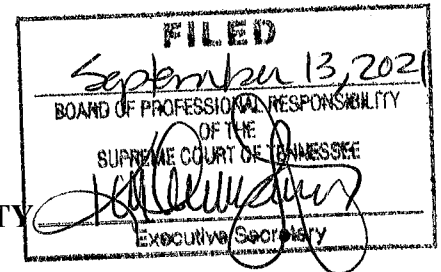


**IN DISCIPLINARY DISTRICT VII
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**IN RE: JACK COLIN MORRIS,
BPR No. 015855, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Madison County)**

DOCKET NO. 2020-3136-7-AJ

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was heard on August 11, 2021 at the Supreme Court Building in Jackson Tennessee beginning at 10:30 a. m. Presiding over the hearing were Paul Hessing, Hearing Panel Chair; Steven Wayne Maroney, Hearing Panel Member; and Joe L. VanDyke, Hearing Panel Member. Participating in the hearing were Respondent, Jack Collin Morris; Respondent's lawyer, Harold Dorsey; and Disciplinary Counsel, Alan D. Johnson.

Mr. Morris was the only witness and a total of six (6) exhibits were introduced. The facts were largely not in dispute. Both parties had submitted pre-trial briefs and made brief closing arguments. Thereafter the Hearing Panel took the matter under advisement and rendered its decision.

STATEMENT OF THE CASE

A Petition for Discipline was filed in this cause on November 9, 2020. The Petition for Discipline alleges that Mr. Morris violated Rules of Professional Conduct 1.3 (diligence), 1.4 (communication)¹, 3.2 (expediting litigation) and 8.4(a and d) (misconduct). On December 8,

¹ The Petition for Discipline alleges violations of RPC 1.4 (communication). This violation was alleged in error and was withdrawn by the Board of Professional Responsibility.

2020, Mr. Morris filed an Answer. The Answer admits almost every allegation in the Petition for Discipline.

A scheduling order was entered on March 4, 2021 setting the trial for July 21, 2021. By agreement, an order was entered on July 23, 2021 re-setting the trial.

FINDINGS OF FACT

File No. 62388-7-KB – Complainant – Richard Forgy

On May 3, 2019, the complaining party, Richard Forgy (Complainant), filed a *pro se* detainer warrant against his tenants that also sought the recovery of \$1,200.00 for unpaid rent for the month of April. (Exhibit 5) On May 29, 2019 Complainant retained Mr. Morris to represent him at the upcoming trial on June 3, 2019. The Complainant paid Mr. Morris \$500.00 for the representation. On the day of trial, June 3, 2019, Mr. Morris appeared in court with Complainant, and the defendants were also present. The defendants requested a continuance to allow them time to retain counsel.

The trial was rescheduled for August 17, 2019. Mr. Morris testified that he had other cases set that day, but believed they would be completed for the 3:00 hearing on June 17, 2019. Mr. Morris did not appear for the Hearing on June 17, 2019. Mr. Morris candidly testified that he was in the next-door courtroom and when that case was finished, he walked past the courtroom where Complainant's case was set and went to his office. According to Mr. Morris, Complainant appeared at his office approximately 30 minutes later.

Mr. Morris testified that Complainant's first concern was why Mr. Morris did not appear at the hearing. Complainant informed Mr. Morris that the court dismissed his case. Mr. Morris testified that he apologized and offered to refund the \$500.00 fee. He testified that he had \$100.00 and gave that to the Complainant. He also offered to do whatever he could to assist Complainant

in evicting the tenants and recovering unpaid rent at no additional charge.

Mr. Morris offered to file a motion to set aside the order, or file another warrant for unpaid rent. Complainant agreed to filing an action for rent. Mr. Morris prepared a notice to vacate the premises and mailed it to the tenants that day, June 17, 2019. (Exhibit 1) The tenants vacated the premises on or about July 1, 2019. On August 16, 2019, Mr. Morris filed a civil warrant against the tenants to recover unpaid rent. (Exhibit 2)

The warrant filed on August 16, 2019 designated the defendant's place of employment for service. The warrant was not served because the defendant was no longer employed when service was attempted. (Exhibit 3) Thereafter, Complainant terminated Mr. Morris, and Mr. Morris refunded the \$400.00 balance of the fee on June 25, 2020.

CONCLUSIONS OF LAW

Pursuant to Tenn. S. Ct. R. 9, § 3, 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 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 (hereinafter "RPC") of the State of Tennessee shall constitute misconduct and be grounds for discipline.

The Board argued that that Mr. Morris violated RPC 1.3 (diligence), 3.2 (expediting litigation) and 8.4(a and d) (misconduct).

RULE 1.3: DILIGENCE

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

The Hearing Panel finds that Mr. Morris violated RPC 1.3 when he missed the June 17, 2019 hearing. Mr. Morris testified that he agreed to reschedule the trial for that day even though he had other matters set for court. The Hearing Panel notes that comment 2 to RPC 1.3 provides:

“A lawyer's workload must be controlled so that each matter can be handled competently.” The Hearing Panel finds that Mr. Morris was negligent and did not intend to miss the hearing; nevertheless, he knew about the hearing and did not appear.

RPC 1.3 states that “a lawyer shall act with reasonable diligence.” (emphasis added) “Reasonable” is defined in RPC 1.0 (h) as follows: “ ‘Reasonable’ or ‘reasonably,’ when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer.” Mr. Morris did not conduct himself as a “reasonable prudent and competent lawyer” when he failed to appear for the June 17, 2019 hearing.

