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

BOARD OF PROFESSIONAL
RESPONSIBILITY

Rew EXEC. SECRETARY

IN RE: CAPP PETERSON TAYLOR, *
BPR #025820, Respondent * Docket No. 2018-2936-1-WM
*

JUDGMENT OF THE HEARING PANEL

This cause came on to be heard on the 14th day of August, 2019, for a hearing on the Board's Petition for Discipline, held at the law offices of The Haynes Firm, 207 East Main Street, Suite 2-A, Johnson City, Tennessee 37604. The Hearing Panel, consisting of Olen G. Haynes, Jr. (Chair), Polly A. Peterson, and James B. Dunn, after considering the record as a whole, exhibits, and argument, and after deliberation, makes the following finds of fact, conclusions of law, and renders its judgment in this cause.

Background

Capp Peterson Taylor, Respondent, is licensed to practice law in the State of Tennessee, the Board of Professional Responsibility No. 025820. A Petition for Discipline was filed November 19, 2018. Mr. Taylor provided a response to some of the allegations in the Petition. The Board moved to strike various of those responses. The Board Ordered certain portions of the response stricken, this Order being filed on June 17, 2019. The Board advised that any amendments to the pleadings could be filed by July 5, 2019. The Respondent did not file a motion to amend, nor any amended answer. The Respondent did, however, submit a pretrial brief in advance of the hearing which the

Hearing Panel thoroughly reviewed and considered. Respondent did not appear at the hearing of this matter.

Burden of Proof

The Tennessee Supreme Court Rule 9, Sec. 8.2, provides:

In hearing on formal charges of misconduct, disciplinary counsel must prove the case by a preponderance of the evidence.

Findings of Fact

1. In 2003, Mr. Taylor incorporated a Florida for-profit corporation, Federal Employees Advocates, Inc. ("FEA"). Mr. Taylor was the President of FEA and Brooke Gockenbach was its Vice President. Ms. Gockenbach is Mr. Taylor's daughter. She is not a licensed attorney. In 2015, FEA was incorporated as a Tennessee corporation with Ms. Gockenbach as its President.

2. Mr. Taylor was licensed to practice law in Tennessee in 2006. He was licensed to practice law in the State of Florida in 1979. At all times material, Mr. Taylor's letterhead included the FEA web address, which was www.fealaw.com.

3. Federal law does not require an attorney to represent an employee in an FECA case.

Michael Burke

4. Michael Burke is a former employee of the United States Postal Service in Cape Coral, Florida. On February 29, 2016, Mr. Burke signed a contract of representation retaining Federal Employee Advocates to represent him in his FECA claim. The contract of representation contained language that "FEA may engage the

services of Capp P. Taylor, attorney. Capp P. Taylor is the attorney for FEA.” Mr. Burke also signed various authorizations for FEA and the Law Office of Capp P. Taylor, PA to act on his behalf or to represent him in his federal worker’s compensation claim. Mr. Burke paid \$2,000.00 to FEA as a retainer payment. The retainer was, at least in part, the advance payment of legal fees and expenses to be withdrawn as earned. This money was not deposited into an attorney’s trust account.

5. On February 29, 2016, Mr. Burke signed an untitled document prepared by Mr. Taylor authorizing Mr. Burke’s local congressman to act on his behalf with regards to the Office of Worker’s Compensation Programs. That document provides, in part, “it is requested that the Office of Worker’s Compensation Programs cooperates[sic] with FEA and the Law Office of Capp P. Taylor, PA on my behalf in regard to my claim.”

6. On February 29, 2016, Mr. Burke also signed a document titled “OWCP File No.: 062366659” that provides, in part, “this serves as authorization for FEA and the Law Office of Capp P. Taylor, PA to represent me in regard to my federal worker’s compensation claim.”

7. Also on February 29, 2016, Mr. Burke signed a HIPAA authorization that authorizes the release of his medical records to the Law Office of Capp P. Taylor, PA.

8. Mr. Burke would communicate to Mr. Taylor that the U.S. Postal Service and the Department of Treasury were sending him letters, demanding that Mr. Burke reimburse them money due to an alleged overpayment associated with his continuance of pay. Mr. Burke did not receive adequate responses from Mr. Taylor after informing him of these demands.

