

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

TYREE B. HARRIS IV,

Petitioner,

v.

No. 19C1717

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE,

Respondent.

JUDGMENT

Pursuant to Tenn. Sup. Ct. R. 9, § 33, Petitioner, Tyree B. Harris IV (“Mr. Harris”), appeals the decision of the Hearing Panel of the Board of Professional Responsibility (“Hearing Panel”). Specifically, Mr. Harris seeks to reverse the Hearing Panel’s findings that he (1) violated Rule 8.4 of the Tennessee Rules of Professional Conduct (“RPC”), and that he (2) be suspended from the practice of law for one year. Mr. Harris contends that the Hearing Panel lacked the requisite substantial and material evidence to support a violation of RPC 8.4(c) in connection with his testimony in a child support modification proceeding. Mr. Harris further contends that even if there is enough evidence to support such a violation, a one-year suspension is not an appropriate sanction.

Mr. Harris timely filed a Petition for Review, and this Court heard oral arguments on January 21, 2020. Honorable William B. Acree, Jr., Senior Judge, sitting by designation over the Circuit Court of Davidson County, reviewed the Hearing Panel transcript, the official record with exhibits, and the appellate briefs, and considered applicable authorities.

For the following reasons, this Court affirms the Hearing Panel’s decision that Mr. Harris violated RPC 8.4(c), and the sanction of suspension from the practice of law for one year.

PROCEDURAL BACKGROUND

This matter is based on a Petition for Discipline filed by the Disciplinary Counsel on May 8, 2017, alleging that Mr. Harris violated (1) RPC 8.4(c) in connection with conversion and concealment of a fee from his law firm; and (2) RPC 8.4(a)-(c) by testifying falsely at a deposition and court hearing related to child support.

In response, Mr. Harris filed the Answer to Petition for Discipline on July 5, 2017. A hearing was held on February 6, 2019, at which Mr. Harris was the only witness called by either side. On May 24, 2019, the Hearing Panel entered its Final Order of Disciplinary Hearing Panel.

The Hearing Panel found that (1) the Disciplinary Counsel failed to prove that Mr. Harris violated RPC 8.4(c) in connection with conversion and concealment of a fee from his law firm by a preponderance of the evidence; (2) the Disciplinary Counsel met its burden of proof to establish a violation of 8.4(c) in connection with Mr. Harris's testimony in the child support modification proceeding; and (3) the appropriate sanction for violation of RPC 8.4(c) in this case was a suspension for a period of one year.

On July 8, 2019, the Chief Justice of the Tennessee Supreme Court designated this Court to hear this lawyer-disciplinary appeal.

Mr. Harris timely filed a Petition for Writ of Certiorari and Judicial Review of Administrative Proceeding on July 23, 2019, alleging that the Hearing Panel's findings were arbitrary or capricious or characterized by an abuse of discretion, and that its findings were unsupported by substantial and material evidence.

FACTUAL BACKGROUND

This case stems from the Disciplinary Counsel's petition against Mr. Harris, which alleged that Mr. Harris violated RPC 8.4 multiple times in two distinct matters over the span of one year. The Disciplinary Counsel first alleged that Mr. Harris violated RPC 8.4 on January 31, 2011, when he directed his law firm's bookkeeper to distribute funds from the firm's escrow account to him and

his partners. The Disciplinary Counsel then alleged that Mr. Harris violated RPC 8.4 during a March 25, 2011 deposition and an April 1, 2011 hearing, when he answered questions about his income in a child support proceeding.

Ultimately, the Hearing Panel found that the Disciplinary Counsel had failed to prove by a preponderance of the evidence that Mr. Harris had violated RPC 8.4 in connection to the distribution of the fee in this first matter. However, with regards to the second matter, the Hearing Panel found that Mr. Harris had violated RPC 8.4(c) in connection with testimony he gave in both the deposition and the hearing in the child support case.

