

**FILED**  
*December 29, 2003*  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE  
*Mary Woodruff*  
Executive Secretary

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

IN RE:

MICHAEL HENRY SNEED, )  
)  
RESPONDENT. )  
)  
An Attorney Licensed to Practice Law )  
in Tennessee Davidson County, Tennessee )  
(BPR No. 11141) )

BOPR DOCKET NO. 2002-1339-5-CH

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JUDGMENT OF THE HEARING COMMITTEE

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This cause came to be heard by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee on November 17, 2003. This Hearing Committee Mark A. Baugh, Chair, David S. Ewing, and Edgar M. Rothschild, III, makes the following findings of fact and submits its judgment as follows:

**STATEMENT OF THE CASE**

On October 9, 2002, a Petition for Discipline was filed against Respondent in seven cases styled and numbered as follows: 23592-5-CH, 23655-5-CH, 23700-5-CH, 23701-5-CH, 23766-5-CH, 23994-5-CH, and 24824-5-CH.

On January 3, 2003, Petitioner filed a Motion For Default Judgment, as Respondent failed to answer the Petition For Discipline within the twenty days allowed by Supreme Court Rule 9, Section 8.2.

On February 6, 2003, Respondent filed a Motion for Extension of Time to Answer on February 6, 2003. Disciplinary counsel did not oppose the motion and the Honorable Charles Carpenter, the Chair of the Board of Responsibility, granted the Motion.

On February 10, 2003, Respondent filed an answer to the Petition for Discipline. On August 11, 2003, a Supplemental Petition for Discipline was filed and served on respondent on August 13, 2003. On September 19, 2003, disciplinary counsel filed a Motion for Default Judgment alleging that Respondent had not answered the Supplemental Petition for Discipline. Respondent did not respond to the motion and on November 4, 2003, the Hearing Panel entered a Default Judgment Order.

On November 17, 2003, the Petition for Discipline came on for hearing to determine whether Respondent was in violation of the Code of Professional Responsibility regarding the cases in the Petition and the punishment, if any, to be assessed against the Respondent in the cases identified in the Petition for Discipline and in the Supplemental Petition for Discipline.

On the day of the hearing, Respondent filed a Motion to Continue Hearing and to Set Status Conference and Scheduling Order, which was denied, along with a Motion in Limine, which was also denied. Respondent also filed a Motion to Strike Default Judgment Order Entered on the Supplemental Petition For Discipline and to Dismiss the Supplemental Petition. The Panel set aside the entry of the Default Judgment, but denied the Motion to Dismiss the Supplemental Petition.

Disciplinary Counsel dismissed the cases of Elizabeth Wynn and Shelia Lipscomb Browne. The Petition and the Supplemental Petition proceeded to a full hearing regarding the other cases. Disciplinary counsel called Complainants: Karen Hodge, Denetta Taylor, Orlando Gaines and William Phillips as witnesses. Respondent provided only his testimony to refute Complainants' testimony.

## FINDING OF FACTS AND CONCLUSIONS

### FILE NO. 23655-5-CH

Complainant, Karen D. Hodge, was seriously injured on June 23, 1998, when she was struck by a car. Respondent agreed to represent Complainant in a Workers' Compensation claim, a civil suit, and a Social Security claim, all arising out of the June 23, 1998, injury. Respondent obtained a quick settlement of the worker's compensation claim, for which he received attorney fees of \$21,587.80.

On June 14, 1999, on Ms. Hodges' behalf, Respondent filed in Davidson County Circuit Court, a personal injury case designated Case No. 99-C-1616, styled *Karen Hodge v. Stejani Holder and Walter Elliston*. Stejani Holder ("Holder") was the driver of the automobile that caused the injuries to Ms. Hodge, and Walter Elliston owned the automobile that Holder drove. Holder was convicted of aggravated assault in criminal court for injuring Karen Hodge.

Disciplinary Counsel alleged that Respondent failed to follow court rules regarding discovery in Case No. 99- C-1616 and that Respondent's pleadings were deficient which led to the dismissal of Holder's insurance company.

