

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

**IN RE: C. LEANN SMITH,
BPR #018899, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Davidson County)**

DOCKET NO. 2021-3185-5-DB

JUDGMENT OF THE HEARING PANEL

This cause came on to be heard before this Hearing Panel of the Board of Professional Responsibility on April 13, 2022, in Courtroom 502 of the Historic Metro Courthouse, 1 Public Sq., Nashville, TN 37201. This Final Hearing was conducted pursuant to Rule 9, Rules of the Tennessee Supreme Court. The Hearing Panel, Matthew T. Harris (Chair), D. Billye Sanders and Raymond S. Leathers, after considering the entire file in this matter, testimony of the witnesses, exhibits and arguments presented and after thorough deliberations makes the following Findings of Fact, Conclusions of Law and renders its Judgment.

STATEMENT OF THE CASE

1. This is a disciplinary proceeding against Respondent, C. LeAnn Smith, an attorney licensed to practice law in Tennessee.
2. The Petition for Discipline, Docket No. 2021-3185-5-DB, was filed June 28, 2021, and served upon Ms. Smith (hereinafter sometimes referred to as "Respondent").
3. On September 14, 2021, the Respondent filed an Answer to the Petition for Discipline.

4. On October 1, 2021, the Hearing Panel was appointed.
5. A pre-hearing Case Management Conference was held on November 2, 2021, and a Scheduling Order was entered December 2, 2021, setting the Final Hearing for April 13, 2022.

6. On April 1, 2022, the Board filed its Pre-Trial Brief and Exhibit and Witness List.

7. Ms. Smith did not file a trial brief nor an exhibit and witness list.

8. On April 7, 2021, the Board filed an Amended Exhibit and Witness List.

9. The Final Hearing was held April 13, 2022. Ms. Smith appeared pro se, and the Board was represented by Douglas R. Bergeron. In its case in chief, the Board called the Executive Director of the Tennessee Lawyer Assistance Program (TLAP), Buddy Stockwell and the Respondent, C. LeAnn Smith. In her case in chief, Ms. Smith testified on her own behalf and called no other witness.

10. The following documents were admitted as evidence at the Final Hearing: October 2017 transcript of Respondent's deposition, transcript of trial testimony of Respondent in October 2018, Respondent's Release of Information waiver for TLAP, Respondent's monitoring agreement with TLAP, three (3) instances of prior disciplinary history, the issued Public Censure with TLAP requirements originally issued as a result of the conduct alleged, and a prior TLAP Monitoring Agreement executed by Respondent for her voluntary participation in Monitoring prior to the issues that gave rise to this disciplinary matter, the letter of TLAP's Buddy Stockwell notifying the Board of Ms. Smith's non-compliance, Ms. Smith's email to TLAP advising of her termination of her participation in the TLAP monitoring Agreement, Ms. Smith' s TLAP Monitoring Agreement from 2012/2013 for her voluntary participation in TLAP, and Ms. Smith's letter to the Board, dated February 4, 2019, responding to the initial complaint filed in this matter .

11. At the close of proof on April 13, 2022, the Hearing Panel ordered the parties to submit proposed findings of fact and conclusion of law to be due on or before April 28, 2022. The Board, through Mr. Bergeron, filed proposed findings of fact and conclusions of law. Respondent did not submit any findings or conclusions.

FINDINGS OF FACT

Pursuant to the testimony received at the final hearing in this matter, the admissions contained in the Answer of the Respondent, and the documentary evidence admitted at the final hearing, the Hearing Panel hereby finds the following facts proven by a preponderance of the evidence:

12. By letter dated October 23, 2018, the Board of Professional Responsibility received a Disciplinary Complaint from attorney, Larry Hayes, Jr., regarding the conduct of Ms. Smith. (File No. 58897-5-ES). Ms. Smith was a litigant in a custody proceeding in the Juvenile Court of Davidson County, Tennessee, Docket No. 2008-4989, Petition No. PT223803.

13. On October 10, 2017, as part of the juvenile proceeding, Ms. Smith was deposed by Larry Hayes and questions relative to Ms. Smith's use of alcohol were asked and answered.

