

BOARD NOTES

published by the
Board of Professional Responsibility
of the
Supreme Court of Tennessee

Fall 2021



Inside:

2 Spotlight: Tennessee Supreme Court Streamlines Advertising Rules

4 Identifying the Client When Probating an Estate

13 Board of Professional Responsibility - New Disciplinary Counsel

14 Disciplinary Actions April 2021 - September 2021

Greeting from Floyd Flippin

Chair, Board of Professional Responsibility

Many years ago, my brother called me to ask if I had heard the TV advertisement from a local law firm that intrigued him. He indicated that the advertisement had a line in it, "We are here to help and we know how."

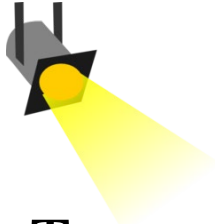
That line has stayed with me all these years. I liked it then and I like it now.

As Lawyers, we are always in a position to help our clients. Most of the time, we know how to help them. But there are those gray areas in our practice that are generally the ones that cause us trouble.

Can the Board of Professional Responsibility help us deal with the gray areas?

Yes it can. We issue Ethics opinions, we answer questions and give written guidance when asked, we speak at Seminars, and we are always a phone call or email away. We would love there to be no need to discipline attorneys. As a High School Football and Basketball Official, I can assure you the best games are those without flags in Football and Fouls in Basketball.

The next time you find yourself in a gray area, contact us. We are here to help and we know how.



Tennessee Supreme Court Streamlines Advertising Rules

Sandy Garrett

Chief Disciplinary Counsel, Board of Professional Responsibility

By order filed September 1, 2021, the Tennessee Supreme Court adopted amendments to lawyer advertising rules in Tennessee Supreme Court Rule 8, Rules of Professional Conduct (RPC) 7.1-7.5.

The Supreme Court's Order consolidates RPC 7.1 and 7.2 into new RPC 7.1. RPC 7.1(a) is unchanged and provides that an attorney shall not make a false or misleading communication about the lawyer or the lawyer's services. RPC 7.1(b) is new and states that a lawyer may advertise, subject to the Rules, and any communication shall include the name and contact information of at least one attorney responsible for the content of the communication. The requirement that an attorney retain a copy of each advertisement for a period of two years along with a record of when and where the advertisement appears still exists but has been moved to new RPC 7.1(c).

Guidance concerning an attorney's area of expertise/specialization has been deleted from RPC 7.4 and moved to RPC 7.1 comments [9] and [10]. Rules concerning firm names have been deleted from RPC 7.5 but now are addressed in comments [11]-[13] to RPC 7.1.

RPC 7.2 has been deleted but some of its provisions have been amended and added to RPC 7.3(f).

New RPC 7.3(a) defines solicitation as "a targeted communication initiated by or on behalf of a lawyer that is directed to a specific person and that offers to provide, or reasonably can be understood as offering to provide, legal services for a particular matter."

New RPC 7.3(b) provides: "A lawyer shall not solicit by live person-to-person contact, or permit employees or agents of the lawyer to solicit by live person-to-person contact on the lawyer's behalf, professional employment from a potential client when a significant motive for doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer;
- (2) is a person who routinely uses for business purposes the type of legal services offered by the lawyer;
- (3) is pursuant to a court-ordered class action notification; or
- (4) has a family, close personal, or prior professional relationship with the lawyer."

New Rule 7.3(c) require that solicitations include the words "advertising material" on the outside envelope, if any, and at the beginning and end of the communication, unless the recipient is specified in paragraphs 7.3(b)(1)-(4).

New RPC 7.3(d) limits solicitation if:

- (1) The target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
- (2) The solicitation involves coercion, duress, fraud, harassment, intimidation, overreaching, or undue influence; or

- (3) A significant motive for the solicitation is the lawyer's pecuniary gain and the communication concerns an action for personal injury, divorce or legal separation, worker's compensation, wrongful death, or otherwise relates to an accident, filing of divorce or legal separation, or disaster involving the person to whom the communication is addressed or a member of that person's family, unless the accident, filing of divorce or legal separation, or disaster occurred more than thirty (30) days prior to the mailing or transmission of the communication or the lawyer has a family, close personal, or prior professional relationship with the person solicited.

Lastly, new RPC 7.3(f) and comments [10] and [11] outline the parameters of when a lawyer may pay others, who are not an employee or lawyer in the same firm. Specifically, a lawyer may:

- (1) pay the reasonable cost of advertisements and other communications permitted by RPC 7.1, including online group advertising;
- (2) pay the usual charges of a registered intermediary organization as permitted by RPC 7.6;
- (3) pay for a law practice in accordance with RPC 1.17;
- (4) pay a sponsorship fee or a contribution to a charitable or other non-profit organization in return for which the lawyer will be given publicity as a lawyer; and
- (5) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer; if:
 - (i) the reciprocal referral agreement is not exclusive; and
 - (ii) the client is informed of the existence and nature of the agreement.

[Click here](#) to see the Tennessee Supreme Court's Order adopting revisions to Tenn. Sup. Ct. R. 8, RPCs 7.1,7.2,7.3,7.4,7.5, and 7.6.

Identifying the Client When Probating an Estate

Steven J. Christopher
Deputy Chief Disciplinary Counsel of Investigations
Board of Professional Responsibility

It is crucial that an attorney be cognizant of the identity of their client whenever acting in a representative capacity. An attorney owes duties to clients that are not owed to third parties, such as the duty to provide zealous advocacy, to keep the client advised of the status of the representation, and to maintain confidentiality. On this basis, the attorney must be conscious of the individuals or entities to whom these duties are owed.

In most fields of practice, the identity of the client is straightforward and obvious. When an attorney agrees to represent a competent adult in pursuing a civil claim, there is no question that the attorney represents the individual pursuing the claim. If the opposing party receives a settlement demand from the attorney, it is self-evident that the attorney does not represent the opposing party's interests.

The identity of the client in Tennessee is not clearly defined in the context of an attorney who agrees to probate an estate. The ambiguity of the client's identity in probate practice is reflected in Comment 27 to Rule 1.7 of the Tennessee Rules of Professional Conduct:

In estate or trust administration, the identity of the client may be unclear under Tennessee law. Under one view, the client is the fiduciary, under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.¹

Some jurisdictions, like Tennessee, lack any legal authority on the issue.² Other jurisdictions have expressly defined the identity of the client in trust administration through appellate court precedent or codification in a court rule or other legal authority.³

This article will provide (1) an overview of the three primary theories articulated by legal authorities for defining the identity of a client in probate practice; (2) examples of the ways that these varied definitions impact an attorney's ethical analysis; and (3) practical suggestions for Tennessee probate lawyers in establishing and maintaining protocols that will clarify the identity of their client and otherwise fulfill their ethical responsibilities.

Theories Regarding the Identity of a Client in Probate Administration

There are three theories regarding the identity of the client when a lawyer is retained to administer a probate estate. The majority rule is that the attorney represents only the personal representative in their fiduciary capacity over the estate, and not the estate as a separate legal entity

¹ TENN. SUP. CT. R. 8, Rule 1.7, Comment [27]. The Tennessee Rules of Professional Conduct, codified at Rule 8 of the Tennessee Supreme Court Rules, will be cited as RPC _._.

² The ambiguity of the client's identity in a number of jurisdictions was articulated by the ABA Comm. on Prof'l Ethics & Grievances, Formal Op. 94-380 (1994). An analysis of the client's identity in probate practice has also been addressed in numerous legal publications. See, e.g., Jeffrey N. Pennell, Representations Involving Fiduciary Entities: Who Is the Client?, 62 FORDHAM L. REV. 1319 (Mar. 1994); 18 Albert W. Secor, TENN. PRAC., PROBATE LAW ¶ 1:2-1:3 (3d ed. Nov. 2020).

³ See id.

or the beneficiaries.⁴ This theory is premised on an understanding that the probate estate is not a legal person like a corporation or other business association.⁵ Instead, the probate estate is merely a collection of assets and liabilities, akin to a bankruptcy estate or marital estate.⁶

While not directly on point, legal authorities in a number of jurisdictions have held in the context of legal malpractice litigation involving the conduct of a probate lawyer that the attorney owes a duty of care only to the personal representative, and not to the beneficiaries or the estate as a separate entity.⁷ These decisions reflect an understanding that the lawyer's duties to the personal representative are qualitatively distinct from the lawyer's duties to the beneficiaries or the trust assets.⁸

The second theory regarding the identity of the client in probate practice defines the client as the estate itself.⁹ This view is premised on the theory of the probate estate as a separate legal person distinct from the personal representative and beneficiaries. Legal authorities adopting this theory hold that the attorney should proceed in accordance with the jurisdiction's codification of Model Rule 1.13, which governs the representation of organizations.¹⁰

According to this understanding, the lawyer's client is the estate itself, as the lawyer for an organization represents the organization acting through its duly authorized constituents.¹¹ The personal representative acts as the sole agent of the estate. Consequently, while the probate estate is the client, the personal representative exercises decision making authority in their capacity as the estate's agent, and the lawyer fulfills the lawyer's other ethical responsibilities, such as the duty of communication, through the personal representative.¹²

A lawyer representing an organization may also represent any of its constituents subject to concurrent conflict of interest rules.¹³ On this basis, conceptualizing the client as the estate does not necessarily preclude dual representation of the beneficiaries absent the presence of a concurrent conflict.

