IN DISCIPLINARY DISTRICT IV
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

IN RE: WILLIAM E. GIBSON,
BPR #12636, Respondent,
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Putnam County)

DOCKET NO. 2007-1653-4-SG

JUDGMENT OF THE HEARING COMMITTEE

This cause came on for trial before the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee on the 4th and 5th days of August, 2008, and adjourned until November 20, 2008, at which time the hearing was concluded upon the filing, by both parties, of Proposed Findings of Fact and Conclusions of Law. This cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court. This Hearing Committee, Terry A. Fann, Matthias B. Murfree, III, and Jeffrey L. Reed, after considering the testimonies of the witnesses, exhibits, and arguments presented to this Panel, and after thorough deliberations, makes the following Findings of Fact and renders its Judgment in this cause.

I. BACKGROUND

Respondent William Gibson was licensed to practice law on October 19, 1987. He served as the elected District Attorney General for the 13th Judicial District for eighteen (18) years from September 1, 1990 through July 10, 2008. The Respondent was notified of a Disciplinary Complaint on September 27, 2006. The Respondent replied to the Complaint. A Petition for Discipline was filed on January 9, 2007, charging the Respondent with violation of Disciplinary Rules in file No. 2006-1653-4-SG. Mr. Gibson's license to practice law was summarily suspended in September 2006. Mr. Gibson petitioned to have the temporary suspension lifted. In March 2007, a hearing was held and the hearing panel recommended that the temporary suspension remain in place pending a final hearing. The Court affirmed the hearing panel's recommendation in August 2007.

The Tennessee Bureau of Investigation conducted a criminal investigation of all matters concerning the Respondent as related to those issues pending before the Board of Professional Responsibility. In January 2008, the findings of the criminal investigation were presented to the Putnam County Grand Jury. The Grand Jury did not return an Indictment against the Respondent. The Respondent was not charged with any crime.

II. FINDINGS OF FACT AS TO CHRISTOPHER ADAMS

On September 9, 2003, when Lillian Kelly was murdered in Putnam County, Tennessee, the Respondent was the District Attorney for the 13th Judicial District. On September 19, 2003, Tennessee Bureau of Investigations (TBI) Agent Bob Krofssik questioned Christopher Adams about the Kelly murder. During Agent Krofssik's questioning of Christopher Adams, Agent Krofssik telephoned the Respondent. During Agent Krofssik's questioning of Christopher Adams,

Christopher Adams asked to speak with the Respondent, and the Respondent spoke with Adams by telephone. During that call, the Respondent asked Adams, "Have you messed up?", and Adams started sobbing. Also during that call, the Respondent asked Adams, "Well did you talk to an attorney?" and stated: "I'll pray about your situation."

When Adams got off the telephone with the Respondent, Adams confessed to murdering Lillian Kelly.

Adams was charged with especially aggravated robbery, especially aggravated kidnapping, forgery, passing a forged instrument, and first degree murder. David Brady, Public Defender for the 13th Judicial District since 1989, was appointed to represent Adams.

Six (6) death penalty aggravating factors existed in Mr. Adams' case:

(a) Christopher Adams had been convicted of a very violent felony or a juvenile adjudication;

(b) The murder was especially heinous, atrocious, or cruel;

(c) The murder was committed for the purpose of avoiding, interfering with or preventing a lawful prosecution of the defendant;

(d) The murder was knowingly committed in the course of another enumerated felony;

(e) The murder consisted of arguably the mutilation of the body of the victim after death; and

(f) The murder victim was seventy (70) years of age or older.

The proof the State had against Adams was videotape evidence of Adams passing a check of the deceased shortly after the killing, the murder weapon, which had been found at Adams' residence, a fingerprint of Adams on a B.C. powder in the victim's purse, and Adams' confession.

While Adams was still in the Putnam County Jail, the Respondent suggested to Public Defender Brady that the Respondent and Brady take a book to Adams in the jail. Brady delivered the Respondent's book to Adams in the jail and informed Adams that the book came from the Respondent.

On April 28, 2004, Adams wrote the Respondent his first letter thanking the Respondent for the book and stating, "I pray that you would pray about giving me a lesser charge or sentence." The Respondent did not disclose Adams' April 28, 2004, letter to Adams' counsel, David Brady. On May 19, 2004, Adams wrote the Respondent again stating, "I hope you received the other letter and will prayerfully consider it." He apparently did, and between September 2004 and July 2006, the Respondent communicated by mail with Adams through approximately eleven (11) letters. These communications took place without the knowledge or consent of counsel representing Adams.

