

CURRENT DEVELOPMENTS

Board of Professional Responsibility

NOVEMBER 4, 2021

EILEEN BURKHALTER SMITH, DISCIPLINARY COUNSEL
TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY



Tennessee Supreme Court Rules

- TENN. SUP. CT. R. 9, SECTION 30
- Reinstatement 30.2. Individuals disbarred on or after July 1, 2020, are not eligible for reinstatement.
- TENN. SUP. CT. R. 9, SECTION 12.2 – 10 year suspensions, permanent disbarment



Rule of Professional Conduct 1.15 (f) (Safekeeping Funds)

(f) A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts to identify and return the funds to the rightful owner. If after 12 months . . . ascertaining the ownership or securing the return of the funds will not succeed, the lawyer must remit the funds to TLFCP. No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph (f).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to TLFCP, which after verification of the claim will return the funds to the lawyer.

-June 5, 2020

TENNESSEE LAWYERS' FUND
for CLIENT PROTECTION

**Request to Remit Unidentified Funds to
Tennessee Lawyers' Fund for Client Protection (TLFCP) Pursuant
to Tennessee Supreme Court Rule 8, RPC 1.15(f)**

Amount of funds to be remitted to TLFCP: _____

Attorney/Law Firm: _____

Date of Remittance: _____

I certify that it has been at least 12 months after the discovery of the unidentified funds and have determined that ascertaining the ownership or securing the return of the funds will not succeed*.

Name of Remitter (Printed)

Name of Remitter (Signature)

Date

*Pursuant to Tenn. Sup. Ct. R. 8, RPC 1.15(f), "A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to TLFCP, which after verification of the claim will return the funds to the lawyer."

Rule of Professional Conduct 7.1 (Advertising)



RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

(b) . . . [A] lawyer may advertise services through written, recorded, or electronic communications, including public media. . . .

(c) A copy or recording of each advertisement shall be retained by the lawyer for two years after its last dissemination along

New Comments 4 - 14.

-September 1, 2021

Rule of Professional Conduct 7.3 (Solicitation of Clients)

RULE 7.3: SOLICITATION OF CLIENTS

(a) A solicitation is a targeted communication initiated by or on behalf of a lawyer that is directed to a specific person and that offers to provide, or reasonably can be understood as offering to provide, legal services for a particular matter.

New Subsections (e), (f)

New Comments

Rules 7.2, 7.4, 7.5 - Deleted

Board Notes- Fall 2021

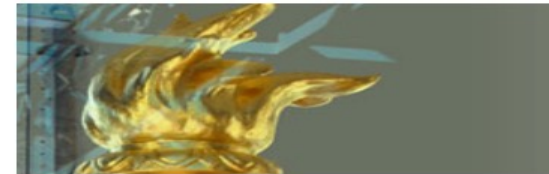
Identifying the Client when Probating an Estate

– Steven J.
Christopher

BOARD NOTES

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Fall 2021



Inside:

- 2 Spotlight: Tennessee Supreme Court Streamlines Advertising Rules
- 4 Identifying the Client When Probating an Estate
- 13 Board of Professional Responsibility – New Disciplinary Counsel
- 14 Disciplinary Actions April 2021 - September 2021

Greeting from Floyd Flippin

Chair, Board of Professional Responsibility

Many years ago, my brother called me to ask if I had heard the TV advertisement from a local law firm that intrigued him. He indicated that the advertisement had a line in it, "We are here to help and we know how."

That line has stayed with me all these years. I liked it then and I like it now.

As Lawyers, we are always in a position to help our clients. Most of the time, we know how to help them. But there are those gray areas in our practice that are generally the ones that cause us trouble.

Can the Board of Professional Responsibility help us deal with the gray areas?

Yes it can. We issue Ethics opinions, we answer questions and give written guidance when asked, we speak at Seminars, and we are always a phone call or email away. We would love there to be no need to discipline attorneys. As a High School Football and Basketball Official, I can assure you the best games are those without flags in Football and Fouls in Basketball.

The next time you find yourself in a gray area, contact us. We are here to help and we know how.

Tennessee's Proactive Management-Based Regulation

- Voluntary program created to help lawyers with their professional development.
- Mitigate risk, elevate competence, and enhance the quality of legal services.
- What is working and what could be improved.
- The goal is to prevent problems before they arise.
- 3 Dual CLE Credits.



