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IN THE SUPREME COURT OF TENNESSEE
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FRED C. DANCE v. BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE

Direct Appeal from the Circuit Court for Williamson County
No. 24-CV-68 Robert E. Lee Davies, Senior Judge

No. M2024-01757-SC-R3-BP

Tennessee attorney Fred C. Dance represented a client in a wrongful death action that eventually settled. Rather than promptly disburse the settlement proceeds to his client, he used the funds to pay for personal expenses while ignoring his client's inquiries about the money. A hearing panel of the Board of Professional Responsibility concluded that Dance had violated Rules 1.4(a)(3), 1.4(a)(4), 1.15(a), 1.15(d), 8.4(a), and 8.4(c) of the Tennessee Rules of Professional Conduct. Based on its finding that Dance had knowingly converted client property, the hearing panel recommended that Dance be disbarred. In this appeal, we consider whether disbarment is the appropriate sanction for Dance's misconduct. As a preliminary matter, we clarify that in an appeal under Tennessee Supreme Court Rule 9, section 33.1(d), this Court reviews the hearing panel's recommended punishment de novo rather than for abuse of discretion. We affirm the hearing panel's finding that Dance knowingly converted client property and its application of aggravating and mitigating factors. But after considering the sanctions imposed in similar cases, we conclude that Dance should be suspended rather than disbarred. We therefore reverse the hearing panel's judgment in part and suspend Dance from practicing law for five years, with three years to be served on active suspension.

Tenn. Sup. Ct. R. 9, § 33.1(d); Judgment of the Circuit Court Affirmed in Part and Reversed in Part

SARAH K. CAMPBELL, J., delivered the opinion of the Court, in which JEFFREY S. BIVINS, C.J., and HOLLY KIRBY, DWIGHT E. TARWATER, and MARY L. WAGNER, JJ., joined.

Fred C. Dance, Fairview, Tennessee, appellant, Pro Se.

R. Davison Douglas, Brentwood, Tennessee, for the appellee, Board of Professional Responsibility.

OPINION

I.

Fred C. Dance has been licensed to practice law in Tennessee since 1980. On May 25, 2021, the Board filed a petition for discipline against Dance. As relevant here, the Board alleged that Dance had violated Rules 1.4 (Communication), 1.8 (Conflict of Interests), 1.15 (Safekeeping Property and Funds), 4.1(a) (Truthfulness), and 8.4 (Misconduct) of the Tennessee Rules of Professional Conduct. *See* Tenn. Sup. Ct. R. 8, RPC 1.4, 1.8, 1.15, 4.1(a), 8.4. These allegations were based on a complaint filed by one of Dance's clients, Christopher Pernishek.[1]

A.

In 2016, Pernishek retained Dance to represent Pernishek and his siblings in a wrongful death action arising from their mother's death. Dance agreed to work for a contingency fee—one-third of any eventual recovery—plus expenses.

On May 31, 2017, Pernishek and his siblings settled with the defendant for $20,000. That same day, the defendant issued a check for $20,000, payable to Dance's Interest on Lawyer Trust Account ("IOLTA"). Dance deposited the funds, and they were posted to his IOLTA on June 8, 2017. Before the deposit, the IOLTA's balance was $121.35; after the deposit, the balance was $20,121.35. The deposit from the Pernishek settlement was the only deposit made in June.

Three withdrawals were made from the IOLTA in June after the settlement funds were deposited. The first two withdrawals were checks payable to "Fred C. Dance" for $10,000 and $6,140, respectively. Dance testified that he made these withdrawals because he was having "money issues."

The third withdrawal was a check for $3,868 payable to "Harpeth School of Gymnastics," one of Dance's former clients. Dance maintained that this check was a disbursement of Harpeth's share of a favorable judgment in another case.

The three withdrawals together totaled $20,008, bringing the IOLTA's balance at the end of June down to $113.35. Dance did not replace the settlement funds or disburse them to the Pernisheks for almost four years.

On March 3, 2021, Pernishek filed a complaint against Dance with the Board. The complaint focused on Pernishek's inability to "get ahold of Mr. Dance" and alleged that

[1] The Board's disciplinary petition also included a complaint alleging misconduct in a matter unrelated to the Pernishek complaint. But the Board later abandoned that complaint due to a lack of evidence.

Dance failed to "return calls or letters." On March 9, the Board informed Dance of the complaint and requested a response.

In early April, Dance and Pernishek discussed the matter in a series of text messages. Dance admitted fault in failing to disburse the funds and agreed to reduce his fee to ten percent of the settlement—$2,000. After this conversation, Dance sent a letter to the Board. He admitted that there was "no reason or excuse for me not reaching out to [Pernishek] long ago to discuss this case." Dance claimed that he had not put the case on his follow-up list and therefore "just forgot" about it. He informed the Board of his conversation with Pernishek and indicated that the matter was resolved. On April 14, Dance deposited $18,000 in his IOLTA and issued a check in that amount to Pernishek.

B.

The Board filed a petition for discipline against Dance on May 25, 2021. A hearing panel of the Board held a disciplinary hearing on November 16, 2023. There was no real dispute about whether Dance had improperly used the settlement funds. At the outset of the hearing, Dance's counsel agreed that the issue was not whether misconduct occurred, but rather the appropriate punishment for that misconduct. When Dance testified, he freely admitted that he used the money in his IOLTA to settle various financial obligations. And he acknowledged that taking the funds "was not the right thing to do."

The only point of disagreement concerning the complaint's factual allegations was whether Dance ignored Pernishek's attempts to contact him. Pernishek and Dance agreed that Dance informed Pernishek that he had received the settlement check from the defendant. They also agreed that Dance told Pernishek that the settlement funds could not be disbursed to Pernishek until Dance notified the Social Security Administration of the settlement and gave that agency the opportunity to file a claim. Pernishek testified that he called Dance's office every couple of weeks or months to check on the status of the disbursement. According to Pernishek, he could only reach Dance's secretary or voicemail. Pernishek also testified that he left notes on Dance's office door requesting that Dance call him. Dance, by contrast, testified that he received only one follow-up call from Pernishek a few months after Dance received the settlement check and never received any messages after 2017. He said that he simply forgot about the Pernishek matter due to some failure in his follow-up system.

