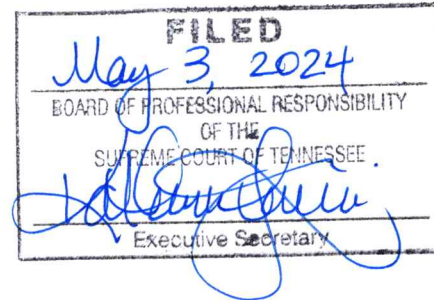


IN DISCIPLINARY DISTRICT VI  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE



IN RE: JAMES MICHAEL MARSHALL,  
BPR No. 018784, Respondent,  
an Attorney Licensed to Practice  
Law in Tennessee  
(Maury County)

DOCKET NO. 2023-3360-6-DB

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

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This matter came was heard for a final hearing to determine discipline on March 19, 2024. The final hearing was preceded by this panel's granting of the Board's Motion for Default Judgment memorialized by Order of Default Judgment entered on January 30, 2024. The final hearing held on March 19, 2024 was before a Hearing Panel consisting of Evan P. Baddour, Panel Chair, Cameron R. Hoffmeyer, and Michael L. Russell. The Tennessee Board of Professional Responsibility (hereinafter sometimes referred to as "the Board") was represented by Douglas R. Bergeron, Disciplinary Counsel for the Board of Professional Responsibility and Respondent, James M. Marshall. The hearing was conducted via audio-visual means through the Zoom platform. The Hearing Panel, after considering the argument of Disciplinary Counsel, testimony of the Respondent, the entire record in this matter and after thorough deliberations, makes the following Findings of Fact, Conclusions of Law and renders its Judgment in this case.

**STATEMENT OF THE CASE**

The Petition for Discipline in this matter was filed by the Board on October 13, 2023. Following no responsive pleading being filed by Respondent, a Motion for Default Judgment and that the Allegations of the Petition be Deemed Admitted was filed by the Board on December 6, 2023. Respondent provided no response to the Default Judgment Motion which was granted by Panel order on January 30, 2024. The Panel issued on order on February 21, 2024 setting the final hearing for Discipline for March 19, 2024.

## FINDINGS OF FACT

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

### File No. 73020-6-SC – James Addison III

On May 22, 2023, Mr. Marshall was disciplinarily suspended for one (1) year pursuant to Supreme Court Order No. M2023-00663-SC-BAR-BP for a prior disciplinary investigation unrelated to the facts included in this Petition.

The Respondent, James Michael Marshall, and the Complainant, James Addison, on October 6, 2020, executed a Retainer Agreement retaining Respondent in connection with pursuing a divorce action against Complainant's wife, Holly M. Addison. Per the Retainer Agreement, Complainant paid the Respondent \$3,305.00 on October 6, 2020. Part of the amount paid to Respondent, \$305.00, was for the divorce filing fee. Respondent never placed the filing fee into a trust and/or IOLTA account.

The divorce action was filed on or about October 20, 2020, at which time Respondent paid the filing fee. As Complainant had discussed with Respondent, Mr. Addison's principal objective was for Ms. Addison to take over the mortgage payments on the parties' residence at which Mr. Addison no longer resided, but his spouse was so living. Following service of the divorce complaint, Respondent, after receiving no answer, filed for and obtained a default judgment against client's spouse on or about March 1, 2021, and a final hearing was then set on damages for April 5, 2021. On March 12, 2021, the opposing party filed an Answer and Counter-Complaint and a Motion to Set Aside Default. The Default was set aside, and the Complaint for Divorce moved forward. On April 19, 2021, Respondent issued written discovery to the spouse's counsel.

In and around April of 2021, Respondent's client advised him that he wanted to put the divorce on hold to see if the parties could accomplish a long-term reconciliation, and the divorce proceeding remained on hold until November 2021. Respondent and opposing counsel agreed to pause the divorce proceeding. Ultimately, the Complaint for Divorce, and now counterclaim for divorce, began again in and around November 2021.

On November 15, 2021, Respondent filed an Answer to the counter divorce complaint. Mediation between the parties was held on March 9, 2022, but was not successful. Following the unsuccessful mediation, Respondent, on April 19, 2022, served written discovery on opposing counsel. At no time during his active period of representation did Respondent file any pleading to address the issue of mortgage payments being made by his client. After serving the discovery, Respondent did not work on the case from April 19, 2022, through December 5, 2022. The opposing party failed to respond to discovery requests within the time allotted by the Tennessee Rules of Civil Procedure and as required by local court rule. From May 19, 2022, through December 5, 2022, or any other time, Respondent never requested from opposing counsel responses to his propounded discovery requests from opposing counsel. From May 19, 2022, through December 5, 2022, or at any other time, Respondent never filed any pleading to compel responses to his propounded discovery requests from the opposing party. Respondent averred to disciplinary counsel during the investigative process that he was waiting for discovery responses prior to setting any final hearing on the divorce proceeding.

