

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

JENNIFER E. MEEHAN,

Petitioner,

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE

Respondent.

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No. 17C3204

MEMORANDUM AND ORDER

This matter came on to be heard on the May 22, 2018 and June 7, 2018, before Robert E. Lee Davies, Senior Judge, upon the petition for review filed by Jennifer Elizabeth Meehan (sometimes referred to as “Petitioner”) and the answer filed by the Board of Professional Responsibility (sometimes referred to as “Respondent”). The Court has received a copy of the Hearing Panel’s transcripts, the official record with exhibits, and the briefs filed by each party. After argument of counsel for the Petitioner and Respondent the Court makes the following findings of fact and conclusions of law.

Procedural History

After Ms. Meehan was indicted, the Tennessee Supreme Court summarily suspended her law license on August 10, 2016. A petition for final discipline was filed that same day to which Ms. Meehan filed her answer on December 2, 2016.

The hearing on the petition was originally set for January 11, 2017. On January 4, 2017, Ms. Meehan filed a motion to continue until disciplinary proceedings were completed in South

Carolina, or until January 25, 2017. The motion was granted in part, and the hearing continued to January 25, 2017.

On January 24, 2017, Ms. Meehan filed another motion to continue because she had reported to serve her prison sentence earlier than she anticipated and was already in prison in West Virginia by the time she found out the original hearing was continued to January 25, 2017. The Board objected, and the Hearing Panel proceeded to hear the Board's argument. The Panel then adjourned the hearing and issued an order allowing Ms. Meehan thirty days after receipt of the transcript of the hearing to submit any evidence or argument on an appropriate sanction arising out of the bank fraud conviction.

On February 27, 2017, counsel for Ms. Meehan entered a notice of appearance, for Ms. Meehan, who previously had represented herself. Ms. Meehan's counsel filed a renewed motion to continue which was granted in part. Although the Panel refused to await the conclusion of separate proceedings in South Carolina, it did grant her request to attend a hearing in person and present additional evidence in mitigation of final discipline.

An evidentiary hearing was held on July 31, 2017 at which Ms. Meehan and her counsel were present. The Panel heard testimony of ten live witnesses, without objection. At the conclusion of the hearing, the Panel took the case under advisement and issued its written findings of fact and conclusions of law on September 27, 2017. Based upon its findings of fact and conclusions of law, in conjunction with the ABA Standards For Imposing Lawyer Sanctions, the Panel decided that the appropriate final discipline in this case was disbarment.

Facts

Ms. Meehan graduated from Texas Tech University School of Law in 2003. Upon graduation, Ms. Meehan moved to Nashville, Tennessee and earned her Tennessee law license in 2003. While in Tennessee, she worked for the Board for Licensing Contractors for the State of Tennessee and as a contract attorney at King & Ballow in Nashville. In 2008, Ms. Meehan moved back to South Carolina to be with her father and work in the family business. She also obtained her South Carolina law license and began practicing in that state.

In 2009, Ms. Meehan applied for a position with the Tennessee Department of Health. However, the resume which she submitted contained misrepresentations. It indicated that she clerked for a federal judge when she only had completed a judicial internship, and it indicated she had published a law review article when the article, although submitted in anticipation of publication, was never actually published. As a result, a complaint was filed with the Tennessee Board of Professional Responsibility, and Ms. Meehan received a public censure following a conditional agreement to discipline. Likewise, South Carolina imposed a public censure under its reciprocal-discipline rule. Ms. Meehan elected not to return to Tennessee and instead continued to practice law in Anderson, South Carolina. In 2010, she started her own law firm concentrating in the areas of health care compliance and estate work.

Ms. Meehan attended the University of Alabama for her undergraduate degree. While at Alabama, she joined a sorority and during the time she was practicing law in Tennessee, she accepted a position on the sorority's housing board, which managed all property owned by the sorority chapter on the campus of the University of Alabama.¹ In 2011, Ms. Meehan became president of the housing board. During her tenure as president, the sorority purchased and renovated its own sorority house, and some time later, the sorority elected to sell its old house

¹ Ms. Meehan's sorority was Gamma Phi Beta.

and build a new one. As president, Ms. Meehan was responsible for overseeing the construction of the new sorority house. All of her work on this project was performed on a volunteer basis, and it consumed a significant portion of Ms. Meehan's time as she traveled between Anderson, South Carolina and Tuscaloosa, Alabama.