14. On October 12, 2018, Ms. Smith testified at length at the trial in the same juvenile proceeding regarding her use of alcohol during 2017 and testified about her deposition testimony regarding the same time frame and topic.

15. At that trial, Ms. Smith admitted to lying in her sworn deposition testimony on multiple occasions. (Exhibit 7, pp. 2152-2155 of trial transcript).

16. On October 21, 2020, a Public Censure was issued to Ms. Smith by the Board imposing a censure with the condition that Ms. Smith complete an assessment with TLAP and

follow the recommendations stemming from said assessment. (Exhibit 10). In the Final Hearing, Ms. Smith challenged the determination in the Public Censure that she lied under oath about using alcohol **in the presence of her minor child**. (Emphasis added). While admitting that she lied under oath, she testified that it was not in the presence of her child. Upon reviewing the underlying transcript of the juvenile proceeding it appears questionable whether she actually consumed alcohol in the presence of her child. However, this does not obviate the fact that she lied under oath on multiple occasions in a deposition taken in the same case.

17. Ms. Smith did not demand a formal hearing within twenty days of the Notice of Public Censure pursuant to Tenn. Sup. Ct. R. 15(e), or in other words accepted the issued Public Censure.

18. Pursuant to the condition of the Public Censure, on December 7, 2020, Ms. Smith executed a Tennessee Lawyer Assistance Monitoring Agreement. As part of the Monitoring Agreement Ms. Smith was subject to random alcohol screenings.

19. On March 23, 2021, Ms. Smith was notified that she was to submit to a random alcohol test. Ms. Smith "checked in" as requested but did not appear for the scheduled test. As a result of not showing for the first drug screen, Respondent was scheduled for a blood alcohol test on April 1, 2021, which could detect alcohol consumption in the previous three weeks. Respondent did not "check in" and did not appear for the screening.

20. Following Ms. Smith's second no show for required testing, a Zoom meeting was held between TLAP and Ms. Smith, on April 6, 2021. Mr. Stockwell testified that in that meeting Ms. Smith admitted to having "slipped" and consumed alcohol in the last few days. Pursuant to that revelation, Mr. Stockwell advised Ms. Smith that she was required to perform an in-patient assessment. Ms. Smith wanted a guaranteed outpatient assessment option which TLAP could not

promise. She wanted an outpatient option since she claimed she could not find a suitable childcare option for her minor child if she was inpatient. Mr. Stockwell testified that once he stated that the assessment would be multiday, further discussions were over from Ms. Smith's perspective. Mr. Stockwell testified that he could not recall whether he informed Ms. Smith that there may have been an out-patient option available in Nashville. Requiring in-patient assessments was TLAP's standard practice in situations where monitored patients miss testing and/or advised of "slipping" by using alcohol. It was clear to Mr. Stockwell that Respondent did not intend to undergo the recommended assessment or follow through with the Monitoring Agreement. Likewise, the Panel finds that Respondent did not intend to undergo the assessment or follow through with the Monitoring Agreement.

21. The following day, on April 7, 2021, Ms. Smith emailed Mr. Stockwell and Holly Wade of TLAP and advised that she had a phone call with Eileen Smith following the Zoom Meeting of April 6, and stated in part:

I explained to her as I have to you on numerous occasions, that I felt it was no longer in my best interest to be jumping through hoops for something I do not want. As I told her, this unfortunately, includes TLAP, and its demands and expenses.

(Exhibit 14).

22. Following Ms. Smith's actions and statements to TLAP, Mr. Stockwell informed the Board of Professional Responsibility of Ms. Smith's non-compliance with her TLAP obligations. This notification was by letter dated April 9, 2021.

23. On May 7, 2021, the Tennessee Supreme Court Ordered that Ms. Smith be temporarily suspended for her violation of her TLAP obligations indicating that Ms. Smith posed a threat of substantial harm.

24. Ms. Smith has not appealed the Supreme Court's temporary suspension since its issuance, nor has she made any attempt to be reinstated from said suspension.

25. The Board, on June 11, 2021, pursuant to its authority under Tenn. Sup. Ct. R. 9, §12.8, authorized the filing of the Petition in this case based on Ms. Smith's failure to comply with the requirements of her Public Censure.