⁴ The majority position was acknowledged in ABA Formal Op. 94-380, *supra* note 3. See also Huie v. DeShazo, 922 S.W.2d 920 (Tex. 1996); The Estate of Fogelman v. Fegen, 3 P.3d 1172 (Ariz. 2000); In re Estate of Wagner, 386 N.W.2d 448, 450 (Neb. 1986).

⁵ Estate of Wagner, 386 N.W.2d at 450 (“attorneys represent people. There is no such position known as “attorney of an estate”) (citing In re Ogier, 35 P. 900 (Cal. 1894)).

⁶ See, e.g., Del. State Bar Formal Op. 1989-4 (1989) (a probate estate has no independent legal existence); Alaska Ethics Op. 91-2 (1991) (“an estate is for probate purposes a collection of assets rather than an organization and is not an entity involved in the probate proceedings”).

⁷ See, e.g., Spinner v. Nutt, 631 N.E.2d 542 (Mass. 1994); Goldberg v. Frye, 217 Cal. App. P.3d. 1258 (1990).

⁸ Id.

⁹ Steinway v. Bolden, 460 N.W.2d 306, 307-308 (Mich. Ct. App. 1990); Grimes v. Saikley, 904 N.E.2d 183 (Ill. Ct. App. 2009).

¹⁰ Douglas H. Frazer, Identifying the Client: Trust and Estate Matters, 88 WIS. LAWYER 28 (July/Aug. 2015); Estate of Hubberd v. Comm'r, 99 T.C. 335 (U.S. Tax Ct. 1992) (defining the estate as an entity, rather than its beneficiaries or their fiduciary, as a party eligible for an award of litigation costs).

¹¹ RPC 1.13(a).

¹² RPC 1.13, Comment [1] (“an organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders, and other constituents”). Officers, directors, employees, and shareholders are the constituents of the corporate organizational client.

¹³ RPC 1.13(f). Tennessee's concurrent conflicts of interest are defined at RPC 1.7.

A third position holds that the lawyer jointly represents the personal representative and beneficiaries of the estate.¹⁴ Commentators have frequently cited Geoffrey C. Hazard, Jr. and W. William Hodes in the Law of Lawyering in articulating this position:

Where the lawyer's client is the fiduciary, however, there is a third party in the picture (namely the beneficiary) who does not stand at arm's length from the client; as a consequence, the lawyer also cannot stand at arm's length from the beneficiary. Clients with such responsibilities include trustees, partners, vis-à-vis other partners, spouses, corporate directors, and officers vis-à-vis their corporations, and many others, including parents. In the situations posited, because the lawyer is hired to represent the fiduciary and because the fiduciary is legally required to serve the beneficiary, the lawyer must be deemed employed to further that service as well.¹⁵

Proponents of this theory have utilized the analogy of an attorney in insurance defense practice who represents the insured and the insurance carrier, with the insured as the client who is owed the principal duty.¹⁶ This perspective thereby acknowledges that while the attorney's representation is joint, the personal representative is owed a principal duty in contrast to the beneficiaries.¹⁷

In all three understandings, conceptualizing the identity of the client and the respective responsibilities to the personal representative and beneficiaries is complicated by the fact that the personal representative is required to act in a fiduciary capacity. The fact that the personal representative acts in a fiduciary role distinct from their capacity as beneficiary is well settled in Tennessee and other jurisdictions.¹⁸ In this fiduciary role, the personal representative must deal with the beneficiaries in good faith and "exercise the same degree of diligence and caution that reasonably prudent business-persons would employ in the management of their own affairs."¹⁹ The personal representative is required to act with diligence in carrying out the wishes of the decedent, or in the case of intestate administration, the distribution of the estate's assets and liabilities consistent with applicable law. The personal representative thereby owes a specific duty to the estate and its beneficiaries, including the duty to communicate with beneficiaries as needed in connection with their fiduciary role.²⁰

Normally, a lawyer is required to seek a client's personal objectives in connection with the representation, declining to do so only when the client pursues an objective that is criminal, fraudulent, or otherwise in violation of applicable law.²¹ Regardless of whether the personal

¹⁴ Frazer, supra note 11.

¹⁵ Geoffrey C. Hazard, Jr. and W. William Hodes, THE LAW OF LAWYERING, § 57.3-§ 57.4 (3d Ed. 2005); Riggs Nat'l Bank v Zimmer, 355 A.2d 709, 712-714 (Del. Ch. 1976).

¹⁶ Frazer, supra note 11.

¹⁷ Id.

¹⁸ Mason v. Pearson, 668 S.W.2d 656, 663 (Tenn. Ct. App. 1984); In re Estate of Ladd, 247 S.W.3d 628, 637 (Tenn. Ct. App. 2007).

¹⁹ McFarlin v. McFarlin, 785, S.W.2d 36, 369-370 (Tenn. Ct. App. 1990).

²⁰ See Estate of Doyle, 60 S.W.3d 838, 844-845 (Tenn. Ct. App. 2001); In re Estate of Ladd, 247 S.W.3d at 637

²¹ RPC 1.2(a) and RPC 1.2(d).

representative is a client or an agent of the client in the entity theory, the probate attorney is required to circumscribe the objectives of the representation in light of the personal representative's fiduciary capacity. To the extent that the personal representative seeks objectives which are inconsistent with their fiduciary duty, the probate lawyer must seek to persuade the personal representative to act in accordance with their duties defined by applicable law. If the personal representative refuses to do so, the probate lawyer may need to seek leave to withdraw from the representation.

While research did not reveal any legal authority on point in Tennessee, legal authorities in several jurisdictions have imposed a direct rather than derivative fiduciary duty on the probate lawyer towards the beneficiaries.²² It is unclear whether this fiduciary duty rises to a level to constitute the constructive equivalent to an attorney-client relationship to warrant requirement of all of the attendant ethical obligations.²³ Commentators have noted that the imposition of this direct fiduciary duty normally occurs within the context of legal malpractice litigation involving an attorney's handling of probate matters, and that the appellate courts appear to confuse the issue of whether this duty rises to the level of an attorney-client relationship or is merely part of the calculus of the attorney's duty of care for purposes of malpractice exposure.²⁴

The Impact of the Client Identity on the Attorney's Ethical Responsibilities

The identity of the client will impact how the probate attorney conceptualizes and carries out their ethical duties. An example is the attorney's concurrent conflict analysis, both at the commencement of the representation and during the representation. A concurrent conflict exists if the representation of one client will be directly adverse to another client, or if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client.²⁵

If the client is deemed to be the personal representative and does not include the beneficiaries, any beneficiary whose legal objectives are known to be adverse to the personal representative as fiduciary would not create a conflict as the attorney does not represent the beneficiaries. However, if the lawyer represents both the personal representative and the beneficiaries, the lawyer would be required to zealously pursue the interests of the beneficiaries in any action regarding their rights as beneficiaries.

If the attorney's client is deemed to be the estate, a concurrent conflict analysis would be governed by RPC 1.13, which provides that a lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of RPC 1.7 and RPC 2.2.²⁶ Consequently, the attorney would be precluded from

²² See, e.g. Morales v. Field, et al., 160 Cal. Rptr. 239, 244 (Cal. Ct. App. 1979); Riggs Nat'l Bank v Zimmer, 355 A.2d 709, 712-714 (De. Ch. 1976); Estate of Torian v. Smith, 564 S.W.2d 521, 526 (Ark. 1978) ("an attorney for an estate represents the heirs and distributes and legatees and is in a "position of trust with respect to all of those interests in the estate.").

²³ See, e.g., Riggs Nat'l Bank v Zimmer, 355 A.2d at 712-714.

²⁴ Pennell, supra note 3 (citing Ficket v. Superior Court, 558 P.2d 988 (Ariz. Ct. App. 1976) and Charleson v. Hardesty, 839 P.2d 1303, 1306-1307 (Nev. 1992)).

