

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

MICHELLE FOREMAN,	)	
PLAINTIFF,	)	NO. _____
v.	)	
	)	
G. KLINE PRESTON, ESQ.	)	JURY DEMAND - 6 MEMBER
DEFENDANT.	)	

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COMPLAINT FOR LEGAL MALPRACTICE AND DAMAGES

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Comes now the Plaintiff, Michelle Foreman, by and through Counsel, and for her causes of action against Defendant G. Kline Preston, Esq. (“Attorney Preston”), would show unto this Honorable Court as follows:

**PARTIES, JURISDICTION AND VENUE**

1. The Plaintiff, Michelle Foreman, is a resident of Williamson County, Tennessee, residing at 7486 Deer Ridge Road Primm Springs, TN 38476.

2. The Defendant, G. Kline Preston, IV, BPR #017141, is a Licensed Tennessee Attorney since 1995, doing business at multiple locations in Davidson County, Tennessee. It is believed that the principal place of business is 4515 Harding Pike, Suite 17, Nashville, Tennessee, 37205, and that Defendant can be served with process at this address. Alternatively, the Defendant does business at 4000 Hillsborough Pike Suite 1008 Nashville, TN 37215.

3. Ms. Foreman’s causes of action arose in Davidson County, Tennessee, where Defendant was practicing law, and representing Ms. Foreman, at the time of the actions alleged herein. Venue and a jury demand are proper pursuant to Tenn. Code Ann. §§ 20-4-101 and 20-4-104. This Court has jurisdiction pursuant to Tenn. Code Ann. § 16-10-101.

## STATEMENT OF FACTS

### A. Summary of Underlying Case

4. This case involves attorney malpractice and breach of fiduciary duty on the part of Attorney G. Kline Preston, in his representation of Michelle Foreman as a plaintiff in a defamation action arising from communications published by a Mr. David Rosenberg, which she alleged were defamatory in nature;

5. Attorney Preston filed the original Complaint on October 26, 2022, in Williamson County Circuit Court Case Number 22CV527, naming only Dave Rosenberg as the defendant, a summons being issued and returned served on Mr. Rosenberg on October 27, 2022.

6. On November 23, 2022, Mr. Rosenberg filed a Motion under Tenn. R. Civ. P. 12.05 seeking a More Definite Statement with regard to the issue of Venue, and further seeking compliance with Tenn. R. Civ. P. 10.03, as the cause of action was based on a written instrument not affixed to the Complaint.

7. An Order was entered in the Circuit Court for Williamson County on February 21, 2023, and pursuant to Mr. Rosenberg's Motion ordering the Plaintiff, Ms. Foreman to allege that "venue is proper in *Davidson County* within 10 days of the entry of this Order", and also stating this "case shall be transferred to Davidson County Circuit Court". Upon information and belief, this was an announcement made by Mr. Rosenberg's counsel based on the relief requested in his Motion for more Definite Statement, with Attorney Preston being *in absentia*. It should be noted that the Certificate of Service on the Order as entered reflects the same was sent to Attorney Preston on February 3, 2021, and was electronically signed by Mr. Rosenberg's Counsel, Mr. Jamie R. Hollin.

8. Attorney Preston then filed a “Motion to Revise” the “Order entered February 21, 2023” on February 24, 2023, stating he had not opposed Mr. Rosenberg’s Rule 12.05 Motion which also sought compliance with Tenn. R. Civ. P. 10.03; however, the Order submitted by Mr. Hollin, and ultimately entered by the Honorable Michael W. Binkley, had exceeded the scope of the relief sought after in the Motion and Mr. Hollin had submitted an Order beyond the scope of any agreement he may have conferred.

9. On March 16, 2023, Mr. Hollin then filed a Response to Attorney Preston’s Motion, along with his own Motion to Transfer Venue to Davidson County pursuant to Tenn. R. Civ. P. 12.02(3), stating he wished to avoid wasting the Court’s time and have the relief granted as written in the Order (as entered on February 21, 2023), as Venue was not proper in Williamson County. It is unclear what was announced at the hearing on Mr. Rosenberg’s original Rule 12.05 Motion on January 19, 2023, as the Order simply stated “a hearing was set and heard on January 19, 2023”, without stating who was present, just that the “Motion was unopposed”. In the Response portion of Mr. Hollin’s March 16, 2023 filing, he cited an e-mail chain wherein he stated he sent the Order as entered to Attorney Preston.