26. At the Final Hearing and in her Answer to the Petition, Ms. Smith admitted to violations of the Tennessee Rules of Professional Conduct RPC 8.4(c) and (d).

27. At the Final hearing, Ms. Smith agreed that reasonable discipline to be imposed upon her for the alleged violations would be two (2) years and six (6) months of active suspension and a condition, prior to being reinstated, of compliance with a TLAP monitoring Agreement, any and all assessments required pursuant to that agreement, and resulting treatment recommendations following any such assessments. While the Panel is not bound by the apparent "agreement" of the parties to the discipline to be imposed, we find that the proposed sanction is consistent with the ABA Standards for the imposition of Sanctions after considering all Aggravating and Mitigating circumstances as set forth below.

28. Ms. Smith has incurred prior discipline for prior Rule violations as follows:

- (1) Public Censure, December 28, 2005, violation of RPC 1.1 (duty of competent representation); RPC 1.3 (duty of diligence and promptness); RPC 1.4 (client communication); and RPC 8.4(d) (conduct prejudicial to the administration of justice). (Exhibit 3).
- (2) Informal Admonition, March 19, 2007, violation of RPC Rules 1.1 and 8.4(a) and (d) for Ms. Smith allowing her client to sign a Petition before it was even drafted and her failure to ensure that her client reviewed the Petition prior to filing. (Exhibit 4).

(3) Public Censure, December 12, 2012, Violation of RPC 8.4(b)(misconduct) by engaging in conduct underlying a conviction of Driving Under the Influence, Second Offense. (Exhibit 5).

29. Evidence introduced at the Final Hearing shows Ms. Smith has, over many years, previously received treatment for her substance abuse issues and has relapsed after each such treatment. Further, she revealed at the hearing, apparently for the first time, that she had participated in a 90-day program at Talbott, a well-regarded treatment facility according to Mr. Stockwell. Her failure to previously acknowledge this to TLAP was another example of her lack of truthfulness and candor when it comes to dealing with her past issues of alcohol abuse. Mr. Stockwell testified that TLAP would welcome her back and assist her at any point in the future.

30. Ms. Smith provided no evidence to the Hearing Panel of any attempts at sobriety and/or treatment of her substance abuse issues since she terminated her TLAP Monitoring Agreement on April 7, 2021.

31. The evidence preponderates that Ms. Smith lied under oath on multiple occasions as asserted in the Petition filed by the Board. This was admitted at the Hearing and was admitted in Respondent's Answer at paragraphs 25, 26 and 28 as well.

CONCLUSIONS OF LAW

32. Pursuant to Tenn. Sup. Ct. R. 9, § 8.1, attorneys admitted to practice law in Tennessee, including attorneys specially admitted by a court of this state for a particular proceeding, are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts.

33. Pursuant to Tenn. Sup. Ct. R. 9, § 1, the license to practice law in his state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the Standards imposed upon members of the bar as conditions for the privilege to practice law.

34. Pursuant to Tenn. Sup. Ct. R. 9, § 11.1, acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

35. The Supreme Court has the essential and fundamental right to prescribe and administer rules pertaining to the licensing and admission of attorneys. *In re Burson*, 909 S.W.2d 768, 773 (Tenn. 1995). The Supreme Court, in the exercise of its constitutionally delegated authority, promulgated rules and regulations governing the practice of law. *Smith County Education Ass'n*, 676 S.W.2d at 333-34. Analogies to ordinary private or adversary litigation are fallacious and attempts to apply the ordinary processes of civil litigation to the regulatory authority of the Supreme Court over the legal profession are inappropriate. *Petition of Tennessee Bar Ass'n*, 539 S.W.2d 805, 810 (Tenn. 1976).

36. Based upon the evidence presented and by a preponderance of the evidence the Hearing Panel finds that Ms. Smith knowingly failed to conduct herself in conformity with the Tennessee Rules of Professional Conduct and is guilty of professional misconduct in violation of RPC 8.4 (c) and (d) (Misconduct).

37. Ms. Smith knowingly lied while under oath on numerous occasions in a deposition when questioned about her use of alcohol on past occasions.

38. Ms. Smith knowingly terminated her TLAP Monitoring Agreement, that was required as a condition of her Public Censure issued in October of 2020, after knowingly using alcohol and knowingly failing to present for required testing.