²⁵ RPC 1.7(a)(1)-(2). A conflict under RPC 1.7(a)(2) is potentially waivable through informed consent by the client and if the circumstances defined at RPC 1.7(b)(1)-(4) are present.

²⁶ RPC 2.2 governs the conduct of an attorney serving as an intermediary between clients.

representation of the personal representative in their capacity as beneficiary or the other beneficiaries if such representation resulted in a concurrent conflict under RPC 1.7.²⁷

The identity of the client also impacts the probate attorney's analysis of confidentiality and attorney-client privilege. Rule of Professional Conduct 1.6 prohibits an attorney from disclosing any information relating to the representation, regardless of the source from which the information was obtained, unless the client provides informed consent, the disclosure is impliedly authorized to carry out the representation, or one of the grounds for permissive or mandatory disclosure defined at RPC 1.6(b)-(c) applies.²⁸ The lawyer is under an affirmative obligation to prevent the unintended or unauthorized disclosure of any information that falls within the scope of RPC 1.6(a).²⁹ The fact that the personal representative is acting as fiduciary does not limit the scope of confidentiality defined at RPC 1.6.³⁰

The attorney-client privilege is much narrower than the confidentiality rule and is limited to the compelled disclosure by the attorney of communications made between the attorney and the client pursuant to the attorney-client relationship and with the intention that the communications remain confidential.³¹ The attorney-client privilege belongs to the client, and thereby may be waived by only by the client.³²

If the attorney's client is deemed to be the personal representative only, then any communications between the attorney and the personal representative are confidential and cannot be disclosed to any third party, unless the personal representative provides informed consent, one of the circumstances for mandatory or permissive disclosure exists, or the disclosure is impliedly authorized. The communications between the attorney and personal representative are likewise privileged. Any communication between the attorney and the beneficiaries would be confidential, as it is information relating to the representation. However, the attorney would be required to disclose the communication to the personal representative to the extent that the disclosure was necessary to comply with attorney's obligation to keep their client reasonably informed about the status of the representation pursuant to RPC 1.4(a)(3) and/or to further the client's objectives pursuant to RPC 1.3.

In contrast, if the attorney is deemed to represent both the personal representative and the beneficiaries, the communications would fall within RPC 1.6 and the attorney would be precluded from sharing communications between the personal representative and each beneficiary absent informed consent. The communications with the beneficiary would likewise be privileged.

Under the entity theory of representation, the personal representative is deemed to be the agent of the estate as client. Communications between the "constituents" of an organization and attorney fall within the scope of RPC 1.6.³³ The constituents of an organizational client are the

²⁷ RPC 1.13(f).

²⁸ RPC 1.6(a).

²⁹ RPC 1.6(d).

³⁰ See ABA Formal Op. 94-380, supra note 3.

³¹ TENN. CODE ANN. § 23-3-105. Culbertson v. Culbertson, 393 S.W.3d 678 (Tenn. Ct. App. 2012).

³² Culbertson v. Culbertson, 393 S.W.3d at 678 (citing Smith Cnty. Educ. Assoc. v. Anderson, 676 S.W.2d at 333).

³³ RPC 1.13, Comment [2].

“officers, directors, employees, and shareholders, and other constituents” [Emphasis added].³⁴ “Other constituents” are defined as the positions equivalent to officers, directors, employees, and shareholders held by persons acting for organizational clients that are not corporations.”³⁵ As the personal representative is the only agent acting on behalf of the estate, it is highly likely that the personal representative’s role would be construed as analogous to the definition of constituent within RPC 1.13, Comment [1]. The beneficiaries could at least arguably be construed as analogous to shareholders and thereby also be covered by RPC 1.6.

A final example of the impact of the identity of the client in probate practice is the attorney’s duties upon discovery that the personal representative or a beneficiary has misappropriated estate funds or engaged in malfeasance. If the lawyer represents the personal representative and discovers that the client has engaged in malfeasance or expresses an intent to do so, the lawyer is required to first seek to dissuade the client from engaging in the activity, or if it has already occurred, to rectify the conduct.³⁶ If the client persists, the lawyer is required to seek leave to withdraw but is prohibited from further disclosure.³⁷

In contrast, if the client is deemed to be the estate and the personal representative engages in the malfeasance, the lawyer may ultimately be required to make disclosure to the tribunal. If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, the lawyer is required to act as is reasonably necessary in the best interest of the organization.³⁸ This normally includes referral to the highest authority that can act on behalf of the organization as determined by applicable law.³⁹

In the context of the probate estate, the personal representative is the functional equivalent of the highest authority in a corporation or other business association. RPC 1.6 provides that a lawyer’s permissive disclosure of a client’s fraudulent activity is subject to the lawyer’s requirements at RPC 3.3.⁴⁰ As indicated above, RPC 3.3 requires a lawyer to withdraw from the representation without further disclosure if the client has engaged in the activity at issue. However, under an estate theory, the client is the estate, not the personal representative. The personal representative would thereby be considered a nonclient and disclosure would be required under RPC 3.3(f). Additionally, as the lawyer’s obligations in this theory are to the estate as the true client, the lawyer would be required to make disclosures to the extent necessary to zealously pursue the client’s interests, regardless of the impact on the personal representative.

³⁴ RPC 1.13, Comment [1].

³⁵ *Id.*

³⁶ RPC 3.3(e).

³⁷ RPC 3.3(f).

³⁸ RPC 1.13 (b).

³⁹ *Id.*

⁴⁰ The authority and responsibility of a lawyer representing an organization is concurrent with the authority and responsibility regarding the representation of an individual client. RPC 1.13, Comment [6]. In particular, RPC 1.13 does not limit or expand the lawyer’s responsibility under RPC 1.6 and RPC 3.3. *Id.*

Under the estate as entity theory regarding the malfeasance of a beneficiary, upon discovery of the conduct, the lawyer would be required to bring the conduct of the beneficiary to the attention of the personal representative, pursuant to RPC 1.13(b). If the attorney, acting in concert with the personal representative, was not able to take proper remedial and corrective action, disclosure may be required by RPC 3.3(f).

If the personal representative is deemed to be the only client and a beneficiary engages in malfeasance, disclosure may likewise be required. If a lawyer comes to know prior to the conclusion of a proceeding that a person other than the client has perpetrated a fraud upon the tribunal or otherwise committed an offense against the administration of justice in connection with the proceeding, and in which the lawyer's client was not implicated, shall promptly report the improper conduct to the tribunal, even if so doing requires the disclosure of information otherwise protected by RPC 1.6.⁴¹ On this basis, the beneficiary would not be protected by the lawyer's duty of confidentiality and the lawyer would be required to make disclosure to the Court.

Need to Clarify Who the Attorney Represents and Who They Do Not Represent

As the identity of the client in the context of probate practice has not been defined in Tennessee, it is incumbent on a probate attorney to develop their own internal understanding of their client's identity. While most probate attorneys in Tennessee may generally treat their client as the personal representative acting in their fiduciary capacity, proper interface with clients and third parties requires that the probate attorney be expressly cognizant of this internal understanding.⁴²

Once a probate attorney definitively establishes their own internal understanding of their client's identity, this foundational understanding should undergird the attorney's communications with clients and third parties and govern their case management protocols and office procedures. One of an attorney's fundamental obligations is to establish and maintain office protocols to ensure that the attorney and their staff comply with the Tennessee Rules of Professional Conduct.⁴³ Lawyers are vicariously responsible for any rule violation by their attorney or non-attorney staff that arises out of a failure to establish and maintain such protocols.⁴⁴ Within the context of probate practice, if an attorney who conceptualizes their client as the personal representative in their fiduciary capacity consistent with the majority rule and a non-attorney staff person fails to respond to the personal representative's phone calls, this would vicariously implicate the attorney's obligations to maintain good communication with a client pursuant to RPC 1.4.

Consistent with these managerial responsibilities and in light of the potential for vicarious disciplinary sanctions, lawyers with managerial and supervisory authority must ensure that their staff are conscious of the adopted understanding of the client's identity in the office's probate practice. The attorney's understanding of the client's identity should be firmly established and reflected in the firm's case management protocols.⁴⁵ For example, the firm's fee agreements, form letters, and other work product should be reflective of the attorney's understanding. The attorney exercising

⁴¹ RPC 3.3(h).

⁴² Secor, *supra* note 3.

⁴³ RPC 5.1.

⁴⁴ RPC 5.1(c).

⁴⁵ RPC 5.1.

managerial and supervisory authority must provide adequate training and instruction on this issue. If a staff person commits workplace errors that reflect a misunderstanding of the client's identity, proper personnel action should be taken to correct this misunderstanding in the same manner as any other breach of the staff person's responsibilities.