In the Respondent's September, 2004, letter to Adams, the Respondent begins by saying, "I'm taking a chance by writing to you without your attorney knowing it. It would mean a lot of trouble for me if you ever mentioned it. It's against the rules to communicate with someone who has counsel without the permission of a lawyer ... so please keep this between you and me."

In the Respondent's September, 2004, letter to Adams, the Respondent states, "First of all, you don't need to plead to first degree. The reason I am saying this is that the day you came to Cookeville back in the summer to enter that plea, I was off. I take off a day every summer to run around town with my kids. I was at a train store around 10:00 and had this terrible feeling come over me about you entering that plea. It did not seem right. I called David Patterson on his cell phone. In court, he keeps it on vibrate and told him I wanted more time to work with this case."

The Respondent states in his September, 2004, letter to Adams, "I knew the death penalty thing was not a real possibility and didn't feel right in having it used as a threat to get you to plead away the rest of your life. You will be entering a plea to the worst possible scenario for you."

In his September, 2004, letter to Adams, the Respondent stated, "Anyway, I say all that to say the other day when we came to see you and talked about feeling that God was speaking to you that day against entering the plea, I felt He was speaking to me, too, about it not being the right thing to do."

In the Respondent's September, 2004, letter to Adams, the Respondent stated, "I spoke with the family last night about second degree and pretty much got about their approval on it, but with an out-of-range of 35 years. I told you to pray for a softening of their hearts and that is what has happened."

In Respondent's September, 2004, letter to Adams, the Respondent stated, "This case against you is strong even without the confession. I understand that they have your fingerprint of a BC Powder in her purse at the scene and a video of you cashing her check the next day at a Sav-A-Lot."

In the Respondent's September, 2004, letter to Adams the Respondent stated, "You can do the math, but I know it would give you a lot fewer years than the 51 year minimum for first degree."

In the Respondent's September, 2004, letter to Adams, the Respondent stated, "Again, keep everything I've said here and even the fact that I have written you under your hat. I would be hung out to dry and also conflicted out of the case."

The Respondent concluded a September, 2004, letter to Adams by stating, "I'll see you Friday one way or the other. Let David Brady tell you the news and act surprised. Discuss it with

him and decide what you want to do. Stay in touch. Your friend and brother and prosecutor, Bill Gibson."

The Respondent did not inform Assistant District Attorney Patterson, the prosecutor in his own office prosecuting the Adams case, about his communication with the Respondent.

Sometime after May 2004, at the Respondent's request, the Respondent and Public Defender Brady went together to the prison to visit Adams. It was very unusual for David Brady, the Public Defender, and the Respondent, the District Attorney, to go to the penitentiary together and see a client of the Public Defender. During their prison visit, Adams asked the Respondent and not his attorney, Brady, whether he should plead guilty to first degree murder. The Respondent responded to Adams' question by advising Adams, "You've got some other things that should be done first," or "I think you have other things that should be looked at."

On July 14, Assistant District Attorney Patterson wrote Public Defender Brady stating:

> In an effort to settle all of Mr. Adams' cases presently pending in our Putnam County Criminal Court, the State makes the following offer:
>
> Plead guilty to Count #1 of case # 03-0874; first degree (felony) murder, and receive a sentence of life. The remainder of the cases will be dismissed upon this plea.
>
> Please advise Mr. Adams that our office has reviewed the aggravating factors relevant to seeking imposition of the death penalty and will give notice of the State's intent should your client decline this offer.
>
> I look forward to your response.

On July 20, 2004, the Respondent called Assistant District Attorney Patterson, who was in Court, and told General Patterson to hold up on entering a plea in Adams' case.

In the Respondent's September 7, 2006, letter to the Board, the Respondent stated, "I was aware of and at the suggestion of the death penalty by defense counsel to get a plea in this case was an unfair tactic and that the death penalty was not even being considered by the prosecution."

The Respondent met with Barbara Calfee, daughter of Adams' murder victim Lillian Kelly, and told Ms. Calfee that the Respondent believed Adams' confession was obtained illegally. The Respondent advised Ms. Calfee that they did not find the murder weapon, and they could only prove that Adams had been in Lillian Kelly's home, but they couldn't prove that Adams killed Ms. Kelly, so if the case went to trial, there was only a 50/50 chance that Adams would be found guilty. Ms. Calfee, the daughter of murder victim Lillian Kelly, personally advised the Respondent and Assistant District Attorney David Patterson that she did not believe in the death penalty and did not want the death penalty for Adams. When the Respondent advised Ms. Calfee that the District Attorney's Office had negotiated a settlement with Adams' lawyer for twenty (20) years, Barbara Calfee asked, "you mean my mother's life is only worth 20 years?", and the Respondent answered, "In this case, it is." Ms. Calfee agreed to Adams' guilty plea to thirty-five (35) years because Ms. Calfee believed the Respondent's statements to her that the District Attorney had no confession and no murder weapon. At the time of Adams' plea, the maximum sentence for second degree murder was twenty-five (25) years with eligibility for parole at eighty-five (85%) while the sentence for first degree murder was a minimum of fifty-one (51) years with eligibility for parole at fifty-one (51) years. In November of 2004, Adams entered a guilty plea to second degree murder for twenty (20) years and fifteen (15) years for especially aggravated robbery.