The hearing panel issued its findings and judgment on December 15, 2023. The hearing panel determined that Dance's explanation regarding his failure to disburse the settlement funds to Pernishek—that he simply forgot about it when he did not receive a response from Social Security or Medicare or any follow-up communication from Pernishek—was not credible. The hearing panel instead credited Pernishek's testimony that he had repeatedly tried to contact Dance to inquire about the status of the disbursement. The hearing panel concluded that Dance had violated Rules 1.4(a)(3), 1.4(a)(4), 1.15(a), 1.15(d), 8.4(a), and 8.4(c). The panel determined that Dance had not violated Rule 1.8(h), however, and made no findings about Rule 4.1(a).

Next, the hearing panel considered the appropriate punishment for these violations. The panel found that Dance had "knowingly converted client property" and "knowingly deceived his client into believing that he had maintained the money in his IOLTA account." And it found that Pernishek and his siblings had suffered injury because their receipt of the funds was delayed and "their ability to receive any money . . . was put at risk dependent upon Mr. Dance's personal solvency." The panel determined that disbarment was the presumptive sanction under ABA Standards 4.11 and 4.61. ABA Standard 4.11 provides that "[d]isbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." ABA Standards for Imposing Lawyer Sanctions § 4.11 (2d ed. 2019) [hereinafter ABA Standards]. And ABA Standard 4.61 provides that "[d]isbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client." *Id.* § 4.61.

The hearing panel then considered whether any aggravating or mitigating circumstances existed that would justify a departure from the presumptive sanction. As for aggravating circumstances, the hearing panel found that Dance had a "dishonest or selfish motive" and "substantial experience in the practice of law." It also considered his "prior disciplinary history of receiving a private informal admonition eight (8) or nine (9) years ago" but gave this circumstance only "slight" weight "given the number of years [Dance] ha[d] practiced law."

The hearing panel found no mitigating circumstances. It rejected Dance's "payment of $18,000.00 to Mr. Pernishek after the filing of the Board complaint" as a mitigating circumstance because it was "forced or compelled restitution under ABA Standard 9.4(a)." Thus, the panel applied the presumptive sanction, recommending that Dance "be disbarred from the practice of law."

C.

Dance timely filed a petition for review of the hearing panel's decision in the Williamson County Circuit Court. Tenn. Sup. Ct. R. 9, § 33.1(a). He argued that the hearing panel's finding that he had knowingly converted client property was erroneous and that the panel had therefore erred in applying ABA Standard 4.11. He also disputed the hearing panel's findings regarding aggravating and mitigating factors, contending that the panel had erred in finding that he acted with a selfish or dishonest motive and in overlooking "at least six (6) mitigating factors." The trial court rejected Dance's arguments and affirmed the hearing panel's judgment, noting "the deferential standard of review that is binding on the trial court." Dance appealed the trial court's judgment to this Court pursuant to Tennessee Supreme Court Rule 9, section 33.1(d).

II.

Before we can review the judgment below, we must determine our standard of review. We directed the parties to file supplemental briefs addressing "[w]hether the Court should apply a de novo standard—rather than an abuse-of-discretion standard—when reviewing the recommended punishment for 'uniformity and 'appropriateness' in an appeal brought pursuant to Tennessee Supreme Court Rule 9, section 33.1(d), as it does when reviewing the recommended punishment under Rule 9, section 15.4(b)–(c)." Order, *Dance v. Bd. of Pro. Resp.*, No. M2024-01757-SC-R3-BP (Tenn. Jan. 23, 2026). Both the Board and Dance argued that we should review the recommended punishment de novo. We agree.

There are two paths for this Court to review a recommended sanction for an attorney's violation of the Rules of Professional Conduct. *First*, if neither party appeals a recommendation of public censure, suspension, or disbarment, the Board must submit a proposed order of enforcement for our approval under Rule 9, section 15.4. Tenn. Sup. Ct. R. 9, § 15.4(b), (d). If we believe the proposed punishment is "inadequate or excessive," then we must "issue an order advising the Board and the respondent attorney that [we] propose[] to increase or to decrease the punishment." *Id.* § 15.4(c), (e). *Second*, either the Board or the attorney may appeal the hearing panel's judgment to the trial court and then appeal the judgment of the trial court to this Court under Rule 9, section 33.1(d). *Id.* § 33.1(a), (d).

When we review a recommended punishment under the first path—Rule 9, section 15.4—our review is de novo. *In re Walwyn*, 531 S.W.3d 131, 137 (Tenn. 2017). This standard of review is appropriate "[g]iven our inherent authority to enforce the disciplinary rules for the legal profession, the mandate [in Rule 9, section 15.4] that we review the recommended punishment with a 'view to attaining uniformity of punishment,' and our ability to modify the judgment of the hearing panel." *Id.* (quoting Tenn. Sup. Ct. R. 9, § 15.4(b)).

Yet we have applied a different standard of review in appeals like this one that arise under the second path. When we review the judgment of a hearing panel under Rule 9, section 33.1(d), "[w]e apply the same standard of review as the trial court." *Gray v. Bd. of Pro. Resp.*, 710 S.W.3d 664, 673 (Tenn. 2025).[2] That standard of review—found in Rule 9, section 33.1(b)—permits reversal or modification of a hearing panel's judgment only when:

> the hearing panel's findings, inferences, conclusions or decisions on any issue brought up for review and relief are: (1) in violation of constitutional

[2] By its terms, the standard of review in Rule 9, section 33.1(b) applies only to the trial court's review of the hearing panel's judgment. *See* Tenn. Sup. Ct. R. 9, § 33.1(b) (referring to "the trial court"). We seem to have adopted that standard in appeals to this Court as a prudential matter.

> 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.