The attorney's understanding of the client's identity must be expressly communicated to the client prior to undertaking the representation, when the representation is commenced, and should undergird ongoing communications with the client. If the majority position is adopted, the attorney should provide notice to the personal representative that an attorney-client relationship exists between the personal representative and the attorney, with all of the attendant privileges, including the duty to provide diligent representation, to maintain communication, confidentiality, and attorney-client privilege. In the same fashion, if the majority position is adopted, the probate attorney should provide notice to the personal representative that the scope of representation is limited to the personal representative in their fiduciary capacity and does not extend to advocating or advising the personal representative in their capacity as beneficiary or otherwise.

As many personal representatives will not have prior experience acting in a fiduciary capacity, part of the probate lawyer's responsibility is to clarify the overall nature of a fiduciary obligation and the distinction between acting in accordance with this obligation and in a personal capacity. It would be prudent for the probate lawyer to articulate at the commencement of the representation the reasonably foreseeable circumstances where a conflict could potentially arise between the personal representative's capacity as fiduciary and in their capacity as beneficiary or other personal capacity. Given the high likelihood that a personal representative may have difficulty grasping the nuances of their fiduciary responsibilities, particularly while also having rights as a beneficiary to the estate, it is highly recommended that probate lawyers develop form letters to be sent at the commencement of the representation confirming the nature of the personal representative's fiduciary obligations.

In the same fashion that a lawyer in probate practice is required to expressly confirm their understanding of the client's identity to the client, the probate lawyer is required to clarify to any non-clients that no attorney-client relationship exists.⁴⁶ Tennessee Rules of Professional Conduct 4.3 provides that in dealing on behalf of a client with a person who is not represented by counsel, when a lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.⁴⁷ Additionally, the lawyer communicating with the unrepresented person in this circumstance is required to refrain from the provision of legal advice other than to refer the nonclient to private counsel.⁴⁸

There is a significant risk that beneficiaries in a probate proceeding will form the perception that a probate lawyer represents their interests and that an attorney-client relationship thereby exists.⁴⁹ This is particularly the case when the beneficiary is not raising any objections in the probate proceeding.⁵⁰ From the standpoint of the beneficiary, their principal concern is to obtain the assets from the probate estate granted through the decedent's will or intestate administration. The probate

⁴⁶ RPC 4.3.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ See Secor, supra note 3.

⁵⁰ Id.

lawyer facilitates this distribution through the personal representative, so the interests of the probate lawyer and the fiduciary are normally aligned with the beneficiaries.

The dangers contemplated and addressed by RPC 4.3 and its comments are particularly applicable in the context of communications between a probate lawyer and the beneficiaries. If the client is the personal representative, a beneficiary may not be cognizant that statements made by the probate lawyer do not constitute substantive legal advice for their interests as beneficiary but are being made in a representative capacity on behalf of the personal representative. The beneficiary may also mistakenly believe that any statements are subject to attorney-client privilege, and on this basis, the beneficiary may make unintended admissions that are detrimental to the beneficiaries' interests. Once in receipt of information through a beneficiaries' admissions, the probate lawyer would be required to disclose the information to the personal representative as client to the extent required by RPC 1.3 or RPC 1.4 and/or a third party if permissive or mandatory disclosure exists under RPC 1.6.

Pursuant to RPC 4.3, it is the probate lawyer's responsibility to correct this potential misperception and to refrain from giving legal advice to beneficiaries other than referral to private counsel if the lawyer's client is the personal representative. The lawyer's internal office protocols and training of attorney and non-attorney employees should provide clarification and instruction regarding the most effective methodology of communicating this understanding verbally and in writing. It is reasonably foreseeable that a beneficiary will call the lawyer's office with questions and on this basis, support staff particularly need to be trained concerning the questions that may be answered and the questions where the beneficiary should be referred to private counsel. It is strongly recommended that a written communication be sent to all beneficiaries at the commencement of the representation clarifying that no attorney-client relationship is being established with the beneficiaries.

For attorneys adopting the majority rule, what creates an additional nuance in their relationship with the beneficiaries is the fact that while no attorney-client relationship exists, the probate lawyer's status on behalf of the fiduciary requires some level of communication with the beneficiaries. Consistent with the personal representative's fiduciary duty, the probate lawyer is required to communicate with the beneficiaries to the extent required to facilitate the personal representative's fiduciary obligation. This heightens the possibility of the misperception contemplated by RPC 4.3.

Further Inquiry

If you have questions about the content of this article, you may contact the author at schristopher@tbpr.org or (615) 361-7500, extension 203. Questions about the article may also be directed to the Board's Ethics Counsel, Laura Chastain, at lchastain@tbpr.org, or (615) 361-7500, extension 212.



Board of Professional Responsibility New Disciplinary Counsel

Shilina B. Brown has 20 years of experience as a legislative and regulatory attorney. Ms. Brown served the Tennessee General Assembly where she assisted legislators by providing legal advice and oversight on state fiscal matters, budgeting, fiscal bill analysis, federal legislation, state contracts, competitive bidding, and state audits.

Ms. Brown has represented state government clients in administrative law hearings and provided legal advice to state regulatory agencies. She represented and advised the public utility commission in complex utility litigation in the areas of telecommunications, water, sewer, wastewater, electric, and natural gas utilities. Ms. Brown has also represented and litigated on behalf of several of the occupational and professional licensing boards in Tennessee. She has handled enforcement and disciplinary litigation for accountants, architects, engineers, appraisers, auctioneers, court reporters, embalmers, funeral directors, land surveyors, motor vehicle salespersons and dealers, private investigators, real estate brokers and others.

Ms. Brown received her Juris Doctorate from New England Law in Boston, Massachusetts, and her undergraduate degree from the University of New Mexico. Ms. Brown was admitted to the practice of law in Tennessee in 2000.

Diane Nesbit joined the Board of Professional Responsibility in June 2021. Prior to coming to the Board, Diane worked as senior clerk for Judge Andy Bennett at the Tennessee Court of Appeals, in private practice in Cookeville, Tennessee, and at the Tennessee Attorney General's office. She graduated from law school at Washington University in St. Louis and clerked for Judge Ben Cantrell at the Tennessee Court of Appeals. Diane grew up in Kentucky and received her undergraduate degree from Rhodes College in Memphis. She also has a master's degree in social work from Washington University in St. Louis.

Disciplinary and Licensure Actions

(April, 2021 – September, 2021)

PERMANENT DISBARMENTS

JASON WADE BARNETTE, BPR #026960 DAVIDSON COUNTY

Effective April 1, 2021 the Tennessee Supreme Court permanently disbarred Jason Wade Barnette from the practice of law. Mr. Barnette consented to permanent disbarment because he could not successfully defend the charges alleged in Petitions for Discipline and complaints filed against him with the Board.

Mr. Barnette represented eight clients in collection disputes and employment matters. His misconduct included failing to communicate with his clients and inform them that he had been suspended from the practice of law, allowing default judgments to be entered against clients, engaging in the unauthorized practice of law, posting misleading information on his web page suggesting he was authorized to practice law in another state, and failing to disburse settlement funds to his client.

Mr. Barnette's ethical misconduct violated Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.15 (safekeeping property), 1.16 (terminating representation), 5.5 (unauthorized practice of law), 7.1 (communications concerning a lawyer's services), 8.1 (disciplinary matters), and 8.4(a), (d) and (g) (misconduct).

Pursuant to Tennessee Supreme Court Rule 9, Mr. Barnette is not eligible for reinstatement to the practice of law in this state, and the affidavit of Mr. Barnette consenting to disbarment shall be maintained under seal.

Mr. Barnette must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 regarding the obligations and responsibilities of disbarred attorneys.

WENDELL KYLE HALL, BPR #017749 KNOX COUNTY

Effective April 27, 2021, the Supreme Court of Tennessee permanently disbarred Wendell Kyle Hall from the practice of law for failure to provide competent representation to his clients; failure to act with

reasonable diligence and promptness in his representation; failure to respond to requests for information; failure to communicate with numerous clients and keep them informed about the status of their case; failure to inform them of his suspension from the practice of law; improperly requesting and receiving a loan from a client without memorializing the loan in writing and without advising the client in writing to seek independent legal counsel; failure to notify clients of his withdrawal as attorney of record or take appropriate steps to protect their interests; failure to expedite litigation; failure to respond to the Board's requests for responses to complaints; and failure to comply with the Order of Enforcement entered by the Supreme Court.

