

Actions from the Board of Professional Responsibility

Reinstated

Jane J. Buffaloe and Bruce Henderson Guthrie II, both of Chattanooga, and Steven L. Williams of Knoxville, have been reinstated to the practice of law after complying with Rule 21 as required by the Board of Professional Responsibility.

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On April 12, the Tennessee Supreme Court reinstated the law license of **Byron R. Simpson** who had practiced law in Franklin until taking disability inactive status on Jan. 13, 2003. The court found that Simpson's disability has been removed and that he is fit to practice law based upon the following conditions: (1) compliance with outstanding continuing legal education requirements; (2) working with a practice monitor; (3) completion of a post-trial diversionary program and dismissal of all criminal charges; (4) payment of the professional privilege tax; and (5) continued compliance with the Tennessee Lawyers Assistance Program (TLAP) for five years.

Suspended

Kingston attorney **Charles B. Hill II** was suspended from the practice of law in Tennessee for one year, effective April 1. After the Board of Professional Responsibility filed a petition for discipline against Hill, he entered a conditional guilty plea in exchange for a stated form of discipline. Hill pled guilty to allowing a statute of limitations to expire in a car accident case without filing a complaint on his clients' behalf. Rather than admitting his irresponsibility, Hill created a fictitious judgment purporting to be an award of \$2,800 in damages and gave a copy of this document to the clients. In another matter, Hill filed a voluntary dismissal of a client's lawsuit without explaining this to the client. Finally, the board found that once disciplinary action had been initiated, Hill failed to respond in a timely manner to information requests from the disciplinary counsel. Hill may seek reinstatement to the practice of law after one year if he can show clear and convincing evidence that he should be reinstated, has completed the Board of Professional Responsibility's Ethics Workshop later this year, has made restitution to clients, has paid the costs of the disciplinary proceeding, and agrees to an attorney monitor for one year following his reinstatement.

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The Supreme Court of Tennessee suspended the law license of **David L. Goad** on March 28 after finding that Goad posed a threat of irreparable harm to the public. After 30 days he was to no longer use indicia of lawyer, legal assistant or law clerk and not maintain a presence where the practice of law is conducted. In addition, he must notify all clients, co-counsel and opposing counsel of the suspension order and return to all clients any papers or property to which they are entitled. Goad may request dissolution or modification of the suspension for good cause.

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Knoxville lawyer **John Earl Rainwater** was suspended from the practice of law on April 22 for failing to respond to a complaint of misconduct. After 30 days he was no longer able to use the indicia of lawyer, legal assistant or law clerk and must not maintain a presence where the practice of law is conducted. In addition, he must notify all clients, co-counsel and opposing counsel of the suspension order and return to all clients any papers or property to which they are entitled. Rainwater may request dissolution or modification of the suspension for good cause.

Censured

The Board of Professional Responsibility censured Kinsport attorney **Michael J. LaGuardia** on March 18. LaGuardia reported to the board that he falsely testified in a pre-trial deposition about the financial arrangement for the purchase of a vehicle. LaGuardia testified at the deposition that he had not put any money down for the purchase of the vehicle but then testified at trial that he had made a \$7,500 down payment. The board found that his actions violated the Rules of Professional Conduct and issued a censure but did not limit LaGuardia's ability to practice law.

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Jeffrey Andrew Stinnett, a Chattanooga attorney, received a censure from the Board of Professional Responsibility on April 19. The board found that Stinnett had engaged in the practice of law during a period when his law license was administratively suspended for failing to comply with continuing legal education requirements. His representation of a client while on administrative suspension violated Rule of Professional Conduct 5.5(a). The censure declares his conduct improper but does not limit his right to practice law.

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On April 13, the Board of Professional Responsibility issued a censure to **Michael D. Fitzgerald** of Memphis for failing to keep trust account records as required by Section 29 of Supreme Court Rule 9 and Rule 1.15 of the Tennessee Rules of Professional Conduct. Because of this action, the board was unable to determine if Fitzgerald was handling trust funds correctly. The board censured Fitzgerald on the condition that he comply with his monitoring agreement with the Tennessee Lawyers Assistance Program (TLAP) and that any reported incidence of non-compliance with the program would constitute grounds for immediate suspension. The censure declares his conduct improper but does not limit his right to practice law.

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Arch B. Boyd III of Memphis was censured on April 14 for neglecting a legal matter, failing to adequately communicate with a client and failing to refund fees after being terminated. The Board of Professional Responsibility issued a censure on condition that Boyd submit the fee matter to the Memphis Bar Association Fee Dispute Committee to determine whether a refund is due and if so, in what amount. The censure declares his conduct improper but does not limit his right to practice law.

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On April 25, the Board of Professional Responsibility issued a public censure to **Earle J. Schwarz** of Memphis. He did not request a hearing. A complaint was filed against him based on a declaration in a habeas corpus action that Schwarz willfully neglected his representation of his client. He neglected his client's legal matter in a death penalty case and filed a declaration and subsequent habeas corpus proceeding setting forth that: he was admitted pro hac vice in Alabama; he represented the client from 1998-2003; he received notice in February 2003 that the Alabama Court of Criminal Appeals denied his clients appeal; he did not notify the client of the denial of his appeal; he did not file a notice of appeal with the Alabama Supreme Court or file a notice of withdrawal. After the Alabama Court of Criminal Appeals denied his client's appeal, Schwarz did not tell the client he was no longer representing him and he did not inform the client that he would not file a notice of appeal in the Alabama Supreme Court or pursue relief in federal court. Schwarz did not have contact with the client after the appeal was denied.

The board determined that his conduct violated Rules 1.1, 1.3, 1.16 and 8.4(a)(c)(d) of the Tennessee Rules of Professional Conduct.

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On May 2, the Board of Professional Responsibility issued a public censure to Clarksville lawyer **Nan Shelby Calloway**. She did not request a hearing. Calloway failed to adequately communicate with her client, resulting in the client's decision to hire another attorney to complete her legal matter. Calloway and her client could not agree on the amount of refund to be made to the client, and Calloway did not timely resolve this issue with the Nashville Bar Association Fee Dispute Committee. Calloway has repaid the client the legal fees the client paid to her for the legal work.

The board determined Calloway's conduct violated Rules 1.1, 1.3, 1.4, 1.5 and 8.4(a)(d) of the Tennessee Rules of Professional Conduct. A public censure is a form of discipline that declares the conduct of the lawyer improper but does not limit her right to practice law.

Contempt of court

On May 2, the Tennessee Supreme Court entered a consent order adjudging Memphis lawyer **Christopher P. Renard** to be in willful contempt of court and fining him \$100. Renard has been continuously suspended from the practice of law since May 21, 2004, the date the court's order of temporary suspension was entered against him for failing to respond to complaints of ethical misconduct.

The Board of Professional Responsibility filed a petition for order of contempt against him in January, alleging that after June 20, 2004, he had continued to provide legal services to a former client and had held himself out to opposing counsel and the general public as a practicing lawyer, while suspended. The board also alleged that Renard had consistently refused to properly comply with the requirements and obligations of suspended or disbarred lawyers as set forth in Supreme Court Rule 9, Section 18.

Tennessee Bar Journal
June 2005 - Vol. 41, No. 6

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