Tenn. Sup. Ct. R. 9, § 33.1(b). We have applied that deferential standard of review not only to the hearing panel's subsidiary factual findings and conclusions, but also to its recommended punishment. *See, e.g.*, *Bd. of Pro. Resp. v. Sheppard*, 556 S.W.3d 139, 151 (Tenn. 2018) ("We now consider the sanctions imposed by this Court in factually similar cases to determine whether the hearing panel abused its discretion in recommending that Mr. Sheppard be suspended rather than disbarred."); *Napolitano v. Bd. of Pro. Resp.*, 535 S.W.3d 481, 503 (Tenn. 2017) (noting that "we will not change the Panel's decision to impose a five-year suspension unless" one of the five prongs applies).

We now reject this bifurcated approach and adopt a uniform standard of review for both kinds of proceedings. When reviewing a hearing panel's recommended punishment for uniformity and appropriateness in an appeal under Rule 9, section 33.1(d), we will apply the same de novo standard of review that we apply under Rule 9, section 15.4. Two considerations compel this conclusion.

First, both section 15.4 and section 33.1(d) require this Court to "review the recommended punishment . . . with a view to attaining uniformity of punishment throughout the State and appropriateness of punishment under the circumstances of each particular case." Tenn. Sup. Ct. R. 9, §§ 15.4(b), 15.4(d), 33.1(d). In *Walwyn*, we relied on this language in section 15.4 in holding that our review of the recommended punishment under that section is de novo. 531 S.W.3d at 137. Indeed, it is hard to see how we could achieve statewide uniformity of punishment and appropriateness in each case absent de novo review. When we decided *Walwyn*, section 33.1(d) did not contain similar language requiring review for uniformity and appropriateness. But we amended section 33.1(d) in 2025 to add that language and cross-referenced section 15.4 in doing so. Order, *In re Amends. to Rule 9, secs. 26.4 and 33.1, Rules of the Tenn. Sup. Ct.*, No. ADM2025-00078 (Tenn. Mar. 7, 2025). Now that section 33.1(d) also requires review for uniformity and appropriateness, we should apply the same de novo standard when reviewing a recommended punishment under that section. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012) ("A word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning.").

De novo review is also logically necessary given that neither hearing panels nor trial courts are permitted "to base recommended attorney discipline sanctions on a review of sanctions imposed in comparative cases." *Doll v. Bd. of Prof. Resp.*, 691 S.W.3d 372, 383

(Tenn. 2024). Rather, the hearing panel is instructed to "consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions." Tenn. Sup. Ct. R. 9, § 15.4(a). And the trial court's review of the hearing panel's judgment is limited to the five categories of error identified in subsection 33.1(b). *Id.* § 33.1(b). Because hearing panels and trial courts do not consider uniformity in exercising their discretion, it makes little sense to apply an abuse of discretion standard when reviewing a recommended punishment for uniformity and appropriateness.

Second, when we review the recommended punishment for a violation of the Rules of Professional Conduct, we are exercising our inherent authority and original jurisdiction over attorney discipline. "This Court's inherent power under the Tennessee Constitution includes the authority to regulate and supervise the practice of law in this State." *Manookian v. Bd. of Pro. Resp.*, 685 S.W.3d 744, 801 (Tenn. 2024); *see also id.* (collecting cases). Among other responsibilities, we "promulgat[e] and enforc[e] the rules that govern the legal profession." *Id.* (quoting *In re Sitton*, 618 S.W.3d 288, 294 (Tenn. 2021)). Our authority in this respect is plenary. *See id.* And because we have "the inherent and original power to prescribe the ethics rules governing the practice of law," we also have the "'original power to review' the actions of the hearing panel 'in interpreting and applying them.'" *Id.* at 801–02 (quoting *Belmont v. Bd. of L. Exam'rs*, 511 S.W.2d 461, 462 (Tenn. 1974)). A de novo standard of review better comports with our plenary role in attorney discipline matters than a deferential abuse of discretion standard.

To be sure, the procedures we established under Rule 9 to enforce our disciplinary rules delegate significant discretion to the Board, as well as to the hearing panels the Board convenes to adjudicate alleged attorney misconduct. *See* Tenn. Sup. Ct. R. 9, §§ 4, 6. But notwithstanding this delegation, "[t]he license to practice law in this State is a continuing proclamation by" this Court "that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court." *Id*. § 1. Given our continuing responsibility to ensure that attorneys licensed in Tennessee are fit to practice law, we must be able to modify or reverse a hearing panel's recommended punishment as we deem necessary.

To sum up, we hold that our review of a hearing panel's recommended punishment for uniformity and appropriateness under section 33.1(d) is de novo. We also review legal questions de novo. *Gray*, 710 S.W.3d at 673. But we "do not substitute our judgment for that of the hearing panel as to the weight of the evidence on questions of fact." *Id.* And we continue to review a hearing panel's subsidiary findings and conclusions regarding rule violations, aggravating and mitigating circumstances, and the like under the deferential five-prong standard found in Rule 9, section 33.1(b).

III.

On appeal, Dance does not dispute the hearing panel's determinations concerning his violations of the Rules of Professional Conduct. He instead argues that the hearing panel imposed an inappropriate punishment. He raises four arguments in that regard: (1) that the hearing panel applied the wrong ABA Standard to determine the presumptive sanction; (2) that the hearing panel's determination that he acted with a selfish or dishonest motive was erroneous; (3) that the hearing panel erred in finding no mitigating circumstances; and (4) that the sanction imposed was comparatively harsh relative to sanctions imposed in similar cases. We address each of these arguments in turn.

A.

To determine the appropriate sanction for attorney misconduct, "[t]he hearing panel 'first identifies the presumptive sanction under the ABA Standards and then considers whether the presumptive sanction should be increased or decreased based on aggravating and mitigating factors." *Gray*, 710 S.W.3d at 681 (quoting *Dunlap v. Bd. of Pro. Resp.*, 595 S.W.3d 593, 612 (Tenn. 2020)); *see also* Tenn. Sup. Ct. R. 9, § 15.4(a) ("In determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions."). "If there are no aggravating or mitigating factors, the presumptive sanction applies." *Dunlap*, 595 S.W.3d at 612.