The Respondent wrote Adams on December 20, 2004, stating, "I wanted to send you something for Christmas, but I wasn't sure what would pass and what wouldn't. I also thought it might be good to find out something you might like or need, so send me some ideas."

The Respondent wrote Adams again in March 2005, stating, "I have another case in person for you to pray for. The guy's name is Chad Craig. He sexually abused his two stepchildren really bad. He has confessed and could get sixty years. I'm having trouble knowing just what is right."

In the Respondent's May 4, 2005, letter to Adams, the Respondent stated, "Sunday is Mother's Day. And I was going to ask you if you need me to do anything for your mother on your behalf." In the Respondent's May 4, 2005, letter to Adams the Respondent also stated, "The other thing I was thinking about was that it would be good to come see you sometime. You need to help me out with that, like whether it would be a good idea from your side. I would never want to cause you any trouble or anything like that. But at the same time, I would like to pay you a visit."

The Respondent wrote Adams on July 23, 2005, stating, "I have been moved sometimes to tears at the evidence of God's hand on you and your situation." The Respondent further stated in his July 23, 2005, letter to Adams, "This morning, I talked to your mother for a good while. She is dealing with all the emotional stuff as well as physical problems. I told her that God's hand is all over your life and in that situation. Anything and everything is possible." In the Respondent's July 23, 2005, letter to Adams, the Respondent also stated, "If you are not familiar with the law on post-convictions pleadings, you should read up on it. I'm not sure what the time frames are, but there is a window during which any post-conviction must be filed. After that, it is too late." Also, in the Respondent's July 23, 2005, letter to Adams, the Respondent stated, "For the main reason, a post-conviction is ineffective assistance of counsel. I'm not saying anything more than you need to keep

all your options alive and available provided to you should you decide to. If I understand all the facts, I think you got an unheard of deal."

On October 6, 2005, Adams wrote the Respondent stating, "I received notice from the court clerk that my post-conviction was filed in her office September 26th, 2005. I'm trusting God that His will be done."

On October 23, 2005, the Respondent wrote Adams stating, "I am glad you are pursuing your post-conviction. ... [Brent] Jared has yet to contact Brady and at some point, I have to swim upstream against my normal role and against the establishment. I don't mean to sound like I am conspiring against my own side, but there is a bigger authority here and we have both seen Him at work in your case. I will be obedient to Him and trust Him to do what he wants to do with it and with us. I will be in prayer with you on that from now until then." In the Respondent's October 23, 2005, letter to Adams, the Respondent also stated, "I talked to your mom about the P.C. She was very concerned it would end you up worse off. In theory, it could set aside your plea and open everything back up. A vindictive prosecutor can then try to go tougher. But we don't have a vindictive prosecutor, ☺ so there's no way that you can end up any worse."

On December 1, 2005, the Respondent wrote Adams saying, "I am praying about your P.C.R. situation. I will be glad to see this amended petition."

The Respondent continued his letter writing campaign with Adams into the year 2006. On January 10, 2006, the Respondent wrote Adams stating:

> I wanted to drop you a line to stay connected and let you know what's going on around here. David Patterson is the A.D.A. who has your case whenever I wasn't interfering with it. He is a good man—a strong, practicing Christian. He's also a good prosecutor and very hard and tough on crime.

> David got your amended petition and said we should just agree to the post-conviction and then take you to trial for 1st degree. I have not told him a lot about our communications because I don't want him thinking I am biased or that I have been snowed. Besides, that is between you and me and God. We have watched Him do miracles and seen His hand on this case.
>
> I let David P. know I didn't like his idea very much. He talked about it with Bob Krofssik who didn't like it either. So he is off of that. Now, my point is we need to pray hard for David and for your lawyer- They both need to open up to the leading of the Holy Spirit in this matter and get themselves out of the way!

On March 6, 2006, the Respondent wrote Adams stating:

> I saw the letter Patterson wrote to Jared and the part about retrying you for a bigger sentence was just to scare you. I'm telling you that will not happen. You are at the max you ever have to worry about.
>
> We need to pray that David sees God's hand on your life and this situation as we do. That will be up to God to touch David and show us a way to 15 years.

