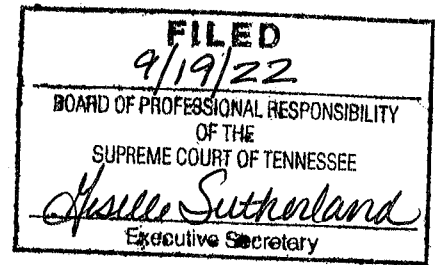


**IN DISCIPLINARY DISTRICT VI
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**IN RE: MELISSA ANN BAKER,
BPR No. 035018, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Williamson County)**

DOCKET NO. 2020-3097-6-AJ

JUDGMENT OF THE HEARING PANEL

This cause came for trial before the Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee on the 14th day of September, 2022 via Zoom Meeting ID: 849 8262 2796. This cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court. This Hearing Panel, Ryan P. Durham (Chair), Richard H. Boehms, and Hilary H. Duke, after considering the entire file in this matter, statements of witnesses, exhibits, and arguments presented to this Panel, and after thorough deliberations, makes the following Findings of Fact, Conclusions of Law, and renders its Judgment in this cause.

I. BACKGROUND

Respondent, Melissa Ann Baker is licensed to practice law in Tennessee with Board of Professional Responsibility Number 035018. Disciplinary proceedings in this cause were initiated by the Board of Professional Responsibility on May 22, 2020, with the filing of a Petition for Discipline against Respondent Baker. The original Petition asserted ethical violations against Respondent as related to two (2) complainants. Thereafter, on March 25, 2021, the Board filed a Supplemental Petition for Discipline, which asserted ethical violations against Respondent Baker as related to two additional complaints filed by one (1) complainant.

On September 9, 2021, the Board filed a Motion for Partial Summary Judgment as related to all claims stated in the original Petition. Respondent filed no response or counter-affidavits in response to the Motion. On May 12, 2022, this Hearing Panel deemed all allegations in the original Petition to be undisputed, granted the summary judgment motion, and awarded judgment to the Board with respect to all claims asserted in the original Petition for Discipline.

On July 23, 2021, the Board filed a Motion for Default Judgment as related to all claims stated in the Supplemental Petition. By the same Order, this Hearing Panel overruled Respondent's objections to the Motion, granted the Motion for Default, and awarded judgment to the Board with respect to all claims asserted in the Supplemental Petition for Discipline.

Pursuant to the Order entered on July 13, 2022, this Hearing Panel set this matter for a final hearing on September 14, 2022, solely for a determination of appropriate discipline.

II. FINDINGS OF FACT

A. Petition for Discipline File No. 61115-5-KB; Complainant Marvin Anderson Porter, Jr.

1. Respondent Baker represented Complainant Marvin Anderson Porter, Jr., in *Marvin Porter v. NIA Association, et. al.*, civil action no. 3:17-CV-00482, in the U.S. District Court for the Middle District of Tennessee.

2. In February 2017, Mr. Porter retained Respondent Baker to represent him in a discrimination claim against NIA Association. After discussing the case with Mr. Porter, Respondent concluded that NIA was involved in false billing practices and contacted the Tennessee Bureau of Investigations (TBI). During her call with the TBI, Respondent identified

herself and provided information to the TBI evidencing the alleged false billing practices by NIA. Respondent specifically and purposefully withheld her client's name from the TBI.

3. Respondent Baker filed the complaint in *Porter v. NIA Association* on March 2, 2017, alleging discrimination. Thereafter, in July 2017, the TBI visited NIA and interviewed several employees concerning the allegation of false billing practices; however, Mr. Porter was not interviewed.

4. Mr. Porter was disciplined by NIA in July 2017 for his billing practices, and due to Mr. Porter's strong opposition to the discipline, he was required to participate in an Employee Assistance Program (EAP). Mr. Porter failed to participate in the EAP program and was terminated by NIA in August 2017.

5. On April 19, 2018, a status conference was held in the *Porter v. NIA Association* case, during which Respondent Baker discussed a request to amend the complaint due to Mr. Porter's termination. Respondent acknowledged that she had contacted the TBI about NIA's billing practices.

6. On the same day, Respondent Baker filed a Motion for Leave to Amend Complaint, seeking permission to add a cause of action for retaliation against NIA for wrongful termination. On May 8, 2018, the court granted the motion, and an Amended Complaint was filed.

7. The Amended Complaint stated that "believing and later ascertaining that the actions of the Defendant mentioned above were in violation of T.C.A. § 71-5-2601(a)(2)(A), Plaintiff filed a report with the State based on Defendant's billing practices." In the Amended Complaint, Respondent Baker asserted that "[o]n or about July 2017, the State of Tennessee, showed up onsite at Defendant's offices, demanded to see records, interviewed employees, and visited recipients of services of Defendant. Plaintiff was interviewed by a State investigator."