Here, the panel applied ABA Standard 4.11. Dance argues that it should have applied 4.12 instead. ABA Standard 4.11 provides that "[d]isbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." ABA Standards § 4.11. By contrast, ABA Standard 4.12 provides that "[s]uspension 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." ABA Standards § 4.12. The hearing panel "unanimously conclude[d] [that] Mr. Dance knowingly converted" client property and therefore that "there is no choice under the applicable law but that the presumptive sanction . . . is disbarment."

While Dance admits that he dealt improperly with client property, he argues that there was insufficient evidence in the record for the hearing panel to find that he knowingly converted client property. In his view, the only evidence of his mental state was his admission "that he wrote checks to himself to pay personal bills or expenses." This, he contends, was more consistent with a finding that he knew or should have known that he was dealing improperly with client property.

We disagree. In the context of professional discipline, conversion is defined as "the appropriation of . . . property to a party's own use in exclusion or in defiance of the owner's rights." *Fam. Tr. Servs. LLC v. Green Wise Homes LLC*, 693 S.W.3d 284, 306 (Tenn. 2024) (citation modified).[3] And the ABA Standards provide that an attorney acts with "knowledge" when he acts with "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." ABA Standards, Definitions.

Dance admitted that he withdrew funds from his IOLTA for personal expenses. That evidence is sufficient to support the hearing panel's conclusion that Dance appropriated client funds for his own use. Further, given that the only significant funds in the IOLTA were from the Pernishek settlement and that Dance began withdrawing funds from the IOLTA a mere day after depositing the settlement check, the hearing panel easily could have inferred that Dance had "conscious awareness" that he was appropriating client property.

There is also little question that a reasonable factfinder could determine that Dance knowingly appropriated the funds to the exclusion of or in defiance of the Pernisheks' rights. Dance spent the Pernisheks' money within two weeks of having deposited it in the IOLTA. He also failed to replace the funds or disburse them to the Pernisheks for nearly four years—and only when contacted by the Board and facing potential professional discipline. A reasonable factfinder also could have concluded that Dance acted knowingly instead of merely negligently. The hearing panel credited Pernishek's account of his attempts to contact Dance over Dance's claims that he had not heard from Pernishek in years. We decline to second guess the panel's findings regarding witness credibility. *See In re Sitton*, 618 S.W.3d at 298 ("Credibility and the weight given to evidence are questions of fact; our standard of review requires us to give deference to the findings made by the hearing panel.").

On these facts, it was reasonable for the hearing panel to conclude that "Mr. Dance intended to keep the [Pernisheks'] money for himself indefinitely unless and until he was forced to return it." That conclusion was supported by substantial evidence, and it was neither arbitrary and capricious nor an abuse of discretion. We thus conclude that the

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[3] In *Family Trust Services*, we explained that only "tangible property" can be converted. 693 S.W.3d at 306. The Court of Appeals has suggested that generally "money is an intangible and therefore not subject to a claim for conversion," but it also noted a possible "exception where the money is specific and capable of identification or where there is a determinate sum that the defendant was entrusted to apply to a certain purpose." *PNC Multifamily Cap. Institutional Fund XXVI Ltd. P'ship. v. Bluff City Cmty. Dev. Corp.*, 387 S.W.3d 525, 553 (Tenn. Ct. App. 2012) (quoting 90 C.J.S. *Trover and Conversion* § 16 (2012) (footnotes omitted)). Regardless of whether money can be subject to a claim for conversion under Tennessee common law, ABA Standard 4.11 clearly contemplates that client funds are capable of being converted. *See* ABA Standards § 4.11 annot. ("Some courts have established a bright-line rule that disbarment is the only appropriate discipline when a lawyer knowingly converts client funds."). As our rules require the application of the ABA Standards, it is not necessary to determine whether or when money constitutes tangible property for the purpose of common law conversion.

hearing panel did not err in determining that the presumptive sanction was disbarment under ABA Standard 4.11.[4]

B.

We next turn to Dance's contention that the hearing panel erred in determining that he acted with a "dishonest or selfish motive." According to Dance, our decision in *Harris v. Board of Professional Responsibility*, 645 S.W.3d 125 (Tenn. 2022), stands for the principle that "conversion of funds[] alone is not sufficient to establish dishonesty, fraud, or deceit."

Dance's reliance on *Harris* is misplaced for several reasons. *First*, our decision in *Harris* merely quoted a *hearing panel*'s statement that "the fact of conversion alone did not demonstrate the sort of 'dishonesty, fraud, deceit, or misrepresentation' necessary to establish a violation of RPC 8.4." 645 S.W.3d at 132. We neither approved nor disapproved of this statement because no party had challenged it on appeal. *Id.* Dance argues that we should infer agreement from the Court's silence given our inherent authority to review the hearing panel's judgment. But Dance reads far too much into the opinion. Whether or not this Court *could* have reached the issue, the fact remains that this Court *did not* do so. When this Court is silent on an issue that was not appealed, its silence should not be taken as wholesale approval of the decision below.

Second, *Harris* involved RPC 8.4, whereas this case involves ABA Standard 9.22. *Id.* at 131. The language in RPC 8.4 differs from that in ABA Standard 9.22. RPC 8.4(c) says that "[i]t 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). ABA Standard 9.22(b), by contrast, states that "[a]ggravating factors include . . . dishonest or selfish motive." ABA Standards § 9.22(b). Both RPC 8.4 and ABA Standard 9.22 allow for consideration of dishonesty, but only 9.22(b) considers selfishness. Even if conversion alone were insufficient to establish dishonesty, that would not preclude a hearing panel from finding that Dance had a selfish motive. Here, evidence that Dance used settlement funds designated for the Pernisheks to pay for personal expenditures supports the hearing panel's finding that Dance acted with a selfish motive.