The sorority was required to contract with a third-party company, Greek Resource Services, that assisted the sororities and fraternities with property management, collection of dues, housing contracts, employment issues, food service, and financial management. As president, Ms. Meehan worked with Greek Resource Services to contract and pay for the construction of the new sorority house and to furnish the house with fixtures and furnishings. Although the sorority would pay for these items out of its own funds, the funds were held in an account managed by Greek Resource Services.

Ms. Meehan became concerned over the timing of payments for the furnishings for the new sorority house. She was worried that the house would not be furnished by the time rush began, which would adversely affect the sorority's ability to recruit new members. Gamma Phi Beta first attempted to set up its own account but was told by Greek Resource Services that separate accounts were not allowed.

Ms. Meehan then devised a strategy to circumvent the Greek Resource Services' prohibition regarding separate accounts. Gamma Phi Beta had contracted with a furniture vendor by the name of AI Corporate Interiors. AI Corporate Interiors was Alabama's exclusive dealer for furniture manufactured by Teknion, which was headquartered in New Jersey. AI Corporate Interiors provided Ms. Meehan with an invoice template. Ms. Meehan used that template to create two false Teknion invoices, which were not related to any actual order. At the same time, Ms. Meehan opened a bank account with First Citizens Bank in the name of "Technion." She

then submitted the two false Technion invoices to Greek Resource Services and when she received checks totaling \$375,000, she deposited those checks into the false Technion account which she had established at First Citizens in Carnesville, Georgia.² After Ms. Meehan opened the bank account at First Citizens, someone from the bank informed her that the EIN she had provided was incorrect, so Ms. Meehan obtained Teknion's actual EIN from AI Corporate Interiors and provided it to the bank. Ms. Meehan admitted that she had no authority from the actual Teknion to open an account or use its EIN. When Ms. Meehan realized that Teknion was aware that its EIN was being used for a bank account at First Citizens, she became concerned that the legitimate Teknion might try to assert ownership over the funds in the account. To eliminate this possibility, Ms. Meehan wired \$175,000 of the money in the false Technion bank account to one of her personal bank accounts at Bank of America. She later paid this \$175,000 to AI Corporate Interiors for furniture that the sorority ordered for the new house.

Once the furniture had been delivered and paid for, Ms. Meehan made arrangements for the remaining balance (approximately \$200,000) in the false Technion bank account to be returned to Greek Resource Services and placed in Phi Gamma Beta's account. This occurred in March 2015, and before Ms. Meehan was aware that the federal authorities were investigating her. Ms. Meehan was arrested on June 29, 2015. The original indictment included eight felony charges: three counts of wire fraud, one count of bank fraud, and four counts of money laundering. Ms. Meehan ultimately pled guilty to count four of the indictment, bank fraud, and entered into a plea agreement on July 12, 2016. Said agreement provides in part as follows:

Meehan, in her capacity as the President of the House Corporation Board of the Epsilon Lambda Chapter of GPBS at the University of Alabama, did knowingly and willfully execute a scheme and artifice to obtain moneys and funds owned by or under the capacity or control of First

² Ms. Meehan testified that she was given the original Teknion EIN and a false corporate resolution by AI Corporate Interiors and that she was unaware that she was listed as the CFO.

Citizens Bank & Trust Company, and Bank of Tuscaloosa Financial Institutions, the deposits of which were then insured by the Federal Deposit Insurance Corporation, by means of false and fraudulent pretenses and representations.

At the sentencing hearing, the district court judge imposed a sentence of six months imprisonment, forty months of supervised release (including eighteen months of home detention), a fine of \$50,000, and restitution of \$34,815.41 to Greek Resources, which already had been paid. In her statement of reasons, the district court judge found Ms. Meehan did not personally profit from her offense and noted that she had lost her license and practice as a result. After Ms. Meehan served the six months of jail time, she volunteered to serve at Community Kitchens of Birmingham, a charitable organization serving lunches to the homeless and hungry in Birmingham, Alabama. Kimberly Jeanty, the Director, testified Ms. Meehan served the program with skill and integrity, and Ms. Jeanty would not hesitate to hire Ms. Meehan to work at the program. Volunteer work was not a requirement as part of Ms. Meehan's plea agreement with Federal Court.