On April 19, 2022, the same date Respondent issued discovery, Respondent generated a bill for his services and sent same to his client via email for all alleged work done up to and including April 19, 2022. Admitted Exhibit J of the Petition shows that Respondent requested additional funds to pay the account balance but also to provide an "additional retainer" of \$5,000.00. Following receipt of this letter and invoice, the client/complainant paid the Respondent an additional \$4,340.00 for additional payment of billed fees and retainer funds. The request made by Respondent of additional retainer fees, nor the documentation provided by Respondent to his client when requesting additional funds, indicated the payment was non-refundable and specifically indicated was based on anticipated additional attorney fees. The funds received for this "additional retainer" were not placed into a trust account.

Unbeknownst to the complainant, Respondent, at some point during the period of doing no work on the file (April 19, 2022, through December 5, 2022), was offered new employment in a non-law practice position and accepted same. At no time did Respondent advise his client of his acceptance of new employment in a timely manner or discuss with his client his need to obtain new counsel. On December 5, 2022, Respondent texted his client advising that two (2) months prior, he had taken a job with a medical device company and texted advising his client

that he was withdrawing from representation and that he would be repaying any retainer. Respondent never filed a Motion to Withdraw at any time. Respondent did not timely turn over his client's file to his client following his notice that he was withdrawing, waiting until March of 2023, approximately four and a half (4.5) months, to provide the client his file.

Complainant's "retainer refund" in the amount of \$4,280.00 was eventually sent electronically to the Complainant by Respondent on March 9, 2023, after the disciplinary complaint that gives rise to this matter was filed. Respondent's "retainer refund" was not accompanied by any billing statement or any other documentation or explanation to denote how Respondent arrived at the "retainer refund" amount.

It is further found as fact that the Respondent failed to participate in the defense of his case up until the final hearing where he presented statements regarding potential mitigating factors discussed below. Mr. Marshall discussed issues he was dealing with in and around the time of the representation in this cause. Those issues are discussed further below in the consideration of applicable mitigating factors, if any.

#### CONCLUSIONS OF LAW

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

The preponderance of the evidence in the complaint at issue in this disciplinary matter, establishes that Mr. Marshall has knowingly committed the alleged violations of the Rules of Professional Conduct. In light of the admitted facts and in addition to the default order in this case wherein Respondent is deemed to have admitted the violations of the Tennessee Rules of Professional conduct (hereinafter referred to as "RPC") averred in the petition the RPC violations are proven.

Respondent, in failing to file any motion or interlocutory pleading relative to client's objective of the need to determine responsibility of mortgage payments on the marital residence,

is in violation of Tennessee RPC 1.3 (Diligence) and 1.2(a) (Scope of Representation). In two violations, Respondent failed to deposit the monies received from Complainant as additional retainer and in a separate instance failed to deposit funds received from the client for filing fees into any trust or IOLTA account in violation of Tennessee RPC 1.15. Respondent, in failing to file any motion or interlocutory pleading relative to client's primary objective of the need to determine responsibility of mortgage payments on the marital residence, is in violation of Tennessee RPC 3.2 (expediting litigation). Respondent, in failing to do essentially any work on the case between April 19, 2022, and the date he notified his client of withdrawing on December 5, 2022, is in violation of Tennessee RPC 1.3 (diligence). Respondent, in failing to communicate with his client between April 19, 2022 and December 5, 2022 is in violation of Tennessee RPC 1.4 (Communication). Respondent, in knowingly failing to make any inquiry with opposing counsel or file any pleading relative to unanswered and overdue discovery requests, is in violation of Tennessee PRC 3.2 (expediting litigation) Respondent, in failing to communicate timely relative to accepting new non-legal employment, is in violation of Tennessee RPC 1.4 (communication). Respondent, in failing to file a Motion to Withdraw after advising his client of the need to withdraw, is in violation of Tennessee RPC 1.16(c) (declining or terminating representation). Respondent, in failing to file a Motion to Withdraw after advising his client of the need to withdraw, is in violation of Tennessee RPC 3.4(c) (fairness to opposing party and counsel). Respondent, in failing to take any steps to protect the interests of his client upon withdrawal and failing to turn over client file materials promptly, is in violation of Tennessee RPC 1.16(c). Respondent, in violating the Tennessee Rules of Professional Conduct as described herein, is additionally in violation of Tennessee RPC 8.4(a) (Misconduct). It was admitted by default that all of the actions taken, and violations committed were done *knowingly*.

#### **Application of ABA Standards**

With disciplinary violations having been established by preponderance of the evidence, the Panel shall next consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions. Tenn. S. Ct. Rule 9, § 15.4(a) governs the imposition of punishment by the Hearing Panel. "[i]n determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions". See *Thompson v.*

*Board of Professional Responsibility*, 600 S.W.3d 317, 320-21 (Tenn. 2020); *In re Vogel*, 482 S.W.3d 520,533 (Tenn. 2016).The ABA Standards are designed to promote: "(1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case;(2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; [and] (3) consistency in the imposition of disciplinary sanctions." ABA Standard 1.3. These standards serve as "guideposts" for determining the appropriate punishment rather than "rigid rules that dictate a particular outcome."*Vogel*, 482 S.W.3d at 533-34.