The Respondent, having been a police officer for ten (10) years and the District Attorney General for sixteen (16) additional years at the time of his correspondence with Adams, knew that correspondence moving in and out of state prison facilities is monitored and subject to no expectation of privacy.

Barbara Calfee, daughter of murder victim, Lillian Kelly, first learned about the Respondent's letters to and from Adams from a photographer and a news reporter from *The Tennessean*.

III. FINDINGS OF FACT AS TO TINA SWEAT

Tina Sweat was arrested on November 13, 2002, and charged with aggravated child abuse, aggravated assault, manufacturing a controlled substance and possession of Schedule II controlled substance for resale in the Respondent's Judicial District. Sweat's aggravated assault charge states, "Tina Sweat intentionally and knowingly threw toxic chemicals onto affiant's [Deputy J.R. Scott] person in an attempt to cause him serious bodily harm." Sweat was arrested again on November 25, 2002, for violation of probation and possession.

On December 15, 2003, in Judge Lillian Sells' Court, Sweat pled guilty to simple assault and two (2) counts of felony possession of a Schedule II controlled substance for sale or delivery.

In August 2005, Sweat approached the Respondent after a Wednesday night church service. Sweat complained to him that several years prior to that time she had plead guilty to crimes that she did not believe she was guilty of committing. Sweat told the Respondent that she had been a methamphetamine user in 2002 and lived with a man named Sean Livesay who manufactured methamphetamine. She stated that both of them were arrested in 2002 and that she had plead guilty to felony charges of possession with intent to sell, and received a sentence of three and a half years. She further stated that her codefendant, who was actually the one supplying the meth, had received only five (5) days to serve on a misdemeanor plea of simple possession. Sweat told the Respondent that she had taken the plea on advice of appointed counsel in order to get out of jail for time served, which was approximately nine months at the time of her plea. She was further advised that entering the plea was the fastest way to be reunited with her two children who had been placed into state custody. Sweat told the Respondent that she was not advised and did not understand the ramifications that the felony convictions would have on her life going forward. She stated that as of

August 2005, she had been clean and free of any drug use for over three (3) years and that she had regained custody of her children and was doing all she could to pull others back from drug use. She told the Respondent that she had a college degree with a high grade point average, and the felony convictions were causing her great difficulty in gaining good employment. She stated an interest in furthering her education, but felt that it would be useless with her record.

Based on everything Sweat said, the Respondent believed that she might be entitled to some form of relief. He advised her to seek the advice of an attorney. The Respondent recommended Attorney William Cameron. Mr. Cameron told Sweat, "you got a one-year statute now -- this new statute. You're going to have to get somebody with the D.A.'s Office who is sympathetic with you." Mr. Cameron told Sweat if the District Attorney did not waive her statute of limitations, it would bar Sweat from any relief. The Respondent told Sweat that the statute of limitations might not be able to be waived.

From the Respondent's previous correspondence with Adams regarding post-conviction relief, the Respondent indicated he knew the applicable statute of limitations. In the Respondent's July 23, 2005, letter to Adams, the Respondent advised Adams: "There's a window during which any post-conviction must be filed. After that, it is too late."

The Respondent called Attorney Cameron and stated that the Respondent did not believe Judge Sells would agree to set aside Sweat's conviction even if the District Attorney and Mr. Cameron recommended it.

The Respondent previously recommended to Judge Sells that Sweat serve on Judge Sells' Drug Court Advisory Committee. One evening after a Drug Court Advisory Committee meeting, the Respondent approached Judge Sells and asked to meet with her after the drug court meeting. After

the Drug Court Advisory Committee meeting, Judge Sells and the Respondent went to Judge Sells' office and the Respondent asked Judge Sells how to get a criminal conviction set aside. Judge Sells told the Respondent a post-conviction relief petition or Governor's pardon might get a conviction set aside.

The Respondent had a second conversation with Judge Sells in which the Respondent advised that the case he had previously inquired about was Sweat's. The Respondent advised Judge Sells that the statute of limitations had run on Sweat's case. Judge Sells had a rapport with the Governor, and the Respondent asked Judge Sells, "Do you think the Governor would pardon Tina if we approached him?"

The Respondent asked Judge Sells if she would hear Sweat's post-conviction petition. Judge Sells told the Respondent she could not possibly hear Sweat's post-conviction petition. The Respondent told William Cameron that Judge Sells told the Respondent that she would recuse herself on Sweat's post-conviction petition based upon Sweat's involvement with Judge Sells' Drug Court Advisory Committee. The Respondent asked Judge Sells if she would have a problem with Judge Turnbull hearing Sweat's petition. It appeared to Judge Sells that the Respondent wanted Judge Turnbull to hear Sweat's petition. Judge Sells told the Respondent that Chancellor Neal, the presiding Judge, would assign Sweat's case, but Judge Sells suspected Chancellor Neal would assign the case to Judge Burns, the other Criminal Court Judge.