8. Defendant took Mr. Porter's deposition on August 1, 2018, during which Mr. Porter admitted that he did *not* contact the TBI, did not know what T.C.A. § 71-5-2601(a)(2)(A) was, and was *not* interviewed by a State investigator. Thereafter, and in compliance with Rule 11(c)(2), Fed. R. Civ. P., counsel for NIA served notice to Respondent Baker and a Motion for Rule 11 sanctions more than 21 days before filing the Motion with the Court. The notice and motion set forth in detail the reasons why Mr. Porter's claim for retaliatory discharge had no basis in fact based upon Mr. Porter's deposition testimony, and records from the TBI that established Mr. Porter had not reported to the TBI or any state agency allegations of NIA's false billing practices and that the TBI had not interviewed Mr. Porter.

9. The Defendant filed a Motion for Rule 11 Sanctions and a hearing on the matter was held on November 13, 2018. The Court directed the plaintiff to file a response to the motion on or before November 27, 2018.

10. Respondent Baker failed to file a response to Defendant's Motion for Rule 11 Sanctions. On December 12, 2018, the Court entered an Order, granting Rule 11 Sanctions. The court found that the employer could not have retaliated against Mr. Porter due to reporting the fraud because Respondent Baker failed to disclose Mr. Porter's name to the TBI, thereby making the complaint anonymous. The court further noted that "[t]here is nothing in the record that connects the protected activity to the Plaintiff in this case. In fact, 'the certified copies of the TBI's records demonstrate that, not only was Plaintiff not interviewed by the TBI, but also that his counsel intentionally withheld his identity during her communications with that agency.'" The court also struck Mr. Porter's retaliatory discharge claim and subsequently awarded attorney fees in the amount of \$2,613.00 against Mr. Porter and Respondent Baker.

11. On January 2, 2019, the Defendant filed a Motion for Summary Judgment and Defendant's Statement of Undisputed Facts, neither of which Respondent Baker responded to.

12. On May 2, 2019, the court granted the Motion for Summary Judgment and dismissed the case. The Court granted Defendant's Motion for Attorney's Fees on January 15, 2019, awarding attorney's fees in the amount of \$2,613 against Mr. Porter and Respondent Baker.

B. Petition for Discipline File No. 56349-5-KB; Informant Honorable Ross Hicks).

13. Respondent Baker represented plaintiffs in *Joel Diemoz, et al. v. Eric Huneycutt, et al.*, Civil Action Case No. MC CC CV 16-901, in the Circuit Court for Montgomery County, Tennessee.

14. On September 9, 2016, Joel and Elizabeth Diemoz filed a *pro se* civil complaint with the Circuit Court of Montgomery County. Respondent Baker assisted in the preparation of the *pro se* civil complaint; however, she had not yet received her license to practice law.

15. On October 7, 2016, after receiving her license to practice law, Ms. Baker signed and filed an Amended Complaint on behalf of Mr. and Ms. Diemoz.

16. On September 19, 2017, the defendants filed a Motion for Summary Judgment contending that the lawsuit was untimely due to a 4-year statute of repose applicable to construction defect claims. Defendants relied upon the twice pled notice date of June 2015 set forth in the previous complaints filed by Mr. and Ms. Diemoz. In response, Respondent Baker moved the court for permission to again amend the complaint and filed a second amended complaint with the motion that added another defendant.

17. On October 20, 2017, a hearing was conducted after which the court granted permission to amend the complaint and directed defendants' counsel to prepare the order.

18. On October 25, 2017, Paul Brewer, counsel for the defendants, sent a proposed order to Respondent Baker via U.S. mail and e-mail for review and approval. After not hearing from Respondent, Mr. Brewer—on October 27, 2017—sent a follow-up e-mail with the proposed order attached.

19. On November 7, 2017, and after again not hearing from Respondent Baker, Mr. Brewer sent the proposed order to Respondent a third time and advised that the order would be submitted to the court for entry.

20. On November 9, 2017, court clerk received the proposed order and, pursuant to the local rules, Respondent Baker had 10 days to object thereto. The court did not receive any objection from Respondent, and the Informant—Hon. Ross H. Hicks—signed and entered the order on November 22, 2017. The order granted plaintiffs' Motion to Amend and stated that "Defendants will have thirty (30) days from the date of entry of this Order to file an Answer or other response to this Second Amended Complaint."