The Panel heard Ms. Hodge's testimony and found her to be credible regarding her complaints against Sneed. The Panel found that Respondent represented Ms. Hodge with respect to her Workers' Compensation Claim. While, Complainant alleged that Respondent did not assist her in receiving hand rails after the settlement of the Workers' Compensation claim, the panel found that Respondent did attempt to assist Ms. Hodge in getting her hand rails and that she subsequently received the hand rails with the assistance of subsequent counsel.

Respondent, in his professional judgment filed, a Complaint for tort damages, in which he alleged an intentional act by Holder against Hodge. While the allegation of an intentional act

led to Holder not having insurance coverage, Respondent's actions were not deficient in that he sought to recover punitive damages from Holder. The absence of insurance coverage did not remove Holder's liability for Ms. Hodges injuries.

The panel found that Respondent was not responsive to Ms. Hodge in her queries regarding her tort action. Respondent failed to timely return Ms. Hodge's calls and to keep her informed about her case.

With respect to Ms. Hodge's complaint regarding Respondent's representation of her in her claim for Social Security benefits, the Panel found that Respondent was responsive. The panel accredited the testimony of Ms. Hodge and Respondent, in that they testified that Ms. Hodge filed a claim for Social Security benefits, prior to consulting the Respondent regarding her claim for Social Security benefits. Ms. Hodge's first application was denied and her second application with Respondents' assistance was also denied. The panel found that that there was insufficient proof that the denial of her Social Security benefits was due to Respondent.

The panel concluded that the Respondent should be publicly censured due to his failure to timely respond to Ms. Hodge's phone calls.

**FILE NO. 23700-5(N)-CH**

The panel found that with respect to the allegations regarding Respondent's handling of his trust account, the documents "spoke for themselves". Respondent had an IOLTA Attorney Trust Account at Bank of America N.A. On February 28, 2001, an overdraft was incurred in the account. A check for \$1,250.00 was presented for payment on a balance of \$379.85.

Notification of the overdraft was made to the Board of Professional Responsibility by Bank of America. By letter dated March 15, 2001, the Board of Professional Responsibility inquired of Respondent about the overdraft.

On or about September 25, 2000, Respondent issued check #2905 from his Attorney Trust Account at Bank of America. On February 28, 2001, check #2905 was presented for payment against insufficient funds.

The Panel found that Respondent failed to keep records required of an Attorney Trust Account. Respondent did not furnish a deposit slip or client ledger sheet as requested. The Panel found that there was insufficient evidence to establish that Respondent used client funds for his own expenses resulting in the overdraft.

The Panel found that Respondent did not offer any sound explanation regarding his accounting practices. However, the Panel found that Respondent's testimony was a mitigating factor in that subsequent to February, 2001, he was suspended for a period of six (6) months, and as a condition of that suspension, he received classes regarding proper office management. The panel did find that Respondent's prior suspension and his prior disciplinary record were aggravating factors.

**FILE NO. 23701-5-CH**

On March 12, 2001, Orlando Gaines filed a complaint for discipline against Respondent.

The Panel found that Complainant was injured during his employment with Knight Masonry for which he filed a claim for Workers' Compensation benefits. Respondent did not represent the Complainant in that action, as Complainant had other counsel for that action. Subsequently, Respondent agreed to represent Complainant in a wrongful termination suit in 1998, and received \$250.00 from Complainant for a retainer to cover court costs.

On December 28, 1998, Respondent filed a complaint for damages in the Chancery Court of Davidson County, Tennessee, Case No. 98-3814-III. On May 6, 1999, Rogers Jackson, a principal in the Knight Masonry Company, was served with the Complaint.

On January 24, 2000, the Chancellor, Ellen Hobbs Lyle, sent a Notice to Respondent concerning case 98-3814-III. The Notice advised Respondent to attend a docket call on May 5, 2000.

Complainant became aware of the May 5, 2000, docket call and contacted Respondent to inquire whether Complainant should attend. Respondent advised Complainant that Complainant did not need to attend the hearing because Respondent would be there. Respondent failed to attend the court on May 5, 2000. As a result, Complainant's case was dismissed by an Order entered on May 8, 2000.

Complainant subsequently retained Attorney Laura Tek to represent him in his claim for wrongful termination. Complainant alleges that Respondent failed to properly advise him to exhaust his administrative remedies, by first filing with the Equal Employment Opportunities Commission. Complainant alleges that his case was dismissed when he re-filed because of his failure to exhaust his remedies.