When the Respondent had his second conversation with Judge Sells about Sweat's post-conviction petition, it appeared to Judge Sells that the Respondent had affections for Sweat and that he and Sweat were dating. Previously, during the time frame when Judge Sells was forming her drug court, Judge Sells was under the impression that the Respondent and Sweat were dating.

There is evidence of a relationship between the Respondent and Sweat. In the fall and winter of 2005, the Respondent and Sweat:

telephoned each other;
exchanged text messages;
exchanged e-mails;
met at Crawdaddy's for dinner;
attended a play practice for Assistant District Attorney Tony Craighead;
took walks at lunch time at Sweat's place of employment;
the Respondent sent flowers to Sweat; and
rode to Paris, Tennessee, together, alone, on a Drug Court Advisory Committee trip.

Other evidence of a relationship between Sweat and Respondent is:

they rode alone to a Drug Court Advisory Committee meeting in Chattanooga;
they rode alone together to a Drug Court Advisory Committee observation in Nashville;
the Respondent gave Sweat money for Christmas; and
the Respondent sent Sweat a text message that said, "Tina, I love you.".

There was further evidence of a relationship between the Respondent and Sweat, even though it appears to have been after her post-conviction relief Order was granted. On January 31, 2006, or the next day, Sweat and the Respondent went out to celebrate Sweat's post-conviction relief at Cheddar's Restaurant. In spring 2006, Sweat spent the night at the Respondent's home and slept in the Respondent's bed. The Respondent and Sweat have kissed. The Respondent and Sweat have been naked together. On Valentine's Day, the Respondent gave Sweat flowers. In March 2006, the Respondent and Sweat took the Respondent's children, Sweat's children and Tony Craighead's daughter on a trip to Gulf Shores, Alabama. The Respondent helped buy Sweat books to study for the Law School Admissions Test (LSAT).

Further, on March 8, 2006, the Respondent wrote a letter of recommendation on his letterhead as District Attorney General in support of Sweat's admission to the Nashville School of Law. The Respondent stated, "I am writing to tell you about a special situation and to make a special

request. This is the second time in my sixteen years as a prosecutor that I have advocated for the admission of a person with any past involvement in the criminal courts..."

However, in apparent contradiction to the aforementioned evidence, on October 10, 2006, the Respondent wrote the following letter to the Board:

> I refer to Tina Sweat as a friend of mine. Based upon my interactions with Ms. Sweat on the Drug Court Team and her membership within our church, I do now consider and refer to her as a friend. There was no closer relationship than that. Friendship was not a factor in my agreement to Ms. Sweat's post-conviction petition.

Also, on March 27, 2007, at the Respondent's Temporary Suspension hearing, Disciplinary Counsel asked the Respondent, "Have you dated -- Would you consider your relationship with Ms. Sweat dating at some point in time?" The Respondent answered, "No, not in a romantic sense. I have not been romantic with Ms. Sweat." Again, this appears to be inconsistent with the conduct of the Respondent and Sweat.

In the Respondent's October 10, 2006, letter to the Board, the Respondent stated, "In the Summer of 2005, Ms. Tina Sweat approached me complaining she had been arrested and ultimately pled guilty to offenses she was not guilty of. ... We were not friends and had no social connection. I told her to seek the advice of an attorney."

When asked about his prior representations regarding his relationship with Sweat at the Hearing on August 4, 2008, the Respondent testified that his October 10, 2006, letter to the Board was, "questionable and maybe not the truth."

As to obtaining the post-conviction relief Order for Sweat, the Respondent telephoned Judge Turnbull and advised him that Judge Sells could not hear Sweat's petition and asked Judge Turnbull

to hear Sweat's petition. The Respondent advised Judge Turnbull that the District Attorney's Office agreed to Sweat's Petition for Post-Conviction Relief and the matter would be presented with an Agreed Order. On January 31, 2006, the Respondent and not Attorney Cameron telephoned Sweat to tell Sweat to come to the courthouse regarding her PCR. That day, Judge Turnbull asked the Respondent more than once if Judge Turnbull should grant the petition, if it was the right thing to do. Neither the Respondent nor Attorney Cameron had Sweat's court file with them that day.