Pursuant to Tennessee Supreme Court Rule 9, Mr. Hall is not eligible for reinstatement to the practice of law in this state and must comply with the requirements of Tennessee Supreme Court Rule 9, Section 28, regarding the obligations and responsibilities of disbarred attorneys.

PHILLIP GREGORY MEEK, BPR #015852
TENNESSEE LAWYER

On August 31, 2021, Phillip Gregory Meek, a Mississippi attorney, was permanently disbarred by Order of Reciprocal Discipline entered by the Supreme Court of Tennessee. Mr. Meek was disbarred by the Supreme Court of Mississippi on July 12, 2013.

On July 7, 2021, this Court entered a Notice of Reciprocal Discipline directing Mr. Meek to inform this Court, within thirty (30) days of receipt of the Notice, why the discipline imposed by the Supreme Court of Mississippi should not be imposed by this Court. Mr. Meek did not file a response with the Court as ordered.

Mr. Meek must pay the Board's costs and expenses and the court costs within ninety (90) days of the entry of the order.

KURT POMRENKE, BPR #015327
TENNESSEE LAWYER

Effective April 22, 2021, Kurt J. Pomrenke of Abingdon, Virginia, was permanently disbarred from the practice of law in Tennessee. On December 28, 2020, Mr. Pomrenke pled guilty to one (1) Count Conspiracy to Defraud the United States, in violation of 18 United States Code Section 371. On December 28, 2020, a Consent to Revocation Order was entered by the Virginia State Bar Disciplinary Board resulting in the revocation of Mr. Pomrenke's license to practice of law in Virginia. On March 17, 2021, the Supreme Court of Tennessee entered a Notice of Reciprocal Discipline directing Mr. Pomrenke to inform the Court within

thirty (30) days of receipt of the Notice as to why the discipline imposed by the Commonwealth of Virginia should not be imposed by this Court. Mr. Promrenke provided no response to the Supreme Court.

***PAUL JAMES SPRINGER, BPR #021267
SHELBY COUNTY***

Effective June 4, 2021, the Supreme Court of Tennessee permanently disbarred Paul James Springer from the practice of law and ordered him to pay restitution to his client in the amount of \$6,247.34, close his law firm IOLTA account, and pay all costs incurred to the Board of Professional Responsibility.

After a hearing upon the disciplinary petition, a Hearing Panel determined Mr. Springer misappropriated settlement funds belonging to his client, made material misrepresentations to his client, failed to reasonably communicate with his client, and engaged in criminal conduct as well as conduct involving dishonesty, deceit, misrepresentations and fraud and knowingly failed to comply with a final court order entered in a proceeding in which he was a party.

Mr. Springer's actions and omissions violated Rules of Professional Conduct 1.2 (scope of representation and allocation of authority between client and lawyer), 1.4 (communication), 1.5 (fees), 1.15 (safekeeping property and funds), 8.1(b) (bar admission and disciplinary matters), and 8.4(a), (b), (c) and (g) (misconduct).

SUSPENSIONS

***KRISTIE NICOLE ANDERSON, BPR #021840
CAMPBELL COUNTY***

On July 9, 2021, the Supreme Court of Tennessee entered an order suspending Kristie Nicole Anderson from the practice of law for a period of one (1) year, with thirty (30) days active suspension, and the remainder on probation pursuant to Tennessee Supreme Court Rule 9, Section 12.2. Ms. Anderson was further ordered to engage the services of a Practice Monitor and to reimburse the Board for all costs in the disciplinary proceeding.

The Board received complaints from five (5) clients regarding the failure of Ms. Anderson to file appropriate pleadings, submit timely orders, respond to discovery and reasonably communicate regarding the status of the representation. Ms. Anderson executed a Conditional Guilty Plea acknowledging her conduct

violated Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 1.4 (communication), 3.2 (expediting litigation), 3.4 (fairness to opposing party and counsel), and 8.4 (a) (misconduct).

Ms. Anderson must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30, regarding the obligations and responsibilities of suspended attorneys and may not return to the active practice of law until an order of reinstatement has been entered by the Supreme Court.

***JAKE PRESTON EVANS, BPR #030147
TENNESSEE ATTORNEY***

On July 9, 2021, Jake Preston Evans, an attorney licensed to practice law in Tennessee, was suspended for sixteen months retroactive to March 9, 2020 by the Supreme Court of Tennessee and ordered to contact Tennessee Lawyers Assistance Program, pay restitution to his clients and pay costs of the disciplinary action to the Board of Professional Responsibility.

Mr. Evans was retained in two separate patent and trademark matters and was not diligent in making timely filings for patents and copyright matters resulting in the applications being denied. Mr. Evans failed to perfect appeals of those denials, failed to reasonably communicate with his clients, and failed to respond to Board inquiries.

Mr. Evans executed a Conditional Guilty Plea admitting his conduct violated Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), and 8.1 (bar admissions and disciplinary matters).

Mr. Evans must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

***GLEN ROY FAGAN, BPR #034666
HAMILTON COUNTY***

On April 16, 2021, the Supreme Court of Tennessee entered an order suspending Glen Roy Fagan from the practice of law for a period of six (6) years, with five (5) years active suspension and the remainder on probation pursuant to Tennessee Supreme Court Rule 9 Section 12.2. Mr. Fagan was further ordered to engage the services of a Practice Monitor, complete six (6) additional continuing legal ethics hours and reimburse the Board for all costs in the disciplinary proceeding.

A hearing panel found Mr. Fagan, a Georgia lawyer employed as in-house counsel in Tennessee, created a fictitious complaint; a fictitious settlement; and authorized the transfer of funds from his employer to himself under the company's mistaken belief the company was settling the complainant. Mr. Fagan violated

Rules of Professional Conduct 4.1 and 8.4(b), (c), and (d). The Panel also found that Mr. Fagan falsified a second complaint and authorized the transfer of money from his employer to himself. The hearing panel found both aggravating and mitigating factors in the case.

Mr. Fagan must comply with the requirements of Tennessee Supreme Court Rule 9, Section 30, regarding the obligations and responsibilities of suspended attorneys and may not return to the active practice of law in Tennessee until further order of the Supreme Court.

MICHAEL LLOYD FREEMAN, BPR #028698
DAVIDSON COUNTY

On June 21, 2021, the Supreme Court of Tennessee entered an order suspending Michael Lloyd Freeman from the practice of law for a period of three (3) years with three (3) months active suspension pursuant to Tennessee Supreme Court Rule 9, Section 12.2, and the remainder on probation pursuant to Tennessee Supreme Court Rule 9, Section 14.1. Mr. Freeman must pay the Board for all costs in the disciplinary proceeding as well as restitution in the amount of \$750.00. During the period of probation, Mr. Freeman shall obtain an evaluation with the Tennessee Lawyers Assistance Program and engage the services of a Practice Monitor.

A Hearing Panel found Mr. Freeman failed to file an appropriate complaint in a contested divorce action resulting in the dismissal of the divorce for failure to prosecute, failed to reasonably communicate with his client and expedite his litigation, failed to review his client's file and respond to a pending motion for summary judgment, and failed to file an executed marital dissolution agreement and take appropriate action to confirm its filing with the Court in violation of Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 1.4 (communication) and 3.2 (expediting litigation).

Mr. Freeman must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4 regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

GRACE INGRID GARDINER, BPR #023269
KNOX COUNTY

On August 30, 2021, the Supreme Court of Tennessee entered an order suspending Grace Ingrid Gardiner from the practice of law for a period of three (3) years with four (4) months active suspension pursuant to Tennessee Supreme Court Rule 9, Section 12.2, and the remainder on probation pursuant to

Tennessee Supreme Court Rule 9, Section 14.1. Ms. Gardiner must pay the Board for all costs in the disciplinary proceeding in the amount of \$2,391.03.

A Hearing Panel found that during representation of clients in Bankruptcy Court, Ms. Gardiner failed to comply with Rules of the Bankruptcy Court, including the following: 1) obtaining original “wet” signatures of clients on petitions and schedules; 2) permitting her name to be signed to a retainer agreement before she met the client; 3) presenting an agreed order continuing a hearing bearing the signature of the Chapter 13 Trustee who had not agreed to the continuance; 4) failing to take reasonable measures to ensure that her assistant complied with the Rules of the Bankruptcy Court; and 5) presenting to the Court a document bearing the forged signature of her client.

Ms. Gardiner violated Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 3.3 (candor toward the tribunal), 5.3 (responsibilities regarding nonlawyer assistants) and 8.4 (misconduct).