21. On December 12, 2017, Respondent Baker filed a Motion for Default asserting that the order filed with the court on November 9, 2017, and entered November 22, 2017, did not accurately reflect the court's ruling which allowed defendants 30 days from the date of the October 20, 2017, hearing in which to file an answer. Respondent Baker filed a declaration in support of the Motion, under penalty of perjury, asserting that "opposing counsel did not present the Order to Plaintiffs' counsel requesting approval prior to submitting to the Court for approval."

22. On December 18, 2017, the Defendants responded with a motion to compel discovery and a safe harbor letter pursuant to Tenn. R. Civ. P. 11.

23. On December 20, 2017, Defendants filed a Response to Plaintiffs' Motion for Default setting forth Mr. Brewer's efforts to contact Respondent Baker about the proposed order and including as attachments the letters and e-mails he had sent to Respondent.

24. On January 10, 2018, Respondent Baker filed a Motion to Correct Order to conform to the ruling on the record that the defendants had thirty (30) days from the time of the hearing to file a responsive pleading.

25. On February 2, 2018, Mr. Brewer filed a Motion to Disqualify Melissa Morris (Baker) as Plaintiffs' Attorney, arguing that any conversations which occurred prior to the time Respondent Baker was licensed to practice law were not protected by the attorney-client privilege and were discoverable. Respondent did not file a response to the Motion to Disqualify on behalf of the Plaintiffs.

26. On February 5, 2018, Mr. Brewer filed a Motion for Sanctions on behalf of the Defendants asserting that Plaintiffs' Motion for Default was made for an improper purpose and the allegations and factual in support of the Motion lacked evidentiary support. Again, Ms. Baker did not file a response on behalf of the Plaintiffs.

27. A hearing was conducted on February 16, 2018, which resulted in an order entered on March 2, 2018, wherein, the court held that Respondent Baker's declaration under oath that "opposing counsel did not present the order to Plaintiffs' counsel requesting approval prior to submitting to the Court for approval" was "absolutely FALSE," and that Ms. Baker failed to timely object to the proposed order and that all Defendants had filed Answers to the Second Amended Complaint within the required time deadline and denied Plaintiffs' Motion for Default. The order further denied Respondent's Motion to Correct Order referencing her failure to timely object to Mr. Brewer's proposed order as set forth in the local rules. The court also granted Defendants'

Motion for Sanctions against Respondent only, not her clients, and requested that Defendants' counsel submit an affidavit of fees, costs, and expenses related to defense of Plaintiffs' Motion for Default and pursuit of Defendants' Motion for Sanctions to be assessed only against Ms. Baker. The court further assessed a fine in the amount of \$500.00 against Ms. Baker to be paid to a charitable organization of her choosing or the clerk of court within thirty (30) days of entry of the order and granted Defendants' request to disqualify Ms. Baker finding that she was, in fact, an essential witness in the matter. Finally, the court granted Defendants' Motion to Compel requiring Plaintiffs to retain new counsel or proceed *pro se* and to fully respond to Interrogatories and Requests for Production of Documents on or before May 2, 2018.

28. The court further ordered Respondent Baker to pay the monetary fine and additional monetary fees ordered previously by May 25, 2018, at which time the discovery motions would be heard.

29. On April 3, 2018, Respondent Baker fax-filed a Motion for Permission to File an Interlocutory Appeal but did not include exhibits referenced in her motion. Respondent filed the exhibits to her motion on April 9, 2018.

30. A hearing was conducted on Respondent Baker's motion for permission to pursue an interlocutory appeal on May 7, 2018, and the motion was denied due to her untimely filing of the motion and exhibits. The court further denied several other motions, including a Motion to Reconsider the court's prior orders, Motion to Stay Execution of Sanctions and Motion to Recuse Informant Hicks. The court also reduced Ms. Baker's additional fine in the amount of \$500.00 to \$50.00.

31. On May 7, 2018, the Court entered a Show Cause Order requiring Ms. Baker to appear before the court on May 25, 2018, to show cause why she should not be held in contempt of court for failure to comply with the March 2, 2018, and April 5, 2018, court order.

32. On May 15, 2018, i.e., after Respondent had been removed as counsel for the plaintiffs, Defendants filed a Rule 37 Motion for Sanctions contending that Plaintiffs should be sanctioned for failure to comply with the court's March 2, 2018, order which compelled the production of discovery responses by May 2, 2018.

33. On May 24, 2018, Respondent Baker's husband, attorney John Morris, filed a Motion to Amend Order and for Recusal of Judge on behalf of Plaintiffs, and sought a continuance of the May 25, 2018, hearing due to counsel's unavailability and the pending motion to recuse.