Sweat did not give testimony before Judge Turnbull even though T.C.A. §40-30-110 provides, "The evidentiary hearing shall be recorded." On January 31, 2006, Judge Turnbull signed Sweat's post-conviction relief Order.

Judge Turnbull signed Orders of *Nolle Prosequi* and an Order of Expungement of Criminal Offender Record for Sweat which were prepared by the Respondent, not Sweat's attorney.

By Order entered January 9, 2008, Judge Donald Harris declared void Judge Turnbull's Order dated January 31, 2006, granting Sweat's post-conviction relief. Judge Harris further Ordered that Sweat's Order of *Nolle Prosequi* and Order for Expungement be set aside.

Judge Turnbull believed that the Respondent breached Judge Turnbull's and Judge Burns' confidence. Statutory law clearly states that if a petition for post-conviction relief is not filed within the time set forth in the statue of limitations, it shall be dismissed. Statutory law also requires the District Attorney to represent the State and file an Answer. The Respondent did not file an Answer in Sweat's post-conviction case. Rather, the Respondent agreed to the post-conviction petition. The Respondent cannot recall ever agreeing to any post-conviction petition other than Sweat's. Assistant District Attorney Tony Craighead testified, "It would be unusual for the District Attorney to advocate for the person with the post-conviction."

In the Respondent's October 10, 2006, letter to the Board of Professional Responsibility, the Respondent stated, "Based upon my conversations with Mr. Cameron and my looking into the case, I felt that her [Tina Sweat's] guilty pleas were entered more from the desire to obtain custody of her children rather than a true admission of guilt. I also believed there was new evidence, which did indicate she was not guilty."

There was no new scientific evidence in Sweat's post-conviction case indicating that Sweat was not guilty. Just her own statements.

IV. CONCLUSIONS OF LAW

The Respondent, at all times pertinent to the facts of this cause, was the duly elected District Attorney General for the 13th Judicial District, representing the citizens of that District from September 1, 1990, through his ultimate resignation on July 10, 2008.

The Respondent violated Rules 1.3, 1.6, 1.7, 3.5, 4.1, 4.2, 8.1, and 8.4 of the Rules of Professional Conduct.

The Respondent did not act with reasonable diligence as required by Rule 1.3 in his prosecution of Christopher Adams for the First Degree Murder of victim Lillian Kelly, nor did he act with reasonable diligence in representing the State of Tennessee in response to Tina Sweat's petition for post-conviction relief.

The Respondent violated Rule 1.6, breaching the cannon of confidentiality in his ongoing personal relationship with Adams during a time he should have been representing the interests of the State of Tennessee in not only the prosecution of Adams, but also after his filing of a petition for post-convicition relief.

The Respondent violated Rule 1.7, and clearly had a conflict of interest at a time when he should have been representing the State of Tennessee in cases regarding the prosecution and post-conviction petition of Adams, and in the post-convicition petition of Sweat. The Respondent's personal relationships with Adams and Sweat placed him and his entire office in a position of conflict of interest wherein the State of Tennessee was without adequate representation.

The Respondent violated Rule 3.5 in his ex-parte communications with Judge Sells and Judge Turnbull in his involvement with the Sweat petition for post-conviction relief, which resulted in an Order granting such relief and an expungement of her record.

The Respondent violated Rule 4.1 in regards to his communications with the Court regarding the Tina Sweat post-conviction petition.

The Respondent violated Rule 4.2 by communicating with Christopher Adams and Tina Sweat, both of whom were represented by counsel.

The Respondent violated Rule 8.1 by misrepresenting the nature of his relationship with Tina Sweat to the Board of Professional Responsibility.

The Respondent violated Rule 8.4 in the case of Christopher Adams, even admitting in one letter that he knew it was unethical for him to contact Adams. The Respondent engaged in conduct in the Adams case which was deceitful, and engaged in conduct in the Sweat case which was a misrepresentation to the Court, and in both cases, engaged in conduct that was "prejudicial to the administration of justice."

During the Hearing, as well as in his Proposed Findings of Fact and Conclusions of Law, the Respondent does not contest his violations of the Rules of Professional Conduct.

V. FINDING OF AGGRAVATING and/or MITIGATING CIRCUMSTANCES

Tennessee Supreme Court Rule 9, §8.4, states in part: "In determining the appropriate type of discipline, the Hearing Panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions. Section (c) of the ABA Standards for Imposing Lawyer Sanctions sets forth Factors to be Considered in Imposing Sanctions, and lists four (4) specific factors which should be considered in imposing a sanction after a finding of lawyer misconduct. Those factors are:

a. The duty violated;

b. The lawyer's mental state;

c. The potential or actual injury caused by the lawyer's misconduct; and

d. The existence of aggravating or mitigating factors.