Third, the hearing panel's conclusion that Dance had a dishonest motive was supported by evidence other than conversion alone. Dance told Pernishek that he was waiting on Medicare, while simultaneously "helping himself to <u>all</u> of the Pernishek

[4] The Board notes that the hearing panel also relied on ABA Standard 4.61, which states that "[d]isbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client." Because we find that the hearing panel did not err in applying ABA Standard 4.11, we need not consider ABA Standard 4.61.

settlement proceeds within days after receipt into his IOLTA account." He ignored Pernishek's attempts to contact him for four years. And he "pretend[ed] that he simply 'forgot' to disburse the settlement proceeds" rather than admitting his misconduct. A reasonable factfinder could easily conclude from this evidence that Dance had a dishonest motive. The hearing panel therefore did not err by applying ABA Standard 9.22(b) as an aggravating factor.

C.

Dance's arguments concerning mitigating factors fare no better. Dance contends that the hearing panel should have considered as mitigating factors (1) his long legal career free of discipline; (2) the remoteness of any prior offenses; (3) his cooperative attitude in the proceedings; (4) that his misconduct only involved one client; and (5) his acknowledgement that his behavior was wrong and his exhibition of remorse. We disagree.

Dance's argument concerning the absence of a prior disciplinary record under ABA Standard 9.32(a) fails for a simple reason: he previously received a private informal admonition. Although a private informal admonition is one of the less severe possible sanctions, it is still considered a disciplinary action. *See* Tenn. Sup. Ct. R. 9, § 12 (listing private informal admonitions as one of the "types of discipline"); *Beier v. Bd. of Pro. Resp.*, 610 S.W.3d 425, 447 (Tenn. 2020) (finding that private disciplinary actions can preclude application of ABA Standard 9.32(a)). The panel was free to assign the private informal admonition little weight, as it did. But it was not required to give Dance credit for the "absence of a prior disciplinary record" when he in fact had a prior disciplinary record.

As a backstop, Dance maintains that the hearing panel at least should have applied ABA Standard 9.32(m) concerning remoteness of prior offenses because his private admonition occurred "eight or nine years" ago. Although the hearing panel did not expressly apply ABA Standard 9.32(m), it considered the remoteness of his private admonition in deciding to "assign[] little weight to" the private admonition as an aggravating factor. A hearing panel does "not have to make a determination one way or the other on all aggravating or mitigating factors listed in the ABA Standards"; it need only "consider the applicable provisions." *Meehan v. Bd. of Pro. Resp.*, 584 S.W.3d 403, 415 (Tenn. 2019) (quoting Tenn. Sup. Ct. R. 9, § 15.4(a)). The panel did not err by considering the remoteness of Dance's private admonition as part of its evaluation of aggravating factors.

Dance's argument under ABA Standard 9.32(e) regarding his purported cooperative attitude also misses the mark. "The application of this mitigating factor traditionally requires a finding that an attorney went above and beyond in cooperating with the Board." *Johnson v. Bd. of Pro. Resp.*, 737 S.W.3d 276, 288 (Tenn. 2025). "And even then, it should typically be afforded little weight, as attorneys have a duty to cooperate with disciplinary authorities." *Id.* at 289. Here, the panel found that Dance's testimony was not credible. As we explained in *Beier*, a finding that an attorney's testimony was not credible weighs against a finding of cooperation. 610 S.W.3d at 447. Accordingly, the hearing panel did not err in declining to apply this mitigating factor.

Nor did the hearing panel err by failing to consider as a mitigating factor that Dance harmed only one client—the estate of Pernishek's deceased mother—rather than multiple clients. ABA Standard 9.3 does not identify the number of clients as a mitigating factor. Nevertheless, we have held that "the factors enumerated in Standard 9 are 'illustrative rather than exclusive'" and that "[o]ther factors may also be considered." *Bd. of Pro. Resp. v. Cowan*, 388 S.W.3d 264, 268 (Tenn. 2012) (quoting *Lockett v. Bd. of Pro. Resp.*, 380 S.W.3d 19, 28 (Tenn. 2012)). But the fact that the hearing panel *may* consider unenumerated factors does not mean that the hearing panel *must* consider unenumerated factors. In any event, the hearing panel found that Dance's misconduct injured at least three clients—Pernishek and his two siblings—by depriving them of the settlement proceeds for more than four years.

Dance also claims that the hearing panel should have applied ABA Standard 9.32(1) because he acknowledged his wrongdoing. But that argument also fails. Dance points to his testimony acknowledging that he was "wrong" and that he "shouldn't have taken the money out of the trust account." But we have explained that "[r]emorse . . . means more than mere regret at having engaged in conduct that resulted in disastrous consequences to the offending attorney." *In re Sitton*, 618 S.W.3d at 303. Further, a hearing panel's finding regarding a lawyer's remorse "hinges on an assessment of his credibility." *Id.* Here, the hearing panel was in the best position to determine whether Dance's acknowledgment of wrongdoing was true remorse for his actions or mere regret that his actions had consequences. We therefore decline to substitute our judgment on this issue for that of the panel's.

D.

After determining that Dance knowingly converted client property and weighing aggravating and mitigating circumstances, the hearing panel found that Dance should be disbarred. We review the panel's recommended sanction de novo, "with a view to attaining uniformity of punishment throughout the State and appropriateness of punishment under the circumstances of each particular case." Tenn. Sup. Ct. R. 9, § 33.1(d).

We agree with the hearing panel's conclusion that the balance of aggravating and mitigating factors—three aggravating factors and no mitigating factors—favors the presumptive sanction of disbarment. But as part of our review for uniformity, we must also compare the recommended sanction to sanctions imposed in similar cases.

