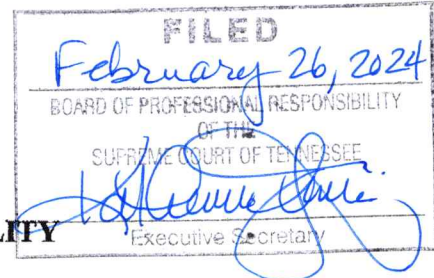


**IN DISCIPLINARY DISTRICT II  
OF THE BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE SUPREME COURT OF TENNESSEE**



**IN RE: GARY LEE ANDERSON  
BPR No. 004515, Respondent  
An Attorney Licensed and  
Admitted to the Practice of  
Law in Tennessee  
(Knox County)**

**DOCKET No. 2023-3347-2-DB**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

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This matter came on for a hearing on the Board's Motion for Default Judgment and for a final hearing on December 21, 2023 before a Hearing Panel consisting of Matthew A. Grossman, Panel Chair, Stephen A. Marcum, and Garrett P. Swartwood. The Tennessee Board of Professional Responsibility (hereinafter sometimes referred to as "the Board") was represented by Douglas R. Bergeron, Disciplinary Counsel for the Board of Professional Responsibility. Respondent, Gary Lee Anderson, did not participate in the hearing. The hearing was conducted telephonically.

**STATEMENT OF THE CASE**

The Petition for Discipline in this matter was filed by the Board on August 18, 2023. Following no responsive pleading being filed by Respondent, a Motion for Default Judgment and that the Allegations of the Petition be Deemed Admitted was filed by the Board on October 25, 2023. Following a telephonic case management conference on March 5, 2023, this Hearing Panel entered an Order on December 7, 2023, setting a hearing date for December 21, 2023 to hear the Board's Motion for Default and, in the event Respondent failed to appear at said hearing, a final hearing on discipline was to be held on said date. A telephonic hearing was held on December 21, 2023 at which Respondent did not appear. In light of Respondent's failure to appear the Board's

Motion for Default was granted and the Board presented its proof and argument in a final disciplinary hearing. Following the hearing on December 21, 2023 this Hearing Panel issued an Order on December 21, 2023, granting the Board's Motion for Default and finding that the allegations and averments of the Petition for Discipline, and the exhibits attached thereto, to be deemed admitted.

### **FINDINGS OF FACT**

The allegations of fact contained in the Petition for Discipline filed by the Board were deemed admitted pursuant to the Order of Default entered in this matter and we so find by preponderance of the evidence the following facts have been proven by preponderance of evidence:

#### **File No. 68551c-2-ES – Complainant - Charles Nelson**

Respondent was hired by Complainant, Charles Nelson, to represent Mr. Nelson's son to obtain the son's release from prison after the son entered a plea on September 4, 2018, to the resale of Schedule II drugs and was sentenced to 12 years in prison, with jail credit of 636 days. Complainant paid Respondent \$1,375.00 for the representation. After being retained Respondent spoke to the father of the client on two occasions and thereafter never again spoke with client's father following numerous calls made by father to Respondent and messages left for a return call. At no time did Respondent speak with the actual client. At no time did Respondent confirm at all, nor in writing, with the actual client that the client agreed to be represented by Respondent. At no time did Respondent file any pleading on behalf of the incarcerated client. At no time did Respondent communicate in writing with his client or the father of his client. At no time did Respondent comply with requests from the Board's Consumer Assistance Program

for information regarding the Nelson matter. At no time did Respondent comply with any request from disciplinary counsel regarding the investigation of this Nelson matter.

Respondent, in failing to ever communicate with his client, violated Tennessee Rule of Professional Conduct 1.4. Respondent, in failing to file any pleadings relative to whatever avenues were available regarding client's incarceration or alternatively failing to advise client that nothing could be filed or would be futile, violated Tennessee Rule of Professional Conduct 1.3. Respondent, in receiving funds for representation and then doing no work, has charged an unreasonable fee in violation of Tennessee Rule of Professional Conduct 1.5. Respondent, in accepting compensation from client's father and then failing to get the client's informed consent to accept such payment, has violated Tennessee Rule of Professional Conduct 1.8. Respondent, in failing to comply with any request for information from the Board's disciplinary counsel, has violated Tennessee Rule of Professional Conduct 8.1(b). Respondent, in his violation of the disciplinary rules alleged herein, has also then violated Tennessee Rule of Professional Conduct 8.4(a).