Mr. Harris

Before 2017, Mr. Harris was never subject to any disciplinary proceedings over his 40-year law practice. He graduated from Washington and Lee University in 1967, and from Vanderbilt University Law School in 1970. He has been licensed to practice law in Tennessee since 1970. After graduating law school, Mr. Harris joined the military for four years, where he engaged in the practice of military law. Upon his discharge from the military, Mr. Harris has worked at numerous law firms, including Willis & Knight, PLC, where he practiced law from 1999 to 2011. Upon that firm's dissolution, Mr. Harris formed Harris, Brown & Associates, PLLC, where he practiced until his retirement.

Escrow Account

Because both Mr. Harris and the Board of Professional Responsibility ("Board") do not appeal the Hearing Panel's finding that Mr. Harris did not violate RPC 8.4 by conversion of a fee, the Court will provide a brief summary of this matter only as it is relevant to this appeal.

Mr. Harris's first alleged violation of RPC 8.4 arose out of the disposition of a fee he earned while at Willis & Knight, PLC. After Mr. Harris performed work for a client in a long-running and complex litigation, the client paid Willis & Knight, PLC, \$336,857.57 in May 2010. However,

because there was a dispute with the client over expenses involving an expert witness, the money was held in the firm's escrow account for several months.

Once the dispute with the client over the expert witness fee was resolved, Mr. Harris, along with two of his partners, agreed that the sum held in escrow would be divided into different shares. Because Mr. Harris was primarily responsible for the work generating the fee, they agreed that he was to receive \$225,000. On January 31, 2011, Mr. Harris directed the firm's bookkeeper to prepare three checks based on the agreed distribution. As a result, the fee was distributed to the three partners *prior* to its passing through the operating account, where it could be charged with overhead expenses.

Normally, all fees at Willis & Knight, PLC would first be deposited to the firm's *operating account*, from which rent and other firm expenses would be paid prior to any distribution to partners. After deduction of expenses, the remaining net fee would be credited to each partner's *capital account* in accordance with their ownership interests. The partners could then draw cash from the operating account, which would reduce their individual capital accounts accordingly. However, Mr. Harris and his two partners did not follow this procedure for the fee at issue. Instead, the three partners received their portion of the fee *before* it passed through the operating account.

According to Mr. Harris, the decision to bypass the normal procedure for the distribution of the client fee was approved by a 2-1 vote of the members. That is, two of the three members – one of them being Mr. Harris himself – allegedly agreed to deviate from the firm's usual course of business in distributing the fee. However, in a lawsuit filed by the firm against Mr. Harris, the trial court and Court of Appeals found otherwise. *Knight v. Harris*, No. M2016-00909-COA-R3-CV, 2018 WL 372211, at *5 (Tenn. Ct. App. Jan. 11, 2018) (finding that Mr. Harris's testimony with regards to the distribution of the fee from the escrow account was not credible). In addition, Mr.

Harris provided no other evidence than his own testimony regarding this vote at the disciplinary hearing.

The alleged violation of RPC 8.4 first occurred after Mr. Harris received his check for \$225,000 directly from the escrow account on January 31, 2011, and then deposited that check into a separate personal bank account. According to Mr. Harris, he deposited the check into a savings account, which was separate from his personal checking account, and he was awaiting a determination of any expenses owed to the firm.

In April 2011, one of the three partners demanded the return of the full check to pay past-due overhead expenses. While Mr. Harris refused to return the full amount, he offered to pay his one-third share of the outstanding rent. The partner disagreed, and eventually, Willis & Knight, PLC filed a lawsuit against Mr. Harris alleging fraud, conversion, and outlandish conduct stemming from Mr. Harris's withdrawal of the \$225,000 from the firm's escrow account. *Id.* at *2.

Eventually, the trial court held that (1) Mr. Harris converted a portion of the earned fee by withdrawing it directly from the firm's escrow account; and (2) Mr. Harris achieved the conversion through concealment so as to warrant an award of punitive damages. *Id.* at *1. Although the Court of Appeals affirmed the trial court's first holding, it reversed the trial court's award of punitive damages against Mr. Harris and reduced the compensatory damages award. *Id.*

As a result of Mr. Harris's conduct as described, the Disciplinary Counsel alleged that Mr. Harris violated RPC 8.4(c) in connection with the conversion and concealment of the fee from the escrow account. The Disciplinary Counsel's main contention was that a violation of RPC 8.4(c) was established via non-mutual offensive collateral estoppel from the Court of Appeals decision in *Knight v. Harris*, 2018 WL 372211 (Tenn. Ct. App. Jan. 11, 2018).