34. On May 25, 2018, a hearing was conducted, and neither Respondent Baker nor anyone on her behalf appeared before the court. The court entered an order on July 6, 2018, holding that Respondent had not paid the court ordered sanctions into court and had failed to appear or show cause why she had not paid the sanctions on or before the court-imposed deadline. The court denied the Motion to Recuse—finding it untimely, filed solely for delay, and procedurally deficient—and further granted Defendants' Motion for Rule 37 Sanctions against the *pro se* Plaintiffs and ordered Plaintiffs to pay attorney fees and expenses totaling \$2,915.70. The court also dismissed the claims as to all Defendants with prejudice. A transcript of the motion hearing was attached to the order, and Informant made the following statement: "Ms. Morris is found to be in contempt by her failure to be here this morning and her failure to comply with the Court's orders regarding the imposition of sanctions."

35. The case was appealed to the Court of Appeals. On August 27, 2018, the Court of Appeals entered an order requiring Appellants to file with the trial court a transcript or statement

of the evidence or else show cause why the appeal should not be dismissed for failure to comply with Tenn. R. App. P. 24. Appellants failed to comply with the order, and the appeal was dismissed by order filed September 20, 2018.

36. Thereafter, the Appellants filed a motion to reconsider, which the Court of Appeals granted. The case was argued on August 6, 2019.

37. On May 6, 2020, the Court of Appeals issued an opinion that affirmed the trial court rulings in all respects but one—i.e., vacating the order of dismissal with prejudice and directing entry of dismissal without prejudice. In its discussion of the whether dismissal was appropriate, the Court of Appeals noted that “much of Plaintiffs’ delay throughout the case was a result of Counsel’s longstanding failure to respond and her disregard of the court’s orders, including her continued representation following the court’s removal of her from the case.”

C. Supplemental Petition for Discipline; File Nos. 63533-6-KB and 63601-6-KB; Informant Lisa Carol Cothron.

38. On March 1, 2018, Informant Lisa Carol Cothron filed an emergency Petition for Dependency and Neglect in Macon County Juvenile Court, against the father, James Huffman, and mother, Lindsey Montoney, of a child on behalf of the maternal grandparents, Kristy and Mark Montoney (hereinafter “the Montoneys”). The Montoneys already had physical custody of the child, and—pursuant to an Ex Parte Order for Temporary Custody entered on March 1, 2018—were granted temporary legal custody as well.

39. Respondent Baker was retained to represent Mr. Huffman.

40. At a hearing on August 2, 2018, a DNA test confirmed that Mr. Huffman was the biological father of the child. Also at the August 2, 2018, hearing, the court found that the mother—having failed to respond to the petition—was in default, and that by default the child was dependent and neglected as to the mother.

41. On September 10, 2018, an adjudicatory hearing was held after which the court found that the child was dependent and neglected as to the father (Respondent's client) for willfully failing to support the child, visit the child, or provide necessities to the child since January 2017. The court concluded that custody would remain with the Montoneys. The order—which was entered on September 25, 2018—also required that Respondent provide the necessary information to Informant Cothron for submission of an Order of Parentage as to Mr. Huffman. Information necessary to complete the parentage order was requested from Respondent Baker in court on August 2, 2018, and September 10, 2018, by email on September 5, 13 and 17, 2018 and by text messages on September 13 and 25, 2018.

42. On September 26, 2018, Informant Cothron filed a Motion to Produce seeking information from Mr. Huffman to prepare and file the Agreed Order of Parentage. A hearing was scheduled for October 4, 2018. On that date, neither Respondent Baker nor Mr. Huffman appeared in court. Accordingly, the court ordered that the information be provided no later than October 12, 2018. Respondent Baker did not comply with the order.

43. On October 26, 2018, Respondent filed a Petition to Modify Custody alleging that, since DNA testing confirmed that Mr. Huffman was the biological father, he had a constitutional and superior right to custody of his son. On the same date, Informant Cothron filed a contempt action for failure to provide the necessary information to submit an Agreed Parentage Order. On October 29, 2018, Informant filed an Answer to the Petition to Modify Custody contesting Mr. Huffman's right to custody.

44. On November 1, 2018, a hearing was conducted on the Petition to Modify and the contempt action. At the hearing, the court asked Mr. Huffman why he did not attend the prior October 4th hearing, and Mr. Huffman stated that he had not seen the motion to produce nor had

he been told about the hearing. The information needed for the Agreed Parentage order was provided except for Mr. Huffman's 2017 tax return.