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Acknowledgement

This self-assessment was adopted, adapted and reprinted with permission from materials originally authored by the Colorado Office of Attorney Regulation Counsel. The Board of Professional Responsibility acknowledges and appreciates the assistance provided by the Colorado Office of Attorney Regulation, the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and the Disciplinary Board of the New Mexico Supreme Court.

The ten self-assessments focus on the following ten core practice principles:

- Developing Competent Practices;
- Communicating in an Effective, Timely, Professional Manner;
- Ensuring that Confidentiality Requirements are Met;
- Avoiding Conflicts of Interest;
- Retaining and Managing Secure Files;
- Managing the Law Firm/Legal Entity and Staff;
- Charging Appropriate Fees and Making Appropriate Disbursements;
- Ensuring the Use of Reliable Trust Account Practices;
- Access to Justice and Client Development; and
- Promoting Wellness.

Tennessee's PMBR

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- Promoting Wellness.

The Board - By the Numbers

- 23,392 Active Attorneys
- 468 Administrative Suspensions_(7/1/20-6/30/21)
- 2,105 Informal Ethics Inquiries

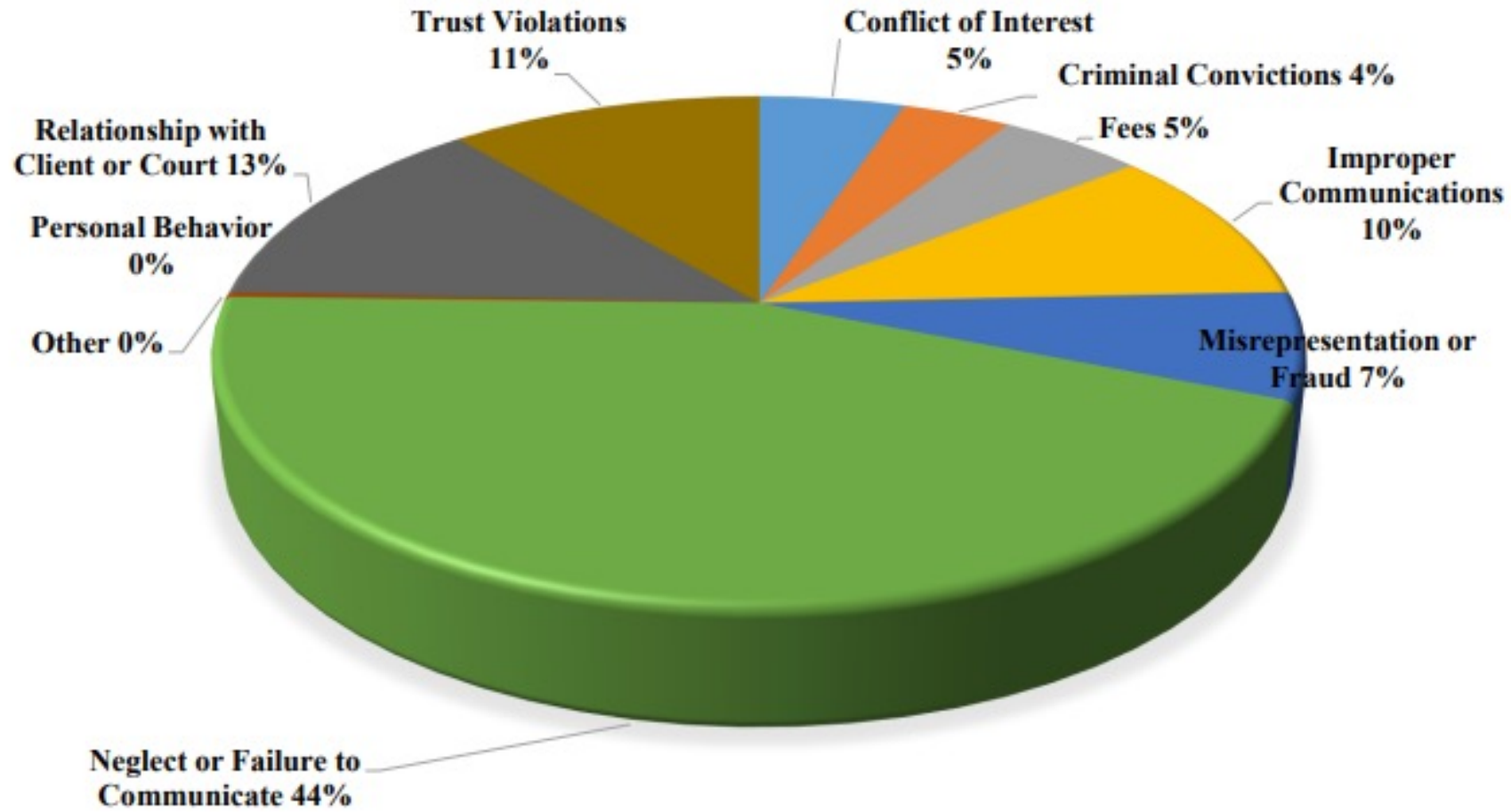


Discipline - By the Numbers

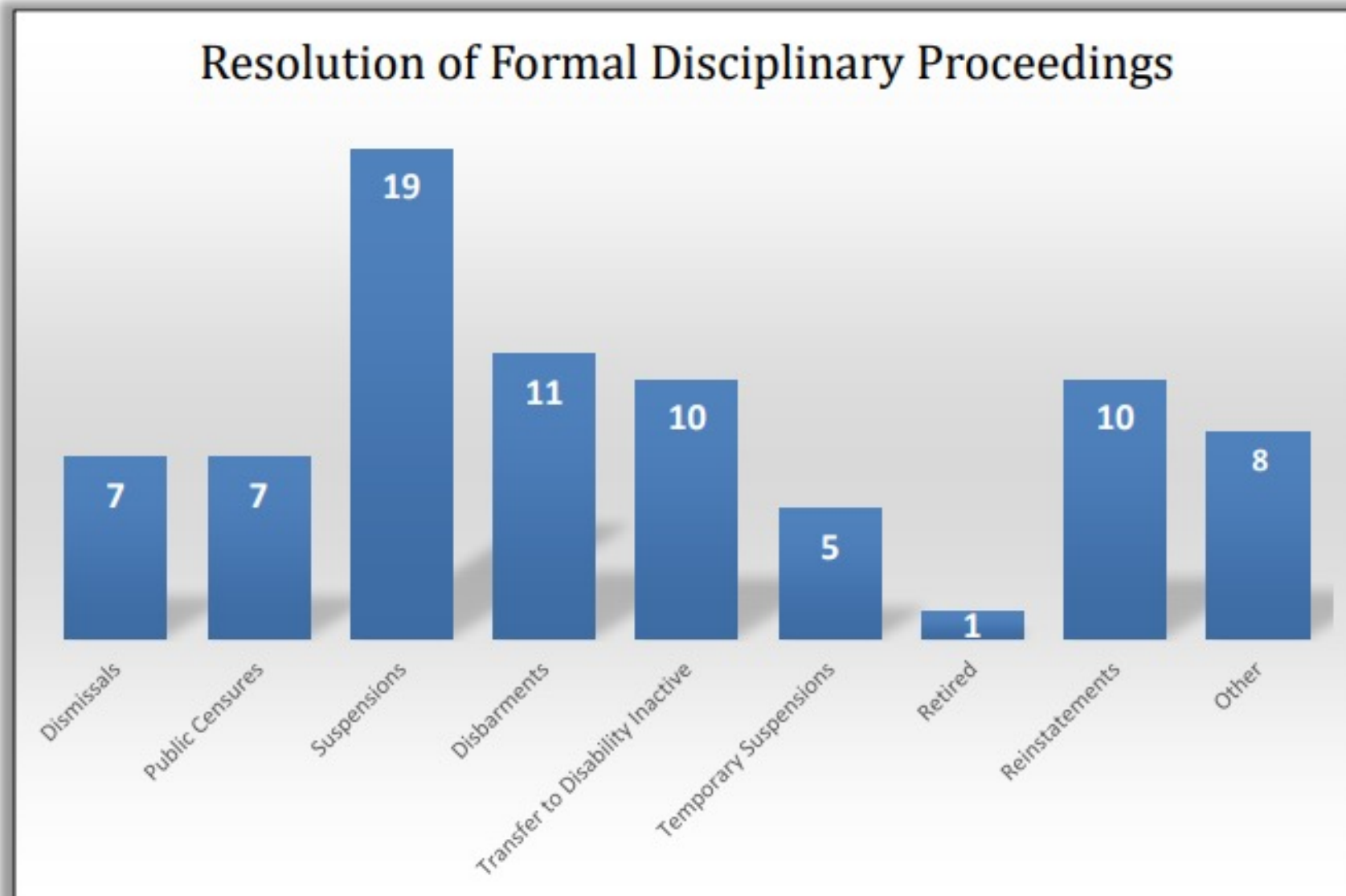
- 1,134 Disciplinary Complaints_(7/1/20-6/30/21)
- 102 Issuance of Discipline
- 83 Trust Account Overdrafts



