence before us shows that she did negligently violate

Rule 5.5 of the Tennessee Rules of Professional Conduct by practicing law in this State without authorization.

The Supreme Court's Order filed January 21, 2020 and provided to Ms. Hyder by email at 5:35 PM on that day, is unambiguous. It states that Ms. Hyder's license to practice law is summarily suspended. It further states that the suspension is effective immediately. The email to Ms. Hyder from the Board also states that the suspension is effective immediately. Ms. Hyder testified that she understood that the suspension was effective immediately.

There is no dispute that Ms. Hyder, thereafter, practiced law in Montgomery County in various capacities. She also failed to bring the order of suspension to the attention of Judge Ted A. Crozier and Mediator Jacob Mathis.

Ms. Hyder argues that although the suspension was immediate, Tennessee Supreme Court Rule 9 must be read in its entirety before determining the course that an attorney should take after having their license suspended for failure to pay professional privilege taxes. Ms. Hyder asserts that Rule 9, Section 12.3(c) addresses temporary suspensions, and allows attorneys to continue representing existing clients for 30 days from the entry of the order. The Panel is not convinced that Rule 9, Section 12.3(c) is applicable to this situation. First, Ms. Hyder's suspension was not necessarily a temporary suspension. But for her paying delinquent taxes and applicable fees, her license to practice law would still be suspended.

Ms. Hyder also relies on Rule 9, Section 22 of the Supreme Court Rules which addresses discipline for attorneys convicted of serious crimes. She asserts that Rule 9, Section 22.4 provides that attorney suspended for conviction of a serious crime constitutes suspension for the purpose of Rule 9, Section 28. She further argues that Rule 9, Section 28 governs notice of the suspension

to clients, opposing counsel, etc., "except as permitted by Section 12.3(c)." Thus, Ms. Hyder asserts that an attorney convicted of a serious crime can still represent existing clients for 30 days. She argues that it is illogical that an attorney convicted of a serious crime can represent existing clients for 30 days, but an attorney failing to pay the professional privilege tax cannot.

Ms. Hyder's argument is that based on a reading of Rule 9 in its entirety, attorneys suspended for failure to pay the professional privilege tax may represent existing clients for a period of 30 days. Additionally, she asserts that if this is not an appropriate interpretation of the Rule, she should not be disciplined because pursuant to Tennessee Rules of Professional Conduct Rule 8.4, Comment 9, "[f]ailure to comply with a court order is not a disciplinary offense, however, when it does not evidence disrespect for the law either because the lawyer is unable to comply with the order or the lawyer is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based."

As stated above, the Panel finds the Order of Summary Suspension entered by the Tennessee Supreme court to be unambiguous. (See Hearing Exhibit 4) The Panel also finds that Rule 9, Section 26 governs the discipline of attorneys failing to pay the professional privilege tax, and that the language of Section 26 is also unambiguous.

When Ms. Hyder failed to pay the professional privilege tax, the Board complied with Sections 26.3 and 26.4 by providing Ms. Hyder with Notice, and directions as to how to rectify the delinquency. When Ms. Hyder took no action, the Supreme Court issued a summary suspension order pursuant to Section 26.4(c). Ms. Hyder then, seven days after the entry of the Order, paid her delinquent tax and fees as set out in Section 26.4(c). Because she resolved the

suspension within 30 days, Rule 9, Section 28 procedures were not necessary. *See Rule 9, Section 26.4(d).*

There was no need for Ms. Hyder to look further than Rule 9, Section 26, and the plain language of the Supreme Court's Order. Ms. Hyder's failure to notify or consult Judge Ted A. Crozier on the morning of January 22, 2020 of the suspension, her failure to seek counsel on the implications of her suspension until January 25, 2020, and her failure to contact the Board for guidance until January 27, 2020, while continuing to practice law was negligent in the Panel's view. Further, the suspension was not a surprise to Ms. Hyder. She had received multiple notices of the failure to pay her professional privilege tax and that her suspension was imminent if she did not pay the professional privilege tax. Despite this, she also made no efforts before the suspension to determine if she had any ability to practice or her duties to her clients.

The Panel finds, therefore, that the preponderance of the evidence shows that Ms. Hyder, through her negligence, violated Rule 5.5 of the Tennessee Rules of Professional Conduct by practicing law at a time when her license to practice had been suspended by Order of the Tennessee Supreme Court.

The Panel finds no aggravating circumstances.

The Panel also finds that the *ABA Standards for Imposing Lawyer Sanctions*, 6.24 provides that "[a]dmonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding."

V. JUDGMENT

Based on the findings of fact and the conclusions of law, and the lack of aggravating circumstances, the Panel finds that Ms. Hyder should receive a public admonition for the unauthorized practice of law as prohibited by Rule 5.5 of the Tennessee Rules of Professional Conduct. Ms. Hyder is also responsible for the payment of all costs incurred in this matter.

IT IS SO ORDERED.

Entered this the 18th day of November 2021.



Michael J. Fahey II (Chair)



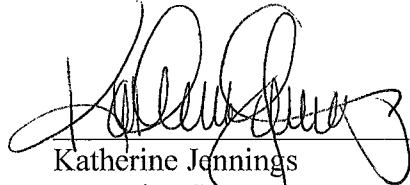
Eric M. Larsen



Elizabeth N. Sitgreaves

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Colleen Ann Hyder c/o Roger A. Maness, Counsel, P.O. Box 1149, Clarksville, TN 37041, by U.S. First Class Mail, and hand-delivered to Douglas R. Bergeron, Disciplinary Counsel, on this the 18th day of November 2021.


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.