

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

**FILED**  
*April 9, 2007*  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE  
*Mary Woodruff*  
Executive Secretary

**IN RE: FLOYD NOLTON PRICE**

**BPR NO. 6475**

**AN ATTORNEY LICENSED TO PRACTICE  
IN TENNESSEE**

**DOCKET NO. 2005-1495-5-TC**

**JUDGMENT OF THE HEARING COMMITTEE**

This cause came to be heard by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee on March 21, 2007. This Hearing Committee, Paul A. Alexis, Chair, Edgar M. Rothschild and Barbara G. Medley, makes the following findings of fact and submits its Judgment in this cause as follows:

**I. STATEMENT OF THE CASE**

1. The Board of Professional Responsibility has filed an original and five supplemental petitions for discipline in this matter. The original Petition for Discipline was filed on February 25, 2005, the Amended and Supplemental Petition for Discipline was filed on September 20, 2005, the Second Supplemental Petition for Discipline was filed on October 11, 2005, the Third Supplemental Petition for Discipline was filed on February 7, 2006, the Fourth Supplemental Petition for Discipline was filed on May 25, 2006 and the Fifth Supplemental Petition for Discipline for Discipline was filed on July 10, 2006 (collectively referred to herein as "Petitions").

2. Each of the foregoing Petitions were duly served on the Respondent in accordance with the Rules of the Board.

3. Respondent did not file any response to any of the foregoing Petitions for Discipline. Accordingly, by Order filed on March 5, 2007, the Hearing Committee in this matter

entered a Default Judgment against Respondent with regard to the allegations in the foregoing Petitions.

4. Accordingly, the only issue before the Hearing Committee at the hearing on March 21, 2007 was the issue of the appropriate discipline to be imposed. The Board of Professional Responsibility through disciplinary counsel, Theresa M. Costonis, appeared and presented both argument and evidence concerning the sanctions to be imposed. The Respondent, Floyd Nolton Price, also appeared in person and presented argument and evidence on his behalf.

5. After due deliberation, the Hearing Committee enters the following Findings of Fact and Conclusions of Law:

## **II. FINDINGS OF FACT**

6. As a matter of law, the entry of the Default Judgment effectively admitted the allegations in the petitions for discipline in this matter. In addition, Respondent Price, at the Hearing on March 21, 2007, essentially admitted, with certain exceptions, to the principal factual allegations. These allegations can generally be grouped into the following categories:

### **A. Neglect/Abandonment**

7. Most of the Complaint files contained in the Petitions contain allegations that Respondent neglected and/or abandoned client matters. In January 2004, Respondent left his former firm, Dodson, Parker, Dinkins & Behm and moved his practice to his home at 914 17<sup>th</sup> Avenue North, Nashville, Tennessee. Subsequently, Respondent moved away from his 914 17<sup>th</sup> Avenue North address. Following both of these moves, Respondent neglected to advise clients of his address change. This was not a practical problem with regard to the first move since the law firm undertook the responsibility to advise clients of his new address. However, after the second move Respondent failed to advise his clients of his new address or to provide any means of communication or contact information so that clients could contact Respondent.

8. Each of the Complaints in the foregoing Petitions also allege that Respondent failed to adequately communicate with his clients with regard to those matters. Again, these allegations are deemed admitted as a result of the Default Judgment. The Petitions also contain allegations of significant injury to the clients involved. For example, in Complaint file numbers 27023-5-TC in the original Petition for Discipline and 27557-5-TC in the Amended and Supplemental Petition for Discipline, the underlying civil cases in which Respondent represented the Plaintiffs were dismissed due to Respondent's lack of diligence. In Complaint file no. 27864-5-TC in the Amended and Supplemental Petition for Discipline, it is alleged that the Complainant, Respondent's Client, lost an opportunity to purchase a new home as a result of Respondent's lack of diligence in consummating a settlement and payment that the Complainant/Client was prepared to make. In connection with the Complaint file numbers 27871-5-TC in the Amended and Supplemental Petition for Discipline and 28537-5-TC in the Fourth Supplemental Petition for Discipline it is alleged that the Respondent's clients' rights to pursue their claims were time barred, and thus extinguished due to the Respondent's lack of diligence. Again, due to the Default Judgment, these allegations are deemed admitted.

