

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

**BOARD OF PROFESSIONAL
RESPONSIBILITY OF THE
SUPREME COURT OF TENNESSEE**

Petitioner,

v.

WENDELL KYLE HALL

Respondent.

No. 197255-1

BOPR DOCKET NO. 2018-2850-2-WM

JUDGMENT

Pursuant to Tenn. Sup. Ct. R. 9, section 33, Petitioner, Board of Professional Responsibility of the Supreme Court of Tennessee (“Board”), appeals the decision of the Hearing Panel ordering a two years’ suspension of Respondent, Wendell Kyle Hall (“Mr. Hall”). The Board contends the Hearing Panel should have ordered disbarment. The Board timely filed a Petition for Review and this Court heard oral arguments on August 6, 2019. Honorable William B. Acree, Jr., Senior Judge, sitting by designation over the Chancery Court of Knox County, reviewed the Hearing Panel transcript and the official record with exhibits and made its ruling from the same. For the reasons set forth herein, the Hearing Panel’s findings of fact and conclusions of law are affirmed and the sanction of the Hearing Panel is affirmed.

The procedural background as stated by the Board in its brief is adopted by this Court as follows:

PROCEDURAL BACKGROUND

This matter was heard on the Board's Petition for Discipline, filed on April 13, 2018, and Mr. Hall's Response to Petition for Discipline, filed on May 15, 2018. A hearing was held on September 20, 2018. On November 9, 2018, the Hearing Panel entered its Amended Findings of Fact, Conclusions of Law and Judgment ("the Judgment") finding that Mr. Hall should be suspended from the practice of law for TWO (2) years, with all but sixty days being suspended pending compliance with terms of probation as specified in the Judgment.

On November 19, 2018, the Hearing Panel entered its Findings and Judgment for Assessment of Costs. The Board timely filed a Petition for Review on January 16, 2019, alleging that the hearing panel's judgment of suspension, as opposed to disbarment, was arbitrary and capricious, an abuse of discretion, and unsupported by substantial and material evidence.

See Brief of the Board of Professional Responsibility, page 1 (filed March 18, 2019) (citations omitted).

FINDINGS OF FACT

The material facts are undisputed. The Court adopts facts from the briefs of both parties as follows:

Mr. Hall has practiced law in Tennessee since 1996. This case concerns Mr. Hall's representation of clients in two separate matters. In the first matter, Mr. Hall represented Mitchell Parsley in a personal injury matter involving injuries Mr. Parsley sustained in an automobile accident. In the second matter, Mr. Hall represented Mary Helms and her husband for injuries they sustained in a separate automobile accident.

Id. at 2 (citations omitted).

Parsley Matter

Mr. Hall represented Mr. Parsley in an attempt to recover damages for injuries he suffered in an automobile accident. Mr. Hall agreed to be paid a one-third (1/3) fee of any recovered proceeds for his representation. During the course of negotiations, Mr. Parsley agreed to a settlement in the amount of \$65,000.00, representing \$50,000.00 to be paid by the responsible party's insurer, Geico Insurance company ("Geico"), and \$15,000.00 to be paid by Mr. Parsley's

uninsured motorist carrier, Tennessee Farmers Mutual Insurance Company (“Tennessee Farmers”)....

On October 28, 2016, Mr. Hall deposited a check from Geico in the amount of \$43,162.531 and a check from Tennessee Farmers in the amount of \$15,000.00, for a total deposit of \$58,162.53. By agreement, Mr. Hall paid one-third (1/3) of the funds received to Mr. Parsley in the amount of \$21,666.67. While Mr. Hall was also entitled to a one-third fee for his representation, the trust account records do not reflect a single payment in this amount being paid to him.

Id. at 2 – 3 (citations omitted).

[Mr. Hall] testified that the [Parsley] case was settled, the client was happy with the settlement, that he thought the settlement with Washington National would be difficult, therefore [he] focused on other cases.