45. On November 14, 2018, the court entered a Final Order of Parentage and Support, establishing Mr. Huffman as the biological parent, and ordering that he pay ongoing child support to the Tennessee Child Support Receiving Unit on behalf of the Montoneys. Retroactive child support was reserved for a future hearing. The court also filed an Amended Adjudicatory Hearing Order indicating that the order amended the prior order of September 10, 2018, to reflect that the September hearing was both adjudicatory and dispositional and represented a final order. The court also filed an Order on Motion for Civil Contempt and noted that Mr. Huffman testified at a hearing on November 1, 2018, that he had not seen the September 27, 2018, motion nor was he notified of the October 4, 2018, hearing. The order further noted, however, that Mr. Huffman brought with him to court the information needed, except for his 2017 tax return.

46. On November 29, 2018, Respondent filed a Motion to Set Aside or Vacate four separate orders related to the adjudicatory and dispositional findings of the court. On November 30, 2018, Respondent filed a Motion for Change of Custody claiming again that Mr. Huffman had a constitutional and superior right to custody of his son.

47. On April 12, 2019, the court took up several pending matters. The court dismissed Mr. Huffman's Petition to Modify Custody indicating the petition failed to allege any grounds for modification and that the court had taken into consideration any and all rights of Mr. Huffman in making its decision to place custody with the Montoneys. Also, by separate order, the court dismissed Mr. Huffman's Motion for Change of Custody because it was filed in the form of a motion instead of a required petition. The court further noted that Mr. Huffman had already filed a Petition to Modify Custody which was pending when the Motion for Change of Custody was

filed and that the facts alleged in Mr. Huffman's motion did not constitute a change in circumstances. By a third order, the court denied Mr. Huffman's Motion to Set Aside or Vacate its prior Orders.

48. Respondent Baker requested a trial *de novo* in Macon County Circuit Court.

49. A trial *de novo* was held by the Circuit Court on November 13-14, 2019. On January 27, 2020, the court found by clear and convincing evidence that the child was dependent and neglected by Mr. Huffman and that custody should remain with the Montoneys. The Court also directed that the father's medical records be submitted to the Court for review by the other lawyers, but to be placed under seal. Respondent obtained Mr. Huffman's medical records from the Vanderbilt University Medical Center records custodian. The records were accompanied with an affidavit from the records custodian. Respondent submitted them to the Court as ordered by the Circuit Court Judge.

50. When Informant Cothron viewed the records, portions of them had been redacted. Informant learned from the records department at Vanderbilt that the records had been produced in an unredacted form. Respondent had redacted the medical records and submitted them to the Court with an affidavit from Vanderbilt that accompanied the unredacted records. When the issue was raised in the court, Respondent indicated that she could redact the information to protect her client under HIPAA.

51. On December 20, 2019, Respondent filed a Petition for Writ of Habeas Corpus with the Circuit Court of Davidson County alleging that the maternal grandparents were restraining father's liberty interests as it related to his son. On January 28, 2020, Informant sent Respondent a "safe harbor" letter stating that her client's attempts to obtain habeas corpus relief in an out-of-county court were non-meritorious and would lead to a Motion for Sanctions if not withdrawn.

Respondent dismissed the Davidson County habeas Petition without prejudice, prior to the expiration of the “safe harbor” period. Also, Respondent filed a Notice of Appeal in the Court of Appeals regarding the 1/27/20 Macon County Circuit Court order, and—in doing so—served the Montoneys but did not serve their counsel, Informant Cothron.

52. Respondent Baker also went to the paternal grandparents’ home and spoke with the child during the child’s weekend visit with his father. While the child has an appointed guardian *ad litem*, Respondent did not obtain permission from the guardian *ad litem* to speak with the child.

53. During Respondent’s attempts to prepare a record to the Court of Appeals, Respondent requested a quote from the court reporter, Pam Farmer, who appeared during a hearing and a two-day trial in juvenile court. Ms. Farmer quoted a \$2,500.00 fee with half paid up front and the balance upon preparation of the transcripts. Respondent balked at the fee and demanded that Ms. Farmer provide her with the audio recordings of the proceedings. Ms. Farmer stated that the audio recording was her work product and was not available without payment for transcription services. Respondent began to harass and threaten Ms. Farmer and claimed that withholding the information would be prejudicial to her client’s appeal.

54. Respondent Baker filed a motion with the Court of Appeals seeking an order directing the trial court clerk to produce the audio recording of the proceedings as the official record. On April 21, 2020, the Court of Appeals denied the request indicating that the court did not consider audio or video recordings of proceedings. The court directed Respondent to provide a transcript of the evidence or a statement of the evidence in thirty (30) days.