The Panel found there was insufficient evidence regarding whether Respondent failed to properly advise the Complainant regarding exhausting his administrative remedies and whether such advice was actually germane to Complainant's actions.<sup>1</sup>

The panel found that Respondent's actions in failing to attend Court, were detrimental to the practice of law, and constituted fraudulent conduct. While Complainant was not injured, as he had a subsequent attorney review his case and there did not appear to be much merit to that case, Respondent's actions were misleading and a his statements were false.

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<sup>1</sup> Respondent stated that the Complaint alleged wrongful termination stemming from his employer's termination of Complainant for filing a Workers' Compensation claim and a claim for failing to accommodate Complainant's disability. There was no evidence that the common law tort action for wrongful termination for filing a Workers' Compensation claim required the exhaustion of administrative remedies. The Panel did not want to substitute its judgment for the professional judgment of the Respondent, Complainant's prior counsel and Complainant's subsequent counsel.

Respondent informed Complainant that he would attend Court and did not attend Court. Respondent did not notify Complainant that the claim would be dismissed and did not inform Complainant of how Respondent intended to proceed in restoring Complainant's case.

**FILE NO. 23766-5-CH**

Respondent was employed to handle various legal matters for Complainant Denetta Taylor. Complainant had surgery on October 8, 1998, at Metro Nashville General Hospital.

Complainant was injured during the surgery with the result that the nerves on one side of her face were destroyed. On March 31, 1999, Complainant consulted the Respondent about the matter.

On October 8, 1999, Respondent filed a Complaint for damages on Complainant's behalf against Dr. Jung and Metropolitan Government of Nashville, Davidson County, Tennessee. The case was filed in the Circuit Court for Davidson County, Tennessee, designated Case No. 99-C-2852.

On February 3, 1999, Complainant's case against Metro Nashville was dismissed with prejudice because of deficiencies in pleadings. Respondent filed an Amended Complaint including a Dr. Williams and Meharry Medical College as defendants.

Dr. Williams and Meharry Medical College were dismissed with prejudice because Respondent did not join them in the action within one hundred twenty days as required by the Rules of Civil Procedure.

Respondent sent a letter to Complainant dated January 24, 2001. Respondent's letter stated that her complaint against Dr. Williams and Meharry Medical College had been dismissed

and that she had to appeal no later than February 3, 2001, with other counsel because his license had been suspended.

The Panel found that Complainant received the letter on February 9, 2001, and it was post marked February 8, 2001, five days after the time had expired for her to appeal. Respondent knew or should have known that Complainant would not be able to find counsel on such short notice. Respondent did not attempt to help Complainant find other counsel, nor did he attempt to take any steps to protect the Complainants' rights.

The Panel found that: 1) Respondent did not have the competency or experience necessary to pursue a medical malpractice case for Complainant; 2) Respondent did not inform his client of his lack of competency or experience; 3) Respondent's failure to prepare, investigate, and act on his client's case resulted in a loss of her right of action; 4) Respondent failed to inform Complainant of the February 3, 1999, dismissal with prejudice or its effect. Although Respondent appeared to be familiar with the Rules of Civil Procedure, Respondent could not adequately explain how a Motion for Summary Judgment was granted against the Complaint. Respondent asserted that he was first informed upon the filing of the Motion for Summary Judgment of the names of additional defendants or the proper defendants. However, Respondent's explanation was not credible.

Disciplinary Counsel offered no proof of Respondent's allegations of misconduct with respect to his representation of Ms. Taylor regarding a truck.<sup>2</sup>

**FILE NO. 24824-5-CH**

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<sup>2</sup> Disciplinary Counsel alleged that: 1) Respondent agreed to represent Complainant in a forfeiture proceeding on her truck; 2) Respondent did not file any claim for Complainant on the truck; 3) Complainant only obtained her truck by filing her own Motion and representing herself.



On or about February 18, 2000, the Complainant, William A. Phillips, hired Respondent to handle a race discrimination claim. Complainant paid Respondent \$250.00 as a deposit for filing fees and costs.

