

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

FILED

2018 JUL 13 PM 12: 06

BOARD OF PROFESSIONAL
RESPONSIBILITY

VCW
EXEC. SECRETARY

IN RE: ELIZABETH CATHERINE VELASQUEZ DOCKET NO. 2018-2820-1-KH
BPR No. 028884, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Sevier County)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This matter came to be heard on June 28, 2018, for a final hearing in this matter. Present were Laura Steel Woods, Hearing Panel Chair; Curtis Dwaine Evans, Hearing Panel Member; Nikki Carter Pierce, Hearing Panel Member; and Krisann Hodges, Deputy Chief Disciplinary Counsel for the Board of Professional Responsibility. Ms. Velasquez, having received notice, did not appear or present any evidence of mitigation.

STATEMENT OF THE CASE

On January 29, 2018, the Tennessee Board of Professional Responsibility (the "Board") filed a Petition for Discipline against the Respondent, Elizabeth Catherine Velasquez. The Board filed a Motion for Default and that Charges in the Petition be Admitted on April 20, 2018. On June 14, 2018, the hearing panel entered an Order of Default. The hearing panel entered an Order on June 25, 2018 advising the parties that any pre-trial issues would be considered prior to the scheduled hearing. A final hearing was held on June 28, 2018 in Morristown, Tennessee.

FINDINGS OF FACT

The following facts have been deemed admitted pursuant to the Order of Default entered

on June 14, 2018.

1. Elizabeth Catherine Velasquez is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee.

2. Ms. Velasquez was licensed to practice law in Tennessee in 2010 and her Board of Professional Responsibility number is 028884.

3. Ms. Velasquez's most recent primary address as registered with the Board of Professional Responsibility is 1075 Berry Trail Drive, Sevierville, Tennessee 37862, being in Disciplinary District I.

4. On June 29, 2016, the Board received a request for assistance in its Consumer Assistance Program ("CAP") department from Monica Peace, a client of Ms. Velasquez.

5. This request was forwarded to Ms. Velasquez on July 8, 2016.

6. After preliminary assessment in the CAP department, the file was transferred to the Board's Investigations department on October 28, 2016 as a complaint of disciplinary misconduct.

7. The Board forwarded the complaint and CAP file to Ms. Velasquez by letter dated October 28, 2016.

8. On November 15, 2016, the Board sent a letter to Ms. Velasquez requesting a response to the October 28, 2016 letter.

9. On November 16, 2016, the Board received a response from Ms. Velasquez.

10. On August 1, 2017, the Board requested additional information from Ms. Velasquez. The Board's letter was returned on August 11, 2017.

11. On August 14, 2017, the Board sent the August 1, 2017 letter to Ms. Velasquez via email and received a confirmation email from the server that the email had been delivered.

12. Ms. Velasquez did not respond to the Board's inquiry of August 1, 2017.

13. The Board filed a Petition for Temporary Suspension on October 31, 2017. The Petition was granted by Order of the Supreme Court of Tennessee on November 3, 2017. Ms. Velasquez has not requested, nor been granted, reinstatement from the suspension.

14. On May 15, 2015, Monica Peace retained Ms. Velasquez to represent her in a modification of a parenting plan.

15. Ms. Peace paid Ms. Velasquez \$500.00 for the representation.

16. Ms. Velasquez prepared a handwritten contract dated May 15, 2015, which detailed that the representation would include filing of a motion, negotiations with adverse party, and no more than two (2) court appearances.

17. At the initial meeting, Ms. Peace provided Ms. Velasquez with a copy of her current parenting plan.

18. On June 28, 2015, Ms. Velasquez filed a Petition for Modification of Parenting Plan and thereafter attempted to serve Ms. Peace's ex-husband; however, Mr. Peace avoided service of the lawsuit.

19. Ms. Velasquez had a private process server personally deliver the summons and complaint to Mr. Peace but he demanded to be served by law enforcement. The Blount County Sheriff's office successfully served Mr. Peace on December 9, 2015.

20. The court scheduled an initial hearing for January 7, 2016.

21. On January 7, 2016, the judge dismissed the petition for the parties' failure to set the matter for a contested hearing and failed to first attempt mediation as set forth in their parenting plan.

22. Despite Ms. Peace's numerous attempts to contact Ms. Velasquez, Ms. Peace could not get a substantive response.

23. Ms. Velasquez then instructed Ms. Peace to re-file the action on her own and have Mr. Peace served.

24. Ms. Velasquez claimed that she did not have the time to handle Ms. Peace's case.

25. On January 18, 2016, Ms. Peace re-filed the Petition and served Mr. Peace on February 9, 2016, per Ms. Velasquez's instructions.

26. On March 9, 2016, Ms. Velasquez was served with Mr. Peace's Answer.

27. Despite Ms. Peace's request, Ms. Velasquez took no further action.

28. The court later advised Ms. Peace of a related child support hearing scheduled for April, 2016.

29. Ms. Peace again requested assistance from Ms. Velasquez.

30. Ms. Velasquez then advised Ms. Peace that she does not handle child support matters and did nothing more on Ms. Peace's case.

31. Ms. Velasquez has failed to respond to any further inquiries in this matter.

32. Ms. Velasquez has a prior disciplinary history.

33. She was temporarily suspended on February 3, 2014 for failure to respond to a complaint of disciplinary misconduct.

34. On February 13, 2014, Ms. Velasquez received a public censure for negligence and failure to communicate. She was retained by a client to file a post-divorce motion. Ms. Velasquez did not keep her client informed about the status of the case. Further, Ms. Velasquez later alleged to the Board that she had filed the pleading and that the Court had denied relief. However, the Board discovered that Ms. Velasquez had never filed the document as she represented.