Separate and apart from the bank fraud scheme, Ms. Meehan often had received checks from Greek Resource Services to pay for various items at the sorority house and to reimburse her for personal funds spent on the project and other sorority expenses. There were also times when Ms. Meehan would submit an invoice to Greek Resource Services, obtain an advance, and not spend all of the money she received. Ms. Meehan explained that sometimes orders would change and that she wanted to have money set aside in order to be able to work with the purchase orders as the changes occurred with interior designers and other people. Sometimes, she would receive a single check from Greek Resource Services that was intended to cover any reimbursement she was owed and any advances for future purposes. For the period of March

2011 through June 2015, Ms. Meehan accumulated excess cash which amounted to \$234,732.82, which she stored in a boot box in her closet and accounted for in a hand-written ledger.

One reason Ms. Meehan was accumulating this cash was due to a disagreement between Greek Resource Services and her sorority regarding a scholarship fund. The Housing Board for Ms. Meehan's sorority had voted to approve a scholarship fund regardless of their dispute, and the board members believed any left-over money from furnishing the new house could be used to start the scholarship fund. Although not a part of the bank fraud charge, these cash funds were completely accounted for and turned over to the United States Government by arrangement through Ms. Meehan's attorney in her criminal case. None of this money was ever used for Ms. Meehan's personal use. It appears Ms. Meehan recognized that this money always belonged to the sorority, and she executed a release to that effect in connection with her plea agreement.

Ms. Meehan's South Carolina law license was summarily suspended in July 2015 after she was indicted. South Carolina then appointed a receiver to audit Ms. Meehan's accounts and client files to make sure all client needs were met in her practice. The receiver found all matters to be in order and found no improprieties. A disciplinary proceeding remains pending in South Carolina.

Standard of Review

When reviewing a Hearing Panel's judgment, a trial court must consider the transcript of the evidence before the Hearing Panel and its findings and judgment. Tenn. S. Ct. R. 9 § 1.3. On questions of fact, the trial court may not substitute its judgment for that of the Hearing Panel. The same is true for weighing the evidence. Board of Professional Responsibility v. Allison, 284 S.W.3d 316, 323 (Tenn. 2009). However, the trial court reviews questions of law *de novo* with no presumption of correctness. Board of Professional Responsibility v. Cowan, 388 S.W.3d 264,

267 (Tenn. 2012). Any modification to a Hearing Panel's decision must be based on one of the specific factors set forth in Tenn. S. Ct. R. 9, § 1.3. Board of Professional Responsibility v. Love, 256 S.W.3d 644, 652 (Tenn. 2008).

Accordingly, the trial court will only reverse or modify the decision of a Hearing Panel if the rights of the petitioner has been prejudiced because the Panel's findings, inferences, conclusions or decisions are: 1) in violation of constitutional or statutory provisions; 2) in excess of the Panel's jurisdiction; 3) made upon unlawful procedures; 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. Tenn. S. Ct. R. 9, § 1.3, Board of Professional Responsibility v. Reguli, 489 S.W.3d 408, 417 (Tenn. 2015).

Finally, the trial court should conduct a review of comparable cases to ensure that the Hearing Panel's sanctions are consistent with sanctions ordered in other cases involving similar misconduct. Board of Professional Responsibility v. Reguli at 425.

Analysis

Whether the Hearing Panel was Required to Accept Ms. Meehan's Offer to Surrender her License

Ms. Meehan contends that she should have been allowed to surrender her law license in lieu of discipline. The surrender of an attorney's law license is governed by Supreme Court Rule 7, Article XV. Article XV provides that an attorney licensed to practice in Tennessee may petition the Supreme Court to accept surrender of their license. Neither the Hearing Panel nor this Court has the authority to accept the surrender of a law license. In addition, Tennessee Supreme Court Rule 9, § 8.1 makes it clear that a Hearing Panel has jurisdiction over any

attorney admitted to practice law in this state with respect to acts committed prior to the surrender of a law license. The Court concludes the Hearing Panel had jurisdiction to hear this case since the Supreme Court did not elect to accept Ms. Meehan's surrender of her license in lieu of discipline.