**B. Incompetence**

9. The Petitions herein also contain allegations that Respondent exhibited a lack of competence. Thus, for example, in file numbers 27864-5-TC and 27871-5-TC, both of which are included in the Amended and Supplemental Petition for Discipline, it is alleged that Respondent gave his clients incompetent legal advice. In file number 27167-5-TC, it is alleged that Respondent appeared in Court while intoxicated, which would constitute incompetence. Again, due to the entry of the Default Judgment, these allegations are deemed admitted.

**C. Fee and Trust Accounting Violations**

10. The Petitions also allege that Respondent did inadequate work on certain cases to earn the fee he was paid and then failed to refund any portion of the fee. See Complaint file numbers 27718-5-TC and 27871-5-TC and the Amended and Supplemental Petition for Discipline file no. 28269-5-TC in the Second Supplemental Petition for Discipline and file no. 28668-5-TC in the Fifth Supplemental Petition for Discipline. In file no. 28273-5-TC in the Second Supplemental Petition for Discipline, it is alleged that Respondent defaulted on payments required pursuant to a payment plan he had agreed to with a Complainant who was a former client of Respondent's. At the Hearing on March 21, Respondent advised the Panel that he had made one of the required three payments, but admitted that he had failed to make the remaining two payments.

**D. Misrepresentations to Clients**

11. Several of the Complaint files contained in the Petitions against Respondent also allege that Respondent lied to or misled his clients. In Complaint file no. 27718-5-TC in the Amended and Supplemental Petition for Discipline and Complaint file number 28537-5-TC in the Fourth Supplemental Petition for Discipline it is alleged Respondent misled his clients about the status of their cases. In file no. 27871-5-TC in the Amended and Supplemental Petition for Discipline, it is alleged that Respondent misled his client about the merits of her claim. Again, due to the entry of the Default Judgment in this matter, these allegations are deemed admitted.

**E. Unauthorized Practice of Law**

12. The Petitions in this matter also allege several instances in which Respondent continued to practice law while his license was suspended. Respondent was suspended from the practice of law twice during times relevant to this matter; once for his failure to comply with his CLE requirements in 2004 and once pursuant to Section 4.3 of the Supreme Court Rule 9 in 2005

(which suspension remains in effect).<sup>1</sup> Nevertheless, it is alleged in the Complaint in file no. 27612-5-TC in the Amended and Supplemental Petition for Discipline that Respondent filed an appeal bond in Davidson County General Sessions Court while thus suspended and in file no. 28668-5-TC in the Fifth Supplemental Petition for Discipline that Respondent continued to work on a criminal defense matter after his license was suspended. In Complaint file no. 27807-5-TC in the Amended and Supplemental Petition for Discipline, a Davidson County Criminal Court Judge complained that Respondent remained counsel of record in two cases before the court after Respondent's suspension took effect and that hearings were rescheduled in these cases during the period Respondent was suspended and that at the first such scheduled hearing during this period of suspension, Respondent "appeared but was unable to proceed due to his failure to properly maintain his license." Again, due to the entry of the Default Judgment in this matter, the factual allegations contained in the Petitions are deemed admitted. However, these factual allegations, as well as the evidence presented at the hearing in this matter, suggest mitigating circumstances. Apparently with regard to Complaint file no. 27807-5-TC in the Amended and Supplemental Petition for Discipline, Respondent advised the Court of his status of suspension in requesting a continuance. Respondent's testimony at the Hearing that he believed that he could cure his suspension in timely fashion and continue as counsel in the matter and was merely requesting a continuance to protect his client's rights is credible. Similarly, in the other two Complaints it would appear that Respondent's actions were taken in an effort to protect his client's rights while trying to address his suspension. In any event, the unequivocal evidence presented at the

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<sup>1</sup> Respondent was also suspended for six months by Order of the Supreme Court filed January 15, 2004 (See Ex. C to original Petition). However, that suspension was stayed so long as Respondent complied with the provisions contained therein. Although there is some dispute about whether Respondent did in fact comply with those provisions, it is not disputed that the suspension was never reinstated.