See Brief of the Appellee Wendell Kyle Hall, page 3 (filed April 18, 2019).

Nonetheless, after the funds were paid into his trust account, Mr. Hall began making numerous electronic transfers in varying amounts from his trust account to his personal checking account. Mr. Hall admitted that he routinely left his earned fees in the trust account and withdrew them in increments as needed. He did not have an operating account. Moreover, he has admitted that his trust account reflected a number of loans to Mr. Hall from friends and relative, checks in repayments of those loans, and transfers to his personal account.

Washington National Insurance Company (“Washington National”) was Mr. Parsley’s Medicare supplemental insurer and had a subrogation claim against the settlement. The exact amount was unknown at the time of the settlement. Mr. Hall did not notify Washington National of the settlement at the time it was reached, or when the settlement funds were deposited into his trust account. Instead, by agreement with Mr. Parsley, he was to hold \$13,652.44 from the settlement funds in his trust account in order to settle Washington National’s subrogation claim. Based upon this agreement, until the subrogation claim was paid, the balance in Mr. Hall’s trust account should never have dropped below \$13,652.44. However, as a result of numerous transfers into his personal account, as of February 28, 2017, the balance in Mr. Hall’s trust account was \$225.84....

Mr. Parsley filed his disciplinary complaint against Mr. Hall on October 5, 2017, nearly one year after the settlement funds were deposited into Mr. Hall’s trust account. Both Mr. Hall and Mr. Parsley were expecting that there would be some amount of money remaining for distribution to Mr. Parsley after resolution of the Washington National subrogation claim.

¹ Geico made a separate payment directly to Medicare in the amount of \$6,837.47, bringing its total payment to \$50,000.00 as agreed.

Mr. Hall admitted that Mr. Parsley called him many times during that year to discuss the settlement of the subrogation claim, but that he avoided the calls. He concedes that on multiple occasions Mr. Parsley left a message for him to call but he did not return the call because he knew what Mr. Parsley wanted. Mr. Hall admits that he did speak with Mr. Parsley on more than one occasion when Mr. Parsley asked if he had resolved the subrogation claim and indicated that he needed the money. Mr. Hall did not advise Mr. Parsley that the money was no longer in his trust account.

Mr. Hall did not promptly advise Washington National that he had received the settlement funds. Instead, for approximately one year after receiving the settlement funds (in October 2016), Mr. Hall ignored efforts from Washington National to discuss and resolve its subrogation claim. Washington National sent numerous emails, faxes and letters, and left him voicemails in an effort to resolve the same. Mr. Hall repeatedly ignored those efforts. Mr. Hall "pushed" the Washington National claim "under the rug."

Only after Mr. Parsley filed the disciplinary complaint against him did Mr. Hall write Washington National to discuss and resolve its claim. On October 19, 2017, Washington National responded by telling Mr. Hall that it would accept \$1,897.76 in settlement of its claim.

Because Washington National was willing to settle its subrogation claim for \$1,897.76, Mr. Hall's client was entitled to the remaining funds from the \$13,652.44, meaning Mr. Parsley was owed \$11,754.68. Moreover, had Mr. Parsley timely dealt with Washington National, Mr. Parsley would have received these funds approximately one year earlier.

See Brief of the Board of Professional Responsibility, pages 3 - 5 (filed March 18, 2019)

(citations omitted).

After settlement of the subrogation claim with Washington National, [Mr. Hall] met with Mr. and Mrs. Parsley at their home. [He] provided a settlement statement to Mr. Parsley reflecting the amount Washington National was to receive, and the remaining balance Mr. Parsley was receiving. Mr. Parsley reiterated that he believed [Mr. Hall] should receive an additional fee for negotiating the subrogation claim, and [Mr. Hall] again explained the process to Mr. Parsley and decline any additional monies.

See Brief of the Appellee Wendell Kyle Hall, page 3 - 4 (filed April 18, 2019).

