

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

In Re: RAMSDALE O'DENEAL, Respondent
BPR No. 13367, An Attorney
Licensed to Practice Law
in Tennessee
(Davidson County)

DOCKET NO. 2008-1753-5-KH

OPINION OF HEARING PANEL

This matter was heard before the undersigned hearing panel on November 12, 2008, in Nashville, Tennessee. At the conclusion of the trial, the panel requested that the Respondent and Disciplinary Counsel each submit Proposed Findings of Fact and Conclusions of Law.

After due consideration, the Panel has unanimously decided that the Proposed Findings of Fact and Conclusions of Law submitted by Krisann Hodges, Disciplinary Counsel for the Board of Professional Responsibility, are accurate in all respects. The Panel hereby adopts and incorporates those Proposed Findings of Fact and Conclusions of Law in their entirety.

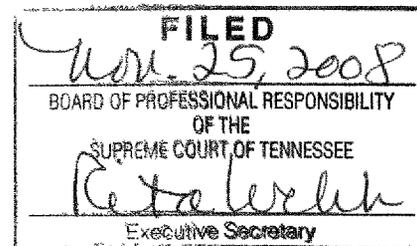
The Motion to Strike need not be considered, because whether or not it is granted the conclusions of the Panel would be the same. For the reasons set forth in the Proposed Findings of Fact and Conclusions of law, this Panel recommends that the Respondent be suspended from the practice of law for one (1) year.

Respectfully submitted,

William L. Harbison

Daniel L Clayton
Daniel Louis Clayton

Michael Dudley Sontag
Michael Dudley Sontag



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**BOARD OF PROFESSIONAL RESPONSIBILITY'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter came to be heard before a designated Hearing Panel on November 12th, 2008, in Nashville, Tennessee. Present before the Hearing Panel were Krisann Hodges, Disciplinary Counsel for the Board of Professional Responsibility and Ramsdale O'DeNeal, Respondent. Based upon the pleadings filed in this cause, the testimony of witnesses, the evidence submitted, statements of counsel and the entire record in this cause, the Board of Professional Responsibility submits the following proposed Findings of Fact and Conclusions of Law.

STATEMENT OF THE CASE

A Petition for Discipline was filed against Respondent on April 28, 2008. On May 16, 2008, the Respondent filed an Answer to the Petition for Discipline.

A Pre-Hearing Conference was conducted on July 10, 2008. A Case Management Order was entered on July 11, 2008 memorializing the trial dates agreed upon by the Panel, Disciplinary Counsel, and Respondent.

The hearing on the Petition for Discipline was held on November 12, 2008. The Board

entered twenty-two (22) exhibits and called three witnesses to testify including the Respondent, Fortress Baker, and Brian Holmgren, Esquire. The Respondent testified on his own behalf but called no other witnesses. He entered one exhibit.

FINDINGS OF FACTS
Files No. 30532-5-LC and 30477-5-LC

On June 30, 2007, the Consumer Assistance Program of the Board of Professional Responsibility received a complaint from Miriam Dirie concerning Respondent. On August 21, 2007, the matter was referred to Disciplinary Counsel due to Respondent's failure to respond to the Consumer Assistance Program inquiry. On August 6, 2007, the Board received a complaint from Assistant District Attorney Brian Holmgren which was also related to Ms. Dirie's case. Ms. Dirie was a criminal defendant charged with five (5) Class A felonies alleging aggravated child abuse and aggravated child neglect against her two children. Her case was filed in the Davidson County Criminal Court, No. 2004-C-2400, before the Honorable Monte D. Watkins. Brian Holmgren was the prosecutor assigned to the case.

Ms. Dirie was represented by attorney Jonathan Richardson until August 2006. On August 23, 2006, Respondent undertook representation of Ms. Dirie and accepted \$5,000.00 from Manamina Sufi, a member of the Somalian community, on behalf of Ms. Dirie. Respondent signed a receipt. The receipt indicates that \$2,500.00 is the balance due. At the time he was retained to represent Ms. Dirie, Respondent was working in the offices of Terry R. Clayton & Associates.

Respondent appeared before the Davidson County Criminal Court on August 24, 2006, on behalf of Ms. Dirie. The Court instructed him to prepare an order for substitution of counsel. Mr. Holmgren testified that Respondent never filed any document with the Court throughout his

entire tenure on the case. In August 2006, Mr. Holmgren advised Respondent that prior defense counsel, Mr. Richardson, filed motions that were still pending. He asked Respondent to review them and inform Mr. Holmgren if he wished to proceed. The resolution of these motions were potentially critical to scheduling and to discovery in the case.