Clifford Martin

9. Clifford Martin is a former employee of the Pueblo Chemical Depot (U.S. Army) Civil Federal Service. On or about August 26, 2014, Mr. Martin signed a contract of representation with FEA to represent him in his Federal Employee Compensation Act claim. The contract of representation stated, in part: "It is understood and agreed that FEA may engage the services of Capp P. Taylor, attorney, as part of the representation upon the following conditions...".

10. Mr. Martin also signed various authorizations for FEA and the Law Office of Capp P. Taylor, PA to act on his behalf or to represent him in his federal worker's compensation claim. Mr. Martin paid \$2,000.00 to FEA as a retainer payment. The retainer was, at least in part, the advance payment of legal fees and expenses to be withdrawn as earned. This money was not deposited into an attorney's trust account. The retainer was to be billed against the hourly rate of \$475.00.

11. On August 26, 2014, Mr. Martin signed an untitled document prepared by Mr. Taylor authorizing Mr. Martin's local congressman to act on his behalf with regards to the Office of Worker's Compensation Programs. That document provides, in part, "It is requested that the congressman inquire with OWCP as to the problems referenced by Capp Taylor, my attorney."

12. On August 26, 2014, Mr. Martin also signed a document titled "OWCP File No.: 122050155" that provides, in part: "This serves as authorization for FEA and the Law Office of Capp P. Taylor, PA to represent me in regards to my federal worker's compensation claim."

13. Also on August 26, 2014, Mr. Martin signed a HIPAA authorization form authorizing the release of his medical records to the Law Office of Capp P. Taylor, PA.

Matthew Woltmann

14. Mr. Matthew Woltmann is a former employee of the United States Department of Homeland Security. On or about August 13, 2015, Mr. Woltmann signed a contract of representation with FEA to represent him in his Federal Employee Compensation Act claim. The contract of representation stated, in part, "I hereby retain Federal Employees Advocates, Inc./Capp P. Taylor, Attorney at Law, as my representative/attorney to prosecute my claim for worker's compensation benefits ...". The agreement also provides, in part, "It is hereby understood and agreed that I employ FEA/Capp P. Taylor, attorney employment[sic] upon the following conditions...."

15. Mr. Woltmann also signed various authorizations for FEA and the Law Office of Capp P. Taylor, PA to act on his behalf or to represent him in his federal worker's compensation claim. Mr. Woltmann paid \$2,000.00 to FEA as a retainer payment. The retainer was, at least in part, the advance payment of legal fees and expenses to be withdrawn as earned. This money was not deposited into an attorney's trust account. The retainer was to be billed against the hourly rate of \$475.00.

16. On August 13, 2015, Mr. Woltmann also signed an untitled document prepared by Mr. Taylor authorizing Mr. Woltmann's local congressman to act on his behalf with regards to the Office of Worker's Compensation Programs. That document provides, in part, "It is requested that the congressman inquire with OWCP as to the problems referenced by Capp Taylor, my attorney."

17. Also on August 13, 2015, Mr. Woltmann signed a document titled "OWCP File No.: 132252224" that provides, in part, "This serves as authorization for FEA and the Law Office of Capp P. Taylor, PA to represent me in regard to my federal worker's compensation claim."

18. On August 13, 2015, Mr. Woltmann signed a HIPAA authorization form authorizing the release of his medical records to the Law Office of Capp P. Taylor, PA.

19. Respondent was suspended by Order of Enforcement from the Supreme Court of Tennessee, which Order was filed on the 19th day of December, 2017. This Order specifically required that Mr. Taylor seek reinstatement prior to returning the practice of law and to comply with all aspects of Tennessee Supreme Court Rule 9.0. Section 28.2 of Rule 2 provides that clients being represented in pending matters must be notified of the Order of the Court, "and that the attorney is therefore disqualified to act as attorney after the effective date of the Order ...".

20. Mr. Taylor's license was suspended on December 19, 2017, and Mr. Taylor has not petitioned for reinstatement.

21. Mr. Taylor continued representing Mr. Woltmann, following his suspension, as evidenced by charges for services appearing on FEA invoice attached to Mr. Taylor's pre-trial brief.¹

22. At the time that the contracts with the clients were entered into, Mr. Taylor held himself out as an attorney who would be assisting clients in their matters in his capacity as an attorney.