Nonetheless, when the resolution of the Washington National claim was reached, Mr. Hall did not have sufficient funds in his trust account to satisfy either the Washington National claim or to refund the balance to Mr. Parsley. On December 1, 2017, Mr. Hall deposited \$14,500.00 to his trust account. This amount represented a loan to him from his cousin, so that he would have sufficient funds in the account to make a final distribution to Mr. Parsley and Washington National. On December 4, 2017, Mr. Hall paid \$11,754.68 to Mr. Parsley. It was not until sometime in 2018 that Mr. Hall finally paid Washington National.

Mr. Hall admitted that he used the \$13,652.44 he was obligated to hold in trust for his personal and business expenses. Mr. Hall kept no trust account records other than recording deposits and checks in the checking account register. He did not record the electronic transfers to himself. He did not record a running balance in the register. He did not maintain any sort of client ledgers to document who the money in the account belonged to. He never looked at his trust account bank statements, and never reconciled them. He admitted that whenever he logged into the account online to make one of the electronic transfers, the balance was plainly displayed, though he did not necessarily pay it any attention. He conceded that when he wrote trust account checks, there were times when he did not know if there was enough money in the account to cover them.

See Brief of the Board of Professional Responsibility, page 5 (filed March 18, 2019)(citations omitted).

[Mr. Hall] testified that drawing funds from the trust account was the result of negligent record-keeping and not any intent to misappropriate. Specifically, [he] testified that although he had practiced law for twenty-two years, he had managed a trust account only since 2011. Until 2016, there were very few transactions in the trust account. [He] had no accounting background, and had never taken a college course in accounting. [He] testified that he did not maintain a ledger nor monitor the balance of the trust account, but that he also did not do so with his own personal checking account.

...[Mr. Hall] testified that he did not pay adequate attention to money accounts. He acknowledged that this was inappropriate, but that there was never any intent to misappropriate. . . . He stated that he was not aware that attorney's fees were to be immediately disbursed from trust, and that he sometimes left the attorney's fees in the trust account after disbursement to the client, and drew the fees out as he needed them....

See Brief of the Appellee Wendell Kyle Hall, page 4 (filed April 18, 2019).

The Helms Matter

Mr. Hall represented Mary Helms and her husband in a case involving personal injuries stemming from a vehicle accident. On December 22, 2011, Mr. Hall filed a complaint on behalf of Mr. and Ms. Helms against the responsible party, Pamila Fuson, in the Circuit Court for Knox County. Process was never served on Ms. Fuson. On December 21, 2012, Mr. Hall voluntarily dismissed the complaint pursuant to Tenn. R. Civ. P. 41. However, Mr. Hall did not consult with Mr. and Ms. Helms prior to dismissal of the complaint.

Mr. Hall refiled the complaint on December 20, 2013. On February 26, 2015, the defendant filed a motion to dismiss alleging that Mr. Hall failed to comply with Tenn. R. Civ. P. 41.01(1) which required that Ms. Fuson be served with the notice of dismissal and the summons and complaint. Mr. Hall did not timely advise the Helms of the filing of the motion to dismiss. On July 1, 2016, an order was entered granting the motion to dismiss and dismissing the case with prejudice for failing to comply with the requirements of Tenn. R. Civ. P. 41.01(1)[.] Once again, Mr. Hall did not timely advise the Helms that their lawsuit had been dismissed.

On August 2, 2016, Mr. Hall filed a notice of appeal, appealing the dismissal to the Court of Appeals. Mr. Hall did not consult with the Helms prior to filing the notice of appeal. Mr. Hall did not timely advise the Helms that he had filed the notice of appeal. Mr. Hall did not comply with the requirements of Tenn. R. App. P. 24 by filing either a transcript or a notice that no transcript or statement of the evidence would be filed. On October 4, 2016, an order was entered directing Mr. Hall to comply with Tenn. R. App. P. 24 or else show cause why the appeal should not be dismissed.