Dance cites seven cases in arguing that disbarment is a comparatively harsh sanction: *In re Hickman*, 673 S.W.3d 188, 204 (Tenn. 2023) (one-year suspension, with six-month active suspension); *Waggoner v. Board of Professional Responsibility*, 673 S.W.3d 227, 243 (Tenn. 2023) (two-year suspension, with eighteen-month active suspension); *Beier v. Board of Professional Responsibility*, 610 S.W.3d 425, 449 (Tenn. 2020) (two-year active suspension); *Board of Professional Responsibility v. Sheppard*, 556 S.W.3d 139, 153 (Tenn. 2018) (sixty-day suspension, followed by two-year probation); *Napolitano v. Board of Professional Responsibility*, 535 S.W.3d 481, 505 (Tenn. 2017) (five-year suspension, with one-year active suspension); *Waggoner*, No. 2016-2561-9-AW, at 19 (Bd. Pro. Resp. Mar. 17, 2017) (three-year suspension); and *Milligan v. Board of Professional Responsibility*, 166 S.W.3d 665, 674 (Tenn. 2005) (two-year suspension). The Board counters that these cases are "inapposite, readily distinguishable, and afford [Dance] no relief." In the Board's view, our decision in *Board of Professional Responsibility v. Barry*, 545 S.W.3d 408, 428 (Tenn. 2018) (disbarment), is more on point.

1.

First, a preliminary matter. The Board observes that Dance cites cases involving presumptive sanctions other than disbarment and urges us to disregard those cases in our comparative review. Dance argues that we should review all cases involving comparable underlying facts, regardless of the presumptive sanction.

We agree with Dance that our cases involving different presumptive sanctions need not be excluded from our comparative review provided they involve similar underlying conduct. The cases the Board relies on—*Meehan* and *Manookian*—do not hold otherwise. True, in *Meehan* we distinguished a case that applied ABA Standard 5.11 from a case that applied ABA Standard 5.12. *See* 584 S.W.3d at 417–18. But ABA Standard 5.11 concerns lawyers who "engage[] in serious criminal conduct" involving particular enumerated offenses, as well as "any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation," whereas ABA Standard 5.12 concerns lawyers who "knowingly engage[] in criminal conduct which does not contain the elements listed in Standard 5.11." ABA Standards §§ 5.11–.12. That is, the two standards apply to mutually exclusive underlying conduct. Other ABA Standards, by contrast, apply to overlapping conduct. *Meehan* does not foreclose our consideration of comparative cases involving different presumptive sanctions that apply to similar conduct.

Manookian likewise excluded certain cases from its comparative review because they involved *both* different underlying conduct *and* different presumptive sanctions. 685 S.W.3d at 807 (finding two cases inapposite where "[n]either involve[d] misconduct consisting of victimizing opposing counsel and their families" and "for both, the presumptive sanction under the ABA Standards was suspension, not disbarment").

Although *Meehan* and *Manookian* do not require that we exclude cases involving different presumptive sanctions, they do counsel caution. We must examine cases involving different presumptive sanctions carefully to ensure that the underlying conduct is sufficiently similar. And given the lodestar role the presumptive sanction serves in determining the appropriate sanction for attorney misconduct, cases involving different presumptive sanctions should be given substantially less weight if considered. *See, e.g.*, *Doll*, 691 S.W.3d at 385 (explaining that the presumptive sanction "generally applies unless aggravating or mitigating factors indicate a greater or lesser sanction is appropriate" (quoting *Manookian*, 685 S.W.3d at 808)).

2.

We turn now to the comparative cases. In two of the cases Dance cites—*Beier* and *Sheppard*—we imposed less severe punishments notwithstanding a presumptive sanction of disbarment. *See Beier*, 610 S.W.3d at 445, 448–49 (imposing "two-year suspension, all to be served as active suspension" where "the ABA Standards established a baseline sanction of either suspension or disbarment"); *Sheppard*, 556 S.W.3d at 151–53 (imposing sixty-day suspension followed by twenty-four months of probation where presumptive sanction was either suspension or disbarment). But both *Beier* and *Sheppard* presented materially distinguishable facts.

The attorney in *Beier* did not misappropriate client funds; instead, he took advantage of a client's disability to persuade him to agree to an unreasonable contingency fee. 610 S.W.3d at 443–44. Dance points to our observation in *Beier* that "the circumstances under which Mr. Beier obtained an unreasonable fee are equivalent" to the "misappropriation of client funds." *Id.* at 449. But "there are widely varying degrees of misappropriation of funds." *Bd. of Pro. Resp. v. Daniel*, 549 S.W.3d 90, 106 (Tenn. 2018) (quoting *Bd. of Pro. Resp. v. Bonnington*, 762 S.W.2d 568, 570 (Tenn. 1988)). Negotiating an unreasonable fee resembles misappropriation in that both involve taking money to which a lawyer is not entitled. But Dance used the entirety of his client's settlement to pay for personal expenses, lied about the reason for the delay in disbursing the funds, and ignored the client for four years. This conduct is significantly worse than negotiating an unreasonable fee.

Sheppard involved a managing partner who mismanaged his firm's trust account. 556 S.W.3d at 141–42. The hearing panel found that "Sheppard had failed to properly maintain and monitor client trust accounts, which resulted in the commingling of client funds, use of client funds to pay for operating expenses, and a diminished balance of client funds in the trust account." *Id.* at 144. Although the panel concluded that Sheppard had acted "knowingly," it "found no proof of 'intentional acts' that benefited Mr. Sheppard to the detriment of others or of 'acts or omissions [that] seriously injured his clients.'" *Id.* (alteration in original). Further, the panel found "significant" mitigating circumstances: "absence of prior discipline; absence of a dishonest or selfish motive . . . ; a good faith effort to rectify a violation by borrowing funds; inexperience in accounting and office management; good character and pro bono efforts; remorse; and a significant length of time between the misconduct and the date of the hearing." *Id.* And the panel found no aggravating circumstances. *Id.* Conversely, Dance did not merely mismanage his IOLTA. He intentionally withdrew funds from his IOLTA to pay for personal expenses. Moreover, Dance had fewer mitigating factors and more aggravating factors than the attorney in *Sheppard*.

Dance also relies on *Milligan*. Although that case is more factually analogous to this case than *Beier* and *Sheppard*, it is not on all fours. What's more, the presumptive sanction in *Milligan* was suspension rather than disbarment. 166 S.W.3d at 674 (imposing two-year suspension where misconduct at a minimum warranted suspension).