10. On March 29, 2023, Attorney Preston filed a Response in Opposition to Mr. Rosenberg’s Motion to Transfer, until such time as he may amend the Complaint at the conclusion of his Motion to Revise the Order entered February 21, 2023.

11. The Williamson County Circuit Court heard the pending Motions and Responses on March 30, 2023 and did issue a ruling both (1) revising the Court’s February 21, 2023 Order and (2) granting Defendant Rosenberg’s Motion to Transfer Venue to the Davidson County Circuit Court. An Order to this effect was entered on April 16, 2023, by the Honorable Michael W. Binkley. The Williamson County Circuit Court did certify the record on April 18, 2023.

12. On April 25, 2023, a Notice of Appearance of Counsel was filed by Attorney Daniel Horwitz and his firm on behalf of Defendant Rosenberg in the Davidson County Eighth Circuit Court, bearing Docket Number 23C891. The same day, Attorney Horwitz did file a Motion for Summary Judgment under Tenn. R. Civ. P. 56, one of the alleged grounds being that Attorney Preston had not amended the Complaint as ordered by the Williamson County Circuit Court pursuant to the February 21, 2023 Order. This Motion was noticed for Hearing on August 4, 2023, and a Statement of Undisputed Material Facts and Memorandum of Law were filed contemporaneously therewith.

13. On the same day, April 25, 2023, a letter was sent from the Circuit Court Clerk's Office for Davidson County to notify Attorney Preston that the case had been removed from Williamson County and assigned to the Eighth Circuit Court for disposition. An identical letter was sent to Mr. Hollin on the same date.

14. On May 19, 2023, Attorney Sarah Martin filed a Motion pursuant to Tenn. R. Civ. P. 41.02(1) for Involuntary Dismissal on behalf of Mr. Rosenberg for failure to prosecute, alleging that Attorney Preston had still not amended the Complaint. It appears this was originally set for hearing on June 2, 2023.

15. On May 30, 2023 Attorney Preston filed a Response to Ms. Martin's Motion explaining his position on that, and on May 31, 2023, Attorney Preston filed the First Amended Complaint in the Davidson County Circuit Court. The same day, Attorney Martin filed a Notice striking her Motion pursuant to Tenn. R. Civ. P. 41.02(1).

16. On June 2, 2023, Attorney Horwitz did file a second Motion for Summary Judgment, removing grounds that the Attorney Preston had not filed the Amended Complaint, and

stating grounds that Ms. Foreman could prove no damages and could not prove actual malice. The Motion was set for hearing on October 13, 2023.

17. On June 12, 2023, Attorney Horwitz did file a Motion to Dismiss under Tenn. R. Civ. P. 12.02(6), and, in the same filing, a Petition to Dismiss under the Tennessee Public Participation Act, Tenn. Code Ann. 20-17-101 et. seq. (the “TPPA”). The Motion/Petition was set for hearing in the Eight Circuit Court for Davidson County on June 30, 2023.

18. On June 26, 2023, Attorney Preston did file a Response of Plaintiff in Opposition to Defendant’s Motion to Dismiss, raising multiple, vague issues with the Constitutionality of the TPPA, as well as taking issue with the Declaration of the Defendant, Rosenberg, in certifying that the numerous attachments to the TPPA Petition were authentic, as Attorney Preston claimed they were inadmissible evidence. Attorney Preston’s Response in Opposition did not address the prima facie showing required under the TPPA and set forth in Tenn. Code Ann. 27-17-104(c).

19. At the hearing on the Motion/Petition, the Eighth Circuit Court, Honorable Lynne T. Ingram, ruled in favor of Defendant Rosenberg, dismissing the Complaint filed by Ms. Foreman, holding that she, by and through Attorney Preston, had failed to meet the burden placed on her by the statutory scheme set forth in the TPPA. She further ruled that an award of Attorney Fees was required under the statute, and Defendant Rosenberg’s Attorneys could file motions regarding those fees, as to reasonableness, as well as any Motion regarding sanctions as authorized by the TPPA.

20. An Order was entered to this effect on July 11, 2023.

21. The TPPA expressly provides that a court’s order dismissing or refusing to dismiss an action pursuant to a TPPA Petition is immediately appealable as a matter of right to the court of appeals. See Tenn. Code Ann. 27-17-106.

22. On August 11, 2023, Attorney Horwitz did file two (2) Motions, one for approval of Attorney Fees and Costs, and one for Sanctions against Attorney Preston and Ms. Foreman under Tenn. Code Ann. 27-17-107.