Ms. Gardiner must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

JOHN T. HARDING, BPR #017751
SUMNER COUNTY

Effective June 10, 2021, the Supreme Court of Tennessee suspended John T. Harding from the practice of law for one (1) year with thirty (30) days being an active suspension pursuant to Tennessee Supreme Court Rule 9, Section 12.2, and the remainder served on probation, conditioned upon the payment of fees to the Board.

A Petition containing one complaint was filed by the Board alleging Mr. Harding failed to reasonably communicate with his client regarding the status of the case; failed to act in a diligent manner and expedite the client’s litigation. Mr. Harding executed a conditional guilty plea acknowledging his conduct violated Tennessee Rules of Professional Conduct (RPC) 1.3 (diligence); 1.4 (communication); 3.2 (expediting litigation); and 8.4(a) (misconduct).

Mr. Harding must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4 regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

SHERRY MARIE PERCIVAL, BPR #018840
MADISON COUNTY

Effective May 27, 2021, the Supreme Court of Tennessee suspended Sherry Marie Percival from the practice of law for five years, with six (6) months as an active suspension and the remainder on probation, pursuant to Tennessee Supreme Court Rule 9, Section 12.2, and conditioned upon referral to TLAP, engagement of a practice monitor, engagement of an accountant to reconcile her trust account, attendance at the Board's Trust Account Workshop and the payment of fees to the Board.

Ms. Percival executed a conditional guilty plea acknowledging she failed to reconcile her trust account; mismanaged her trust account and settlement funds therein and executed a release on behalf of her client and endorsed client's name on settlement check without permission of her client in violation of Tennessee Rules of Professional Conduct (RPC) 1.4 (communication); 1.15 (safekeeping property and funds); 4.1(a) (truthfulness in statements to others) and 8.4(a) (misconduct).

Ms. Percival must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

KARL EMMANUEL PULLEY, BPR #012761
DAVIDSON COUNTY

Effective June 8, 2021, the Supreme Court of Tennessee suspended Karl Emmanuel Pulley from the practice of law for one (1) year with thirty (30) days being served as an active suspension pursuant to Tennessee Supreme Court Rule 9, Sections 12.2 and 14.1, and the remainder served on probation conditioned upon the appointment of a practice monitor.

A Petition and Supplemental Petition for Discipline containing four complaints was filed by the Board. Mr. Pulley executed a conditional guilty plea acknowledging he failed to reasonably communicate with his clients regarding the status of their cases; failed to act in a diligent manner and expedite the clients' litigation; failed to timely respond to discovery requests; charged a non-refundable fee without the client executing a written fee agreement; accepted client referrals from a non-registered intermediary organization; and failed to take reasonable steps to protect the client's interest after terminating the representation in violation of Tennessee Rules of Professional Conduct (RPC) 1.3 (diligence); 1.4 (communication); 1.5 (fees); 3.4(d) (fairness to opposing party and counsel); 1.16 (terminating representation); 7.6 (intermediary organization) and 8.4(a) (misconduct).

Mr. Pulley must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4 regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

THOMAS A. TANSIL, BPR #017582
TENNESSEE LAWYER

On September 15, 2021, the Tennessee Supreme Court suspended Thomas A. Tansil, Jr. from the practice of law until further orders of the Court pursuant to Tennessee Supreme Court Rule 9, Section 22.3. Mr. Tansil entered a plea of Nolo Contendere to three (3) felonies involving theft of property, tampering with government records and computer offenses.

Pursuant to the Order of the Supreme Court, the matter has been referred to the Board to institute formal proceedings to determine the extent of the final discipline to be imposed upon Mr. Tansil as a result of his plea of Nolo Contendere to conduct constituting a serious crime as defined by Tenn. Sup. Ct. R. 9, § 2.

Mr. Tansil must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys.

KYLE DOUGLAS VAUGHN, BPR #032416
SULLIVAN COUNTY

On April 27, 2021, the Tennessee Supreme Court suspended Kyle Douglas Vaughan from the practice of law pursuant to Tennessee Supreme Court Rule 9, Section 22.3. On July 21, 2020, Mr. Vaughan pled guilty to Theft of Property over \$60,000 and under \$250,000 in violation of Tennessee Code Annotated Section 39-14-103, in the Criminal Court for Washington County, Tennessee. Pursuant to the Order of Enforcement, the Board is to institute a formal proceeding to determine the extent of final discipline to be imposed as a result of Mr. Vaughan's guilty plea.

Effective January 21, 2020, Mr. Vaughan was temporarily suspended by the Tennessee Supreme Court for misappropriating funds and posing a threat of substantial harm to the public. Mr. Vaughan's temporary suspension remains in effect pending further order of the Court.

Mr. Vaughan must comply with Tennessee Supreme Court Rule 9, Section 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys.

SUSPENSION ORDER VACATED

CHARLES EDWARD WALKER, BPR #021277
DAVIDSON COUNTY

On April 1, 2021, the Supreme Court of Tennessee entered an order vacating its March 25, 2021 Order of Enforcement suspending Charles Edward Walker from the practice of law. Mr. Walker filed a motion asking the Court to withdraw the Order based upon his having filed an appeal with the Court of Appeals, albeit the wrong court. The Supreme Court granted the motion, vacated its Order and transferred the appeal to the Supreme Court as provided by Tenn. R. App. P. 17. Mr. Walker is immediately eligible to resume the active practice of law in the State of Tennessee.

TEMPORARY SUSPENSIONS

ANGELA JOY HOPSON, BPR #022500
MADISON COUNTY

On July 28, 2021, the Supreme Court of Tennessee temporarily suspended Angela Joy Hopson from the practice of law for failing to respond to the Board concerning a complaint of misconduct. Tenn. Sup. Ct. R. 9, Section 12.3 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board.

Ms. Hopson is immediately precluded from accepting any new cases, and she must cease representing existing clients by August 27, 2021. After August 27, 2021, Ms. Hopson shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Ms. Hopson must notify all clients being represented in pending matters, as well as co-counsel and opposing counsel of the Supreme Court's Order suspending her law license and deliver to all clients any papers or property to which they are entitled.

Ms. Hopson must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 12.3(d), regarding the obligations and responsibilities of temporarily suspended attorneys and the procedure for reinstatement.

This suspension remains in effect until dissolution or modification by the Supreme Court. Ms. Hopson may for good cause request dissolution or modification of the suspension by petition to the Supreme Court.

JASON R. MCLELLAN, BPR #024596
SULLIVAN COUNTY

On September 9, 2021, the Supreme Court of Tennessee temporarily suspended Jason R. McLellan from the practice of law upon finding that Mr. McLellan misappropriated funds for his own use, poses a threat of substantial harm to the public, and failed to respond to the Board regarding a complaint of misconduct. Section 12.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Mr. McLellan is immediately precluded from accepting any new cases, and he must cease representing existing clients by October 9, 2021. After October 9, 2021, Mr. McLellan shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Mr. McLellan must notify all clients being represented in pending matters, as well as co-counsel and opposing counsel of the Supreme Court's Order suspending his law license. Mr. McLellan is required to deliver to all clients any papers or property to which they are entitled.

Mr. McLellan must comply with the requirements of Tennessee Supreme Court Rule 9, Section 28 and 12.3(d), regarding the obligations and responsibilities of temporarily suspended attorneys and the procedure for reinstatement.

This suspension remains in effect until dissolution or modification by the Supreme Court. Mr. McLellan may for good cause request dissolution or modification of the suspension by petition to the Supreme Court.

C. LEANN SMITH, BPR #018899
DAVIDSON COUNTY

On May 7, 2021, the Supreme Court of Tennessee temporarily suspended C. LeAnn Smith from the practice of law upon finding that Ms. Smith was substantially non-compliant with a Tennessee Lawyers Assistance Program (TLAP) monitoring agreement, and her non-compliance posed a threat of substantial harm to the public. Section 12.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases where an attorney has failed to substantially comply with a Tennessee Lawyers Assistance Program monitoring agreement or poses a threat of substantial harm to the public.

Ms. Smith is immediately precluded from accepting any new cases, and she must cease representing existing clients on June 6, 2021. After June 6, 2021, Ms. Smith shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted. Ms. Smith must notify all

clients being represented in pending matters, as well as co-counsel and opposing counsel, of the Supreme Court's Order suspending her law license. Ms. Smith is required to deliver to all clients any papers or property to which they are entitled.

This suspension remains in effect until dissolution or modification by the Supreme Court. Ms. Smith may for good cause request dissolution or modification of the suspension by petition to the Supreme Court.