**File No. 70057c-2-ES – Complainant – Ronald L. Cospers Jr.**

In 2012 Complainant was convicted of first-degree murder and attempted especially aggravated robbery in Hamilton County, Tennessee, Docket #E2016-00212-CCAR3-CD receiving an effective life sentence. On or about February 4, 2021, Respondent sent a letter soliciting Complainant as a client for the preparation of federal post-conviction pleadings. On March 2, 2021, Complainant paid Respondent \$1,500.00 to draft a pro se writ of habeas corpus relating to Complainant's 2012 convictions. Respondent drafted the document and provided it to Complainant by mail on May 13, 2021, with instructions on how to file the petition. Complainant timely filed the petition on May 25, 2021. The writ of habeas corpus was denied

on December 7, 2021. Complainant spoke with Respondent on January 2, 2022, about the denial of the petition and the cost for Respondent to prepare an appeal. On January 3, 2022, Respondent sent a letter to Complainant with the details about hiring him for an appeal. Complainant attempted to contact Respondent on numerous occasions following receipt of the January 3, 2022 correspondence, with no response, even after leaving messages. Respondent failed to respond to the original CAP complaint filed by Complainant. Respondent failed at all times to provide a substantive response to disciplinary counsel leading to the Supreme Court issuing a Temporary Suspension pursuant to Supreme Court Rule 9, Section 12.3. Respondent, in failing to respond to his client's communications, has violated Tennessee Rule of Professional Conduct 1.4. Respondent, in failing to respond to inquiries for information from disciplinary counsel, has violated Tennessee Rule of Professional Conduct 8.1.

**File No. 72177e-2-ES – Complaint – Zachary James Pence**

On November 3, 2022, the Board received a complaint from Zachary James Pence (“Mr. Pence”) reporting the alleged behavior of Respondent Gary Lee Anderson (“Mr. Anderson”) to the Consumer Assistance Program (“CAP”) at the Board. Due to Mr. Anderson not responding to CAP, the CAP matter was referred to the Board for further inquiry. Complainant was convicted of aggravated child rape and aggravated child abuse on June 14, 2012. The convictions became final on April 22, 2016, after the dismissal of his direct appeal by the Court of Appeals and the deadline for application to file an appeal to the Supreme Court had elapsed. Complainant's appeal of the denial of post-conviction relief was dismissed on March 8, 2021. No application for permission to appeal to the Supreme Court was filed, which would have been due on May 7, 2021. The federal statute of limitations to file any Petition for Habeas Corpus, based on procedural history, was to expire on February 28, 2022, pursuant to 28 U.S.C. § 2244.

On March 2, 2022, Complainant hired Respondent to prepare a pro se petition for habeas corpus relief for Complainant. Complainant paid Respondent an initial \$2,500 retainer per the Legal Fee Retainer Agreement. Respondent prepared the pro se petition for habeas corpus relief and sent it to Complainant, advising Complainant that the petition needed to be filed by March 8, 2022. Complainant received the document, signed it March 6, 2022, and filed it with the Court on March 8, 2022. The State of Tennessee then filed a Motion to Dismiss the Petition as time barred and for failing to provide a supporting memorandum of law. The Respondent was aware of the filing by the State in opposition to the Petition. Following the State's filing, the brother of Complainant called Respondent to ask what needed to be done, with Respondent advising the brother of his client not to worry about it and Respondent would take care of it. Respondent never consulted with his client following the State's Motion to Dismiss to ascertain what the client wanted to do regarding the Motion to Dismiss. Respondent did nothing and filed nothing following the filing of the State's Motion to Dismiss.

On May 25, 2022, the United States District Court Judge issued a Memorandum Opinion dismissing Complainant's Habeas Corpus Petition. The Complainant and his family members attempted to contact Respondent numerous times after the Court granted dismissal and Respondent did not return any calls or speak with his client at any time thereafter. At no time, during the pendency of the investigation into this matter, did Respondent provide any substantive response to disciplinary counsel inquiries. Complainant suffered actual monetary harm by paying Respondent to perform a task that Respondent knew or should have known was time barred. Respondent, in providing inaccurate information to his client regarding the statute of limitations expiration regarding a habeas corpus petition and/or failing to be aware of the correct statute of limitations, violated Tennessee Rule of Professional Conduct 1.1. Respondent in