Like Dance, the attorney in *Milligan* misappropriated client funds. *Id.* at 668. The Court considered four aggravating factors, including three previous sanctions and the attorney's failure to abide by a consultant's "recommended changes in his accounting procedures." *Id.* at 674. The only mitigating factor was the attorney's repayment of the funds and the lack of injury to clients or others. *Id.* The misappropriation in *Milligan*, however, involved using settlement funds before they were deposited into the IOLTA account and commingling client funds with personal funds. *Id.* at 672. This misconduct is undoubtedly serious, but it did not involve the failure to disburse settlement funds or the unauthorized use of those funds for personal expenses.[5]

Whether the *Waggoner* proceedings cut in Dance's favor depends on *which* proceeding we consider. The initial disciplinary proceeding involved Waggoner's "knowing[] remov[al] [of] disputed funds from his trust account and conver[sion] [of] those funds to his personal use." *Waggoner*, No. 2016-2561-9-AW, at 14. Waggoner also "failed to redeposit the disputed funds in his trust account for a period of approximately thirty-two (32) months and offered no reasonable justification for such delay." *Id.* at 14–15. Like Dance, although Waggoner received "several requests for a full accounting," he failed to provide the client with the requested information. *Id.* at 15. And also like Dance, Waggoner "improperly used [these funds] to pay personal and business related expenses." *Id.*

In determining the appropriate punishment in the initial disciplinary proceeding, the hearing panel considered the attorney's dishonest or selfish motive, his disciplinary history, his multiple offenses, the fact that he made material misrepresentations to the Board, his substantial experience in the practice of law, his refusal to acknowledge the wrongful nature of his conduct, and his indifference to making restitution. *Id.* at 18–19. No mitigating

[5] In that case, the Board alleged that Milligan had put client funds to personal use. *Milligan*, 166 S.W.3d at 667–69. Milligan admitted as much, but he also claimed his client had authorized the expenditures. *Id.* at 668–69. The hearing panel did not credit this claim, but the trial court did. *Id.* at 669–71. We did not reject the trial court's credibility finding. *Id.* at 672 (concluding that Milligan's "conduct involve[d] dishonesty, fraud, deceit, or misrepresentation . . . whether or not he acted with [his clients'] permission").

circumstances applied. Notwithstanding that disbarment was the presumptive sanction for Waggoner's misconduct, the hearing panel recommended a three-year suspension. *Id.* Waggoner did not appeal, and this Court approved that sanction. Order of Enforcement, *In re Waggoner*, No. M2017-01434-SC-BAR-BP (Tenn. Aug. 1, 2017).

A few years later, another disciplinary matter involving Waggoner came before this Court by way of an appeal. *Waggoner*, 673 S.W.3d 227. The primary conduct at issue in the appeal was the attorney's unauthorized practice of law. *Id.* at 235. But the hearing panel had also found—and it was not disputed—that Waggoner had once again mishandled (though not knowingly converted) client funds. *Id.* at 232. That time, the hearing panel considered as aggravating factors "[the] pattern of misconduct, failure to acknowledge the wrongful nature of his conduct, prior disciplinary history, multiple offenses, substantial experience in the practice of law, and dishonest or selfish motive." *Id.* at 233. Once again, there were no mitigating factors. *Id.* We concluded that the appropriate sanction in that case was a two-year suspension, with eighteen months served on active suspension. *Id.* at 243. But the presumptive sanction in this second proceeding was suspension rather than disbarment. *Id.* at 240.

The conduct at issue in Waggoner's initial disciplinary proceeding is strikingly similar to the conduct at issue here. The Board does not argue otherwise. Yet Waggoner received a far more lenient punishment than Dance. This Court issued an order of enforcement approving that sanction. But because Waggoner did not appeal, we did not issue a published opinion in that case. In *Doll*, we cautioned that "cases that are not reflected in an opinion by this Court are less helpful than published opinions in a proportionality review" because "summaries of these cases may not reflect things like proof or witness issues, nuance and detail that can be important in comparing one case to another." 691 S.W.3d at 387 n.20. Here, however, this Court has the benefit of the hearing panel's judgment, which included fulsome findings of fact and conclusions of law. We therefore see no reason to discount this case in our proportionality review. To the contrary, it strongly supports Dance's position that disbarment was disproportionately harsh.

Our published opinion in the appeal arising from Waggoner's later disciplinary proceeding does not help Dance because that case involved different misconduct. Although the hearing panel found in that proceeding that Waggoner mishandled funds, there was no finding that he had knowingly converted client property. And the presumptive sanction there was suspension, not disbarment.

Dance's other comparative cases—*Hickman* and *Napolitano*—involve closely analogous attorney misconduct, but only *Napolitano* included a presumptive sanction of disbarment. *See Hickman*, 673 S.W.3d at 197–98, 204 (imposing one-year suspension, with six months to be served as active suspension, where presumptive sanction was suspension);

Napolitano, 535 S.W.3d at 503–05 (imposing five-year suspension, with one year to be served as active suspension, where presumptive sanction was disbarment).

Hickman, like *Beier*, involved a lawyer who collected an "unreasonably excessive fee." *Hickman*, 673 S.W.3d at 194. But unlike the attorney in *Beier*, Hickman did not negotiate his fee. *Id.* at 191–93. Instead, he knowingly deceived a court to obtain, "without a basis in law or contract," a payment from the estate he represented. *Id.* at 194–95. He did so "by falsely representing to the probate court that [the heir] had approved the disbursement." *Id.* at 198. That conduct looks a lot more like "knowing conversion" than the facts of *Beier*, *Sheppard*, or *Milligan*. Both Dance and Hickman took funds to which they had no legal or contractual entitlement and failed to return the funds until their misconduct was discovered. *Id.* at 194. Both Dance and Hickman had substantial experience in the practice of law and acted with a dishonest or selfish motive. *Id.* at 198. And yet Dance was disbarred while Hickman was suspended from practice for only a year. *Id.* at 204. True, the Board did not allege that Hickman had misappropriated client property, *id.* at 194, and so the presumptive sanction was suspension rather than disbarment, *id.* at 197. But the underlying facts in *Hickman* are sufficiently similar to make the significant discrepancy in punishment between the two cases concerning. *Hickman* thus weighs at least slightly in favor of Dance.