Respondent never contacted Mr. Holmgren about the pending motions. Further, Respondent scheduled a meeting with Mr. Holmgren to discuss the case prior to the trial date of January 22, 2007, but Respondent failed to appear for the meeting. Ms. Dirie's trial was continued at the State's request in January and rescheduled for July 23, 2007. Respondent verbally agreed to the State's request related to the production of medical and educational records for the child victims. Mr. Holmgren's office sent agreed orders to Respondent on January 30, 2007. Respondent never signed or returned the proposed agreed orders, thus prompting the State to file separate motions for production of documents.

A status conference was set for July 20, 2007, but later changed to July 16, 2007. Respondent did not appear. The Court clerk contacted Respondent on that day and he advised her that he was out of town and would be unable to come. He was advised that the status conference would be moved to July 19, 2007. Respondent did not advise the Court, the Court clerk, or Mr. Holmgren that he was no longer representing Ms. Dirie or that he could not be present on July 19, 2007.

Mr. Holmgren and his office spent many hours preparing for trial. The preparation involved more than 600 pages of discovery materials and extensive preparation of expert medical witnesses. Mr. Holmgren described the case as being very complex due to the medical issues. According to Mr. Holmgren, the issues surrounding medical proof and expert witness testimony required much more research and effort that was apparent in Respondent's activity on the case.

Mr. Holmgren was unable to reach Respondent by phone the week before the trial to arrange delivery of the trial materials. Mr. Holmgren personally attempted to deliver the documents to Respondent but was unable to locate him. Mr. Holmgren testified that following the January 2007 court date, Respondent never called, wrote, or met with him again.

Respondent failed to appear at the status conference on July 19, 2007. As a result of Respondent's failure to appear, Judge Watkins advised the State that the trial could not go forward on July 23, 2007, but he did leave the case on the docket so that he could question Respondent about his representation and the status of the case.

Respondent appeared on July 23, 2007. Respondent advised that he was under the impression Ms. Dirie obtained new counsel. Respondent's testimony regarding the date he believed he was no longer representing Ms. Dirie is confusing at best. He testified that he visited Ms. Dirie at the jail one month prior to the July 23, 2007 court date and it was at that time that she informed him that she had new counsel. However, Respondent also testified that he left the Clayton law offices approximately three months prior to the July court date. Respondent testified that he was under the impression when he left Clayton's office that he would not be handling the Dirie case any longer. Respondent did not take the file and according to his own testimony, he virtually abandoned the matter by taking no further action to alert the Court, Ms. Dirie, or opposing counsel that he intended to withdraw from the case.

Regardless whether it was one month or three months prior to the scheduled court date of July 23, 2007, he admitted that he had never filed an order of substitution or withdrawal at any point in the case. Respondent acknowledged that in the absence of an order of substitution, he remained counsel of record. Respondent described his own failure to follow-up with Ms. Dirie as "egregious error". On July 23, 2007, Ms. Dirie asked the court to appoint new counsel for her

because she was dissatisfied with Respondent's representation.

The Court took Ms. Dirie's request for new counsel under advisement and set the matter for July 25, 2007, at 9:00 a.m. Respondent was ordered to be present and to bring Ms. Dirie's file. According to Mr. Holmgren, Respondent appeared thirty (30) minutes late for the July 25, 2007 hearing and he failed to bring the client's file.

The Court appointed attorney Dwight Scott to represent Ms. Dirie on July 25, 2007. Respondent spoke to Mr. Scott and to Mr. Richardson about the client's file. Respondent left the courtroom and did not return.

On August 20, 2007, Mr. Scott filed a motion requesting that the Court order Respondent to produce the client's file. The Court granted this motion and ordered Respondent to produce the file. To date, Respondent has never produced any part of the Ms. Dirie's file to either Mr. Scott or Ms. Dirie. Respondent testified that he had a part of the file following his departure from Clayton's office, however, the file was stolen from his car several weeks prior to the July 23, 2007 court date. He also believed a portion of it could have remained at Clayton's office. Respondent testified that he never mentioned the theft of the file prior to his deposition taken by Disciplinary Counsel. He did not mention the theft to the Court on July 23, 2007, July 25, 2007, or in any of his responses to the disciplinary complaint, or in his Answer to the Petition for Discipline.

