

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

In the Matter of:

WANEMOND SMITH

Attorney-Respondent,

No. 6227154

Commission No. 2024PR00024

COMPLAINT

Lea S. Gutierrez, Administrator of the Attorney Registration and Disciplinary Commission, by her attorney, Rory Quinn, pursuant to Supreme Court Rule 753(b), complains of Respondent, Wanemond Smith, who was licensed to practice law in the State of Illinois on September 17, 2002, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

ALLEGATIONS COMMON TO ALL COUNTS

1. On November 16, 2021, Respondent was suspended by the Illinois Supreme Court for three years and until further order of the Court. *In re Smith*, M.R. 030971, 2020PR00089.
2. At no time from November 16, 2021 to May 1, 2024, the date of filing of this complaint was Respondent authorized to practice law in the State of Illinois.

COUNT I

(False Statements – Tolbert Matter)

3. On February 9, 2021, Respondent agreed to represent Paula Tolbert (“Tolbert”) in securing a release of claim to a land trust. Respondent and Tolbert agreed that Respondent would accept a flat fee of \$1,500 for the representation.

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4. On or about July 8, 2021, Respondent agreed to represent Tolbert in a landlord tenant dispute then pending against her. The matter was docketed in the Circuit Court of Cook County as *Shenika Hunt v. Paula Tolbert*, case number 2016M1100461. Respondent and Tolbert agreed that Respondent would accept a flat fee of \$2,000 as his fee.

5. On August 19, 2021, Respondent appeared on behalf of Tolbert on case number 2016M1100461. Respondent did not file an appearance. The case was continued to August 19, 2021. From August 19, 2021 to December 10, 2022, Respondent did not file any pleadings on Tolbert's behalf.

6. At no time did Respondent inform Tolbert or the court that he was suspended on November 16, 2021.

7. On December 9, 2021, Respondent was contacted by opposing counsel, Neal Kitterlin ("Kitterlin"). Kitterlin informed Respondent that he would not be able to attend the December 10, 2022 court status date. Respondent indicated he was also not available and could not appear. Respondent asked Kitterlin to submit a continuance order. Kitterlin had a colleague cover the matter, and the matter was continued to January 11, 2022.

8. On or about December 9, 2021, Respondent spoke to Tolbert. Respondent informed Tolbert that he would not be in court on December 9, 2021 because he was sick.

9. Respondent's statement that he could not attend court because he was sick was false or misleading because the reason that Respondent could not attend court was because he was suspended from the practice of law.

10. Respondent knew his statement that he could not attend court because he was sick was false or misleading because Respondent knew he had consented to discipline of a suspension

for three years and until further order of the Court, and he knew that the reason he could not attend court was because he was suspended from the practice of law.

11. On January 7, 2022, Respondent contacted Kitterlin and informed him he would be unable to attend court on January 11, 2022. On or about January 11, 2022, Kitterlin learned of Smith's suspension.

12. At no time from November 16, 2021 to January 11, 2022, did Respondent inform Kitterlin that he was suspended from the practice of law.

13. On March 9, 2022, case number 2016M1100461 was continued to March 22, 2022. Prior to the March 22, 2022 court date, Respondent called Tolbert and informed her "Oh I thought I had told you I can't represent you. I'm having a little problem but I will be ok real soon."

14. Respondent's statement that he would be "ok real soon" was false or misleading because Respondent was suspended from practicing law for three years and until further order of the Court.

15. Respondent knew his statement that he would be "ok real soon" was false or misleading because Respondent knew he had consented to discipline of three years and until further order of the Court.

16. Prior to March 22, 2022, Tolbert asked Respondent what efforts he had made to secure the release of claim for the land trust. Respondent claimed he had spoken with Debbie DerKacy ("DerKacy") from Chicago Trust Company about the matter.

17. Respondent's statement that he had spoken to DerKacy was false because Respondent had not spoken with DerKacy about Tolbert's matter.

18. Respondent knew his statement that he had spoken to DerKacy was false because Respondent knew he had not spoken with DerKacy about Tolbert's matter.

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

- a. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including falsely holding himself out as an attorney authorized to practice law to Kitterlin and falsely stating to Tolbert that he could not attend court because he was sick, had spoken to DerKacy, and would soon be practicing law, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Practicing Law While Suspended, False Statements and Failure to Return Unearned Fees – Torrence Matter)

20. Prior to November 16, 2022, Respondent and Willie Torrence, Jr. (“Torrence”) agreed that Respondent would represent Torrence in filing a petition for a dissolution of marriage. Torrence and Respondent agreed that Respondent would accept a flat fee of \$2,500 to represent Torrence in the matter.

21. On November 17, 2022, Respondent drafted a petition for dissolution of marriage on behalf of Torrence and sent the petition to Torrence via e-mail. Respondent did not sign the petition and drafted it to appear as though Torrence was filing the petition *pro se*.

