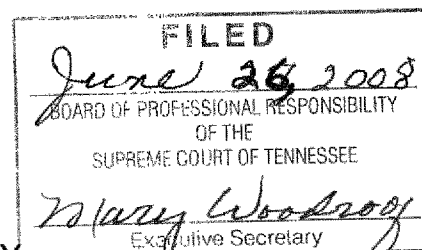


IN THE DISCIPLINARY DISTRICT IX  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE



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IN RE: ARCHIE SANDERS, III  
BPR#012784, Respondent  
An Attorney Licensed and  
Admitted to the Practice of  
Law in Tennessee  
(Shelby County)

DOCKET NO. 2007-1681-9-LC

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JUDGMENT OF THE HEARING COMMITTEE

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THIS cause came on to be heard by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee June 3, 2008, at which time, the hearing was concluded after hearing all proof including, but not limited to, witnesses' testimony and exhibits and this cause was heard pursuant to Rule 9, Rules of Tennessee Supreme Court. This Hearing Committee, Michael J. Banks as Chair, Bruce U. Moss, Jr. and Jeffrey William Parham, that the following findings of fact and submitted judgment in the cause as follows:

**I. STATEMENT OF THE CASE**

1. A Petition for Discipline was filed on May 9, 2007, charging the Respondent for violation of disciplinary rules in file numbers 29445C-9-LC; 29446C-9-LC; 29447C-9-LC; 29448C-9-LC; 29449C-9-LC; 29450-9-LC; 29451C-9-LC; 29631C-9-LC and 29640-9-LC. Respondent was duly served with this Petition and filed an Answer to said Petition in June 1, 2007.

2. On October 9, 2007 a Supplemental Petition For Discipline was filed, charging the Respondent with violation of disciplinary rule in file number 30103-9-LC.

3. The Respondent filed a response to the Supplemental Petition dated October 30, 2007.

4. The parties and Hearing Panel met by conference calls on several occasions to develop a scheduling order for this matter and this matter was heard on both the original and Supplemental Petition on June 3, 2008.

## **II. STATEMENT OF THE FACTS**

1. Archie Sanders, III was employed by the Cochran Law Firm to represent numerous clients in two separate actions against World Rental Car Sales. One action regarded employees that alleged they had been wronged by World Rental Car Sales and the other action was brought by consumers, who had allegedly been wronged by World Rental Car Sales. In addition, one of the employees, Barbara Hale, had filed a separate discrimination lawsuit against World Rental Car Sales, of which Mr. Sanders handled.

Originally, all of the cases had been assigned to attorney Drayton Berkley, who is also with the Cochran Law Firm, however, Mr. Berkley's employment with the Cochran Law Firm was terminated in January 2005. At that time, the Respondent, Mr. Sanders, took over all of the cases that Mr. Berkley had been assigned, including the cases at issue against World Rental Car Sales.

2. Prior to Mr. Sanders taking the cases over in January of 2005, Mr. Berkley had been diligent in taking depositions and filing proper discovery and also in staying in

contact with his clients and communicating with the numerous clients in this case. After January 20, 2005, it is alleged that the Respondent failed to communicate with his clients in these matters and would not return phone calls nor see any of the clients in his office.

3. Mr. Sanders did set up a series of meetings for the groups to meet, including a meeting in March 2005 with Mr. Sanders, the complainants, and Jock Smith, one of the national partners. Again, Mr. Sanders set up a meeting for the same parties on May 6<sup>th</sup> and also July 6<sup>th</sup>.

4. There was conflicting testimony from Mr. Sanders and the complainants, however, either at the May 2006 meeting or the July 2006 meeting, the discussion got very heated and the complainants demanded a trial date. Complainants contend that this was at the May 2006 meeting and Mr. Sanders contends that this did not happen until the July 2006 meeting. The Board called as their witnesses, Attorney Drayton Berkley, Linda Tatum Proctor, Barbara Hale, Charles Vaughn, Carl P. Alexander, Abdule Nooh, Erniece Swift and attorney Archie Sanders. With the exception of attorney Drayton Berkley and Archie Sanders, all of the other names were complainants and also Plaintiffs in the lawsuit against World Rental Car Sales. Some of the complainants were Plaintiffs to the employee's suit against World Rental Car Sales and others were Plaintiffs in the consumer case against World Rental Car Sales.