¹ A copy of the invoice is attached hereto as Exhibit A, reflecting charges for services rendered on March 6, 2018, at the rate of \$475.00 per hour.

23. Following the Supreme Court Order of Enforcement, Mr. Taylor failed to communicate with any of these clients to inform them that his license to practice had been suspended, nor did he return any of the clients' property, or notify them that he could continue representing the clients' interests only as a non-lawyer.

Conclusions of Law

24. The Panel finds by a preponderance of the evidence that Mr. Taylor violated Tennessee Rules of Professional Conduct 1.4(a) (communication); 5.4(a) (sharing of fees with a non-lawyer); and/or 1.15(a) and (c); 5.4(b) (partnership with a non-lawyer); 8.4(g), and Tennessee Supreme Court Rule 9, Sec. 28.2.

25. The Panel finds that Mr. Taylor neglectfully failed to adequately communicate with Mr. Burke, Mr. Martin, and Mr. Woltmann in violation of 1.4(a)3 in that he failed to properly keep his clients informed of the status of their cases.

26. The Panel finds that the Board has not proven by a preponderance of the evidence that Mr. Taylor failed to timely perform and complete the services for which he was retained. In this regard, Mr. Taylor submits that there is very little that an advocate can do to speed up the process towards resolution. There is insufficient evidence to support a finding that additional effort on Mr. Taylor's part would have resulted in earlier resolution.

27. The Board's proof with respect to abandonment of his representation of Mr. Taylor's clients also falls short of the preponderance of the evidence.

28. The Board's proof regarding the failure to refund unearned portions of fees is not supported by a preponderance of the evidence.

29. The preponderance of the evidence indicates that FEA was not a trust account as contemplated by Rule 1.15(a) and (c). The Panel finds it unnecessary to determine whether FEA or Taylor received the fee because the Panel finds that Mr. Taylor and FEA are, in essence, the same, and thus the preponderance of the evidence supports a violation of Rule 1.15(a) and (c).

30. The preponderance of the evidence supports that Mr. Taylor knowingly entered into a *de facto* partnership with FEA in violation of Rule 5.4(b).

31. Mr. Taylor's license was suspended on December 19, 2017, and Mr. Taylor has not petitioned for reinstatement. The evidence shows that Mr. Taylor failed to notify Mr. Burke, Mr. Martin, and Mr. Woltmann of his suspension, in violation of Rule 8.4 and Tennessee Supreme Court Rule 9, Sec. 28.2. The Hearing Panel relies primarily upon the following findings of fact for this conclusion.

A. At the time that the contracts with the clients were entered into, Mr. Taylor clearly held himself out as an attorney who would be assisting clients in their matters in his capacity as an attorney.

B. That, following the Supreme Court Order of Enforcement, Mr. Taylor failed to communicate with any of these clients to inform them that his license to practice law had been suspended, nor did he return any of the clients' property, nor did he notify them that he could no longer continue representing the clients' interests as a lawyer.²

32. As to Rule of Professional Conduct 1.3 (diligence), the Panel finds that the Board proved only that Mr. Taylor failed to adequately communicate with the clients.

² The Panel makes no finding with respect to whether Respondent could have continued representing these clients by notifying them that he would no longer be representing them in his capacity as an attorney but would continue representing them as a non-attorney advocate.

However, the Panel declines to find an additional diligence violation since the Panel has previously found a violation of Rule 1.4 (failure to communicate).

33. The Panel finds that the Board has failed to prove by a preponderance of the evidence that Mr. Taylor violated Rule of Professional Conduct 7.1 (communications concerning a lawyer's services) by maintaining a misleading website.

34. Similarly, the Panel finds that the Board has failed to prove a violation of Rule of Professional Conduct 7.2(d) (advertising) by failing to include his name and address in the FEA website. The Panel notes that no exhibits relating to the FEA website were entered into evidence, although a reference to the FEA website was noted on Mr. Taylor's letterhead.