PUBLIC CENSURES

TERRILL LEE ADKINS, BPR #013138 SHELBY COUNTY

On April 13, 2021, Terrill Lee Adkins, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Adkins agreed to represent a defendant in a pending product liability trial when an attorney at his office had previously been substantially involved in the same matter at a law firm which continued to represent the plaintiff. Mr. Adkins' colleague then left employment of Mr. Adkins' firm. Thereafter, the attorney returned to the employment of Mr. Adkins' firm, and the attorney reminded Mr. Adkins of his prior work on the still-pending case. Mr. Adkins re-hired the attorney and attempted to put screening procedures in place. Because the attorney was substantially involved in the representation of the plaintiff in the matter, the screening procedures are not able to be used to avoid the imputed disqualification of Mr. Adkins' law firm under Rule 1.10(d) (imputation of conflicts of interest). Mr. Adkins' conduct resulted in harm to his client and prejudice to the administration of justice.

In the same matter, Mr. Adkins was granted approval for a limited deposition of an opposing attorney on particular substantive topics. After the deposition, Mr. Adkins issued a subpoena for the employment file of the opposing attorney, seeking documents related to an alleged claim of sexual harassment made against the attorney in the course of his employment. The text of the subpoena described the documents sought in crass, sexist language. After a motion to quash was filed, Mr. Adkins withdrew the subpoena.

By these acts, Terrill Lee Adkins, has violated Rule of Professional Conduct 1.10(d) (imputation of conflict of interest), 8.4(d) (prejudice to the administration of justice) and 4.4 (respect for rights of third persons), and is hereby Publicly Censured for this violation.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

CHARLES MAURICE AGEE, BPR #005042
DYER COUNTY

On July 29, 2021, Charles Maurice Agee, Jr., an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

In the representation of a criminal defendant, Mr. Agee requested that his legal assistant communicate with the prosecutor to seek a continuance of the client's upcoming preliminary hearing because of a conflicting obligation in a court in another county. Mr. Agee did not personally speak or communicate directly with the prosecutor. The legal assistant communicated directly with the prosecutor and advised Mr. Agee that the prosecutor had agreed to the continuance. Mr. Agee appeared in Court on the morning of the preliminary hearing and advised the Court that he had spoken directly with the prosecutor by email and she had agreed to the continuance. Mr. Agee's statement omitted the fact that his communications with the prosecutor were entirely conducted through his legal assistant. The prosecutor was not in the courtroom when the statement was made. The prosecutor later confirmed to the Presiding Judge that she had not agreed to continue the preliminary hearing.

By these acts, Charles Maurice Agee, Jr., has violated Rules of Professional Conduct 3.3(a)(1) (candor towards the tribunal), 5.3 (responsibilities regarding nonlawyer assistance), and 8.4(c) (misconduct) and is hereby Publicly Censured.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

KATHLEEN LAIRD CALDWELL, BPR #009916
SHELBY COUNTY

On April 1, 2020, Kathleen Laird Caldwell, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Caldwell verbally agreed to represent a client in a post-conviction criminal case and on appeal for a flat fee of \$7,500.00. Ms. Caldwell's office received \$3,500.00 toward the fee and deposited the refundable fee directly into an operating account without a written fee agreement signed by the client. Ms. Caldwell met with the client in the Shelby County Jail but had not reviewed materials related to the client's criminal case, had not filed any post-trial motions, had not entered an appearance with the criminal court, and had not begun the appeal process. Less than one month after the representation began, Ms. Caldwell's representation was

terminated, and the client requested a refund of the unearned portion of the fee. Ms. Caldwell only offered to refund \$950.00 to the client and provided an invoice for services billed at the rate of \$300.00 per hour which Ms. Caldwell acknowledged had never previously been discussed with the client.

By these acts, Kathleen Laird Caldwell has violated Rule of Professional Conduct 1.2 (scope of representation), 1.4 (communication), 1.5 (fees), and 1.15 (safekeeping property), and is hereby Publicly Censured for these violations. As a condition of the Public Censure, Ms. Caldwell shall reimburse \$2,750.00 in fees directly to her former client within 120 days less any funds previously refunded by Ms. Caldwell.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***TERRY RENEASE CLAYTON, BPR #012392
DAVIDSON COUNTY***

On July 26, 2021, Terry Renease Clayton, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Clayton represented a client in the recovery of back child support. In August 2020, Mr. Clayton received the funds and timely issued a check to his client. After issuing another check in the case, Mr. Clayton issued a check to himself for fees, which resulted in an overdraft of the account. The check was returned by the bank.

Mr. Clayton then discovered that he had accidentally overpaid his client due to his mathematical error. Mr. Clayton asked his client to return the overpaid funds, which she did. After the error, Mr. Clayton delayed in removing his earned fee from trust, doing so in multiple payments over three months. Mr. Clayton did not have a client ledger on this matter. Mr. Clayton's conduct resulted in the commingling of his funds with client funds for three months.

By these acts, Terry Renease Clayton has violated Rule of Professional Conduct 1.15 (safekeeping funds) and is hereby Publicly Censured with the condition that he attend the next Trust Account Workshop by the Board of Professional Responsibility in September 2021.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***ANDREW JACKSON DANCY, BPR #022063
DAVIDSON COUNTY***

On September 17, 2021, Andrew Jackson Dancy, III, an attorney licensed to practice law in Tennessee, received a Public Censure from the Supreme Court of Tennessee conditioned upon payment of restitution to his client totaling \$2,400.00, and payment of costs and expenses to the Board of Professional Responsibility.

A Pennsylvania resident hired Mr. Dancy's firm to work out a loan modification in the pending foreclosure of her home. Mr. Dancy is not licensed in Pennsylvania but associated with at least two attorneys in Pennsylvania on foreclosure matters. Mr. Dancy failed to supervise his non-attorney staff to ensure that the associated Pennsylvania attorney was notified and retained to assist in the representation in violation of Rules of Professional Conduct 5.3 (Responsibilities Regarding Nonlawyer Assistants). Mr. Dancy also failed to deposit client funds into his IOLTA account as provided in his fee agreement in violation of Rules of Professional Conduct 1.15 (Safekeeping Property and Funds).

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***JACOB EDWARD ERWIN, BPR #020728
BLOUNT COUNTY***

On July 20, 2021, Jacob Edward Erwin, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Erwin utilized trust account funds for fulfillment of a personal financial obligation. While no clients or third parties were harmed, Mr. Erwin's conduct constitutes a breach of his fiduciary obligation regarding client funds and property. By these acts, Jacob Edward Erwin, has violated Rule of Professional Conduct 1.15 (safekeeping property and funds) and is hereby Publicly Censured for this violation.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***JAMES WILLIAM FRIAUF, BPR #027238
KNOX COUNTY***

On July 28, 2021, James William Friauf, an attorney licensed to practice law in Tennessee, received a Public Censure from the Supreme Court of Tennessee.

Mr. Friauf was retained to prosecute an employment action, and a written fee agreement was executed by his client providing Mr. Friauf with a forty percent (40%) contingency fee upon any recovery through settlement or trial, or the fees awarded by the Court through statutory fee shifting, whichever is higher. The fee agreement also allowed Mr. Friauf to charge an undisclosed hourly rate if he chose to withdraw from the representation. During an unsuccessful mediation, Mr. Friauf used the fee agreement to pressure his client to settle his action. Thereafter, Mr. Friauf, without providing any written bill detailing his services, demanded payment of \$63,261.46 in attorney fees at an hourly rate not previously agreed to and misrepresented to his client that Ethics counsel at the Board of Professional Responsibility had ratified Mr. Friauf's demand for fees and expenses.

Mr. Friauf executed a Conditional Guilty Plea acknowledging his conduct violated Rules of Professional Conduct 1.2 (Scope of Representation), 1.5 (Fees), 1.8 (Conflict of Interests), 7.1 (Information about Legal Services) and 8.4(a) (Misconduct).

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***ROBERT HARRIS GOLDER, BPR #034911
SHELBY COUNTY***

On April 13, 2021, Robert Harris Golder, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Golder represented two clients in petitions for post-conviction relief, and a third client in a petition for habeas relief. In all three matters, Mr. Golder delayed in taking proper action on behalf of his clients, failed to respond to inquiries from his clients, and failed to keep his clients updated on the status of their cases. In the habeas proceeding, Mr. Golder also missed applicable court deadlines and failed to deposit unearned fees into his trust account.

By these acts, Mr. Golder, has violated Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property and funds), 3.2 (expediting litigation), and 3.4(c) (fairness to opposing party and counsel) and is hereby Publicly Censured for this violation.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***FLORIDA M. HENDERSON, BPR #016137
WASHINGTON COUNTY***

On July 15, 2021, Florida M. Henderson, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Henderson agreed to represent a client in a small estate matter. Ms. Henderson's client made statements while testifying in open court about the decedent's marital status that were untrue. Ms. Henderson failed to take proper remedial action prior to the conclusion of the proceeding and did not subsequently address the issue directly with her client. Ms. Henderson instead filed a subsequent petition on behalf of the decedent's estate alleging that the client had made knowingly false statements in her testimony.