5. All of the complainants were consistent in their testimony in that each tried numerous times to speak with Mr. Sanders and that Mr. Sanders failed to return their phone calls or meet with them at their request. All of the complainants testified that attorney Berkley, who had previously been assigned to this case, was diligent and was

responsible in taking phone calls and returning their phone calls prior to Mr. Sanders taking over the case.

6. Mr. Sanders admitted that when he received the file in January 2005 that essentially all of the discovery and depositions had been done and that the case was ready to go to trial, yet Mr. Sanders did not get a court date until June 2006 and this was only a setting to see if the other attorneys involved were available on that date.

7. Complainants further testified that numerous documents that were irreplaceable had been turned over to Drayton Berkley of the Cochran Firm to be placed in the file and that the documents were no longer in the file.

8. Barbara Hale, one of the complainants herein, was an employee of World Rental Car Sales and was a Plaintiff in the lawsuit against World Rental Car Sales and also had a discrimination suit against World Rental Car Sales. Ms. Hale had to file Chapter 7 Bankruptcy at some point in time during the litigation and Ms. Hale testified that Mr. Sanders failed to prepare her for depositions and that she waited two hours in his office prior to depositions and only watched a video regarding deposition preparation. Ms. Hale also stated that according to Mr. Sanders the court ordered a verbal Settlement Order of \$5,000.00 on her discrimination claim. Ms. Hale sought other legal advice and received a \$7,500.00 settlement for her claim.

7. The Respondent contends that upon taking over the file from Drayton Berkley, he sent out letters to all of the clients and complainants herein introducing himself and provided in the proof, a copy of this letter, although its not dated and not on Cochran Law Firm letterhead, but Mr. Sanders testifies that he thinks that he sent out

letters to all of the new clients that he had taken over from Mr. Berkley. The complainants herein all deny that they received that letter and that they did not know that Mr. Sanders was handling their case until the first meeting in May of 2005.

8. Respondent admits that in January 2005 until approximately June of 2006, he took very little action on the case and in 2006, finally got a trial setting for this matter with an October 23<sup>rd</sup> trial date.

9. Respondent admits that he did not handle the case as he probably should but that it does not rise to the level of negligence or to a violation of the rules of conduct.

### **III. CONCLUSIONS OF LAW**

1. The Board contends that Respondent has violated DR 1.1, 1.3, 1.4, 1.15, 8.4(a)(d).

2. DR 1.1 Competence - states:

“a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonable necessary for the representation”.

3. The panel finds that Mr. Sanders possessed the legal knowledge and skill to represent the clients and was competent in his understanding of the law, but the panel finds that there is a serious question of whether or not Mr. Sanders had read the file and prepared himself for these specific cases.

4. The Board contends that the Respondent has violated:

DR 1.3 - Diligence:

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

5. The Respondent concedes that in hindsight he should have done things differently but denies that he failed to return phone calls in the manner which the Complainants contend. Furthermore, the Respondent admits that when he took over the case in January of 2005, most of the discovery work had been done and that the case was ready to go to trial, but that he failed to get a trial setting until 18 months after he took over the case and only after a meeting with the clients in which they became upset because of the slow pace of the case. The Respondent immediately left the meeting and got a trial setting, which the Panel believes should have been done much earlier in the case. Furthermore, Exhibit D to the Board of Professional Responsibility's Witness and Exhibit list was a letter from Leo Bearman, Jr who represented World Rental Car Sales that was dated June 20, 2006 requesting answers on discovery that was sent to Mr. Sanders and Attorney Bearman was making his fourth request for answers to interrogatories sent to Mr. Sanders on February 15, 2005, nearly 18 months overdue which Mr. Sanders had failed to answer and as of the date of this hearing had not answered. Also, Mr. Sanders did absolutely nothing to advance the case during the 18 months he had the case.

6. The Board contends that the Respondent violated:

DR 1.4 – Communication

(a) A lawyer shall keep a client reasonably informed of the status of a matter and comply with reasonable requests for information within a reasonable time.