Having found the Respondent in this cause to have been guilty of misconduct for violation of several Rules of Professional Conduct, the Panel considers the mitigating and aggravating factors in determining the appropriate discipline in this matter. Section 1.1 of the ABA Standards states: "The purpose of lawyer discipline proceedings is to protect the public...."

As to the mitigating factors, the Respondent asserts the following:

1. Absence of a prior disciplinary record;

2. Absence of a dishonest or selfish motive;

3. Personal or emotional problems;

4. Timely good faith effort to rectify the consequences of the misconduct;

5. Cooperative attitude during the proceedings;

6. Character or reputation;

7. Delay in disciplinary proceedings;

8. Imposition of other penalties or sanctions; and

9. Remorse.

The Board asserts that aggravating factors include the Respondent's substantial experience in the practice of law since 1987, his pattern of conduct, and submission of false statements during the disciplinary process.

The Hearing Panel considered that the Respondent had no prior disciplinary record as an attorney, but notes that while serving as a District Attorney General, a lawyer does not have daily interaction with "clients" and represents citizens of the State of Tennessee, making it unlikely for a District Attorney to receive Board complaints. The Panel never clearly established from these proceedings the motive of the Respondent, but he did appear to have a selfish motive in his dealings with Tina Sweat which may have caused him to misrepresent his personal relationship with her to the Court and to the Board. As to the alleged emotional problems of the Respondent, the Panel considered his testimony on that issue, as well as that of Dr. Averitt, Laura Gatrell, TLAP Executive Director, and Bradley McLean. Each of these individuals testified that the Respondent is compliant with their recommendations. As to the Respondent's assertion that he timely moved to rectify the consequences of his misconduct, it is noted that he did not resign his position until the summer of 2008. The Respondent asserts that he has cooperated with the disciplinary process, yet he admitted that the representations he made in his response to the Board regarding his personal relationship with Tina Sweat was "questionable and maybe not the truth." This being in response to his October 10, 2006, responsive letter to the Board and after testifying on March 27, 2007, at his temporary suspension hearing, that he did not consider his relationship with Ms. Sweat to be dating, and that he has "not been romantic with Ms. Sweat."

The Respondent asserts as a mitigating factor his good character and reputation and presented several witnesses at the hearing to testify in that accord.

The Respondent also asserts that in the two (2) years since the investigation by the Board was initiated, the Respondent has "made significant strides in his personal recovery and growth." The Respondent further asserts that he has self-imposed penalties and sanctions by resigning from the office of the District Attorney and forfeiting his salary and benefits for the remainder of his term. However, the Respondent ran for re-election in August 2006, seeking the vote of citizens of the 13th Judicial District, to retain him as the area's chief law enforcement official, knowing fully that he had engaged himself in misconduct in his handling of the Christopher Adams murder case which included a letter-writing campaign between September 2004 and July 2006. He also involved himself with inappropriate activities and lawyer misconduct regarding the Sweat matter within a year of his re-election.

As to his remorse as a mitigating factor, several of the persons closely involved in these situations question his sincerity. Judge Leon Burns testified the conduct of the Respondent violated the public trust because the Respondent was elected to represent every citizen of the State. He initially did not sense that the Respondent was sincere in his admission of misconduct, and never believed the Respondent, through his comments, recognized the significance of what he had done. Judge Burns believed that because of the Respondent, there is "a cloud over the system now." Barbara Calfee, the daughter of the victim of Christopher Adams, trusted the Respondent in their conversations regarding the Adams plea negotiations. While she acknowledged receiving a voice message from the Respondent after his letters to Adams were published in the newspaper indicating that he had "probably done some things wrong," she did not receive another call from him until two

(2) days before this Hearing began in which he finally apologized for everything he had done regarding the handling of her mother's murder case. Judge Turnbull believed that the Respondent had breached the confidence of the District Attorney's office and the Circuit Court Judges and that he could not re-establish that trust as a sitting District Attorney. Judge Turnbull was not convinced that the Respondent had finally accepted responsibility for his misconduct.

When the Respondent took the first steps in his inappropriate communications with Christopher Adams, he was not a "young and inexperienced lawyer." The Respondent had substantial experience as he had been licensed to practice law since 1987, and has been elected as the Chief Prosecutor in the 13th Judicial District since 1990. There is no reason to believe that the Respondent was not well versed in the Rules of Professional Conduct, in fact the evidence is quite the contrary. In the Respondent's first letter to Adams (Exhibit 1, Item #3), the Respondent states candidly:

> "I am taking a chance by writing to you without your attorney knowing about it. It would mean a lot of trouble for me if you ever mentioned it. It is against the Rules to communicate with someone who has counsel without the permission of the lawyer. You are learning the law so you can look in the disciplinary/ethical rules of the Tennessee Supreme Court if you are interested. Anyway, what I want to say to you is not necessarily anything I want to get his approval on. So please keep this between you and me."