The impartiality of the Panel

Ms. Meehan raises several concerns that she claims demonstrate bias by the Panel towards her. Ms. Meehan complains that the Panel allowed the Board to present its case in chief on January 25, 2017 when she did not appear for the hearing. She contends some of the Panel members exhibited bias in their questioning of Ms. Meehan; that the Hearing Panel exhibited a desire to punish her; that it considered items outside the record; and that it considered evidence that it found to be unrelated to her bank fraud conviction. The Court finds these issues are without merit.

Ms. Meehan failed to appear at the hearing on January 25, 2017 because she unilaterally decided to commence serving her sentence in the federal penitentiary before the Hearing Panel ruled on her motion to continue. In fact, the Hearing Panel granted her motion in part and continued the hearing to her requested date of January 25, 2017. Ms. Meehan's failure to attend the hearing did not create an *ex parte* proceeding. An *ex parte* proceeding is one in which not all the parties are present or **given the opportunity to be heard.** Black's Law Dictionary, 10th Ed. When a court provides notice to all parties to appear at a time and date certain, but a party elects not to attend, there is no *ex parte* hearing.

The Tennessee Rules of Evidence specifically permit the interrogation of witnesses by the trial judge. Tenn. R. Evid. 614(b). The questions asked by the Panel members did not

indicate bias by any member. Moreover, there was no objection to any of the questions. Accordingly, appellate relief is generally not available when a party has failed to take whatever action was reasonably available to prevent or nullify the harmful effect of any error. State v. Schiefelbein, 230 S.W.3d 88, 118 (Tenn. Crim. App. 2007).

Ms. Meehan contends the Hearing Panel violated her due process rights when it considered the dismissed counts in the indictment. Other than mentioning the indictment, there is no indication that the Panel considered any of the counts, except count 4 to which Ms. Meehan pled guilty. This was a bench trial conducted by three seasoned attorneys. There is nothing to suggest in the findings of fact and conclusions made by the Panel that the other remaining counts were considered by the Panel as a finding of fact or used by the Panel in assessing sanctions for Ms. Meehan.

Ms. Meehan complains the Panel considered the return of the \$234,437.82 in cash from the boot box; however, this issue was raised by Ms. Meehan as a mitigating factor that she made timely, good faith efforts to make restitution. As Ms. Meehan pointed out, she testified about the cash at the hearing. It was evidence which she introduced and then attempted to use as a mitigating factor when she returned it.

Whether the Findings and Conclusions of a Hearing Panel Where Arbitrary and Capricious

Ms. Meehan lists several instances where she believes the Panel acted arbitrarily and capriciously. She argues that she did not “create two false invoices” as found by the Panel; instead the Panel should be bound by the Federal District Court’s finding that Ms. Meehan “altered an actual invoice.” This argument amounts to a “distinction without a difference” which

is a logical falsity. Ms. Meehan submitted two Teknion invoices to Greek Resources for furniture orders, when “there wasn’t actually an order”, and she did not inform Greek Resources of this fact. (Tr. Pg. 168). The record supports the finding of the Panel that Ms. Meehan submitted false invoices. Although Ms. Meehan claims she did not prepare or read the document which she submitted to the bank, and therefore did not intend to lie, that is a question of credibility. The weight, faith and credit to be given to a witness’ testimony lies with the trial court in a non-jury case where there is an opportunity to observe the manner and demeanor of the witness during their testimony. Roberts v. Roberts, 827 S.W.2d 788, 795 (Tenn. Ct. App. 1991). The Court finds that the evidence in this case does not preponderate against the findings of fact by the Hearing Panel regarding Ms. Meehan’s intent to deceive. Credibility findings and the weighing of evidence on questions of fact are binding on a reviewing court unless those findings are unsupported by the evidence in the record. Maddux v. Board of Professional Responsibility, 409 S.W.3d 613, 621 (Tenn. 2013).