(b) A lawyer shall explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

7. The Complainants contend that Mr. Sanders failed to return multiple phone calls and requests for meetings and that one of the Complainants waited in his office approximately 2 hours for an appointment to meet with Mr. Sanders. Furthermore, the Complainant, Barbara Hale, testified that she waited approximately 2 hours for Mr. Sanders to prepare her before her deposition in her discrimination case and that after watching a short video on deposition preparation; she received no further instructions from the Respondent prior to entering her deposition. Respondent contends that he sent a letter of introduction to all of the Complainants herein when he took the case over from attorney Drayton Berkley, but could not provide specific copies of those letters and the Complainants denied ever receiving those letters. The Respondent also contends that he did make regular phone calls and returned phone calls to the Complainants and submitted office records, which show entries anytime communication or action was taken on a client's case and the Respondents own office records are devoid of any proof that he returned any of the phone calls. As a matter of fact, the proof tendered by Mr. Sanders proves that many of the complainants called angry and upset but do not show that Mr. Sanders ever returned a single one of their phone calls. The Board contends that the Respondent violated:

#### DR 1.15 – Safekeeping Property

(a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds. A lawyer in possession of clients' or third persons' property and funds incidental to representation shall hold said property and funds separate from the lawyer's own property and funds.

(1) Funds belonging to clients or third persons shall be kept in a separate account maintained in an insured depository institution located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the overdraft notification program as required by Supreme Court Rule 9. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying bank service charges on that account, but only in an amount reasonable necessary for that purpose.

(i) Except as provided by subparagraph (a)(1)(ii), interest earned on accounts in which the funds of clients are deposited, less any deduction for service charges (other than overdraft charges), fees of the depository institution, and intangible taxes collected with respect to the deposited funds, shall belong to the clients whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.

(ii) A lawyer shall deposit funds of clients and third persons that are nominal in amount or expected to be held for a short period of time in a pooled account that participates in the Interest On Lawyers' Trust Accounts ("IOLTA") program, which provides that all interest earned be paid to the Tennessee Bar Foundation in accordance with the requirements of Supreme Court Rule 43. The determination of whether funds are nominal in amount or are to be held for a short period of time rests in the sound discretion of the lawyer, and no charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in that regard.

8. It is undisputed that many documents from the Complainants were turned over to the Cochran Law Firm, apparently to Drayton Berkley. Drayton Berkley turned the file over to Archie Sanders at the time of Mr. Berkley's termination and at some point during the course of the litigation beginning in 2002 to the present, some of the documents have been lost or destroyed. The proof did not show that Mr. Sanders was responsible for the loss or the destruction of these documents and that there was not a preponderance of the evidence to show that Mr. Sanders ever had these in his



possession and in fact, that they could have been lost by Mr. Berkley or other members of the Cochran Law Firm.

9. The Board contends that the Respondent violated:

DR 8.4 – Misconduct

It is professional misconduct for a lawyer to:

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

10. The panel is of the opinion that Respondent did not knowingly violate or attempt to violate the rules of professional conduct or assist or induce another to do so under subparagraph (a). The panel does feel that the Respondent did violate subparagraph (d) in that his conduct caused a great delay in getting the cases set for trial and that the Complainants have been to numerous other lawyers to have them take over the cases and that they have been unable so far to find anyone to represent them in this matter and that therefore, the Respondent engaged in conduct that is prejudicial to the administration of justice.

**IV. FACTS FINDING OF AGGRAVATING AND MITIGATING CIRCUMSTANCES**

11. The Hearing Panel finds that there is an absence of aggravating circumstances since the Respondent has practiced law since 1987 and had no other complaints against him.

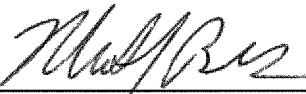
## V. JUDGMENT

It is therefore Ordered, Adjudged, and Decreed by the Hearing Committee as follows:

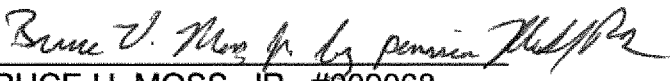
1. That the Hearing Committee finds that preponderance of the evidence that while the Respondent had violated DR 1.3, 1.4, and 8.4(d).
2. That the Respondent, Archie Sanders, III, receive a public censure for his actions/inactions regarding the Complainants in this matter.

Enter this 24 day of June, 2008.

BANKS LAW FIRM, P.A.

By:   
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this date forwarded a copy of the foregoing instrument to Mr. Randall Spivey, Board of Professional Responsibility, Disciplinary Counsel, 1101 Kermit Drive, Suite 730, Nashville, TN 37217, and Archie Sanders, III c/o Cochran Law Firm, One Commerce Square, Suite 2600, Memphis, TN 38103 by depositing same in the U. S. Mail, correctly addressed, postage prepaid, on this the 24 day of June, 2008.

BANKS LAW FIRM, P.A.

By: *Jeffrey William Parham*