Hearing is that Respondent has not engaged in the practice of law in any fashion since the entry of the Tennessee Supreme Court's Order of March 14, 2005 suspending Respondent from the practice of law. None of the above alleged incidents occurred after March 14, 2005 and Disciplinary Counsel did not present any evidence to the contrary.

**F. Violations of Court Orders and/or Rules**

13. A number of the Complaint files in the foregoing Petitions pending against Respondent allege that Respondent failed to comply with Court Orders and/or Rules in a number of ways. To the extent that Respondent engaged in the unauthorized practice of law as described above, such certainly constitutes a failure to comply with Court Orders. In Complaint file no. 27023-5-TC in the original Petition for Discipline, the United States District Judge as an informant alleged that Respondent violated specific Court Orders, including the failure to file a response to a motion and other mandated filings by Court ordered deadlines and that Respondent's client's case was dismissed as a result. Similarly, in Complaint file no. 27066-5-TC, Respondent failed to comply with a Court Order to respond to certain discovery requests within the sixty-day deadline. In file no. 28273-5-TC, Respondent, as a condition of discipline, was ordered to enter into a payment plan to make restitution to the former client. As set forth above in paragraph 10, Respondent admits that he defaulted in making this Court ordered restitution.

14. Respondent also failed to comply with Court Rules in a number of different ways, including the following: his failure to comply with the requirements of Section 18 of Supreme Court Rule 9 that he notify his clients of his summary suspensions; his failure to withdraw from representation of clients in pending matters upon his suspension in violation of Section 18 of the Supreme Court Rule 9; and his failure to file an Affidavit with the Board of Professional Responsibility as required by Section 18 of Supreme Court Rule 9. Finally, Respondent violated

Section 20.5 of Supreme Court Rule 9 by failing to supplement his annual registration statement or to advise the Board of his change of address within thirty days after the change occurred.

### **III. CONCLUSION OF LAW**

15. The instances of neglect/abandonment found in paragraphs 7 and 8 constitute violations of the Tennessee Rules of Professional Conduct 1.2, 1.3, 1.4 and 1.16 (“RPC”).<sup>2</sup>

16. The instances of incompetence found by paragraph 9 constitute a violation of RPC 1.1.

17. The fee and trust accounting violations found in paragraph 10 constitute a violation of RPC 1.5 and 1.15.

18. The misrepresentations to clients found in paragraph 11 constitute a violation of RPC 8.4.

19. Respondent’s continued practice of law while suspended as found in paragraph 12 constitutes a violation of RPC 1.1 and 5.5.

20. The violations of Court Orders and/or Rules found in paragraphs 13 and 14 constitute violations of RPC 3.4(c), 8.4(d) and 9(g).

### **IV. DISCIPLINE**

21. Section 8.4 of Supreme Court Rule 9 provides in pertinent part that “In determining the appropriate type of discipline, the Hearing Panel shall consider the applicable provisions of the ABA standards for imposing lawyer sanctions.” The ABA standards for imposing lawyer sanctions were adopted by the Board of Professional Responsibility in

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<sup>2</sup> The Tennessee Supreme Court adopted the Rules of Professional Conduct effective March 1, 2003 thereby replacing the Code of Professional Responsibility and the Disciplinary Rules. Although some of the representations involved in the Petitions commenced prior to March 1, 2003, the alleged defalcations against Respondent occurred after the Rules of Professional Conduct became effective.

September 1986, for recommendation to its Hearing Committees. *Sneed v. Board of Professional Responsibility*, 37 S.W. 3<sup>rd</sup> 886, 890-891 (Tenn. 2000). Pursuant to the ABA standards, the Hearing Committee must consider both aggravating and mitigating factors.