Whether the Hearing Panel Misapplied Aggravating Factors

The Hearing Panel found that the evidence supported a finding of two aggravating factors. It also rejected three aggravating factors proposed by the Board. The Panel found Ms. Meehan’s prior discipline for submitting a false resume and false statements made in the disciplinary proceeding were aggravating factors. It also found that since she had been licensed in Tennessee since 2003, that she had substantial experience in the practice of law. While the Court does not disagree with the Panel’s finding that Ms. Meehan’s prior experience working with a state agency and a private law firm in Tennessee and establishing her own practice in South Carolina demonstrates a substantial practice, Ms. Meehan’s knowledge and practical

experience as an attorney, had very little connection to her misconduct. Instead, the proper analysis was to reject Ms. Meehan's alleged inexperience in the practice of law as a mitigating factor, which the Panel properly found. In other words, whether Ms. Meehan was a newly admitted member of the bar or a seasoned attorney had little relevance to her crime of bank fraud. As the Supreme Court of New Hampshire held:

To be relevant, there must be a nexus between the inexperience and the offending conduct. Here, the respondent's culpability arises from an act performed outside of the practice of law, the illegality of which is evident to any lay person. It does not take a seasoned legal intellect to understand that insurance fraud is both illegal and morally reprehensible. That the respondent was newly admitted to the bar is therefore irrelevant.

In Re: Grew's Case, 156 N.H. 361, 368, 934 Atlantic 2d 537, 543 (2007).

Whether the Hearing Panel Misapplied Mitigating Factors

Ms. Meehan proposed twelve mitigating factors under ABA Standards 9.32. The first factor rejected by the Panel was the absence of a dishonest or selfish motive. While it is true that the record conclusively establishes dishonest conduct and intentional fraud as found by the Panel, the Court cannot agree that the record fails to support the mitigating factor of lack of dishonest or selfish **motive**. Initially, the Court notes that the Panel, in rejecting the Board's request to find dishonest motive as an aggravating factor, found "it appears that Ms. Meehan was motivated by a desire to assist the sorority." The traditional definition of **intent** is one's desire to cause consequences from an act or the belief that the consequences are substantially certain to result from such an act. Valencia v. Freeland and Lemm Constr. Co., 108 S.W.3d 239, 243 (Tenn. 2003). Motive is more ambiguous. Motive has been defined as a desire that leads one to act. It is an emotion which internally pushes a person to do or refrain from doing an act. John H. Wigmore, A Student's Text Book of the Law of Evidence, 76 (1935). There is no disagreement that the misconduct by Ms. Meehan was not a result of any motivation for personal gain.

Instead, as the Panel correctly found, her only motivation was to assist her sorority in having the new house completed and fully furnished before rush commenced in August. Ms. Meehan's dislike for Greek Resources' policy of prohibiting separate bank accounts for sororities and the amount of time it took to satisfy invoices, does not amount to a dishonest or selfish motive. Therefore, the Court finds that the Panel made an arbitrary decision when it found on one hand the evidence did not support a finding of a selfish motive for an aggravating factor, but on the other hand, the evidence did not support a finding of an absence of a dishonest or selfish motive as a mitigating factor.

Ms. Meehan contends that the Panel erred when it failed to find a good faith effort by her to make restitution as a mitigating factor. As the Panel found, this factor applies to "lawyers who make restitution voluntarily or make an effort on their own initiative to rectify the consequences of their misconduct." ABA Annotated Standards for Imposing Lawyer Sanctions, (2015, p. 462). It is undisputed Ms. Meehan used the funds deposited into the Technion bank account to pay either for furniture for the sorority house or was returned to Greek Resources by the middle of March 2015. This was done months before she was indicted, aware of any investigation, or arrested. The Panel found her motive for returning the money was out of her concern that the real Teknion might seize those funds. The Panel went on to comment on Ms. Meehan's efforts to return the cash from the boot box nine months after her arrest. This was error. The cash in the boot box had nothing to do with count 4 of the indictment for bank fraud, the only count to which Ms. Meehan pled guilty. The only restitution from the criminal case was the \$34,815.41 which Ms. Meehan was required to reimburse Greek Resources for the audit. Obviously, Ms. Meehan could not have repaid these funds until the audit had been completed which was well after her indictment.