55. Respondent Baker subsequently filed in the trial court a Motion for Approval of Statement of the Evidence and Motion to Declare Appellant Indigent for purposes of the appeal. On June 1, 2020, the trial court determined that the Statement of the Evidence was “woefully

insufficient,”” and that Mr. Huffman “was not indigent and . . . should pay for the transcript.” Respondent filed a Motion for Reconsideration which was also denied by the trial court on July 8, 2020.

56. Informant Cothron filed a Motion to Dismiss Appeal after Respondent failed to submit a transcript of the record within the prescribed 30 days, but the Court of Appeals denied the request and allowed Respondent an additional 30-day extension. Respondent subsequently moved the Court of Appeals for leave for Mr. Huffman to proceed as an indigent person, but the request was denied on July 14, 2020, with the court noting the prior denials by the trial court.

57. On July 15, 2020, Respondent Baker still had not filed a transcript of the record or statement of the evidence and the Court of Appeals entered an Administrative Order, allowing Respondent 15 days to file the required information or risk dismissal of the appeal. In August 2020, Respondent filed a motion with the Court of Appeals to remand the case to the trial court for consideration of a motion for relief from judgment based upon a change in circumstances. The court denied the motion explaining that relief based on a post-judgment change of circumstances in a dependency and neglect case should be sought by filing a new petition for modification of the judgment, not for relief under Rule 60 of the Tennessee Rules of Civil Procedure.

58. Respondent Baker filed at least one additional motion with the Court of Appeals to clarify a ruling of the trial court which was also denied without explanation by the court. The record was finally established by the Court of Appeals on October 15, 2020, after the *Guardian Ad Litem* took efforts to obtain the official trial transcript.

59. The Court of Appeals issued an opinion on September 27, 2021, and remanded the case to determine if the father had timely perfected an appeal to the Circuit Court.

III. SEPTEMBER 14, 2022 HEARING

At the September 14, 2022 hearing the Board of Professional Responsibility, by and through their Counsel, Mr. Andrew Campbell presented the case, adopting all the Undisputed Findings of Fact in the Motion for Summary Judgment as to the first Petition on May 12, 2022 and additional Findings of Fact, established by default of the Supplemental Petition on July 23, 2022. Further, Counsel for the Board reiterated that the only matter in dispute was the disciplinary action to be taken against Respondent Baker. Thereafter, Respondent Baker presented her own testimony, as well as the testimony of a personal friend, Ms. Michelle Marshall and the testimony of a former law assistant, Ms. Angela Morgan. In general the testimony elicited from these witnesses painted a picture of personal issues faced by Respondent Baker during the timeframe when the Complaints were filed. During Respondent Baker's testimony, she laid blame on her personal issues and ex Husband/Law partner as the main causes of her dereliction of duties. There was no testimony regarding actions of Respondent Baker to mitigate harm to her clients. Further, there was no testimony regarding Respondent Baker seeking assistance from the Board or TLAP while she was having personal issues. Of additional concern to the hearing panel was the Respondent's harassment and threats to the Court reporter.

IV. BURDEN OF PROOF

Tennessee Supreme Court Rule 9, Section 8.2 states the following:

In hearing on formal charges of misconduct, Disciplinary Counsel must prove the case by preponderance on the evidence. In this case, findings of misconduct have been established by default (July 23, 2021 Original Petition) and by summary judgment (July 23, 2021 Supplemental Petition).

V. FINDINGS BY HEARING PANEL

On May 12, 2022, the Hearing Panel, as to the original Petition, the Hearing Panel found Respondent Baker violated:

- RPC 1.3 (diligence) Respondent Baker failed to file any response to the Motion for Sanctions despite being ordered to do so by the Court and failed to respond to a Motion for Summary Judgment which concluded the case. Respondent Baker did not respond to Defendants' motions.
- RPC 1.4(a) and (b) (communication) Respondent Baker failed to communicate to her clients, Joel and Elizabeth Diemoz regarding Motions filed against them, that ultimately resulted in the dismissal of their case with prejudice.
- RPC 3.2 (expediting litigation) Respondent Baker failed to file any response to the Motion for Sanctions despite being ordered to do so by the Court and failed to respond to a Motion for Summary Judgment which concluded the case. Respondent Baker did not respond to Defendants' motions.
- RPC 3.3(a)(1) (candor toward tribunal) Respondent Baker included allegations in the amended complaint that had no basis in fact.
- RPC 3.4(c) (fairness to opposing party and counsel) Respondent Baker failed to file any response to the Motion for Sanctions despite being ordered to do so by the Court.
- RPC 8.4 (a)(c) and (d) (misconduct) Respondent Baker violated RPC 8.4(a) by violating the Rules of Professional Conduct set forth herein. Respondent Baker violated RPC 8.4(c) by pleading facts in the amended complaint that she knew were false.