The Hearing Panel, however, found that non-mutual offensive collateral estoppel did not establish the violation because the Court of Appeals did not find that Mr. Harris's conduct with

regards to the conversion was intentional, reckless, fraudulent, or malicious. *Id.* at *10-11. The Hearing Panel noted that Mr. Harris made no effort to conceal the distribution of the fee in accordance with an agreed-upon division. As such, the Disciplinary Panel failed to prove the first alleged violation by a preponderance of the evidence.

While the Hearing Panel concluded that Mr. Harris did not violate RPC 8.4 in the first matter with regards to the fee from the escrow account, the Hearing Panel found that Mr. Harris's failure to disclose the fee in a child support modification proceeding constituted a violation of the Rule.

The Davidson County Juvenile Court Proceeding

On September 3, 2010, about five months before Mr. Harris deposited the fee into his savings account, Mr. Harris filed a petition in the Juvenile Court for Davidson County, Tennessee, seeking to reduce his child support obligation. There were two issues raised by the child support proceeding: (1) removal of the child from the custodial parent; and (2) reduction of Mr. Harris's support obligation due to a decrease in his income. It would be Mr. Harris's testimony as to the second issue that would bring him under the Hearing Panel's scrutiny.

Since Mr. Harris's divorce from the mother of the child, Special Judge Max Fagan of the Davidson County Juvenile Court held four or five child support modification hearings. To pay his child support, Mr. Harris had authorized his child support payments to be withdrawn directly from his capital account at Willis & Knight, PLC.

According to Mr. Harris, at each child support modification hearing, Judge Fagan relied solely on Mr. Harris's income tax returns to determine his income. As such, Mr. Harris had turned over every tax return he filed since 1992 or 1993. On prior occasions, Judge Fagan had determined that whatever gross income was earned did not reflect overhead and business expenses; therefore,

the judge had relied on tax returns in determining Mr. Harris's income, sometimes averaging income for two or three years depending on the occasion.

Prior to the April 1, 2011 hearing, Judge Fagan conducted a telephonic hearing on March 24, 2011, which addressed the nature and scope of documents to be produced in conjunction with Mr. Harris's deposition. Judge Fagan ordered Mr. Harris to produce his tax returns from 2007 and forward, and the profit and loss statements of Willis & Knight, PLC from 2007 and forward. Mr. Harris complied and provided that documentation.

For the most recent petition, Mr. Harris testified twice about his income. Following the receipt of the \$225,000 on January 31, Mr. Harris first spoke about his income at a deposition on March 25 and a second time at a hearing on April 1. At both the deposition and the hearing, Mr. Harris did not testify about the \$225,000 fee that was deposited into his savings account just a few weeks prior.

The Deposition

Mr. Harris first testified about his income in connection to his child support modification petition during a deposition on March 25, 2011. Mr. Harris's responses to questions about his capital account, in particular, gave rise to the Hearing Panel's scrutiny over the truthfulness of his testimony. Mr. Harris testified in relevant part:

Q. All right. In 2007, what was the value of your capital account?

A. I have no idea.

Q. All right. What would be your best guesstimate of that?

A. I don't have one.

Q. Okay. Is that something that really matters, or does it not matter?

A. Well, you mean as to what it was then?

Q. Is that something that you as a partner at a law firm would be concerned about, the value of your capital account?

A. It allows me to draw.

Q. Okay. And so that means you get to get money out of the law firm?

A. Yes.

Q. Okay. And when it's zero, like it is now—or below zero like it is now, what does that—what effect does that have on you?

A. I have not drawn anything from the firm with the single exception of my child support. I have not drawn a penny from Willis & Knight, PLC, in the last five months.

Q. Okay. And—

A. I'm sorry; four months.

R. vol. 1 at 49.

Following this excerpt, the Hearing Panel emphasized that Mr. Harris had received a check for \$225,000 from Willis & Knight, PLC, on January 31, 2011, and that he had deposited it into a savings account.