Further, while "[h]earing panels should 'precisely and clearly identify all ABA Standards that are relied upon for guidance in determined an appropriate sanction,'" *Board of Professional Responsibility v. Sheppard*, 556 S.W.3d 139, 149 (Tenn. 2018) (citation omitted), the Standards-as "guideposts"-are not "rigid rules" and "are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct." *Board of Professional Responsibility v. Daniel*, 549 S.W.3d 90, 100 (Tenn. 2018). In cases where lawyer misconduct seems to fall between presumptive sanctions or within multiple ABA Standards which identify different presumptive sanctions, Hearing Panels and the Supreme Court are authorized to make an ultimate determination on the appropriate sanction. *Id.* at 102. Accordingly, "a hearing panel may consider the full panoply of sanctions applicable to lawyer misconduct ... even if a particular ABA Standard does not explicitly describe the fact pattern in question." *Id.*

In light of this guidance, the following ABA Standards are applied to the findings in this case:

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

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

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

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

**6.2 Abuse of the Legal Process** – *Applies to violations of RPC 3.2, 3.4(c), and 8.4*

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

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

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

**7.0 Violations of Other Duties as a Professional** - *Applies to violation of RPC 1.16*

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

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

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

**Aggravating Factors:**

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

1. Mr. Marshall's pattern of misconduct is an aggravating circumstance justifying an increase in discipline.
2. Mr. Marshall's multiple offenses are an aggravating circumstance justifying an increase in discipline.
3. Mr. Marshall's substantial experience in the practice of law, having been licensed in Tennessee in 1997, is an aggravating circumstance justifying an increase in discipline.
4. Mr. Marshall's prior disciplinary offenses are an aggravating circumstance justifying an increase in discipline. Mr. Marshall's prior discipline consists of a Supreme Court Order of a sixty (60) day suspension issued on June 13, 2014, a Public Censure issued on July 16, 2015, and a Supreme Court Order of one (1) year suspension issued on May 22, 2023.
5. Dishonest or selfish motive.

**Mitigating Factors:**

Mr. Marshall provided argument regarding hardships in his personal and professional life in and around the same time of his representation, including the fact that his law partner reportedly committed suicide preceding the time period of the representation in question in this case. The hearing panel chair inadvertently did not swear in Mr. Marshall prior to his testimony, however, the panel members found his testimony to be sincere. It is noted that there was no corroborating evidence introduced to support Mr. Marshall's statements of hardship. Here, the Panel believes that (i) personal or emotional problems; and (ii) remorse are mitigating factors present in this matter.



Mr. Marshall also argued that he had no intention of ever practicing law again and is currently suspended due to a prior suspension still pending and administratively for failure to pay his Bar dues and his Professional Privilege tax.

## JUDGMENT

The Hearing Panel finds that Mr. Marshall knowingly violated the Rules of Professional Conduct as described above, and the appropriate baseline sanction is suspension. Having established the appropriate baseline sanction, the Hearing Panel, upon consideration of the aggravating and mitigating factors in this case, does not find that an increase to the presumptive sanction of suspension is warranted, but does utilize such factors in determining the length of the presumptive sanction of suspension and so finds by a preponderance of the evidence that Mr. Marshall committed significant disciplinary misconduct as averred and proven, and that the prior disciplinary record of Mr. Marshall is a significant aggravating factor. While the hearing panel is sympathetic to the facts and circumstances presented by Mr. Marshall as mitigating factors, the panel finds that the aggravating factors outweigh the mitigating factors.

After considering the actions of Mr. Marshall, the aggravating and mitigating factors, the applicable ABA Standards for Imposing Lawyer Sanctions, and the entire record in this case, it is the opinion of the Hearing Panel that Mr. Marshall shall be suspended from the practice of law for a period of five (5) years, with a minimum period of four (4) years as active suspension.

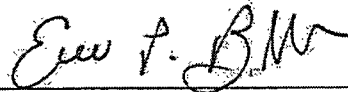
At the conclusion of four (4) years of active suspension Mr. Marshall may, pursuant to Supreme Court Rule 9, apply for reinstatement and, if granted, at which time he will serve one (1) year of probation. The probationary period will require Mr. Marshall to engage the services of a Practice Monitor who shall be selected and approved in accordance with Tenn. Sup. Ct. R. 9, §12.9(c). The Practice Monitor shall meet with Respondent monthly and assess Respondent's case load, case management, timeliness of performing tasks, adequacy of communication with clients and accounting procedures. The Practice Monitor shall provide a monthly written report of Respondent's progress to Disciplinary Counsel.

NOTICE

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

IT IS SO ORDERED.

This the 3<sup>rd</sup> day of May, 2024.



Evan P. Baddour, Panel Chair



Cameron R. Hoffmeyer, Panel Member



Michael L. Russell, Panel Member

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to James Michael Marshall, P.O. Box 715, Spring Hill, TN 37174, by U.S. First Class Mail, and delivered via email to Douglas R. Bergeron, Disciplinary Counsel, at [dbergeron@tbpr.org](mailto:dbergeron@tbpr.org) on this the 3rd day of May 2024.

  
Katherine Jennings  
Executive Secretary

**NOTICE**

**This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.**