failing to delineate and/or specify any limitations on the scope of his representation, violated Tennessee Rule of Professional Conduct 1.2. Respondent failed to provide any guidance to his client following the State's opposition Motion and failed to prepare any response in violation of Tennessee Rule of Professional Conduct 1.3. The Respondent failed to reasonably communicate with his client during the pendency of the Petition for Habeas Corpus relief and, in doing so, violated Tennessee Rule of Professional Conduct 1.4. Respondent, in accepting a fee to prepare a Petition for habeas corpus and receiving a fee for same all after the statute of limitations had already expired, charged an unreasonable fee and is in violation of Tennessee Rule of Professional Conduct 1.5. Respondent, in failing to respond to inquiries for information from disciplinary counsel, violated Tennessee Rule of Professional Conduct 8.1.

It is further found that the Respondent failed to participate at any stage of this proceeding.

#### **CONCLUSIONS OF LAW**

Pursuant to Tenn. Sup. Ct. R. 9, § 1, the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline.

The preponderance of the evidence, in the complaints at issue in this disciplinary matter, establishes that Mr. Anderson has knowingly committed the following violations of the Rules of Professional Conduct:

#### **File No. 68551c-2-ES -- Complainant - Charles Nelson**

In the Nelson matter, Respondent, in failing to ever communicate with his client, violated Tennessee Rule of Professional Conduct 1.4. Respondent, in failing to file any pleadings relative

to whatever avenues were available regarding client's incarceration or alternatively failing to advise client that nothing could be filed or would be futile, violated Tennessee Rule of Professional Conduct 1.3. Respondent, in receiving funds for representation and then doing no work, has charged an unreasonable fee in violation of Tennessee Rule of Professional Conduct 1.5. Respondent, in accepting compensation from client's father and then failing to get the client's informed consent to accept such payment, has violated Tennessee Rule of Professional Conduct 1.8. Respondent, in failing to comply with any request for information from the Board's disciplinary counsel, has violated Tennessee Rule of Professional Conduct 8.1(b). Respondent, in his violation of the disciplinary rules alleged herein, has also then violated Tennessee Rule of Professional Conduct 8.4(a).

**File No. 70057c-2-ES – Complainant – Ronald L. Cospers Jr.**

In the Cospers matter, Respondent, in failing to respond to his client's communications, has violated Tennessee Rule of Professional Conduct 1.4. Respondent, in failing to respond to inquiries for information from disciplinary counsel, has violated Tennessee Rule of Professional Conduct 8.1.

**File No. 72177c-2-ES – Complaint – Zachary James Pence**

In the Pence matter, Respondent, in providing inaccurate information to his client regarding the statute of limitations expiration regarding a habeas corpus petition and/or failing to be aware of the correct statute of limitations, violated Tennessee Rule of Professional Conduct 1.1. Respondent in failing to delineate and/or specify any limitations on the scope of his representation, violated Tennessee Rule of Professional Conduct 1.2. Respondent failed to provide any guidance to his client following the State's opposition Motion and failed to prepare any response in violation of Tennessee Rule of Professional Conduct 1.3. The Respondent failed

to reasonably communicate with his client during the pendency of the Petition for Habeas Corpus relief and, in doing so, violated Tennessee Rule of Professional Conduct 1.4. Respondent, in accepting a fee to prepare a Petition for habeas corpus and receiving a fee for same all after the statute of limitations had already expired, charged an unreasonable fee and is in violation of Tennessee Rule of Professional Conduct 1.5. Respondent, in failing to respond to inquiries for information from disciplinary counsel, violated Tennessee Rule of Professional Conduct 8.1.

#### APPLICATION OF ABA STANDARDS

With disciplinary violations having been established by preponderance of the evidence, the Panel shall next consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions. Tenn. S. Ct. Rule 9, § 15.4(a) governs the imposition of punishment by the Hearing Panel. "[i]n determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions". See *Thompson v. Board of Professional Responsibility*, 600 S.W.3d 317, 320-21 (Tenn. 2020); *In re Vogel*, 482 S.W.3d 520,533 (Tenn. 2016). The ABA Standards are designed to promote: "(1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; [and] (3) consistency in the imposition of disciplinary sanctions." ABA Standard 1.3. These standards serve as "guideposts" for determining the appropriate punishment rather than "rigid rules that dictate a particular outcome." *Vogel*, 482 S.W.3d at 533-34.