Napolitano also supports Dance's position that disbarment is too harsh. That case involved a dispute between an attorney and his client regarding the fee the attorney was to receive from a settlement. *Napolitano*, 535 S.W.3d at 485. During the pendency of that dispute, the attorney failed to maintain the funds in a trust account. *Id.* at 493. The hearing panel found that the attorney had knowingly converted client funds. *Id.* at 503–04.

In recommending a sanction, the hearing panel in *Napolitano* considered the following aggravating factors:

> (1) Attorney's previous five-year suspension . . . for similar violations; (2) his motive of personal gain in appropriating Client's funds; (3) his "lack of candor with the Board in his repeated claims that he was maintaining the disputed [Client] funds in his trust account"; (4) his "outright perjury" during his deposition; (5) his "unwillingness or inability to acknowledge the gravity of his perjury indicating only that he was sorry he had 'shot from the hip' in his sworn [deposition] testimony"; and (6) his "significant and substantial experience in the practice of law."

Id. at 502 (alterations in original). The panel also considered the following mitigating factors:

> (1) the "high opinion [that] local judges and members of the bar have of [Attorney] in terms of his legal skills, his trial preparation, his helpfulness to

> the Courts, and his assistance to younger attorneys"; (2) Attorney's Fee Dispute Settlement agreement with Client regarding the disputed funds, which Attorney had "thus far fulfilled"; (3) the fact that Attorney's misconduct did not involve multiple clients; and (4) Attorney's acknowledgment that his misappropriation of Client's funds was wrong.

Id. at 502–03 (alterations in original). On these facts, the hearing panel recommended a five-year suspension, with probation available after one year. *Id.* at 484, 505.

The Board contends that *Napolitano* is distinguishable because "there were numerous mitigating factors present . . . that are not present here." The Board is right that there were more mitigating factors in *Napolitano*, but there were significantly more aggravating factors as well. And, importantly, the aggravating factors were generally more serious than those at issue here. Given the strong factual similarities and the common presumptive sanction, *Napolitano* counsels strongly in favor of a reduced punishment.

The Board identifies only one comparable case that supports disbarment. That case—*Barry*—warrants careful consideration because it is factually similar and had the same presumptive sanction of disbarment. 545 S.W.3d at 423. In *Barry*, "disputed . . . funds were placed in the attorney's trust account pending resolution of [a] dispute." *Id.* at 411. But "[s]hortly after the disputed . . . funds were deposited, the attorney began to comingle funds in her trust account and use the . . . proceeds for her own purposes." *Id.* "In response to her client's repeated inquiries about disbursement of the client's share of the funds, the attorney stalled, made misrepresentations, and finally stopped communicating with the client altogether." *Id.* The hearing panel found that Barry had knowingly converted client funds. *Id.* Further, it found no mitigating circumstances and five aggravating circumstances—that Barry "had a prior disciplinary offense; showed a dishonest or selfish motive; showed a pattern of misconduct; committed multiple offenses; and had substantial experience in the practice of law." *Id.* at 423. On these facts, the hearing panel found that Barry should be suspended for eighteen months, with two months of active suspension. *Id.* at 411–12. But on review, the trial court found—and we agreed—that Barry should be disbarred. *Id.* at 419, 428.

The conduct in *Barry* and the conduct here are unquestionably similar in nature. Dance does not disagree. At first blush, then, *Barry* supports the Board's position that disbarment is the appropriate sanction for Dance. On closer examination, however, the disbarment sanction imposed in *Barry* was at least arguably less severe than the sanction imposed on Dance. *Barry* was decided at a time when disbarment was not permanent. At that time, an individual who had been disbarred could apply for reinstatement after five years. This Court later amended its rules to make disbarment permanent. Order, *In re Amends. to Rule 9, secs. 8, 12, & 30, Rules of the Tenn. Sup. Ct.*, No. ADM2019-01685

(Tenn. Jan. 23, 2020).[6] If Dance were disbarred, he would be unable to seek reinstatement. Tenn. Sup. Ct. R. 9, § 30.2.

Although disbarment is the presumptive sanction for Dance's conduct under the ABA Standards, our review of comparative cases persuades us that a less severe penalty is appropriate. *See Justice v. Bd. of Pro. Resp.*, 693 S.W.3d 225, 261 (Tenn. 2024) (Kirby, C.J., concurring) ("Even where disbarment is the presumptive sanction, this Court may, after review of comparative cases, determine that a lesser sanction is more appropriate."); *see also Beier*, 610 S.W.3d at 445, 449 (declining to impose recommended penalty of disbarment even though it was the presumptive sanction). Dance has identified three cases—*Hickman*, *Napolitano*, and the initial disciplinary proceeding in *Waggoner*—in which attorneys received suspensions for similar misconduct. Although the presumptive sanction in *Hickman* was suspension rather than disbarment, the factual similarities between *Hickman* and this case move the needle at least slightly toward suspension. And *Napolitano* and *Waggoner* move the needle well toward suspension, given their closely analogous facts and common presumptive sanctions. The only case pointing toward disbarment is *Barry*, an opinion issued when disbarment was not permanent. We are unaware of any case imposing *permanent* disbarment for similar misconduct.

In the interest of uniformity, we therefore decline to permanently disbar Dance. But because the knowing conversion of client funds is egregious misconduct, *see Barry*, 545 S.W.3d at 425, we also reject Dance's request that we suspend him for only sixty days. We instead suspend Dance for five years, with three years to be served on active suspension.

CONCLUSION

We affirm in part and reverse in part. We affirm the hearing panel's application of ABA Standard 4.11 in determining the presumptive sanction. We also affirm the hearing panel's conclusions regarding the applicable aggravating and mitigating factors. But in the interest of uniformity, we modify Dance's punishment from disbarment to a five-year suspension, with three years to be served on active suspension.

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SARAH K. CAMPBELL, JUSTICE

[6] This order also increased the maximum suspension from five years to ten years.