

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION AND
DISCIPLINARY COMMISSION

In the Matter of:)	
)	
THOMAS EARL HILDEBRAND, JR.,)	Commission No. 2024PR00068
Attorney-Respondent,)	
)	
No. 1213369.)	

COMPLAINT

Lea S. Gutierrez, Administrator of the Attorney Registration and Disciplinary Commission, by her attorney, Tammy L. Evans, pursuant to Supreme Court Rule 753(b), complains of Respondent, Thomas Earl Hildebrand, Jr., who was licensed to practice law in Illinois on October 7, 1976, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Dishonesty, Making False Statements to C.C.'s Mother and to Judge Zachary Schmidt, and Engaging in Conduct that is Prejudicial to the Administration of Justice)

1. On or about April 6, 2022, the Greene County State's Attorney filed an amended information against C.C. charging him with aggravated battery, a Class 3 felony, and mob action, a Class 4 felony. The matter was docketed as *People of the State of Illinois v. [C.C.]*, case number 2022CF39. The court appointed a public defender for C.C.

2. On or about July 6, 2022, Respondent and C.C. agreed that Respondent would represent C.C. and substitute in as counsel for him in case number 2022CF39. Respondent and C.C. agreed that Respondent would charge C.C. a \$3,000 flat fee, and that A.P., C.C.'s aunt, would pay Respondent the \$3,000 flat fee. On July 6, 2022, the court entered an order allowing Respondent to substitute in as counsel for C.C. in case number 2022CF39.

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3. On or about September 22, 2022, the Greene County State's Attorney filed a second information against C.C. charging him with three counts of aggravated driving under the influence involving a motor vehicle crash that resulted in the death of another person, a Class 2 felony. The matter was docketed as *People of the State of Illinois v. [C.C.]*, case number 2022CF90.

4. On or about September 28, 2022, Respondent and C.C. agreed that Respondent would represent him in case number 2022CF90. Respondent did not charge C.C. an additional fee to represent him in case number 2022CF90. Instead, he agreed that the \$3,000 flat fee that he received from A.P. would include his representation of C.C. in case number 2022CF90.

5. On December 19, 2022, Respondent filed his appearance and entered a plea of guilty on behalf of C.C. in case number 2022CF90. On the same date, the court, by agreement of the parties, dismissed case number 2022CF39. The court scheduled a sentencing hearing for case number 2022CF90 on February 4, 2023. Respondent received a copy of the court's order.

6. On February 4, 2023, the court, by agreement of the parties, rescheduled the sentencing hearing for case number 2022CF90 to April 4, 2023, at 1:30 p.m. Respondent received a copy of the court's order.

7. On April 4, 2023, Respondent had a flat tire outside of Jerseyville on his way to the sentencing hearing in Carrollton. Respondent called the State's Attorney's Office and reported that he would not be able to attend the sentencing hearing. The State's Attorney relayed to the court that Respondent would not be able to attend because he had a flat tire.

8. On April 4, 2023, Judge Zachary Schmidt entered an order directing Respondent to provide proof of his flat tire before the next court date, and scheduling a sentencing hearing for case number 2022CF90 on April 28, 2023, at 1:30 p.m. Respondent received a copy of the court's order.

9. On April 21, 2023, Respondent filed a receipt for his tire repair with the Greene County Circuit Clerk's Office.

10. On April 26, 2023, C.C.'s mother contacted Respondent about the sentencing hearing that the court had scheduled for April 28, 2023. Respondent told C.C.'s mother that he did not know that the court had scheduled a sentencing hearing on April 28, 2023 for case number 2022CF90.

11. Respondent's statement to C.C.'s mother described in paragraph 10, above, was false because Respondent knew the court had scheduled a sentencing hearing for April 28, 2023, as he had previously received a copy of Judge Schmidt's April 4, 2023 order.

12. At the time Respondent made the statement to C.C.'s mother described in paragraph 10, above, he knew the statement was false.

13. On April 27, 2023, Respondent contacted Caleb Briscoe, the Greene County State's Attorney, and asked him if he would agree to continue the sentencing hearing for case number 2022CF90 that the court had scheduled for the following day. Mr. Briscoe told Respondent that he would not agree to the continuance and directed Respondent to file a written motion to continue the matter.

14. At no time did Respondent file a written motion to continue the sentencing hearing for case number 2022CF90 that the court had scheduled for April 28, 2023, at 1:30 p.m.

15. On April 28, 2023, at 1:07 p.m., Respondent left a message on Judge Schmidt's voicemail, which Judge Schmidt had transcribed and provided to the Administrator. In his message, Respondent stated in part, the following:

“...I did not get an email from the clerk's office on the 4th or the 5th or the 6th. I checked all my emails[.] Ms. [C] called me on Wednesday and said she thought her son had court on Friday and I

did not see it anywhere, I looked back again and there is something indicating that there is something set today at 1:00...”

“...I did not get notice[.] I checked my email, I checked spam, I checked my junk mail, for the last month and I did not get anything otherwise I would have contacted the State’s Attorney’s Office and see what we were going to do because I already had all this other stuff scheduled in Randolph County...”

16. Judge Schmidt did not receive the message described in paragraph 15, above, until approximately 2:30 p.m. on April 28, 2023, because he was in court.