A. Nature of Complaints



- Formal Disciplinary Proceedings - 81 Petitions Filed, 29 Hearings (7/1/20-6/30/21)



Recent Discipline – Three Suspensions



Teets v. Board of Professional Responsibility ,

20C2184, Circuit Court of Davidson County (05/17/21)

- Attorney had a “duty to inform the court” that he had been told the owner was unwilling to stay on the bond. – Hearing Panel
- Panel findings are “the only reasonable explanation.” –Circuit Court
- Attorney “used deflection and deception.” – Circuit Court

Beier v. Board of Professional Responsibility ,

E2019-00463-SC-R3-BP (10/02/20)

- Attorney argued that Affidavit was true.
 - “Beside the point” -Tennessee Supreme Court
- Aggravating factors: 40 years of practice; refusal to acknowledge the wrongfulness of his conduct.

In Re: Sitton, M2020-00401-SC-BAR-BP (1/22/21)

- Tenn. Sup. Ct. Rule 9, § 15.4(b)

The Court shall review the recommended punishment provided in such judgment or settlement with a view to attaining uniformity of punishment throughout the State and appropriateness of punishment under the circumstances of each particular case.

I have a carry permit Lauren. The problem is that if you pull your gun, you must use it. I am afraid that, with your volatile relationship with your baby's daddy, you will kill your ex _ your son's father. Better to get a taser or a canister of tear gas. Effective but not deadly. If you get a shot gun, fill the first couple rounds with rock salt, the second couple with bird shot, then load for bear.

If you want to kill him, then lure him into your house and claim he broke in with intent to do you bodily harm and that you feared for your life. Even with the new stand your ground law, the castle doctrine is a far safer basis for use of deadly force.

As a lawyer, I advise you to keep mum about this if you are remotely serious. Delete this thread and keep quiet. Your defense is that you are afraid for your life _ revenge or premeditation of any sort will be used against you at trial.



In Re: Sitton, Continued

- “Giving advice as a lawyer about planning in advance how to claim a defense to killing someone is conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d).” – Hearing Panel Decision
- “Perhaps most surprising . . . injudicious advice was virtually unprompted.” – Supreme Court of Tennessee
- “Our rules do not permit lawyers to offer advice on how to commit crime with impunity.” – Supreme Court of Tennessee

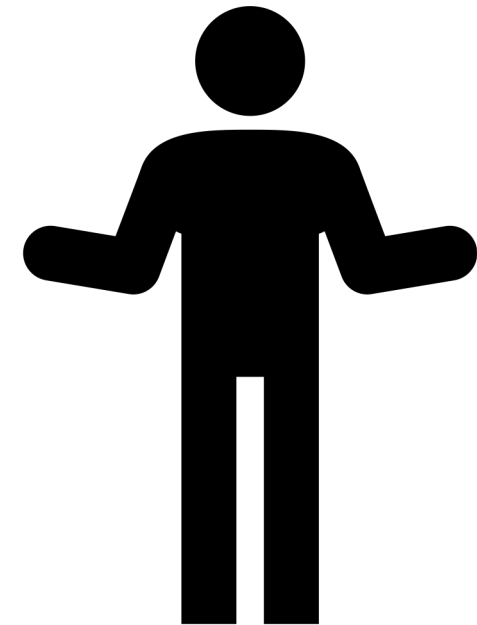
In Re: Sitton, Continued

- No Mitigation – Attorney continues to claim this is all a “gross misunderstanding. This is not taking responsibility.”
 - Consistent minimizing of social media comments
- Aggravation – Social Media Platform
- “We can think of few things more prejudicial to the administration of justice than publicly fostering a view of lawyers as co-conspirators whose role is to manufacture plausible but untrue defenses against criminal charges for the premeditated use of deadly force.” - Supreme Court of Tennessee

On-Line Reviews – A Hypothetical

If a client posts a negative review of you on AVVO or another platform, how can you respond?

- No name; no facts. Location? Type of case?
- May say “I was compelled to withdraw under the Rules of Professional Conduct;” if client is not identified.
- “I am prohibited from responding with facts to show this is unfounded, due to client confidentiality.”





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