While Ms. Meehan may have moved the funds from the false Technion account to her own account at Bank of America in order to keep the real Technion from seizing those funds, it is also true that those funds were not the real Technion's funds. Those funds were the sorority's, part of which would be owed to Technion when it delivered the furniture. Upon delivery, Ms. Meehan paid Technion the amount which was owed, and returned the balance to Greek Resources, ultimately, to be placed back into her sorority's account. The Court finds the Panel made an arbitrary decision when it failed to acknowledge restitution as a mitigating factor.

Ms. Meehan contends that it was error for the Panel not to consider her willingness to have a mentor as a mitigating factor. The Court disagrees. The proof put on by Ms. Meehan indicated the receiver who was appointed to take over her practice in South Carolina found all of her files and accounts to be in order. As set forth above, Ms. Meehan's criminal conviction had little to do with her practice of law. In other words, Ms. Meehan does not need a mentor to advise her not to create false documents in order to get around rules and regulations. This issue is without merit.

Finally, Ms. Meehan complains that the Panel erred when it refused to acknowledge lack of harm as a mitigating factor. The Court agrees with the Panel's decision not to give Ms. Meehan credit for lack of harm as a mitigating factor. Ms. Meehan committed a crime. As a result, she caused the federal government, First Citizens Bank, and Greek Resources to expend time and resources to investigate and prosecute her.

The Sanction Imposed

In order to determine the appropriate discipline in a given case, the Court looks to the ABA Standards for imposing lawyer sanctions. Maddux, 409 S.W.3d at 624. These Standards

act as a guide rather than rigid rules, thereby providing courts with discretion in determining the appropriate sanction for a lawyer's misconduct. Maddux, 409 S.W.3d at 624. The ABA Standards specify that when imposing a sanction, the court should consider:

- 1) What ethical duty did the lawyer violate (a duty to a client, the public, the legal system, or the profession?);
- 2) What was the lawyer's mental state? (Did the lawyer act intentionally, knowingly, or negligently?);
- 3) What was the extent of the actual or potential injury caused by the lawyer's misconduct? (Was there a serious or potentially serious injury?);
and
- 4) Are there any aggravating or mitigating circumstances?

Id. (Quoting ABA Standards, Theoretical Framework).

Here, the Panel found the duty violated arose out of Ms. Meehan's conviction of a serious crime, bank fraud and violation of 18 U.S.C. § 1344. It found Ms. Meehan's plea agreement conclusively established her guilt and her intent to defraud.

The standards which control for violation of duties owed to the public are found at 5.0. ABA Standard 5.11 provides that:

Disbarment is genuinely appropriate when:

- a) A lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft . . .

Using this Standard, the presumptive sanction in Ms. Meehan's case is disbarment. She intentionally violated her duty to the public by committing the crime of bank fraud. The Court agrees with the Hearing Panel that Ms. Meehan committed a violation of, RPC 8.4(a)(b)(c).³ As

³ The Court disagrees with the Hearing Panel that Ms. Meehan violated RPC Rule 1.15(d). The Hearing Panel overlooks the fact that Ms. Meehan was holding these funds not as an attorney for the sorority or any third party. Rather, Ms. Meehan was in control of these funds as a result of her position as president of the Housing Board for her sorority. Ms. Meehan was acting in her official capacity as the president of the Housing Board when she took

the Hearing Panel found, it is a violation of RPC 8.4(b) for a lawyer to “commit a criminal act which reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.” Likewise, Rule 8.4(c) provides it is a violation to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” Ms. Meehan’s conviction establishes all of these elements. The Court also agrees with the finding of the Hearing Panel that Ms. Meehan’s motive was to assist her sorority in completing an important construction project on time to avoid the delays inherent in the use of a third party financial manager. Unfortunately, Ms. Meehan used fraud to achieve this legitimate goal in order to avoid the restrictions of Greek Resources which were in place to protect the assets of the sorority.