The Hearing

The hearing for the child support modification petition took place on April 1, 2011, about one week after the deposition. Again, Mr. Harris's responses to questions about his income gave further rise to the Hearing Panel's scrutiny over the truthfulness of his testimony. Mr. Harris testified in relevant part:

Q. Mr. Harris, have you taken a draw since the first of the year?

A. No. (Pause.) Technically I have. The court ordered me to continue to pay the full amount of the child support except for the month of March, and because the firm writes a check and charges it against my capital account, that check has continued to [his former wife], so technically, I have taken a draw to the extent that I have paid the capital account, but in no other way have I.

J. Just so I make sure I understand, you are saying that the only draw that you have taken has been child support.

A. Yes Your Honor. And that is a check that is written by the firm to [his former wife], the mother.

R. vol. 1 at 80.

At another point during the hearing, Mr. Harris testified about the profit and loss statements of Willis & Knight, PLC, but never mentioned the \$336,857.57 fee the firm had just distributed to its partners a few weeks prior:

Q. With respect to the firm's income for January and February, what are the total collections then?

J. About \$66,000.

A. I believe Your Honor is correct. If you want me to add them, I will.

J. The figures are – it is \$34,605 and \$31,611 – that's \$36,200 (sic), somewhere in that range.

Q. What have the total expenses been?

A. Right at \$59,000.

Q. And again, your share of the profit would be what?

A. Would be 50 percent. There is one thing about collections...

R. vol. 1 at 79.

Finally, at another point during the hearing, Mr. Harris testified the following with regards to his income:

Q. So you testified that you have made really no money other than the child support draws in 2011, is that correct?

A. I didn't say I made no money. I made modest money.

Q. Modest money, you don't know what it is do you?

A. For 2011, in the two months that are there, there is approximately \$7,500 in profit.

Q. \$7,500 in two months?

A. Yes.

R. vol. 1 at 91.

In all three testimonial excerpts, Mr. Harris failed to mention the firm's recent distribution of \$336,857.57 to the three partners in his law firm, and more specifically, his receipt of \$225,000 of that sum.

In addition, the Hearing Panel noted that during the hearing, Mr. Harris was questioned about the value of his accounts receivable with the firm. Mr. Harris testified that valuing his accounts receivable would be speculative due to uncertainty as to the accounts' collectability.

Upon the conclusion of the hearing, Judge Fagan found that Mr. Harris's income from Willis & Knight, PLC for the prior six months had been just over \$24,000. This figure was based on 50% of the firm's reported income during that period. Furthermore, Judge Fagan reduced Mr. Harris's monthly child support from \$1,897.58 per month to \$890 per month.

As a result of Mr. Harris's testimony from the deposition and the hearing, the Hearing Panel concluded that the Disciplinary Panel had met its burden of proof in establishing a violation of RPC 8.4(c). Specifically, the Hearing Panel took issue with the fact that Mr. Harris failed to disclose to the Juvenile Court the recent \$225,000 distribution from Willis & Knight, PLC.

First, the Hearing Panel found that even though Mr. Harris was purportedly holding the \$225,000 in anticipation of paying firm expenses, he exercised clear control over the funds and had the power to spend or save as he chose.

Second, the Hearing Panel took issue when Mr. Harris stated that he had not "drawn" anything from the firm with the exception of his child support. The Hearing Panel rejected Mr. Harris's explanation that the \$225,000 check was not a "draw" from the firm because he was holding it subject to resolution of disputed overhead expenses later in the year, and that the remaining money would then constitute a "draw."

Finally, the Hearing Panel found that Mr. Harris's testimony at the hearing was untruthful when Judge Fagan questioned him about any draws that he had taken. The Hearing Panel took issue with the fact that Mr. Harris so narrowly defined the term "draw," that it precluded him from disclosing the \$225,000 the he had just received from his firm.