RULE 3.2: EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation.

The Hearing Panel finds that Mr. Morris did not violate RPC 3.2. While Mr. Morris missed the June 17, 2019 hearing, upon realizing his mistake, he took immediate and aggressive action to mitigate the dismissal of Complainant’s case and offered two alternative steps for Complainant. He sent a notice to vacate to the tenants on the same day as the trial, June 17, 2019. Mr. Morris testified that he understood Complainant’s primary concern was to evict the tenants. The notice to vacate sent by Mr. Morris appeared to work because the tenants left approximately two weeks later.

The Board argued that Mr. Morris violated RPC 3.2 by waiting until August 16, 2019 to file a warrant to collect unpaid rent. By the time the warrant was filed, the defendant was no longer working at the address where service was to be perfected. The Board takes the position that had Mr. Morris filed the warrant earlier, service could have been achieved.

The Hearing Panel disagrees. As noted above, “ ‘reasonable’ or ‘reasonably,’ when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent

lawyer.” RPC 3.2 states that “A lawyer shall make reasonable efforts to expedite litigation.” (emphasis added) Knowing what we now know, filing the civil warrant in July may well have avoided the inability to serve the defendants. Nevertheless, the Hearing Panel concludes that it was not unreasonable to file the civil warrant in August. This is true especially because there was no need to evict the tenants who had already vacated the premises.

RULE 8.4: MISCONDUCT

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (d) engage in conduct that is prejudicial to the administration of justice.

The Hearing Panel finds that Mr. Morris violated RPC 8.4(a) and (d) when he missed the June 17, 2019 hearing. Mr. Morris candidly admitted that he was paid to appear in court to represent Complainant. Mr. Morris testified that he has known Complainant for approximately 35 years and Complainant has difficulty speaking for himself, especially when he is nervous and agitated. He admitted that it was his job to speak for Complainant at the hearing and he should have been present. Failing to represent his client at the hearing was prejudicial to the administration of justice. Violation of RPC’s 1.3 and 8.4(d) constitute violation of 8.4(a).

ABA Standards for Imposing Lawyer Sanctions

Pursuant to Tenn. Sup. Ct. R. 9, 8.4, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions (“ABA Standards”).

The following ABA Standards apply in this matter:

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 and causes injury or potential injury to a client.

4.43 Reprimand 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.

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.

Without Mr. Morris's disciplinary history, ABA Standard 4.43, public censure, would apply here. Mr. Morris's conduct was negligent. However, because he has received three public censures, all of which were for violating RPC 1.3 and two of which for violating 8.4(d), the Hearing Panel concludes that ABA Standard 8.2 is also applicable. Once the applicable baseline standard is identified, we consider the aggravating and mitigating factors that are considered in determining whether there should be an increase or decrease in discipline. The Hearing Panel finds the following aggravating and mitigating factors in this case.

Aggravating Factors

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

1. Mr. Morris's disciplinary history is an aggravating factor justifying an increase in discipline. The Board introduced collective Exhibit 4 which consists of the disciplinary history of Mr. Morris. The exhibits establish that since 1998 Mr. Morris has received four (4) public censures and three (3) private informal admonitions.
2. Mr. Morris's substantial experience in the practice of law, having been licensed in 1993, is an aggravating factor justifying an increase in discipline.

Mitigating Factors

1. Absence of a dishonest or selfish motive is a mitigating factor justifying a reduction in discipline. Mr. Morris refunded Complainant's fee and continued to work on behalf of Complaint at no additional cost. (ABA Standard 9.32(a))
2. Mr. Morris's timely good faith effort to make restitution or to rectify consequences of misconduct is a mitigating factor justifying a reduction in discipline. Mr. Morris refunded Complainant's fee and took steps to rectify his failure to appear in court on June 17, 2019. (ABA Standard 9.32(d))
3. Mr. Morris's full and free disclosure to disciplinary board or cooperative attitude toward proceedings is a mitigating factor justifying a reduction in discipline. Mr. Morris testified honestly and candidly at the hearing and took responsibility for missing the hearing. (ABA Standard 9.32(e))
4. Mr. Morris exhibited remorse for his mistake which is a mitigating factor justifying a reduction in discipline. (ABA Standard 9.32(i))
5. The remoteness of some of Mr. Morris's disciplinary history is a mitigating factor justifying a reduction in discipline. (ABA Standard 9.32(m))

Taking into account the applicable ABA Standards and the aggravating and mitigating factors, the Hearing Panel does not believe that suspension from the practice of law is appropriate in this case. Assuming the baseline standard is set by ABA Standard 8.2, the mitigating factors outweigh the aggravating factors and justify a reduction in the degree of discipline to be imposed.

CONCLUSION

For the foregoing reasons, the Hearing Panel concludes that Mr. Morris should be publicly censured pursuant to Tenn. Sup. Ct. R. 9, § 12.4. The Board shall file its application for costs

within fifteen (15) days of entry of these Findings of Fact and Conclusions of Law pursuant to
Tenn. Sup. Ct. R. 9, § 31.3.

ENTERED ON THIS THE 13th DAY OF September 2021.


Paul Hessing, Hearing Panel Chair


Steven Wayne Maroney, Hearing Panel Member *by permission*


Joe L. VanDyke, Hearing Panel Member *by permission*

NOTICE

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) 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.