Respondent Baker violated RPC 8.4(d) by pleading facts in the amended complaint that she knew were false and failing to withdraw them when given the opportunity which resulted in unnecessary litigation that taxed judicial resources and resulted in an award of sanctions against her and her client.

Further, the Hearing Panel, as to the Supplemental Petition, found that Respondent Baker violated:

- RPC 1.1 (competence) Respondent Baker filed several pleadings that demonstrate a lack of understanding of the substantive law and appropriate procedures.
- RPC 1.3 (diligence) Respondent Baker did not respond to opposing counsel's numerous requests to provide information about her client needed to prepare and file an Agreed Order of Parentage resulting in a Motion to Compel. After the Court entered an order directing that the information be provided by a date certain, Respondent Baker did not comply with the order.
- RPC 1.4(a) and (b) (communication) Respondent Baker failed to inform her client of a hearing on a motion to produce information necessary to prepare and file an Agreed Order of Parentage and neither he nor Respondent Baker appeared for the hearing.
- RPC 3.1 (meritorious claims) Respondent Baker filed several non-meritorious motions and petitions in the Juvenile Court. Respondent Baker also filed a Petition for Writ of Habeas Corpus in the wrong venue that lacked legal or factual support.
- RPC 3.2 (expediting litigation) Respondent Baker filed numerous unnecessary and frivolous motions that served only to delay the litigation.

- RPC 3.3(a)(1) (candor toward tribunal) The Writ of Habeas Corpus was misleading.
- RPC 3.4(c) (fairness to opposing party and counsel) Respondent Baker failed to comply with Court orders to produce information to opposing counsel. Further, Respondent Baker failed to meet a deadline imposed by the Court of Appeals to file a transcript within thirty (30) days.
- RPC 4.2 (communication with a person represented by counsel) Respondent Baker served opposing counsel's clients with the Writ for Habeas Corpus directly without discussing the matter with Informant Cothron.
- RPC 4.4(a) (respect for rights of third persons) Respondent Baker harassed a court reporter in an effort to obtain a transcript of the proceedings for the appeal.
- RPC 8.4 (a)(c) and (d) (misconduct) Respondent Baker violated RPC 8.4(a) by violating the Rules of Professional Conduct set forth herein. Respondent Baker's misleading Writ of Habeas Corpus and redaction of medical records that were filed under seal with the affidavit of a Vanderbilt Hospital record custodian's affidavit violated RPC 8.4(c). Respondent Baker's frivolous and non-meritorious motions delayed the proceedings and was prejudicial to the administration of justice in violation of RPC 8.4(d).

VI. APPLICATION OF ABA STANDARDS FOR IMPOSING SANCTIONS

The imposition of punishment by the Hearing Panel is governed by Tenn. S. Ct. Rule 9, § 15.4(a). As stated therein, the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") serve as the appropriate yardstick for determining such punishment.

Id. (stating that “[i]n determining the appropriate type of discipline, the hearing panel *shall* consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions”; emphasis added). *See also 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.” ABA Standard 3.0 provides that four factors should be considered in imposing punishment for an attorney’s misconduct: “the duty violated; . . . the lawyer’s mental state; . . . the potential or actual injury caused by the lawyer’s misconduct; and . . . the existence of aggravating or mitigating factors.” ABA Standard 3.0. The ABA Standards suggest the appropriate baseline sanction, and aggravating and mitigating factors may justify an increase or reduction in the degree of punishment to be imposed.

Vogel, 482 S.W.3d at 533-34 (other citations omitted).

Based on the facts admitted in the Petition for Discipline and the Supplemental Petition for Discipline, the following ABA Standards apply to the Rules violated in this matter.

A. Competence (RPC 1.1).

The sanction for this offense is governed by Standard 4.5, which states as follows.

4.5 LACK OF COMPETENCE

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 the failure to provide competent representation to a client:

4.51 Disbarment is generally appropriate when a lawyer’s course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer’s conduct causes injury or potential injury to a client.

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

4.53 Reprimand is generally appropriate when a lawyer:

- (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
- (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

4.54 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

B. Diligence (RPC 1.3) and Communication (RPC 1.4).

The sanctions for these offenses are governed by Standard 4.4, which states as follows.

4.4 LACK OF DILIGENCE

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 and causes injury or potential injury to a client.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

C. Meritorious Claims (RPC 3.1), Expediting Litigation (RPC 3.2), Fairness to Opposing Party and Counsel (RPC 3.4), and Respect for Rights of Third Persons (RPC 4.4).