On October 5, 2016, the defendant filed a motion to dismiss the appeal because of Mr. Hall's failure to comply with Tenn. R. App. P. 24. Mr. Hall did not timely advise the Helms of the entry of the show cause order or the filing of the motion to dismiss. Mr. Hall did not respond to the show cause order or the motion to dismiss or otherwise take any action to perfect the record on appeal. On October 31, 2016, an order was entered dismissing the appeal with prejudice. Mr. Hall did not timely advise the Helms of the dismissal of the appeal.

See Brief of the Board of Professional Responsibility, pages 8- 9 (filed March 18, 2019)(citations omitted).

[Mr. Hall] next received a letter from an attorney dated August 25, 2016 that stated in part, "Please be informed that I represent Jim and Mary Lou Helms in their personal injury case occurring on December 10, 2010." The letter further instructed [Mr. Hall] no to further communicate directly with the Helms.

See Brief of the Appellee Wendell Kyle Hall, page 5 (filed April 18, 2019).

STANDARD OF REVIEW

The standard of review for appeals of the Board is set out in Tennessee Supreme Court Rule 9, § 33.1(b), which provides,

The review shall be on the transcript of the evidence before the hearing panel and its findings and judgment. If allegations of irregularities in the procedure before the hearing panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The trial court may, in its discretion, permit discovery on appeals limited only to allegations of irregularities in the proceeding. The court may affirm the decision of the hearing panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the party filing the Petition for Review have been prejudiced because the hearing panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the hearing panels jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the hearing panel as to the weight of the evidence on questions of fact.

Further, “[a]lthough the trial court may affirm, remand, reverse, or modify a Hearing Panel decision; the trial court may not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.” *Board of Professional Responsibility v. Allison*, 284 S.W.3d 316, 322 (Tenn. 2009). This Court will not reverse the decision of a Hearing Panel so long as the evidence “furnishes a reasonably sound factual basis for the decision being reviewed.” *Hughes v. Board of Professional Responsibility*, 259 S.W.3d 631, 641 (Tenn. 2008) (quoting *Jackson Mobilphone Co. v. Tennessee Public Service Commission*, 876 S.W.2d 106, 111 (Tenn.Ct.App. 1993)).

“When none of the first three grounds for reversal are present, as is the case here, the hearing panel should be upheld unless the decision was either arbitrary or capricious,

“characterized by an abuse, or clearly unwarranted exercise, of discretion” or lacking in support by substantial and material evidence.” *Hughes* at 641 (citing *CF Indus. V. Tenn. Pub. Serv. Comm'n.*, 599 S.W.2d 536, 540 (Tenn. 1980)). “An arbitrary [or capricious] decision is one that is not based on any course of reasoning or exercise of judgment, or one that disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.” *Id.* at 641.

Likewise, a reviewing court should not apply Tenn. Code Ann. § 4-5-322(h)(5)’s “substantial and material evidence” test mechanically. Instead, the court should review the record carefully to determine whether the administrative agencies decision is supported by “such relevant evidence as a rational mind might expect to support a rational conclusion.”.... The evidence will be sufficient if it furnishes a reasonably sound factual basis for the decision being reviewed.

Id. (citing *Jackson Mobilphone Co. v. Tennessee Public Service Commission*, 876 S.W.2d 106 (Tenn.Ct.App. 1993).

DECISION OF THE HEARING PANEL

The decision of the Hearing Panel is stated in its conclusions of law section—

1. Pursuant to Tenn. Sup. Ct. R. 9, § 1, the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline.
2. In the Helms matter, by failing to consult with the Helms regarding the decisions to voluntarily dismiss the case and to file an appeal of its dismissal, Mr. Hall violated RPC 1.2(a).
3. By failing to advise the Helms of the voluntary dismissal, the motion to dismiss, the dismissal, the filing of the appeal, the motion to dismiss the appeal and the dismissal of the appeal, Mr. Hall violated RPC 1.4 (Communication).
4. By Failing to retain the balance of the settlement proceeds in his trust account pending resolution of the Washington National subrogation claim and the final distribution to Mr. Parsley, and by retaining earned fees in his trust account

to be distributed in increments, Mr. Hall violated RPC 1.15(a) (Safekeeping Property and Funds).