At the present time, Respondent's official address as registered with the Board is 925 N. Highland Avenue, P.O. 1671, Jackson, Tennessee, 38301. He has been licensed to practice law since 1988. Respondent also appears to rely on the home address of Fortress Baker, at 2012 Mansker Drive, Goodlettsville, Tennessee, 37072. Ms. Baker also appears to be the person who has been sending responses to the Board on behalf of Respondent. Ms. Baker testified that she

signed the Respondent's Answer to the Petition for Discipline after retyping it. Respondent was aware that he had not signed any version of the Answer which was submitted to the Board. All of Respondent's responses to the Board's inquiries have been sent by Ms. Baker as well. Ms. Baker is not a licensed attorney.

The Respondent has four (4) prior public disciplinary offenses. Respondent received a Public Censure on July 31, 1991, for issuing checks without sufficient funds to a Court. On September 22, 1993, Respondent was temporarily suspended pursuant to Section 4.3 of Rule 9 for failure to respond to a disciplinary complaint. Respondent received a suspension for eleven (11) months and twenty-nine (29) days on September 20, 1995, for failing to represent a criminal defendant after being paid a fee, for signing clients' names to bankruptcy petitions and misrepresenting to the Court that he had not received fees, and for taking settlement funds he received in trust to pay for a client's medical bills. He received a Public Censure on February 2, 2000, for failing to adequately represent a client and protect the client's interests. Respondent received another Public Censure on April 17, 2008, for failing to keep adequate trust account records.

CONCLUSIONS OF LAW

Pursuant to Section 1, Rule 9 of the Rules of the Supreme Court, any attorney admitted to practice law in Tennessee is subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts.

Pursuant to Section 3, Rule 9 of the Rules of the Supreme Court, 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.

Pursuant to Section 8.2, Rule 9 of the Rules of the Supreme Court, the Board must prove the case by a preponderance of the evidence. After considering the testimony and evidence submitted on behalf of the Board and the Respondent, this Panel should find by a preponderance of the evidence that Respondent has violated the following RPCs: RPC 1.1, Competence; RPC 1.3, Diligence; RPC 1.4, Communication; RPC 1.15, Safekeeping Property; 1.16, Declining and Terminating Representation; 3.4, Fairness to Opposing Counsel; and 8.4, Misconduct.

Respondent's actions in this case evidence a complete disregard for the serious nature of his client's criminal charges and for the criminal court system. Respondent failed to file an Order of Substitution when he took on representation of Ms. Dirie as ordered to do by the Court. Throughout his tenure on the case, he did not meet with Mr. Holmgren, issue subpoenas for witnesses, prepare an appropriate defense to the complicated and intricate allegations of child abuse, interview any of the state's witnesses, or conduct any of the typical trial preparation one would expect of a skilled defense attorney.

Respondent's inattention to Ms. Dirie's case also impacted the court system. Respondent failed to appear for two status conferences thus prompting the court staff to try to find him. He failed to follow the Court's order demanding that he produce the file. Rather than admit he had lost the file, or that it was stolen, he continued to promise to deliver it. Even following the Court's order to produce the file, he failed to do so.

Further, Respondent waited until the July 23, 2007 court date to announce that he thought he had been released as Ms. Dirie's attorney. However, he did not notify Mr. Holmgren,

the court clerk or the Court. He did not file an Order of Withdrawal or Substitution. If not for the Court's insistence that Respondent appear on July 23, 2008, the case would have been delayed even further due to his failure to communicate. Respondent agreed with the Court that he had committed an "egregious error" by failing to inform the Court that he was under the impression that Ms. Dirie had obtained other counsel when he met with her at least one month prior to the status conferences.

It is significant to note that Ms. Dirie's complaint to the Board is dated June 30, 2007, which is weeks before her court date. Her complaint and statements to the Court on July 23, 2007 indicate that she was not certain whether Respondent was still representing her or not.

Respondent blames the stress and hostility surrounding his departure from Clayton's office as the reason for this entire matter. However, as Ms. Dirie's attorney, he had a duty to clarify exactly who would represent her after his separation from Clayton's office. Further, he had an obligation to the Court to communicate the status of representation. Finally, it is incomprehensible why he would continue to misrepresent to the Court that he would produce the client's file if he knew that he no longer had access to it.