Further, while "[h]earing panels should 'precisely and clearly identify all ABA Standards that are relied upon for guidance in determined an appropriate sanction,'" *Board of Professional Responsibility v. Sheppard*, 556 S.W.3d 139, 149 (Tenn. 2018) (citation omitted), the Standards-as "guideposts"-are not "rigid rules" and "'are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct.'" *Board of Professional Responsibility*



v. *Daniel*, 549 S.W.3d 90, 100 (Tenn. 2018). In cases where lawyer misconduct seems to fall between presumptive sanctions or within multiple ABA Standards which identify different presumptive sanctions, Hearing Panels and the Supreme Court are authorized to make an ultimate determination on the appropriate sanction. *Id.* at 102. Accordingly, "a hearing panel may consider the full panoply of sanctions applicable to lawyer misconduct ... even if a particular ABA Standard does not explicitly describe the fact pattern in question." *Id.*

In light of this guidance, the following ABA Standards have application to the findings in this case:

**4.3 Failure to Avoid Conflicts of Interest - *Applies to violations of RPC 1.8***

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest:

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

(a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or

(b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or

(c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

**4.4 Lack of Diligence – Applies to violations of RPC 1.1, 1.2, 1.3, and 1.4.**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when: (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client.

**7.0 Violations of Other Duties as a Professional - Applies to violations of RPC 1.5 and 8.1**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

**Aggravating Factors**

Pursuant to ABA Standard 9.22, aggravating factors are present in this case. The following aggravating circumstances, as averred, and therefore deemed admitted, in the Board's Petition for Discipline, apply:

- a. Mr. Anderson's pattern of misconduct is an aggravating circumstance justifying an increase in discipline.

b. Mr. Anderson's multiple offenses are an aggravating circumstance justifying an increase in discipline.

c. Mr. Anderson's substantial experience in the practice of law, having been licensed in Tennessee in 1973, is an aggravating circumstance justifying an increase in discipline.

d. Mr. Anderson's prior disciplinary offenses consisting of a Private Reprimand issued on July 15, 2019 and a Supreme Court Order of Temporary Suspension for failing to respond to disciplinary counsel dated November 17, 2022 are aggravating circumstances justifying an increase in discipline.

e. Mr. Anderson's failure to respond to this disciplinary proceeding is an aggravating factor justifying an increase in discipline.

f. Vulnerability of the victims.

g. Refusal to acknowledge the wrongful nature of the conduct.

h. Dishonest or selfish motive.

#### **Mitigating Factors**

Mr. Anderson did not participate in the final hearing of this matter and therefore there is no evidence of mitigating factors.

#### **JUDGMENT**

In light of the Findings of Fact and Conclusions of Law herein and the applicable ABA Standards for Imposing Lawyer Sanctions, the Hearing Panel has determined that the actions of Mr. Anderson were knowing violations of disciplinary rules and the appropriate baseline sanction is suspension. Having established the appropriate baseline sanction the Hearing Panel, upon consideration of the aggravating and mitigating factors in this case, does not find that an increase to the sanction is warranted but does utilize such factors in determining the length of the presumptive sanction of suspension and so finds by a preponderance of the evidence that Mr.

Anderson committed disciplinary misconduct in each complaint contained in the Petition and should be actively suspended from the practice of law for a period of five (5) years, followed by a period of indefinite suspension until the restitution in the following sentence is paid.

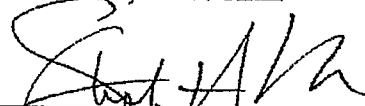
Respondent shall provide restitution to his former client, Charles Nelson, in the amount of \$1,370.00

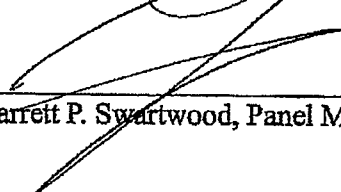
**NOTICE**

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33, by filing a Petition for Review in the Circuit or Chancery Court within sixty (60) days of the date of entry of the hearing panel's judgment.

**IT IS SO ORDERED.**

  
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Matthew A. Grossman, Panel Chair

  
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Stephen A. Marcum, Panel Member

  
\_\_\_\_\_  
Garrett P. Swartwood, Panel Member

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing *Findings Of Fact and Conclusions of Law* has been served upon Respondent, Gary Anderson, via email registered with the Board, pursuant to TRCP 5.02, at glanderson\_2001@yahoo.com on this the 26<sup>th</sup> day of February, 2024.

  
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Katherine Jennings