In the same letter, the Respondent further states:

> "Again, keep everything I have said here and even the fact that I have written to you under your hat. I would be hung out to dry and also conflicted out of this case."

The Respondent's pattern of misconduct is well documented in Exhibit 1, which includes a collection of twenty-five (25) letters between the Respondent and Adams. Not only was the communication between Adams and the Respondent inappropriate, the actions taken by the

Respondent in negotiating a lesser plea agreement with Adams, which apparently was in direct conflict with the Assistant District Attorney in his office prosecuting Adams, was not only inappropriate, but was an abuse of his power and the Office he swore to uphold. The testimony of murder victim Lillian Kelly's daughter, Barbara Calfee, was compelling.

The Respondent's pattern of misconduct continued in his mission to have Tina Sweat's prior conviction set aside and expunged. There appears to be no basis in law nor fact for her petition for post-conviction relief. The petition was clearly filed in violation of the statute of limitations, and obviously would not have been granted by Judge Turnbull without the persuasion of the Respondent, as the District Attorney General of the 13th Judicial District. The Respondent's lack of candor with the Court and with the Board regarding his relationship with Ms. Sweat is troubling.

IV. JUDGMENT

The Preamble of the Tennessee Rules of Professional Conduct provides, in part, the following:

> A lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service and engaging at these pursuits as part of a common calling to promote justice and public good. Essential characteristics of the lawyer are knowledge of the law, skill in applying the applicable law to the factual context, thoroughness of preparation, practical and prudential wisdom, ethical conduct and integrity, and dedication to justice and the public good.
>
> ...
>
> A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.
>
> ....
>
> The legal profession's relative autonomy carries with it special responsibilities of self government....Every lawyer is responsible for observing the Rules of Professional Conduct....Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.
>
> ...
>
> Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system.

Rule 8, Tenn. Sup. Ct. Rule.

In Schoolfield v. Tennessee Bar Association, 353 S.W.2d 401, 404 (Tenn. 1961), the Tennessee Supreme Court clearly set forth the significance of integrity among attorneys in the judicial system:

> It is the duty of an attorney to uphold the honor of the profession of law; to be honest, to be of good conduct in the discharge of his duties to the Court, the public and his clients. Attorneys are trusted by the community with the care of their lives, liberty and property with no other security than personal honor and integrity.

> The trust and confidence which must necessarily be reposed in an attorney requires him to maintain a high standard of moral character and a due appreciation of his duty to his profession, the Courts and the public. He is charged with the duty of good faith and honorable dealing on all occasions.

The Panel finds that the Respondent has engaged in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on his fitness to practice law. The Panel further finds that the Respondent, as an elected official holding a governmental position, knowingly misused and abused his position with the intent to obtain a significant benefit for another, and caused serious injury to the integrity of the legal process. The Panel finds that the Respondent intentionally deceived the Court in the handling of the Tina Sweat petition for post-conviction relief and submission of an Order granting her request by making misrepresentations, improperly withholding material information, and causing a significant adverse affect on the legal proceeding. The Panel finds that the Respondent improperly communicated with Christopher Adams and was able to influence the outcome of the Adams prosecution, while misrepresenting the strength of the prosecutor's case to the family of the victim. The Panel finds the Respondent's improper communications with Christopher Adams were made knowingly in that Respondent acknowledged in his own letters that it was improper for him to make such communications. The Panel finds that the Respondent violated his duties owed to the citizens of the 13th Judicial District by engaging in conduct with the intent to obtain benefit for others, specifically Adams and Sweat, and causing serious injury to the public and the legal system.

Because the actions and conduct of the Respondent while holding the public office of the District Attorney General were egregious and made intentionally and knowingly, it is the opinion of the Panel that disbarment from the practice of law is the appropriate discipline to preserve the

integrity of the legal system and protect the public from this type of misconduct and abuse of the office. The Panel notes:

> Disbarment is generally appropriate when a lawyer in an official or government position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.

Section 5.21 of the ABA Standards for Imposing Lawyer Sanctions.

Therefore, it is the JUDGMENT of the Hearing Panel that the Respondent, William E. Gibson, be disbarred from the practice of law.

ENTER on this the 13th day of January, 2009.

Terry Andrew Fann, Panel Chair

Matthias B. Murfree, III, Hearing Panel

Jeffrey L. Reed, Hearing Panel

cc: All Counsel