17. On April 28, 2023, the State’s Attorney, C.C., and the victims were present in court for the sentencing hearing. The State’s Attorney informed the court that Respondent had contacted him on April 27, 2023, and told him that he was unable to attend the hearing. The State’s Attorney further stated that, when he spoke to Respondent, he directed Respondent to file a written motion to continue the sentencing hearing. Respondent did not file a written motion to continue the sentencing hearing.

18. On April 28, 2023, Judge Schmidt entered an order finding Respondent in contempt of court for failure to appear and failure to file a motion to continue, and ordered Respondent to appear in court on May 30, 2023, to answer to the court’s contempt finding.

19. On May 30, 2023, Respondent appeared in court and made the following statements to Judge Schmidt:

“...the first I knew that that the sentencing for April 28th was set was when I got a phone call from [C.C.’s] mom on Wednesday inquiring about that...”

“...I check my emails every day. And I checked my emails because the Clerk’s Office said, “We emailed you this.” I looked for that and I didn’t find it in trash, didn’t find it in spam, didn’t find it anywhere so I don’t know what the heck happened ‘cause I would have been here...”

20. Respondent's statement to Judge Schmidt that he did not know the court had scheduled a sentencing hearing in case number 2022CF90 until that Wednesday, April 26, 2023, when C.C.'s mother contacted him, was false because Respondent received a copy of the court's order on April 4, 2023, or shortly thereafter.

21. At the time Respondent made the statement to Judge Schmidt described in paragraph 20, above, he knew the statement was false.

22. Respondent's statement to Judge Schmidt that he had not received a copy of Judge Schmidt's April 4, 2023 order was false because he received a copy of the court's order on April 4, 2023, or shortly thereafter.

23. At the time Respondent made the statement to Judge Schmidt described in paragraph 22, above, he knew the statement was false.

24. At the conclusion of the hearing, Judge Schmidt found Respondent in contempt of court and fined him \$500.

25. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, by conduct including knowingly making the false statement to Judge Schmidt that he had not received a copy of the court's April 4, 2023 order, and knowingly making the false statement to Judge Schmidt that he did not know the court had scheduled a sentencing hearing on April 28, 2023 for case number 2022CF90 until C.C.'s mother told him about the sentencing hearing on April 26, 2023, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010);
- b. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by conduct including knowingly making the false statement to C.C.'s mother that he did not know the court had scheduled a sentencing hearing on April 28, 2023 for case number 2022CF90, knowingly making the false

statement to Judge Schmidt that he did not receive a copy of the court's April 4, 2023 order, and knowingly making the false statement to Judge Schmidt that he did not know the court had scheduled a sentencing hearing in case number 2022CF90 until C.C.'s mother told him about the hearing on April 26, 2023, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010); and

- c. engaging in conduct that is prejudicial to the administration of justice by conduct including failing to appear at the sentencing hearing on April 28, 2023, and failing to timely notify the court or file a motion to continue the sentencing hearing the court had scheduled for case number 2022CF90, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Lack of Diligence and Communication – B.D.)

26. On September 17, 2018, B.D. went to the Argosy Alton Belle Casino with her husband to gamble. On her way up to the second floor of the casino, she slipped on the carpeting and fell, injuring her right wrist and her knees.

27. On or about November 2, 2018, Respondent and B.D. agreed that Respondent would represent her and file a lawsuit on her behalf against the casino.

28. On September 15, 2020, Respondent filed an appearance and complaint in Madison County on behalf of B.D. against the casino. The matter was docketed as [*B.D.*] v. *Alton Casino, LLC d/b/a/ Argosy Casino Alton*, case number 2020SC1671.

29. Illinois Supreme Court Rule 102(a) provides: "Promptly upon issuance, summons (together with copies of the complaint as required by Rule 104) shall be placed with service with the sheriff or other officer or person authorized to serve process."

30. Respondent made no efforts to effectuate service on the Alton casino after he filed the complaint in case number 2020SC1671.

31. On July 27, 2023, the court, on its own motion, dismissed the complaint for no activity.

32. At no time after July 27, 2023, did Respondent file a motion to vacate the court's July 27, 2023 order.

33. As a result of Respondent's failure to file a motion to vacate the court's July 27, 2023 order, B.D.'s cause of action against the casino was barred.

34. At no time after July 27, 2023, did Respondent inform B.D. that the court had entered an order dismissing case number 2020SC1671 for no activity.

35. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to act with reasonable diligence and promptness in representing a client, by conduct including failing to issue summons to the defendant in case number 2020SC1671, and failing to file a timely motion to vacate the court's July 27, 2023 order dismissing case number 2020SC1671 for no activity, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these rules, by conduct including failing to inform B.D. that Respondent had failed to issue summons in case number 2020SC1671, and failing to inform B.D. that the court had entered an order dismissing case number 2020SC1671 for no activity, in violation of Rule 1.4(a)(1) of the Illinois Rules of Professional Conduct (2010); and
- c. failing to keep the client reasonably informed about the status of the matter, by conduct including failing to inform B.D. that Respondent had failed to issue summons in case number 2020SC1671, and failing to inform B.D. that the court had entered an order dismissing case number 2020SC1671 for no activity, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Lea S. Gutierrez, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Tammy L. Evans
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