22. On November 23, 2022, Torrence paid Respondent \$500 as partial payment of the agreed-upon fee.

23. On December 14, 2022, Respondent spoke to Torrence on the telephone. During that conversation, Respondent asked for the remainder of his fee. Additionally, Respondent told Torrence that he had rewritten a portion of the petition, and Respondent then sent it back to the Torrence to sign.

24. On December 23, 2022, Torrence paid Respondent a second \$500 as partial payment of the agreed-upon fee.

25. On January 24, 2023, Torrence paid Respondent \$1,500, the balance of the agreed-upon fee.

26. On February 3, 2023, Respondent talked to Torrence on the telephone and discussed his matter including discovery procedures and how to proceed with the case. When Torrence asked Respondent about his status as a suspended attorney, Respondent told Torrence “that’s why I’m appealing because I am not that person.”

27. Respondent’s statement’s that he was appealing his prior disciplinary matter and that he was not the attorney that was the subject of the suspension were false.

28. Respondent knew his statement that he was appealing his prior disciplinary matter and that he was not the attorney was false because Respondent knew he had consented to discipline of a suspension for three years and until further order of the Court and did not file an appeal from that consent petition.

29. On February 6, 2023, Respondent called Torrence and told him that he had filed the case under Torrence’s name. Respondent had not made that filing or any filing on Torrence’s behalf. Additionally, Respondent advised Torrence that he would file a substitution of counsel or an additional counsel. Torrence again raised the issue of Respondent’s disciplinary status and requested a refund of the fees paid.

30. Respondent’s statement that he had filed Torrence’s matter was false because at no time had Respondent filed Torrence’s matter.

31. Respondent knew his statements that he had filed Torrence’s matter were false because Respondent knew he had not filed Torrence’s matter.

32. As of April 29, 2024, the date a complaint was voted in this matter, Respondent had not returned any of the \$2,500 fee to Torrence.

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

- a. failure to promptly refund to Torrence upon discharge any portion of the \$2,500 fee paid in advance that had not been earned, in violation in violation of Rule 1.16(e) of the Illinois Rules of Professional Conduct (2010);
- b. practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, by representing Torrence in his dissolution case and holding himself out as an attorney to Torrence while he was suspended by the Supreme Court, in violation of Rule 5.5(a) of the Illinois Rules of Professional Conduct (2010); and
- c. conduct involving dishonesty, fraud, deceit or misrepresentation, by stating to Torrence that he was not suspended by the Supreme Court and that he had filed Torrence's matter, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT III

(Practicing Law While Suspended and False Statements – Gibson Matter)

34. On December 26, 2022, Respondent and Linnette Gibson ("Gibson") agreed that Respondent would represent Gibson in seeking a petition for guardianship of her mother. Respondent and Gibson agreed that Respondent would accept a flat fee of \$2,500 to represent her in the matter, and Gibson would pre-pay expenses totaling \$1,188.

35. On the same day, Respondent directed Gibson to send \$1,388 to attorney Jeffrey Burt ("Burt") as the "appointed attorney." Respondent and Gibson called Burt, who agreed to represent Gibson in opening the guardianship estate. Burt was unaware that Smith would also be representing Gibson. Additionally, Respondent directed Gibson to send the remaining \$3,688 to Joshua Jones ("Jones"), who Respondent claimed does a lot of "running getting papers signed."

36. On December 27, 2022, Gibson paid Burt \$1,388 using the payment application Zelle. On the same day, Gibson paid Jones \$2,300 using Zelle.

37. On December 28, 2022, Respondent called Gibson and requested an additional \$2,250 for a surety bond. Gibson requested to see some work done on the matter. Respondent sent Gibson text messages with what appeared to be a copy of the guardianship petition. Respondent drafted the petition and included Burt's name, address, and attorney number.

38. At no time did Respondent inform Burt he was also representing Gibson in seeking the guardianship petition.

39. At no time did Burt give Respondent permission to use his name, attorney number, or address in drafting the guardianship petition.

40. On December 30, 2022, Gibson learned that Jones is Respondent's son and Respondent was not authorized to practice law.

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

- a. practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, by representing Gibson in seeking a petition for guardianship and holding himself out as an attorney to Gibson while he was suspended by the Supreme Court, in violation of Rule 5.5(a) of the Illinois Rules of Professional Conduct (2010); and
- b. conduct involving dishonesty, fraud, deceit or misrepresentation, by holding himself out as an attorney to Gibson while he was suspended by the Supreme Court, claiming Jones was an assistant when he was actually Respondent's son, and drafting the guardianship petition to include Burt's name, address, and attorney number without authority in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

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

Respectfully submitted,

Lea S. Gutierrez, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Rory Patrick Quinn
Rory Patrick Quinn

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