According to RPC 1.1, competence requires legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Respondent failed to exhibit thoroughness and preparation reasonably necessary by failing to prepare Orders of substitution or withdrawal at his point of entry and exit to the case. Further, he was not prepared when he appeared for the July 25, 2007 date without the client's file.

RPC 1.3, Diligence, requires a lawyer to act with reasonable diligence and promptness in representing a client. Respondent failed to be diligent or prompt prior to the July status conferences by failing to appear for those conferences and by failing to notify anyone in advance

that he would not be appearing.

RPC 1.4, Communication, requires a lawyer to keep a client reasonably informed about the status of a matter and comply with reasonable requests for information within a reasonable time. Further, the lawyer must explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Ms. Dirie's complaint to the Board and her testimony to the Court demonstrate that she was not clear as to whether Respondent was continuing her representation. Given that Respondent had taken no measures to communicate his withdrawal to the client or Court prior to the actual court date, the Panel should find that Respondent failed to adequately communicate with his client.

RPC 1.15 requires lawyers to safely maintain property of a client such as the client's file. RPC 1.16, Declining and Terminating Representation, a lawyer is required to take steps to the extent reasonably practicable to protect a client's interests, including giving reasonable notice to the client so as to allow time for the employment of other counsel, promptly surrendering papers and property of the client and any work product prepared by the lawyer for the client and for which the lawyer has been compensated; and promptly surrendering any other work product prepared by the lawyer for the client. It is obvious that Respondent failed to comply with RPC 1.16.

Finally, RPC 3.4, Fairness to Opposing Party and Counsel, prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. Respondent obstructed the administration of justice by failing to explain to the Court and opposing counsel that he was withdrawing from the case by filing a Motion and Order to withdraw. Further, he misrepresented to the Court and counsel that he would be providing the file to new counsel in order to ensure a smooth transition

and thus expedite the matter as quickly as possible.

Finally, the violations of the above-referenced RPCs and the Respondent's misrepresentations to the Court are a violation of RPC 8.4, Misconduct, which states that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, and engage in conduct that is prejudicial to the administration of justice.

Pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court, the Hearing Panel must consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions (hereinafter "ABA Standards"). The following ABA Standards apply in this case:

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.

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.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system.

The proof demonstrates that Respondent failed to act with diligence and in a timely manner. His failure to keep his client, the Court, and opposing counsel abreast of the status adversely affected the administration of justice. Further, Respondent's actions injured his client by extending the criminal trial process and by forcing the new counsel to begin preparing for trial from scratch.

Pursuant to ABA Standard 9.22, a number of aggravating factors are present in this case which justify an increase in the degree of discipline to be imposed.

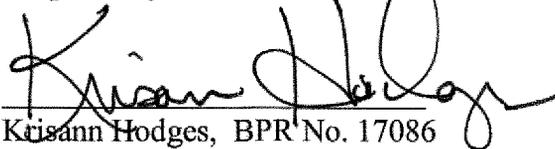
Respondent has already been suspended for eleven (11) months and twenty-nine (29) days for a prior offense involving his failure to adequately represent a client in a criminal matter. Further, the other sanctions (public censures) that have been issued are all related to dishonesty or misrepresentations. Although this proceeding concerns only one case and one client, it is a continuation of the type of misconduct that has plagued Respondent. Respondent has once more demonstrated a pattern of misconduct with this new complaint.

Respondent has substantial experience in the practice of law and his conduct affected a vulnerable victim, Ms. Dirie.

JUDGMENT

Based upon the aggravating factors mentioned above, this Panel recommends that the Respondent be suspended from the practice of law for one (1) year.

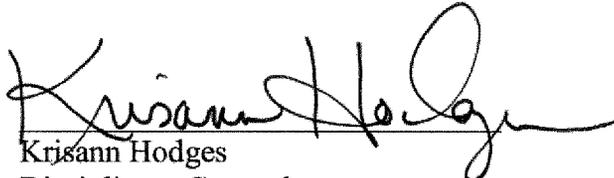
Respectfully submitted,



Krisann Hodges, BPR No. 17086
Disciplinary Counsel
1101 Kermit Drive, Suite 730
Nashville, Tennessee 37217
615-361-7500

CERTIFICATE OF SERVICE

I certify that a copy of the BOARD OF PROFESSIONAL RESPONSIBILITY'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW has been served upon Respondent, Ramsdale O'DeNeal, at 2012 Mansker Drive, Goodlettsville, Tennessee, 37072 on this the 25th day of November, 2008.


Krisann Hodges
Disciplinary Counsel