35. On January 30, 2015, Ms. Velasquez was suspended from the practice of law for three (3) years, with one (1) year served as an active suspension. As a condition of probation, Ms.

Velasquez was required to engage a practice monitor. Ms. Velasquez was suspended for revealing confidential information, failure to communicate with clients and for missing a court appearance, and for the unauthorized practice of law while she was on temporary suspension. Ms. Velasquez was reinstated from this suspension on April 8, 2015.

CONCLUSIONS OF LAW

Pursuant to Tenn. Sup. Ct. R. 9, the license to practice law in this state is a privilege and it is the duty of every recipient of that privilege to conduct himself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct (hereinafter "RPC") of the State of Tennessee shall constitute misconduct and be grounds for discipline. Ms. Velasquez has failed to conduct herself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited within the Petition for Discipline.

A. Violations of the Rules of Professional Conduct

The acts and omissions by Ms. Velasquez constitute ethical misconduct in violation of Rules of Professional Conduct.

By failing to adequately communicate with Ms. Peace about the status of her case, she violated RPC 1.4, Communication.

By essentially abandoning her representation of Ms. Peace and insisting that Ms. Peace continue her case *pro se*, Ms. Velasquez violated RPC 1.3, Diligence; 1.2 Scope of Representation and Allocation of Authority; 1.5(a), Fees; and 1.16(d), Declining or Terminating Representation.

By failing to ensure that the case was set for hearing and that all requirements of mediation were attempted, Ms. Velasquez violated 1.1, Competence; 3.2, Expediting Representation; and RPC 8.4(a) and (d).

By failing to respond to an inquiry by the Board which led to her temporary suspension, Ms. Velasquez violated RPC 8.1(b).

Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a), Misconduct.

B. Application of the ABA Standards

When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, (“ABA Standards”) pursuant to Section 15.4, Rule 9 of the Rules of the Supreme Court.

The following ABA Standards apply in this matter:

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.

The hearing panel finds no evidence of mitigating factors. The following aggravating factors have been demonstrated by a preponderance of the evidence:

Prior Disciplinary Offenses: Ms. Velasquez was temporarily suspended on February 3, 2014 for failure to respond to a complaint of disciplinary misconduct. On February 13, 2014, Ms. Velasquez received a public censure for negligence and failure to communicate. On January 30, 2015, Ms. Velasquez was suspended from the practice of law for three (3) years, with one (1) year

served as an active suspension.

Pattern of Misconduct and Multiple Violations: Ms. Velasquez demonstrated a pattern of misconduct and multiple violations beginning with her failure to arrange mediation, failure to set the motion for hearing, failure to address the dismissal, failure to complete the representation or to withdraw, failure to take any action after service of an answer by the defendant, and failure to properly communicate with her client.

Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency: Ms. Velasquez failed to respond to a disciplinary inquiry by the Board, which resulted in a temporary suspension. Notably, this case is the second time Ms. Velasquez has been temporarily suspended for failing to respond to a disciplinary complaint.

Indifference to making restitution: Ms. Velasquez has taken the position that she does not owe a refund to the client.

Refusal to acknowledge wrongful nature of conduct: Similarly, Ms. Velasquez has failed to acknowledge the wrongful nature of her conduct. She maintained that she performed the only legal services that were required for such a low fee.

JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, the hearing panel finds that Ms. Velasquez should be suspended from the practice of law for five (5) years, with three (3) years served as an active suspension and the remainder on probation, subject to the following conditions:

1. Prior to any application for reinstatement, Ms. Velasquez shall make restitution to Ms. Peace in the amount of \$500.00. To the extent restitution is paid by the Tennessee Lawyer's

Fund for Client Protection ("TLFCP"), Ms. Velasquez shall reimburse TLFCP for said amount and shall remain obligated to the individual(s) listed above for any unpaid restitution.

2. Prior to any application for reinstatement, Ms. Velasquez should be required to contact the Tennessee Lawyers Assistance Program ("TLAP") for evaluation. If TLAP determines that a monitoring agreement is appropriate, Ms. Velasquez shall comply with the terms and conditions of the TLAP monitoring agreement.

3. Ms. Velasquez, at her cost, if any, shall engage the services of a Practice Monitor who shall be selected and approved in accordance with Tenn. Sup. Ct. R. 9, § 12.9(c). The Practice Monitor shall meet with Ms. Velasquez monthly and assess her case load, case management, timeliness of performing tasks, adequacy of communication with clients and accounting procedures. The Practice Monitor shall provide a monthly written report of her progress to Disciplinary Counsel.

4. During the period of active suspension and probation, Ms. Velasquez shall incur no new complaints of misconduct that relate to conduct occurring during the period of suspension and probation and that results in the recommendation by the Board that discipline be imposed.

It is so ordered,

Laura Steel Woods

Laura Steel Woods, Hearing Panel Chair

Curtis Dwaine Evans by LSN with permission

Curtis Dwaine Evans, Hearing Panel Member

Nikki Carter Pierce LSN with permission

Nikki Carter Pierce, Hearing Panel Member

NOTICE OF APPEAL

The findings and judgment of the hearing panel may be appealed pursuant to Tenn. Sup Ct. R. 9, Section 33. See also Tenn. Sup. Ct. R. 9, Section 31(a).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Elizabeth Catherine Velasquez, PO Box 5075, Sevierville, TN 37864, and 1471 Shannon Circle, #3, Sevierville, TN 37862, by U.S. First Class Mail, and hand-delivered to Krisann Hodges, Disciplinary Counsel, on this the 13th day of July, 2018.



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.