5. By failing to promptly notify Washington National of receipt of the funds in which it had an interest, and by failing to promptly deliver to Mr. Parsley and Washington National the amount they were entitled to receive from the balance of the settlement proceeds, Mr. [Hall] violated RPC 1.15(d)(Safekeeping Property and Funds).

6. By converting the balance of the settlement proceeds in his trust account in order to pay personal expenses, Mr. Hall violated RPC 8.4(c)(Misconduct).

7. The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has carried its burden and proven the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence.

8. Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

9. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

4.1 FAILURE TO PRESERVE THE CLIENT'S PROPERTY

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4.4 LACK OF DILIGENCE

4.41 Disbarment is generally appropriate when:

- (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.

10. Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

- a. A pattern of misconduct.
- b. Multiple offenses.
- c. Substantial experience in the practice of law.

11. Pursuant to ABA Standard 9.3, the following mitigating factors are present in this case:

- a. Absence of dishonest or selfish motives.
- b. Timely good faith effort to make restitution or to rectify consequences of misconduct.
- c. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.
- d. Remorse.
- e. Character or reputation.

See Amended Findings of Fact and Conclusions of Law and Judgment, pages 6 – 8, ¶¶ 1 - 11 (filed November 9, 2018).

The Hearing Panel suspended Mr. Hall from the practice of law for two years with all but sixty days being suspended pending strict compliance by Mr. Hall with the terms of probation.

RULING

The issue as stated by the Board is that:

The hearing panel acted arbitrarily, abused its discretion and made a decision unsupported by substantial and material evidence by finding that Mr. Hall should be suspended for two years with only sixty (60) days of active suspension instead of disbarred, when it specifically found that he had converted client funds to his personal use, and violated RPC 1.2(a), 1.4, 1.15(a) and (d), and 8.4(c).

See Brief of the Board of Professional Responsibility, page 13 (filed March 18, 2019).

The Board takes issue with the Panel's decision as it relates to the Parsley matter. The Board argues that, although the Panel made reference to ABA Standards 4.1 Failure to Preserve the Client's Property and 4.4 Lack of Diligence, it failed to address the baseline sanction under those standards and failed to analyze the evidence in the case as it relates to the standards. The Board contends the failure to do so was arbitrary, capricious and against the weight of the evidence which was substantial and material.

The framework for establishing the appropriate sanction is well established by Tennessee law and is summarized in *Board of Professional Responsibility v. Justice*:

To assess the appropriateness of the disciplinary sanction in a given case, this Court begins with the ABA Standards. The ABA Standards are "guideposts" rather than rigid rules for determining appropriate and consistent sanctions for attorney misconduct.

The standards are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct. Rather, the standards provide a theoretical framework to guide the courts in imposing sanctions. The ultimate sanction imposed will depend on the presence of any aggravating or mitigating factors in that particular situation. The standards thus ... are guidelines which give courts the flexibility to select the appropriate sanction in each particular case of lawyer misconduct.

ABA Standards, Theoretical Framework. The presumptive sanction in each case may be identified by considering:

(1) the ethical duty the lawyer violated—whether to a client, the public, the legal system, or duties as a professional; (2) the lawyer's mental state; and (3) the extent of the actual or potential injury caused by the lawyer's misconduct." Next, any aggravating or mitigating circumstances must be considered in determining whether to increase or decrease the presumptive sanction in a particular case.

Board of Professional Responsibility v. Justice, No. E2017-01334-SC-R3-BP, 2019 WL 2751287, *1, *17 (Tenn. July 2, 2019).