The sanction for these offenses is governed by Standard 6.2, which states as follows.

6.0 VIOLATIONS OF DUTIES OWED TO THE LEGAL SYSTEM

6.2 Abuse of the Legal System

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 failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

D. Candor Toward Tribunal (RPC 3.3).

The sanction for this offense is governed by Standard 6.1, which states as follows.

6.0 VIOLATIONS OF DUTIES OWED TO THE LEGAL SYSTEM

6.1 False Statements, Fraud, and Misrepresentation

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 conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

E. Communication with a Person Represented by Counsel (RPC 4.2).

The sanction for this offense is governed by Standard 6.3, which states as follows.

6.0 VIOLATIONS OF DUTIES OWED TO THE LEGAL SYSTEM

6.3 Improper Communications with Individuals in the Legal System

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 attempts to influence a judge, juror, prospective juror or other official by means prohibited by law:

6.31 Disbarment is generally appropriate when a lawyer:

- (a) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
- (b) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
- (c) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.

6.32 Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

6.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

6.34 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with the outcome of the legal proceeding.

F. Misconduct (RPC 8.4(a)-(c)).

The sanctions for violations of RPC 8.4(a)-(c) are governed by Standards 4.0, 4.6, 5.0, 5.1, and 6.0. Incorporated by reference are Standards 4.4, 4.5, 6.1, 6.2, and 6.3 discussed *supra*. In addition, Standard 4.6 states as follows.

4.6 LACK OF CANDOR

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

4.64 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

G. Aggravating Factors.

Standard 9.0 sets forth aggravating and mitigating factors as follows.

9.0 AGGRAVATION AND MITIGATION

9.1 Generally

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

9.2 Aggravation

9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors which may be considered in aggravation.

Aggravating factors include:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution;
- (k) illegal conduct, including that involving the use of controlled substances.

9.3 Mitigation

9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Factors which may be considered in mitigation.

Mitigating factors include:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;

- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical disability;
- (i) mental disability or chemical dependency including alcoholism or drug abuse when:
 - (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
 - (2) the chemical dependency or mental disability caused the misconduct;
 - (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
 - (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
- (j) delay in disciplinary proceedings;
- (k) imposition of other penalties or sanctions;
- (l) remorse;
- (m) remoteness of prior offenses.

9.4 Factors which are neither aggravating nor mitigating.

The following factors should not be considered as either aggravating or mitigating:

- (a) forced or compelled restitution;

- (b) agreeing to the client's demand for certain improper behavior or result;
- (c) withdrawal of complaint against the lawyer;
- (d) resignation prior to completion of disciplinary proceedings;
- (e) complainant's recommendation as to sanction;
- (f) failure of injured client to complain.

The Panel finds the aggravating circumstances in this matter are:

- Respondent's dishonest and selfish motive;
- Respondent's pattern of misconduct;
- Respondent's failure to acknowledge the wrongful nature of some of her conduct, making excuses for the same; and
- Respondent's multiple offenses.

The Panel finds mitigating circumstances in this matter are:

- Respondent has no prior disciplinary record.
- Respondent had personal problems.

VII. JUDGMENT

Based on the admitted allegations in the two disciplinary petitions, the applicable aggravating and mitigating factors, and the knowing violations admitted herein, the Panel finds Respondent Baker should be placed on active suspension for one (1) year, with requirements of a practice monitor for a probationary suspension of two (2) additional years following active suspension.

The Panel finds Respondent Baker should be ordered (a) to meet with the Tennessee Lawyers Assistance Program (TLAP), (b) to follow any and all recommendations of TLAP, and

(c) to provide TLAP permission to communicate with the Board regarding any TLAP monitoring agreement.

Costs are taxed to Respondent Baker.

IT IS SO ORDERED.

THIS JUDGMENT MAY BE APPEALED PURSUANT TO § 1.3 OF RULE 9 OF THE TENNESSEE SUPREME COURT RULES BY FILING A PETITION FOR WRIT OF CERTIORARI, WHICH PETITION SHALL BE MADE UNDER OATH OR AFFIRMATION AND SHALL STATE THAT IT IS THE FIRST APPLICATION FOR WRIT.

ENTERED on this the 19th day of September, 2022.

Ryan P. Durham by permission
RYAN P. DURHAM (Chair) *via email*
9/16/22 (HHD)

Richard H. Boehms by permission
RICHARD H. BOEHMS *via email*
9/16/22 (HHD)

Hilary H. Duke
HILARY H. DUKE