By these acts, Florida M. Henderson, has violated Rules of Professional Conduct 1.4 (communication), 1.6 (confidentiality of information), 1.8 (conflict of interest), 1.9 (duties to former clients) and 3.3 (candor toward the tribunal) and is hereby Publicly Censured for this violation.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***JEFFREY DENNIS JOHNSON, BPR #029704
WASHINGTON COUNTY***

On April 8, 2021, Jeffrey Dennis Johnson, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Johnson received an on-line "google" review from a former client who included his name in the review. Mr. Johnson posted a response on-line which stated details about the former client, including health and medical conditions of the former client and the type of case in which Mr. Johnson represented the client. Mr. Johnson also stated that the former client asked him to make false representations to the court. Mr. Johnson's comments were not favorable to the former client and were posted on a publicly accessible website.

By these acts, Jeffrey Dennis Johnson, has violated Rule of Professional Conduct 1.9(c) (duties to former client) and is hereby Publicly Censured for this violation. A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law. A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

JASON SCOTT MANGRUM, BPR #018098
WILLIAMSON COUNTY

On July 9, 2021, Jason Scott Mangrum, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

In the representation of clients in a civil proceeding, Mr. Mangrum failed to obtain consent from his clients to the voluntary dismissal of their lawsuit. Following the dismissal of the lawsuit, Mr. Mangrum made misrepresentations to his clients, falsely claiming that depositions were in the process of being scheduled. Mr. Mangrum delayed in taking proper action for his clients throughout the representation.

By these acts, Jason Scott Mangrum, has violated Rules of Professional Conduct 1.2(a) (scope of representation), 1.3 (diligence), 1.4 (communication), and 8.4(c) (misconduct), and is hereby Publicly Censured for these violations.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

KEVIN GLENN PATTERSON, BPR #010821
SHELBY COUNTY

On September 17, 2021, Kevin Glenn Patterson, an attorney licensed to practice law in Tennessee, received a Public Censure from the Supreme Court of Tennessee conditioned upon payment of fees to the Board of Professional Responsibility.

Mr. Patterson failed to retain client funds in his IOLTA account after the client failed to cash a check for one year and would not respond to various attempts to reach her. More than four years later, the client negotiated the check and the bank honored it, which caused Mr. Patterson's client trust account to overdraft when an unrelated client deposited a check written from his client trust account. Mr. Patterson immediately paid funds to correct the overdraft and cooperated with the Board making full disclosure of the cause of the overdraft after researching his bank accounts. Mr. Patterson entered a Conditional Guilty Plea admitting his conduct violated Rules of Professional Conduct 1.15 (Safekeeping Property and Funds).

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***MARK CHRISTOPHER SCRUGGS, BPR #010103
DAVIDSON COUNTY***

On May 24, 2021, Mark Christopher Scruggs, an attorney licensed to practice law in Tennessee, received a Public Censure from Supreme Court of Tennessee conditioned upon payment of fees to the Board of Professional Responsibility.

Mr. Scruggs was retained by the stepfather of an 11-year-old girl to represent him against criminal charges alleging rape of the child. The child was the subject of a pending dependency and neglect action arising from the same events, and the Juvenile Court had removed the child from the home and removed the mother's custodial rights. After being informed by the mother that her daughter had recanted statements she previously made against the stepfather, Mr. Scruggs, without seeking or obtaining permission from the custodian of the minor child, arranged with the mother for her daughter to be interviewed by a private investigator at his law office to confirm the recantation. Thereafter, Mr. Scruggs provided the audio recording of the interview to the Assistant District Attorney and the Guardian Ad Litem who had been appointed by the Juvenile Court. Tennessee recognizes a witness, under ordinary circumstances, may alone decide by whom to be interviewed. However, Tennessee also recognizes that the legal custodian of a minor victim has an absolute right to refuse defense counsel's request to interview the minor victim.

The interview in this matter was not under ordinary circumstances and required Mr. Scruggs to seek and obtain permission of the court-appointed custodian prior to interviewing the eleven-year-old victim. By conducting the interview at issue without providing the court-appointed custodian of the child an opportunity to exercise her legal right to refuse the interview, Mark Christopher Scruggs violated Rules of Professional Conduct 4.4(a)(1) (respect for the rights of third persons) and 8.4(a) (misconduct) and is hereby publicly censured for these violations.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***MEMORIE KRISTINA WHITE, BPR #024093
DAVIDSON COUNTY***

On April 15, 2021, Memorie Kristina White, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. White, with knowledge that a corporation was represented by counsel, knowingly contacted corporate employees and negotiated a reduction of a judgment lien held by the corporation.

By this act, Memorie Kristina White has violated RPC 4.2 (communication with a person represented by counsel) and is hereby Publicly Censured for this violation.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

REINSTATEMENTS

KRISTIE NICOLE ANDERSON, BPR #021840 CAMPBELL COUNTY

By Order of the Tennessee Supreme Court entered August 9, 2021, Kristie Nicole Anderson was reinstated to the active practice of law.

On July 9, 2021, Ms. Anderson was suspended by the Supreme Court of Tennessee for one (1) year with thirty (30) days active suspension and the remainder on probation. Ms. Anderson filed a Petition for Reinstatement to the practice of law pursuant to Tennessee Supreme Court Rule 9, Section 30.4(c) on July 27, 2021. The Board found the Petition was satisfactory and submitted an Order of Reinstatement to the Court.

Ms. Anderson's reinstatement to the active practice of law is conditioned upon her engagement of a practice monitor during the probationary period who will meet with her monthly to assess her case load, timeliness of tasks, adequacy of communication with clients, and accounting procedures and provide monthly written reports of Ms. Anderson's progress to Disciplinary Counsel.

Ms. Anderson shall incur no new complaints of misconduct that relate to conduct occurring during the period of probation that result in the recommendation by the Board that discipline be imposed.

A. SAIS PHILLIPS FINNEY, BPR #028845 SHELBY COUNTY

By Order of the Tennessee Supreme Court entered November 6, 2020, the Tennessee law license of A. Sais Phillips Finney of Memphis, Tennessee, was reinstated.

Ms. Finney was temporarily suspended from the practice of law by Order of the Supreme Court on October 29, 2020, for failing to respond to the Board regarding complaints of misconduct. On October 30, 2020, Ms. Finney provided a response to the Board and filed a Petition for Dissolution of Temporary

Suspension. The Board filed an answer acknowledging responses from Ms. Finney were received by the Board which the Court deemed sufficient for dissolution of the temporary suspension.

DAVID SCOTT PARSLEY, BPR #013606
DAVIDSON COUNTY

By Order of the Tennessee Supreme Court entered February 3, 2021, David Scott Parsley was reinstated to the active practice of law.

On October 12, 2020, Mr. Parsley was suspended by the Supreme Court of Tennessee for one (1) year with three (3) months active suspension. Mr. Parsley filed a Petition for Reinstatement to the practice of law pursuant to Tennessee Supreme Court Rule 9, Section 30.4(c) on January 11, 2021. The Board found the Petition was satisfactory and submitted an Order of Reinstatement to the Court.

The Board filed a Response on July 13, 2020, acknowledging the sufficiency of Mr. Holiday's response and no objection to his motion.

KARL EMMANUEL PULLEY, BPR #012761
DAVIDSON COUNTY

By Order of the Tennessee Supreme Court entered September 9, 2021, Karl Emmanuel Pulley was reinstated to the active practice of law.

On June 8, 2021, Mr. Pulley was suspended by the Supreme Court of Tennessee for one (1) year with thirty (30) days active suspension and the remainder on probation. Mr. Pulley filed a Petition for Reinstatement to the practice of law pursuant to Tennessee Supreme Court Rule 9, Section 30.4(c) on August 18, 2021. The Board found the Petition was satisfactory and submitted an Order of Reinstatement to the Court.

Mr. Pulley's reinstatement to the active practice of law is conditioned upon his engagement of a practice monitor during the probationary period who will meet with him monthly to assess his case load, timeliness of tasks, adequacy of communication with clients, and accounting procedures and provide monthly written reports of Mr. Pulley's progress to Disciplinary Counsel. As a further condition of probation, Mr. Pulley shall incur no new complaints of misconduct that relate to conduct occurring during the period of probation that result in the recommendation by the Board that discipline be imposed.