In *Justice*, the hearing panel failed to consider the ABA standards identifying the presumptive sanction. The trial court affirmed the hearing panel's findings of fact and conclusions of law, but modified the sanction from a suspension to disbarment. *Id.* at *9. The Supreme Court agreed that the trial court's modification of the sanction was appropriate considering the hearing panel's lack of analysis of the presumptive sentence under the ABA standards, the inference of aggravating and mitigating factors, and the nature of Mr. Justice's conduct which evidenced his utter disregard for the fundamental obligations of lawyers to be truthful and honest officers of the court. *Id.* at *18.

In *Board of Professional Responsibility v. Barry*, the hearing panel ordered eighteen months suspension because of trust fund violations. *Board of Professional Responsibility v. Barry*, 545 S.W. 3d 408, 419 (Tenn. 2018). The trial court found that, although the hearing panel referenced the ABA standards (referring to sanctions), it failed to consider them as required by Tenn. Sup. Ct. Rule 9. *Id.* at 420. By failing to do so, the panel's decision was arbitrary or capricious. *Id.* The trial court found disbarment to be the proper sanction. *Id.*

In affirming the trial court's decision of disbarment, the *Barry* Court said:

The Board correctly notes that Tennessee Supreme Court Rule 9 specifically requires the hearing panel to consider the applicable ABA Standards when determining the proper discipline in a given case.

...

Generally speaking, 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.

...

[T]he severity of the presumptive sanction varies depending upon the lawyer's mental state—whether the lawyer acted intentionally, knowingly, or negligently—and the seriousness of the actual or potential injury caused by the lawyer's

misconduct. The presumptive sanction is most severe if the attorney knowingly convert[s] client property, less severe if the attorney knowingly deals improperly with client property, and the least severe for the attorney who is merely negligent. The severity of the presumptive sanction also increases if the attorney's actions cause the client to suffer actual injury, as opposed to little or no actual or potential injury.

...
We recognize that our standard of review of the hearing panel decision is limited. However, under the facts of this case, we agree with the trial court that the hearing panel's decision must be deemed arbitrary or capricious. Generally, the presumptions in the ABA Standards apply in the absence of aggravating and mitigating circumstances. The hearing panel here offered no explanation for its decision not to impose the presumptive sanction under the applicable ABA Standard, disbarment. Moreover, its findings provide no insight and offer no basis for the decision to suspend Ms. Barry instead of disbarring her. The hearing panel clearly did not accept Ms. Barry's argument that she was simply an incompetent businessperson; it concluded that Ms. Barry's mental state was intentional—knowing conversion of Ms. Adams' funds. We defer to its assessment of Ms. Barry's mental state and credibility on those issues.

...
We must agree with the trial court that the suspension imposed by the hearing panel is at odds with its factual findings in this case and that disbarment is warranted.

Barry, 545 S.W.3d at 421 - 26 (internal citations omitted).

The Board's contention that the Panel failed to properly consider the ABA Standards identifying the presumptive sentence is correct. The Panel simply referenced the Standards, identified aggravating and mitigating factors and ordered a suspension. Under *Justice* and *Barry*, the Panel was required to first identify the presumptive sentence. Because of that failure, the Panel's decision as to the sanction was arbitrary or capricious. This Court is thus required to identify the presumptive sentence.

Under the undisputed facts, Mr. Parsley ultimately received all funds to which he was entitled. Also, under these facts, there is no evidence that Mr. Hall intended to misappropriate his client's funds or the funds owed to the subrogation carrier. Rather, the evidence establishes

that Mr. Hall was guilty of incompetence and gross negligence in managing the affairs of his office and his client's funds.

The Court finds that under ABA Standard 4.1 Failure to Preserve the Client's Property, the applicable paragraph is 4.12: "Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client's property and causes injury or potential injury to a client."

Under ABA Standard 4.4 Lack of Diligence, the applicable paragraph is 4.42(b): "Suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."