23. On August 21, 2023, Attorney Preston did file “PLAINTIFF’S RULE 54.02 TENN. R. CIV. P. MOTION TO REVISE/RECONSIDER OR ALTER OR AMEND THE COURT’S JULY 11, 2023 ORDER”, renewing Constitutional arguments and procedural arguments, as well as the merits of the underlying cause.

24. Attorney Preston did not timely file an appeal as to the dismissal of the underlying action pursuant to the TPPA, therefore effectively barring Ms. Foreman from Appellate review of the dismissal and award of Attorney Fees.

25. On August 25, 2023, a hearing was held on Rosenberg’s Motions for Attorney Fees and Sanctions, respectively. At this hearing, Attorney Preston essentially conceded that Attorney Horwitz’s fees were reasonable at \$34,961.00 and fixing costs at \$494.00. Attorney Preston continued to argue that the Motions should not be heard and/or ruled upon until a hearing on his Rule 54.02 Motion.

26. As a result of the hearing, the Trial Court entered an Order on September 1, 2023, granting the fees and costs as stated, subject to ruling on Attorney Preston’s Rule 54.02 Motion. The Court further issued an Order on September 12, 2023 holding the ruling on sanctions in abeyance.

27. On September 29, 2023, a hearing was set for Attorney Preston’s Motion under Tenn. R. Civ. P. 54.02, which he asked to reset, and then later agreed to allow the Trial Court to rule on the matter on briefs. The same day, Attorney Horwitz filed a Motion to Certify the September 1, 2023 Order as Final, pursuant to Tenn. R. Civ. P. 54.02, as well as its forthcoming

rulings on the Attorney Preston's Rule 54.02 Motion and Attorney Horwitz's Motion for Sanctions.

28. On November 15, 2023 the Court issued an Order declaring the September 1, 2023 Order as Final, and declaring in advance that its forthcoming rulings with respect to Sanctions and the Rule 54.02 Motion would be Final.

29. On November 17, 2023, the Court issued an Order denying Attorney Preston's Motion to Revise, Alter or Amend the July 11, 2023 Order under Tenn. R. Civ. P. 54.02.

30. On December 4, 2023, the Court issued a punitive sanction against Ms. Foreman in the amount of \$100,000.00 in favor of Mr. Rosenberg.

31. Attorney Preston filed a Notice of Appeal on January 3, 2024.

32. Attorney Preston had represented the Plaintiff, Ms. Foreman, in other defamation actions, including one which was faced a Petition under the TPPA, in which Attorney Preston filed a Notice of Voluntary Nonsuit prior to litigation of same. This was in front of Judge Ingram, who disclosed that she was a constituent of the District which was the subject matter of the litigation in that case. An Order laying out conditions of the dismissal was later entered in that case, *Foreman v. Hemmer*.

33. Attorney Preston further waived a potential conflict of interest with respect to Judge Ingram hearing the case, when she disclosed, again, that she was a constituent in the District which was the subject matter of the litigation, again, in the *Foreman v. Rosenberg* case. Attorney Preston did not consult with Ms. Foreman before waiving that issue.

#### **B. Defendants' Mishandling of Ms. Foreman's Case**

34. Plaintiff now timely files her claims against Defendant, and would state the malpractice occurred, initially, when Attorney Preston failed to respond adequately as set forth in

the TPPA, or June 26, 2023. Plaintiff would aver that, even still, it was some time later that she became aware of the malpractice.

35. Attorney Preston failed to preserve any merits-based appeal of the dismissal of the underlying defamation action by failing to file an Appeal with the Court of Appeals by August 11, 2023.

36. Attorney Preston failed to keep the Plaintiff apprised of certain decisions, such as the decision to waive any potential conflict with Judge Ingram hearing the case.

37. Attorney Preston's representation of Ms. Foreman ultimately resulted in her being sanctioned in the amount of \$100,000.00, as he was the Attorney for Ms. Foreman in every case that Judge Ingram cited when fashioning this punitive remedy against her.

38. Attorney Preston was not sanctioned, and his representation caused, and continues to cause, damages to Ms. Foreman in the form of sanctions, post-judgment interest, exorbitant attorney fees which were essentially uncontested, post-judgment attorney fees for litigation in the matter, including current counsel, and quite likely more attorney fees to be awarded to Mr. Rosenberg until conclusion of the matter, which is still currently being litigated.

39. Attorney Preston knew, or should have known, the provisions in the TPPA, and should have acted diligently and prudently with respect to same.

40. As a direct result of the negligence of Attorney Preston, in advising and representing the Plaintiff, Ms. Foreman suffered monetary penalties in the form of the above-mentioned sanctions and attorney fees.