The ABA Standards then require the court to consider aggravating and mitigating factors to determine whether the presumptive sanction should remain, be decreased, or increased. In reviewing the aggravating and mitigating circumstances, the Court concludes there was one aggravating factor – a prior disciplinary offense which involved the use of a false resume and false statements in the disciplinary proceeding.

The mitigating factors are as follows:

- The absence of a dishonest or selfish motive.
- Personal or emotional problems (slightly mitigating).
- A timely good faith effort to make restitution or to rectify consequences of misconduct.
- Full and free disclosure to disciplinary board or cooperative attitude toward proceedings (mildly mitigating).
- Character or reputation.
- Imposition of other penalties or sanctions (mildly mitigating).

possession of the funds in order to pay for the furniture. Ms. Meehan did not receive these funds in any capacity as an attorney on behalf of a client or a third party.

- Remorse.

The final analysis which the reviewing court must undertake is whether the sanctions imposed in similar cases are consistent with the sanction imposed in the case at bar. In In Re: James Carl Cope, 2018 W.L. 2077434 (Tenn. 2018), our Supreme Court initially noted that in cases in which an attorney has been convicted of a felony, almost all of the attorneys were disbarred. However, the Court pointed to three cases in which the attorney in question was convicted of a felony, meeting the criteria of ABA Standard 5.11, but received a four-year suspension instead of disbarment.⁴ Petitioner has cited the Court to two additional cases. In In Re: James V. Barr, III, No. 01501-9710-BP-00221(Tenn. Oct. 22, 1997) an attorney, was convicted of bank fraud and making a false statement under penalty of perjury along with other misconduct. The attorney received a five-year suspension. In Napolitano v. Board of Professional Responsibility, 535 S.W.3d 481 (Tenn. 2007), an attorney who had previously received a five-year suspension, lied under oath at a deposition and committed misconduct involving client property for which the presumptive sanction was disbarment, received a five-year suspension.

Conclusion

In light of the sanctions imposed in prior similar cases, and in consideration of the single aggravating factor and multiple mitigating factors, in this case, the Court finds the ultimate sanction of disbarment to be arbitrary. The Court concludes that the circumstances justify the imposition of a term of suspension rather than that of disbarment because Ms. Meehan did not have a dishonest or selfish motive. This is underscored by her efforts to return all monies to Greek Resources months before she was ever aware that she was being investigated by the


⁴ See In Re: Carla Ann Kent Ford, BPR# 1432, No. M2016-01035-SC-BAR-BP (Tenn. Dec. 22, 2016)(Theft over \$1,000); In Re: Joanna Temple, BPR# 26096, No. M2015-01280-SC-BAR-BP (Tenn. June 27, 2016)(Attempted Criminal Usury Conviction in N.Y.); Lockett v. Board of Professional Responsibility, 380 S.W.3d 19, 27 (Tenn. 2012).

federal authorities. Moreover, her one prior disciplinary sanction resulted in a public censure, and the record establishes her sincere remorse. When compared to some of the other attorneys who received suspensions, her conduct is somewhat less egregious, particularly in the Barr case.

Based upon the above analysis, the Court imposes a term of suspension of five years. The suspension will be retroactive to the date of Ms. Meehan's initial suspension by the Supreme Court on August 10, 2016. If Ms. Meehan's suspension were prospective, this would result in a total suspension of approximately seven years which would be harsher than disbarment in terms of reinstatement. The Court believes that the sanction of a five-year suspension will serve its purpose to safeguard the administration of justice, protect the public from the misconduct of members of the bar, and preserve the confidence of the public in the integrity and trustworthiness of lawyers in general. Hornbeck v. Bd. of Prof'l Responsibility, 545 S.W.3d 386 (Tenn. Ct. App. 2018).

It is so **ORDERED**.

ENTERED this 24 day of July, 2018.


ROBERT E. LEE DAVIES, SENIOR JUDGE

CLERK'S CERTIFICATE OF SERVICE

A copy of this Order has been served by U.S. Mail upon all parties or their counsel named above.

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Date