Disciplinary Order

After the Hearing Panel found that Mr. Harris had violated RPC 8.4(c) in connection with his testimony in the child support modification proceeding, it then reviewed the relevant ABA Standards to determine the appropriate sanction. The Hearing Panel found that ABA Standard 6.11 applied.¹ The Hearing Panel then considered the four factors under ABA Standard 3.0 and their weight in its selection of the final discipline.²

The Hearing Panel found that Mr. Harris violated the duty to testify fully and truthfully under oath in connection with the court proceedings. It also found that Mr. Harris's mental state was "knowing." The injury from Mr. Harris's violation included deprivation of the Juvenile Court and opposing counsel of information relevant to the child support modification issue. The Hearing Panel found that this deprivation, in turn, threatened potential injury to Mr. Harris's ex-wife and their minor child. Finally, the Hearing Panel found that with regards to injury, Mr. Harris's testimony

¹ ABA Standard 6.11 provides:

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.

² ABA Standard 3.0 provides:

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

- (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.

brought discredit to the profession and that it promoted cynicism regarding the courts and legal system.

The Hearing Panel then discussed potential aggravating or mitigating factors. The Hearing Panel found two aggravating factors: (1) selfish motive; and (2) substantial experience in the practice of law. The Hearing Panel found Mr. Harris's lack of a prior disciplinary history as the one mitigating factor. In fact, it emphasized that Mr. Harris's lack of a prior disciplinary history over a 40-year law practice was significant: "That he has had no prior disciplinary proceedings for four decades suggests that this conduct was an aberration and not reflective of a chronic or habitual disregard of ethical standards." R. vol. 2 at 272, ¶ 17.

In the end, the Hearing Panel ordered Mr. Harris be suspended from the practice of law for one year. The Hearing Panel found that the mitigating factor of a 40-year history free of prior infractions was sufficient to reduce the presumptive sanction of disbarment under 6.11 to a suspension.

ANALYSIS

Mr. Harris raises two main issues for review. First, Mr. Harris contends that the Hearing Panel did not prove by a preponderance of the evidence that he violated RPC 8.4(c) when he answered four questions during the deposition and hearing. Second, Mr. Harris contends that even if the Hearing Panel met its burden of proof, the sanction of a one-year suspension from the practice of law is not justified by the proof nor the Hearing Panel's findings.

In order to assess these arguments, the Court must first establish the appropriate standard of review for an appeal of a final order of a disciplinary hearing panel.

Standard of Review

The standard of review in a lawyer-disciplinary appeal 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 panel's 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.

Furthermore, “[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 the 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 Pub. Serv. Comm’n*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993)).

Finally, the Tennessee Supreme Court has articulated that “[w]hen none of the first three grounds for reversal are present . . . 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 (quoting *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.

With regards to determining whether there is substantial and material evidence to uphold a decision, the Tennessee Supreme Court has stated that “the court should review the record carefully to determine whether the administrative agency’s decision is supported by ‘such relevant evidence as a rational mind might accept to support a rational conclusion.’” *Id.* (citing *Jackson Mobilphone Co. v. Tennessee Pub. Serv. Comm’n*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993).

In sum, Mr. Harris must show that the decision of the Hearing Panel was arbitrary and capricious or an abuse of discretion, or that it was not supported by substantial and material evidence.

Rule 8.4 - Misconduct

The Hearing Panel found by a preponderance of evidence that Mr. Harris violated RPC 8.4(c) in connection with his testimony in child support modification proceedings. The Rule states that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” Tenn. Sup. Ct. R. 8, RPC 8.4(c). In general, such behavior is prohibited because it reflects adversely on the lawyer's fitness to practice law. As further defined in Comment Two:

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. Although under certain circumstances a single offense reflecting adversely on a lawyer's fitness to practice--such as a minor assault--may not be sufficiently serious to warrant discipline, a pattern of repeated offenses, even ones that are of minor significance when considered separately, can indicate indifference to legal obligation.

Tenn. Sup. Ct. R. 8, RPC 8.4.

Mr. Harris contends that he did not violate RPC 8.4(c) because the evidence shows he answered all questions during the deposition and hearing truthfully, and he answered them with no intent to deceive. He contends that the \$225,000 payment was a “distribution” and not a “draw,” and he receives income only if the payment is a “draw.”