**CAUSES OF ACTION**

**COUNT I-NEGLIGENCE**

41. Ms. Foreman incorporates the facts and allegations set forth above as fully described herein.

42. The attorney-client relationship existed between Ms. Foreman and Defendant during the time in question.

43. Defendant generally owed Ms. Foreman a duty to provide appropriate legal representation commensurate with the standard of acceptable professional care.

44. The recognized standards of acceptable professional practice for attorneys in Tennessee and similar communities require at least the duties of (1) being truthful with the client and not misleading the client into believing work was undertaken that was not done, (2) keeping the client reasonably informed about the status of his case, (3) complying with the Rules of Civil Procedure, (4) complying with statutes relevant to the prosecution of the client's case, and (5) meeting statutes of limitations deadlines.

45. Defendant failed to act with ordinary and reasonable care in accordance with the recognized standard of acceptable care for licensed attorneys in Tennessee and breached his duties owed to Ms. Foreman.

46. The ways in which Defendants failed to comply with the applicable standard of recognized acceptable professional practice ("standard of care") include, but are not limited to:

- a. Failing to properly advise Ms. Foreman as to the likelihood of success on certain claims,

- b. Failing to file a proper response to Defendant Rosenberg's Petition under the TPPA, thereby causing the action to be dismissed, with prejudice, and a mandatory award of Attorney Fees rendered against her.
- c. Missing the Appellate deadline with respect to the dismissal of the case by failing to act under the provisions set forth in the TPPA, specifically Tenn. Code Ann. 27-17-106
- d. Failing to disclose a potential conflict of interest concerning the Judge in the case prior to waiving the same.
- e. Failing to comply with the Tennessee Rules of Civil Procedure, and
- f. Prosecuting the case in such a manner that Ms. Foreman was sanctioned in the amount of \$100,000.00 while being represented by the Defendant.

47. Based on at least the above-mentioned actions and inactions, Defendant failed to represent Ms. Foreman in a reasonably prudent and competent manner. Accordingly, he breached the standard of ordinary care for attorneys (including but not limited to objectively wanton and reckless acts or omissions).

48. As a direct (cause in fact) and proximate result of Defendant's negligence, Ms. Foreman is foreclosed from appealing dismissal of the underlying case as to the merits.

49. As a direct (cause in fact) and proximate result of Defendant's negligence, Ms. Foreman incurred damages as set forth in this Complaint.

50. Defendants' actions and inactions amount to gross negligence and, at least, a wanton, reckless, and indifference to the standards of care such that punitive damages should be awarded.

51. But for Defendants' wanton, reckless, and indifference to the standards of care, Ms. Foreman's monetary injuries would not be to the extent that they are, and punitive damages should be awarded.

***Wherefore, premises considered***, Plaintiff prays as follows:

1. That proper process issue and be served upon the Defendant, and the Defendant be required to appear and answer this Complaint within the time required by law;

2. An award of all available compensatory damages for monetary damages (past, present, and future), including, but not limited to, damages incurred in the form of sanctions, attorney fees awarded against her in the negligent prosecution of the claim against Mr. Rosenberg, as well as all reasonable and necessary Attorney Fees incurred in the representation undertaken by substitute counsel in that case in the Eighth Circuit Court of Davidson County, and styled Foreman v. Rosenberg, Docket No. 23C891, and the Appeal thereto, in a fair and reasonable amount to be determined by a jury but not to exceed \$250,000;

3. An award of punitive damages, as lawful and appropriate the maximum amount permitted by law for punitive damages as prescribed by Tenn. Code Ann. § 29-39-104, except that Tenn. Code Ann. § 29-39-104 is unconstitutional and violates the Tennessee Constitution (see *Lindenberg v. Jackson National Life Insurance Company*, 913 F.3d 348 (6th Cir. 2018)) such that there is no cap on punitive damages if the statute is found unconstitutional;

4. An award of the costs of this action be assessed against Defendant including all available discretionary costs under Tennessee Rule of Civil Procedure 54.04;

5. An award of pre-judgment and post-judgment interest, to the extent available and applicable; and

6. Any and all such other and further relief as the Court deems proper.

**PLAINTIFF DEMANDS A JURY OF SIX PERSONS TO DETERMINE ALL  
ISSUES AND DAMAGES SO TRIABLE.**

Dated: June 26, 2024

Respectfully submitted,

*/s/ F. Lee Spratt*

F. Lee Spratt, BPR #034675

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