Respondent filed a lawsuit in the United States District Court for Complainant against his employer, Pulaski Rubber Company, on February 18, 2000. On May 2, 2000, the Court administratively closed the case for the parties to seek alternative dispute resolution.

The Panel found: 1) that since May 2, 2000, no alternative dispute resolution has been attempted or scheduled; 2) throughout the representation, Complainant made many telephone calls to Respondent to be informed about the case; and 3) Respondent was available on some occasions by telephone to address the Complainant.

The Panel found that there were issues of credibility with Mr. Phillips as to whether Respondent failed to keep him informed. The Panel took note that Mr. Phillips had a lot of documents in his possession, some of which appeared to come from the Respondent. However, while Respondent failed to rebut the allegations regarding whether he kept Mr. Phillips informed of his case, the Panel found that Disciplinary Counsel had not carried his burden of proof regarding this allegation.

### **CONCLUSIONS OF LAW**

The Board of Professional Responsibility alleges that Respondent violated the following disciplinary rules as shown herein:

- A. In Case No. 23655-5-CH
  - (1) DR 1-102(A)(1)(4)(5) and (6)
  - (2) DR 6-101(A)(1)(2) and (3)
  - (3) DR 7-101(A)(1)(2) and (3).

The Panel finds that Respondent violated DR 6-101 (A) (2) (3). The Panel finds that Respondent was competent to represent Ms. Hodges in her tort action, but undertook such representation without adequate preparation and neglected Ms. Hodges' tort action, in failing to adequately communicate with Ms. Hodges. The Panel therefore dismissed the charges of DR-106 (A) (1), while finding that Respondent violated the other two subsections.

The Panel further found that Respondent violated, DR 7-101(A)(2) and (3) in that he failed to keep Ms. Hodges informed and to adequately explain to her the issues regarding her tort action.

B. In File No. 23700-5-N

(1) DR 1-102(A)(1)(5) and (6)

(2) DR 9-102(A) and (B)

The Panel finds that Respondent's actions were a violation of DR 9-102(A) and (B), which are violations of DR 1-102(A) (1) (5). Respondent failed to adequately maintain his trust account which led to an overdraft, and Respondent, by his own testimony, admitted that he mismanaged his trust account. Respondent testified that he did not balance the trust account, which resulted in Respondent writing checks when there were insufficient funds to cover the check. Specifically Respondent testified that he paid medical bills on behalf of a client, and that the check was subsequently tendered several months later, which resulted in an overdraft. Respondent should have balanced the trust account to be aware that the check had not cleared before writing any other checks.

C. In File No. 23701-5-CH

(1) DR 1-102(A)(1)(4)(5) and (6)

- (2) DR 2-110(A)(1)(2) and (3)
- (3) DR 6-101(A)(1)(2) and (3)
- (4) DR 7-101(A)(1)(2)(3) and (4)
- (5) DR 7-102(A)(3)
- (6) DR 9-102(B)(4)

The Panel finds that Respondent violated all of the above referenced provisions, except DR 2-110(A)(1)(2) and (3). There was no proof that Respondent ever withdrew from representing Complainant Gaines. Respondent's actions in not attending Court while telling Mr. Gaines he would attend Court and failing to inform Complainant that his action was dismissed constituted misleading statements and was harmful to the practice of law.

D. In File No. 23766-5-CH

- (1) DR 1-102(A)(1)(4)(5) and (6)
- (2) DR 2-110(A)(1) and (2)
- (3) DR 6-101(A)(1)(2) and (3)
- (4) DR 7-101(A)(1)(2)(3) and (4)
- (5) DR 7-102(A)(3)

The Panel finds that Respondent violated all of the above referenced provisions. Respondent was not competent to handle a malpractice action. In addition, when facing a Motion for Summary Judgment, Respondent did not familiarize himself with the Rules of Civil Procedure. Respondent failed to inform Ms. Taylor that her claim was dismissed with prejudice and failed to protect her rights until she could have found other counsel. Respondent's actions were harmful to the practice of law, particularly given the severity of Complainant Taylor's injuries to her face and the manner in which the Respondent handled Ms. Taylor's case.