This Court rejects that argument. As stated by the Hearing Panel, “[t]his type of hair-splitting falls well short of ‘the truth, the whole truth, and nothing but the truth’ required of witnesses under oath. Few rational observers hearing that testimony would expect that he had received \$225,000, a few weeks earlier, which resided in his personal bank account.” R. vol. 2 at 268-69, ¶ 8.

Repeatedly calling the \$225,000 fee a “distribution” as opposed to a “draw” does not adequately explain why Mr. Harris did not disclose, at some point during the entire child support modification proceeding, that he had \$225,000 in his personal savings account. While Mr. Harris provides evidence of attempts to testify before Judge Fagan during the hearing regarding the distribution of \$225,00, why it was not a “draw,” and why it was separate and apart from the capital account of any partner at Willis & Knight, PLC, that still does not explain why he or his attorney didn’t disclose the amount at any other point since the filing of the petition in September 2010.

Even if the Court finds Mr. Harris’s \$225,000 fee was not a “draw,” but a “distribution,” the Court finds that Mr. Harris had a duty to disclose the distribution. The very nature of a child support modification hearing centers around income, and the Court agrees with the Disciplinary Panel that an experienced and accomplished lawyer should know better than to omit information highly relevant to the issues before a court.

In sum, Mr. Harris has failed to show that the Hearing Panel’s decision that he violated RPC 8.4(c) in connection with the child support modification proceeding was arbitrary and capricious or an abuse of discretion, or that it was not supported by substantial and material evidence.

The Sanction

The Court finds that the Hearing Panel's decision to suspend Mr. Harris from the practice of law for one year was supported by substantial and material evidence. The Court further finds the Hearing Panel correctly followed the framework established by our courts. *See Bd. of Prof'l Responsibility v. Justice*, 577 S.W.3d 908, 931 (Tenn. 2019).

The Hearing Panel first identified the presumptive sanction by considering ABA Standard 3.0, which provides the following:

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

- (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.

The Hearing Panel then considered ABA Standard 6.1 and determined that disbarment was the appropriate standard. That standard provides: "Absent aggravating or mitigating circumstances . . . [d]isbarment 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." ABA Standard 6.1 and 6.11.

The evidence clearly showed that Mr. Harris was untruthful about his income in the Juvenile Court proceedings. As a result, the Juvenile Court reduced his child support obligations substantially to the detriment of the mother and child.

The Hearing Panel then considered the aggravating and mitigating factors. It found that the Disciplinary Counsel established a selfish motive (a reduction in his child support payments) and substantial experience in the practice of law (almost 50 years) as aggravating factors. The Hearing Panel rejected other aggravating factors argued by the Disciplinary Counsel. The Hearing Panel then

found as a mitigating factor Mr. Harris's lack of a prior disciplinary history and rejected other mitigating factors argued by him. These findings are supported by substantial and material evidence.

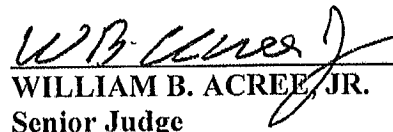
The Hearing Panel then concluded that the presumptive sanction of disbarment should be reduced to a one-year suspension because of Mr. Harris's 40-year history free of prior infractions. While it may be argued that a one-year suspension is overly severe under the facts and circumstances of this case, this Court cannot substitute its judgment for that of the Hearing Panel as to the weight of the evidence on questions of fact.

In short, the sanction imposed by the Hearing Panel is supported by substantial and material evidence, and is neither arbitrary nor capricious.

RULING

After reviewing the record as a whole and considering the Rules of Professional Responsibility, the ABA Standards, and the decisions of the Tennessee Supreme Court, this Court finds that the Hearing Panel correctly determined that Mr. Harris violated RPC 8.4(c) by giving untruthful testimony in a child support modification proceeding in the Juvenile Court of Davidson County, Tennessee. This Court further finds that the Hearing Panel correctly imposed a sanction of a one-year suspension. The decision of the Hearing Panel is AFFIRMED.

IT IS SO ORDERED this the 16th day of April, 2020.



WILLIAM B. ACREE, JR.
Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed to the following at their respective addresses, this 29th day of April, 2020:

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