35. Mr. Taylor continued to represent Claimant Woltmann in his case, and continued to charge a fee for such representation, in violation of Rule of Professional Conduct 8.4(g) (failure to comply with a final Court Order). In this regard, the Panel finds that the preponderance of the evidence supports that Mr. Taylor knowingly failed to comply with the Tennessee Supreme Court Order of Enforcement, filed on December 19, 2017, including the obligations imposed by Rule 9.

Application of ABA Standards – Appropriate Discipline

Pursuant to Tennessee Supreme Court Rule 9, Sec. 8.4, the appropriate discipline must be based upon application of the ABA Standards for imposing lawyer sanctions (ABA Standards).

Aggravating Factors

1. 9.22(a) (prior disciplinary offenses). In this respect, the Panel finds that this aggravating factor exists only with respect to the representation of Mr. Woltmann. The acts underlying the violations in representation of Burke and Martin appear to have occurred at or about the same time as those resulting in Mr. Taylor's prior disciplinary proceeding. The acts complained of appear to have occurred prior to the Hearing Panel's decision and the Supreme Court Order of Enforcement in Case No. 2016-2632-1-WM. The only other prior disciplinary offense presented was a reprimand for a statute of limitations violation in 2012. With respect to Mr. Woltmann, however, the Panel finds that the prior discipline is, indeed, an aggravating factor in that Mr. Taylor engaged in one or more violations after the prior disciplinary proceeding and the Supreme Court's Order of Enforcement.

2. 9.22(i) (substantial experience in the practice of law). The Panel finds substantial experience in the practice of law is an aggravating factor with respect to Mr. Taylor's conduct. Mr. Taylor has been licensed to practice law in Florida for 40 years and in Tennessee for 13 years.

3. 9.22(g) (refusal to acknowledge wrongful nature of conduct). During the scheduling conference in this matter, the Respondent alleged that the Board was improperly motivated in prosecuting this case, that the Board was out to get Respondent, and that, generally, Respondent had done nothing wrong.

4. 9.22(c) (pattern of misconduct). Mr. Taylor violated his responsibilities to Burke, Martin, and Woltmann in the same general manner. He held himself out as an attorney that could help them, signed them up, accepted their money,

failed to adequately communicate with them and keep them apprised, and failed to notify them of his suspension following the Supreme Court Order of Enforcement.

Mitigating Factors

5. The Panel finds that no mitigation factors apply. Although the Respondent took down the website when allegations of improper advertising came to light, Mr. Taylor failed to take additional steps necessary to rectify consequences of his misconduct, including notifying his clients of his suspension.

Applicable Standards

6. Violation of Rule 1.4(a)(3)—Communication. ABA Standard 4.42 provides that suspension is generally appropriate when: (b) a lawyer engages in a pattern of neglect [and] causes injury or potential injury to a client. The extent of injury to the clients in this matter remains uncertain, but there is no doubt that potential injury existed.

7. Violation of Rule 1.15(a) and (c)—Failure to Preserve Client Property. ABA Standard 4.12 provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes potential injury to a client. Given Mr. Taylor's experience level, he knew or should have known that his arrangement with FEA violated his obligations relating to handling client retainers.

8. Violation of Rule 8.4—Failure to Advise clients of Suspension; Failure to comply with a final Court Order.

ABA Standard 8.1 provides that Disbarment is generally appropriate when a lawyer:

(a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or (b) has been suspended for the same or similar conduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

ABA Standard 8.2 provides:

Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

Respondent failed to comply with the Supreme Court's Order to, among other things, advise his clients of his suspension. Mr. Taylor has consistently argued that, because non-lawyers may represent individuals in Federal Employees Compensation Act (FECA) matters, that his suspension from the practice of law had no effect on his ability to continue representing these clients in FECA matters. We disagree. The correspondence between Mr. Taylor and his client(s), prior to and as part of the intake process, indicates that Mr. Taylor was offering his services in his capacity *as an attorney*, not as a non-lawyer. Mr. Taylor was required to advise his client(s) of his suspension. When Mr. Taylor failed to notify his clients of his suspension, he did so in violation of the Supreme Court's Order of Enforcement.

Respondent continued representation of Mr. Woltmann following the Supreme Court suspension of his license on December 19, 2017. Mr. Taylor could not continue in his representation of Woltmann, and could not continue charging a fee for his

representation without, at a minimum, his client agreeing that continuing representation would be as a non-lawyer. When Mr. Taylor continued to represent Mr. Woltmann, he did so in violation of the Supreme Court's Order of Enforcement.