E. **File No. 24824-5-CH**

The Panel found that Respondent 1) did not violate DR 1-102(A)(4), which Disciplinary Counsel alleges that Respondent violated as Respondent misled Complainant Phillips; 2) did not violate DR 7-101(A)(2) by failing to explain the status of this matter to his client and by failure to comply with the client's reasonable requests for communication.; 3) did not violate DR 7-101(A)(3) by failing to explain the matter to allow the client to make informed decisions about it. The Panel found that Mr. Phillips was aware of the status of his case and how it was proceeding.

The Panel did find that Respondent violated 1) DR 6-101(A)(2) by failing to prepare the case for trial or arbitration over a long period of time; 2) violated DR 1-102(A)(5) and (6) by grossly neglecting to proceed to enforce Complainant's legal rights; 3) violated DR 6-101(A)(3) by gross neglect of the legal matter; 4) violated DR 7-101(A)(1) by failing to act with reasonable diligence or promptness in the matter.

**AGGRAVATING AND MITIGATING CIRCUMSTANCES**

1. The Panel finds that the Respondent's actions in taking Complainant Gaines' case subsequent to his Workers' Compensation counsel, refusing to take the more difficult part of Mr. Gaines action, is a mitigating factor. Respondent appeared to be willing to assist Mr. Gaines in seeking vocational rehabilitation and in being compensated as a result of his inability to work.

2. The Panel finds that Respondent's actions in failing to attend Court and then failing to inform Complainant Gaines of his deceit was an aggravating factor.

3. The Panel finds that as Mr. Gaines had another attorney subsequently represent him in a claim against his employer was a mitigating factor.

4. The Panel finds that Respondents' actions in failing to inform Complainant Taylor about the dismissal of her action and in failing to familiarize himself with Complainant Taylor's

action was an aggravating factor. Complainant Taylor has permanent nerve damage to her face and while Respondent was not the cause of the nerve damage, Complainant Taylor never received the satisfaction of knowing whether someone was liable for injury.

5. The Panel found Ms. Taylor's request for leniency to be a mitigating factor.

6. The Panel found Respondent's prior disciplinary record to be an aggravating factor.

7. The Panel found Respondent's actions, with respect to his defense, to be an aggravating factor. Respondent did not timely respond to any Complaint. In fact, Respondent's Answer to the Petition was not filed until after Disciplinary Counsel moved for a Default Judgment. Respondent then requested that the Honorable Charles Carpenter, Chair of the Board of Professional Responsibility, allow him to file his Answer.

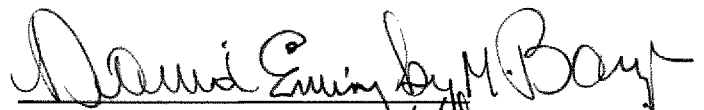
**JUDGMENT**

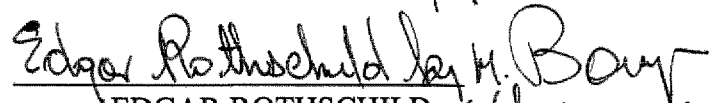
IT IS THEREFORE ORDERED by the Hearing Panel as follows:

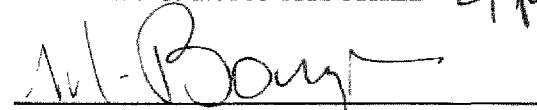
1. That Respondent is publicly censured for his actions with respect to his representation of Complainant Hodges, File No. 23655-5-CH;
2. That Respondent is suspended for a period of six months with respect to his actions representing Complainant Gaines, File No. 23701-5-CH.
3. That Respondent is suspended for a period of six months with respect to his actions in his IOLTA Trust Account, File No. 23766-5-CH.
4. That Respondent is suspended for a period of six months with respect to his actions in Complainant Taylor's case, File No. 223766-5-CH.
5. That Respondent is publicly censured for his actions with respect to Complainant Phillips, File No. 24824-5.

THIS 15th DAY OF DECEMBER, 2003.

HEARING PANEL:

  
\_\_\_\_\_  
DAVID EWING *4/perm mission*

  
\_\_\_\_\_  
EDGAR ROTHSCHILD *4/perm mission*

  
\_\_\_\_\_  
MARK BAUGH, CHAIR