APPLICATION OF THE ABA STANDARDS

39. Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, once a violation has been established, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, ("ABA Standards").

40. Based upon the facts and misconduct previously cited, the Hearing Panel finds the following ABA Standards applicable and relevant to its determination of the appropriate discipline to be imposed against Ms. Smith:

5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

6.1 FALSE STATEMENTS, FRAUD, AND MISREPRESENTATION

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or

potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

- 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding or causes an adverse or potentially adverse effect on the legal proceeding.

2.3 SUSPENSION

Suspension is the removal of a lawyer from the practice of law for a specified minimum period of time. Generally, suspension should be for a period of time equal to or greater than six months, but in no event should the time period prior to application for reinstatement be more than ten years. Procedures should be established to allow a suspended lawyer to apply for reinstatement, but a lawyer who has been suspended should not be permitted to return to practice until he has completed a reinstatement process demonstrating rehabilitation, compliance with all applicable discipline or disability orders, and fitness to practice law.

AGGRAVATING CIRCUMSTANCES

41. Pursuant to ABA Standard 9.22, the following aggravating factors were considered by the Hearing Panel to determine the appropriate discipline to be imposed:

(a) Ms. Smith's multiple offenses are an aggravating circumstance justifying an increase in the degree of discipline to be imposed.

(b) Ms. Smith's substantial experience in the practice of law, having been licensed since 1997, is an aggravating circumstance justifying an increase in the degree of discipline to be imposed.

(c) Ms. Smith has received prior discipline, not including the Public Censure originally issued in this cause, justifying an increase in the degree of discipline to be imposed.

(d) Ms. Smith in knowingly failing to comply with her conditions of her accepted Public Censure justifies an increase in the degree of discipline to be imposed.

MITIGATING CIRCUMSTANCES

42. Pursuant to ABA Standards 9.31 and 9.32, the following mitigating circumstances were also considered by the Hearing Panel to determine the appropriate discipline to be imposed:

(a) Ms. Smith testified that she lied under oath in the custody battle because she was seeking to protect her son from potential physical and mental harm.

(b) Ms. Smith later admitted the misconduct and was not representing a client in the proceeding where she lied.

(c) Ms. Smith testified that her inability to comply with an in-patient assessment required by TLAP and her inability to follow any in-patient recommendations that may result from such an assessment is because she does not have a suitable childcare option for her minor son.

JUDGMENT

Based upon the evidence presented in this case, the application of the Rules of Professional Conduct and considering the ABA Standards, the Hearing Panel finds by a preponderance of the evidence that Ms. Smith committed disciplinary misconduct by lying under oath in violation of Tennessee Rules of Professional Conduct 8.4(c) and 8.4(d) and should be actively suspended from the practice of law pursuant to Tenn. Sup. Ct. R. 9, § 12.2 for a period of two (2) years and six (6) months. Additionally, as a condition of any reinstatement that Ms. Smith may request following her active suspension, Ms. Smith shall enter into a TLAP Monitoring Agreement, as defined in Tenn. Sup. Ct. R. 33, Appendix A, and such agreement shall authorize

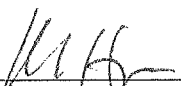
Permitted Disclosures to the Board of Professional Responsibility as defined in Tenn. Sup. Ct. R. 33, Appendix A and Tenn. Sup. Ct. R. 33.07. Ms. Smith shall comply, cooperate, and partake in any assessment requested by TLAP, and complete and/or comply with any course of treatment recommended by TLAP following any such assessments.

Cost of this cause will be assessed pursuant to Tenn. Sup. Ct. R. 9, § 31.3 (a).

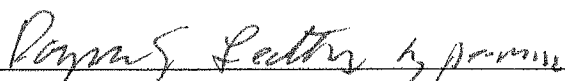
IT IS SO ORDERED

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 by filing a Petition for Review in the Circuit or Chancery Court within sixty (60) days of the date of entry of the Hearing Panel 's judgment.


Entered on the 12 day of May, 2022.



Matthew T. Harris, Chair



Raymond S. Leathers, Hearing Panel Member



D. Billye Sanders, Hearing Panel Member