Under both standards, the presumptive sanction is a suspension. As stated in *Barry*, the presumptive sanction is less severe if the attorney knowingly deals improperly with client property as opposed to converting it. The evidence supports the conclusion that Mr. Hall did not intend or attempt to convert the funds.

After identifying the presumptive sanction, it is necessary to consider aggravating and mitigating factors. The Panel found the following:

Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

- d. A pattern of misconduct.
- e. Multiple offenses.
- f. Substantial experience in the practice of law.

Pursuant to ABA Standard 9.3, the following mitigating factors are present in this case:

- f. Absence of dishonest or selfish motives.
- g. Timely good faith effort to make restitution or to rectify consequences of misconduct.

- h. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.
- i. Remorse.
- j. Character or reputation.

See Amended Findings of Fact and Conclusions of Law and Judgment, page 8, ¶¶ 10 - 11 (filed November 9, 2018).

The Board challenges the Panel's finding of mitigating factor "absence of dishonest or selfish motive" and argues that the opposite is true. That is, Mr. Hall had a dishonest or selfish motive, and this should have been an aggravating factor rather than a mitigating factor. The Court disagrees. The record does not establish that it was Mr. Hall's intent to convert these funds, but rather, he acted in a negligent and indolent manner.

The Board also challenges the Panel's finding of "character or reputation" as a mitigating factor and argues there were no character witnesses who testified on behalf of Mr. Hall. A trier of the facts can find the presence of good character or reputation without hearing the opinion testimony of a witness. Apparently, the Panel based this finding upon the testimony of Mr. Hall. The record supports this finding.

In summary, the Panel's finding of aggravating or mitigating factors is supported by substantial and material evidence.

CONCLUSION

The presumptive sentence with regard to the Parsley matter is a suspension. After considering the aggravating and mitigating factors, the Court concludes that there is substantial and material evidence supporting the Panel's decision of an active suspension of two months.

As previously stated, the Panel's findings in the Helms matter are not an issue. Accordingly, the sanction imposed upon Mr. Hall by the Hearing Panel is affirmed as follows:

- (1) Suspension from the practice of law in Tennessee for a period of two (2) years, with all but sixty (60) days of said suspension being suspended pending strict compliance by Mr. Hall with the terms of probation set forth in the following paragraph.
- (2) Probation for a period of twenty-two (22) months following his sixty (60) days of active suspension, which probation may be revoked and the remainder of the suspension set forth above imposed, should Mr. Hall fail to comply with any of the following terms of his probation.
 - a. Pay all costs of the disciplinary proceeding before the Panel.
 - b. Within sixty (60) days of the entry of the Panel's judgment, engage the services of a Certified Public Accountant at Mr. Hall's cost for the purpose of performing an audit of existing trust accounts for the two (2) year period prior to the entry of the Panel's judgment. Make the results of the audit available to the Disciplinary Counsel.
 - c. Engage a practice monitor for a period of twenty-two (22) months (during probationary period) who shall be selected and approved in accordance with Tenn. Sup. Ct. R. 9 § 12.9(c).
 - d. The practice monitor shall meet with Mr. Hall monthly during the twenty-two (22) months probationary period to supervise Mr. Hall's compliance with trust account rules and accounting procedures and provide a monthly written report to Disciplinary Counsel.

- e. Open a new IOLTA Trust Account. Thereafter, any deposit of client's funds shall be made to the new account. Mr. Hall shall utilize his existing trust account solely for the purpose of distributing the funds in the account at the time the new account is opened.
- f. Take fifteen (15) hours of continuing legal education on law office management and trust accounting procedures.
- g. Provide Disciplinary Counsel with proof of compliance with these conditions.

It is so **ORDERED** this the 23 day of August, 2019.


HONORABLE WILLIAM B. ACREE
Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been delivered to the following at their respective addresses, this _____ day of _____, 2019:

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CLERK