While the default sanction for knowingly violating the terms of a prior disciplinary order is disbarment, this Panel finds that the more appropriate sanction under the circumstances of this case is suspension. First, the Board has recommended suspension as the appropriate discipline in this matter. Second, while each of Mr. Taylor's violations had the potential to injure his clients and, indeed, did likely damage the reputation of the legal system, it is not clear that his conduct resulted in actual injury to his client's FECA cases. The Board has alleged, but in our opinion has not proven, that Mr. Taylor failed to timely complete the services for which he was hired. Finally, the Board concedes that a non-lawyer may represent someone in a FECA matter.

The Panel makes no finding that Mr. Taylor acted in good faith in this regard. Rather, it appears that Mr. Taylor saw what he mistakenly believed was an opportunity to ignore the Supreme Court's Orders, and consciously did so. While this Panel wholly disagrees with Mr. Taylor's assertion that he could continue representing clients as a non-lawyer without so much as notifying them of his suspension, the Panel believes that Mr. Taylor's violation does not rise to the level of culpability typically associated with disbarment. Based upon the totality of the circumstances, the Panel finds that suspension is appropriate for a term of two (2) years.

WHEREFORE, based upon on the above Findings of Fact and Conclusions of Law, in the presence of aggravating circumstances, Mr. Taylor's license to practice law should be suspended for a period of two (2) years.

This the 5th day of September, 2019.



Olen G. Haynes, Jr., Panel Chair



Polly Peterson, Panel Member



James Dunn, Panel Member

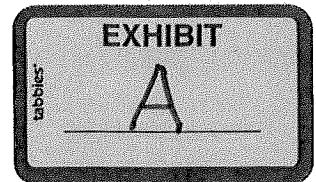
Federal Employee Advocates

Invoice submitted to:
 Woltmann, Matthew
 37511 Palo Verde Drive
 Cathedral City, CA 92234

Invoice #	N/A
Invoice Date	08/06/2019
For Services Through	08/06/2019

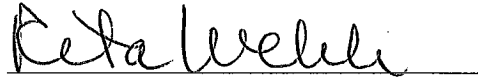
<u>Date</u>	<u>Service Summary</u>	<u>Hours/Rate</u>	<u>Amount</u>
In Reference To: Woltmann, Matthew (Labor)			
04/01/2015	<i>Review</i> documents- CA-2a dated 3/15/2015; Dr. harris' request for MRI and 3/25/15 report	0.25 at \$475.00/hr	\$118.75
04/02/2015	<i>Review</i> Review file re opening file, identifying issues and other claim; Email to client for phone conference	0.40 at \$475.00/hr	\$190.00
04/08/2015	<i>Phone Call</i> Phone call with client re facts, issues, benefits available, OPM-DR, SSD	0.85 at \$475.00/hr	\$403.75
08/12/2015	<i>Review</i> Review document- CE disc file re low back (DOI:20/24/2010; Review file re right wrist case (3/3/2014) actual diagnosis, possible expansion of accepted condition vs. new case (CA2); Email to client re update, status and strategy	2.50 at \$475.00/hr	\$1,187.50
08/18/2015	<i>Review</i> Review file re causation and various job duties, matching with medical records, lumbar and right upper extremity; Email to client re the same	2.50 at \$475.00/hr	\$1,187.50
03/06/2018	<i>Review</i> Review file re medical treatment	0.20 at \$475.00/hr	\$95.00
03/06/2018	<i>Email</i> Email with client re medical treatment	0.10 at \$475.00/hr	\$47.50
03/06/2018	<i>Review</i> Review file re June 2011 CA2	0.25 at \$475.00/hr	\$118.75

Total Hours: 7.05 hrs
Labor: \$3,348.75
Total Amount: \$3,348.75



CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Capp Peterson Taylor, at PO Box 1770, Dandridge, TN 37725-1770, via U.S. First Class Mail, and hand-delivered to Travis Lampley, Disciplinary Counsel, on this the 10th day of September, 2019.

A handwritten signature in cursive script, appearing to read "Rita Webb", written over a horizontal line.

Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.