**A. Aggravating Factors**

22. The Aggravating Factors are listed in Section 9.22 of the ABA Standards. One of these factors (Section 9.22(a)) is the existence of prior disciplinary offenses committed by the Respondent attorney. In an Order dated January 15, 2004, the Supreme Court entered a six-month suspension as to Respondent, which suspension was stayed (Exhibit C to Original Petition). Similarly, Respondent was suspended from the practice of law pursuant to Section 4.3 of Supreme Court Rule 9 by Order dated March 2005 (which suspension remains in effect). Evidence was also presented at the Hearing of three prior private admonitions or reprimands issued by the Board of Professional Responsibility to Respondent.

23. ABA Standard Section 9.22(d) provides that the commission of multiple offenses by the Respondent attorney also constitutes an aggravating factor. In this matter, as described above, the Hearing Panel concludes that Respondent has committed a number of different violations of the Rules of Professional Conduct based on a variety of instances of misconduct, so this aggravating factor also applies in this matter.

24. ABA Standard Section 9.22(e) also provides that "Bad faith obstruction of the Disciplinary Proceeding by intentionally failing to comply with rules or orders of the disciplinary agency" also constitutes an aggravating factor. In this case, Petitioner failed to respond to any of the Petitions in this matter and failed to provide information requested by disciplinary counsel in connection with its investigation of this matter.

25. ABA Standard Section 9.22(i) provides that "substantial experience in the practice of law" is also an aggravating factor. Respondent was first licensed to practice in 1979.



26. Finally, ABA Standard Section 9.22(j) provides that “indeference to making restitution” is also an aggravating factor.” As noted above, Respondent has failed to return unearned fees and, in at least one instance, failed to perform a Court ordered payment of restitution of fees to a client.

**B. Mitigating Factors**

Pursuant to the ABA Standards, the Hearing Panel is also obligated to take into account any mitigating factors presented. The Hearing Panel finds that the following mitigating factors should be taken into account in this matter:

27. The Hearing Committee finds that Respondent has not engaged in the practice of law in any form since at least March 14, 2005, when he was suspended by Order of the Tennessee Supreme Court. All of the alleged instances of misconduct occurred prior to that time. Respondent is currently gainfully employed by the State of Tennessee in a non-legal capacity.

28. Although certain of Respondent’s activities constituted the “unauthorized practice of law,” the Hearing Committee concludes that Respondent took such actions in an effort to protect the interests of his clients.

29. With respect to the fee and trust accounting violations, the Hearing Panel notes that two of these instances involve a dispute over the fee paid and earned by Respondent. With respect to the Complaint in file number 28668-5-TC, Respondent has offered to return to the Claimant whatever fee is determined not to have been earned by him. The Claimant in that matter requests \$3,000 of the \$5,000 retainer fee to be returned; the amount paid by the Claimant to retain new counsel. At the conclusion of the Hearing on March 21, 2007, Respondent Price tendered to disciplinary counsel a check in the amount of \$400 payable to the Claimant in file no. 27718-5-TC. With respect to the Complaint in file 28273-5-TC, Respondent admits that he has

failed to make two of the three payments required by the Court Ordered restitution. However, Respondent claims inability to pay, which has not been refuted by any other evidence.

**V. JUDGMENT**


30. Based upon the foregoing Findings of Fact and Conclusions of Law and after considering all of the arguments and evidence presented at the Hearing on March 21, as well as the entire record in this matter, and considering the sanctions entered in other proceedings involving similar defalcations, the Hearing Committee determines that the following sanction should be imposed on Respondent Price:

(a) Respondent Floyd Nolton Price should be suspended from the practice of law in the State of Tennessee for a period of three years. Such suspension shall commence as of March 14, 2005.

(b) The Respondent Floyd Nolton Price is hereby ordered to make restitution in the amount of \$3,000 to the Claimant in file number 28668-5-TC.

(c) Respondent Floyd Nolton Price is ordered to resolve his client's dispute with his fee in Complaint No. 28269-5-TC under the auspices of the Nashville Bar Association's fee dispute resolution process and shall pay restitution in whatever amount is determined appropriate pursuant to that process.

This <sup>9<sup>th</sup></sup> day of April, 2007.

  
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CHAIR

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This \_\_\_\_ day of April, 2007.

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/s/ Edgar M.  
Rothschild, III

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