

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE

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BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE SUPREME COURT OF TENNESSEE,

Petitioner,

v.

NO. 19-160-IV  
BPR NO. 2017-2784-5-AJ

KEVIN WILLIAM TEETS, JR.,

Respondent.

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**JUDGMENT**

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Pursuant to Tenn. Sup. Ct. R. 9, section 33, Petitioner, Board of Professional Responsibility of the Supreme Court of Tennessee (“Board”), appeals the decision of the Hearing Panel ordering a public censure of Respondent, Kevin William Teets, Jr., (“Mr. Teets”). The Board contends the Hearing Panel should have ordered disbarment or a suspension. The Board timely filed a Petition for Review and this Court heard oral arguments on June 27, 2019. Honorable William B. Acree, Jr., Senior Judge, sitting by designation over the Chancery Court of Davidson County, reviewed the Hearing Panel transcript and the official record with exhibits and made its ruling from the same. For the reasons set forth herein, the Hearing Panel’s findings of fact and conclusions of law are affirmed and the sanction of the Hearing Panel is modified.

The facts in this matter are undisputed. The procedural background as stated by the Hearing Panel and the findings of fact made by it are adopted by this Court as follows:

PROCEDURAL BACKGROUND

On March 3, 2017, the Board of Professional Responsibility issued an ex parte Order to temporarily suspend the law license of Respondent KEVIN WILLIAM TEETS, JR., for posing a substantial threat of harm to the public for

misappropriating funds from a non-profit organization on whose Board he sat. Mr. Teets filed a Petition for Dissolution or Amendment of Order of Temporary Suspension on that same day, March 3, 2017. A hearing was held on the Petition before a Hearing Panel of three members on March 13, 2017. That panel issued a Report and Recommendation on March 15, 2017 finding that the Petition was well-taken and that Mr. Teets did not pose a threat of substantial harm to the public such that the suspension was lifted, but subject to certain conditions, including a practice monitor, continued mental health counseling, continued participation in the Tennessee Lawyers Assistance Program (TLAP), and paying the costs of the case. The temporary suspension of Mr. Teets' license was dissolved on March 22, 2017.

The Board then Filed its Petition for Discipline against Mr. Teets on November 7, 2017. Mr. Teets filed an Answer on December 18, 2017. A Hearing Panel was appointed on December 27, 2017. A Scheduling Order was entered on January 25, 2018, and an Amended Scheduling Order was entered on May 31, 2018. The matter was set for full hearing before the 3-member hearing panel on July 12, 2018. Both sides presented live testimony from witnesses, and Mr. Teets also submitted the Declaration of his therapist, Stephen Daniel Williams, LPC/MHSP, who was not available.

#### FINDINGS OF FACT

Based on all the evidence presented, the Hearing Panel makes the following findings of fact:

1. Mr. Teets graduated from Drake University Law School in 2009.
2. Mr. Teets was first licensed to practice law in Iowa in 2009, and then obtained a master's degree in Public Administration in 2010.
3. Mr. Teets moved from Iowa to Tennessee in 2010 to manage a state senate campaign, and remained involved in Tennessee political campaigns across the state since that time.
4. Mr. Teets was first licensed to practice law in Tennessee in 2011; he has practiced primarily as a solo practitioner since that time, with a practice primarily involving criminal cases.
5. This matter is the first disciplinary complaint against Mr. Teets.
6. Mr. Teets had a stressful family background, including being rejected by his family when he came out to them as being gay in late June 2015 when he was 31.
7. In late summer/early fall of 2016, Mr. Teets was approached by a friend,

Jessica Thurmond, to provide legal assistance to a start-up non-profit called "Lace up With Love[,"] that Ms. Thurmond established to help homeless people.

8. Mr. Teets eventually agreed to perform the work on a pro bono basis for a period of time if he was made a voting member of the company.

9. In September 2016, Mr. Teets joined the Board of the non-profit and was elected treasurer; the other Board members were Jessica Thurmond (President), Kelly Ott (Vice-President), and Ernest Grones.

10. Lace Up With Love opened a bank account in late October 2016, and deposited approximately \$700.00 in donations the company had received.

11. From November 2016 through December 2016, Mr. Teets misappropriated funds the organization.

12. In November 2016, Mr. Teets misappropriated \$5,095.24, which caused the organization to incur \$126.00 in bank fees; during that same month, Mr. Teets reimbursed the organization \$3,600.00 of the sum he had taken, leaving \$1,621.24 still missing for that month.

13. In December 2016, Mr. Teets misappropriated \$3,577.76 from the organization's bank account, and converted \$664.00 in cash to benefit himself; during that same month, he reimbursed the organization \$500.00 leaving \$3,832.76 still missing for that month.

14. In late December, the other members of the Board confronted Mr. Teets after discovering the misappropriations.

15. When confronted, Mr. Teets willingly admitted his improper conduct.

16. By early 2017, Mr. Teets had fully reimbursed the organization and agreed to a course of action that required his resignation from the organization and that he seek help for the gambling problem that he stated led to his misconduct.

17. Following the rejection by his family in the second half of 2015, Mr. Teets started suffering from depression; rather than seeking professional help, Mr. Teets attempted to address his issues on his own.

18. During the 2016 holiday season in November and December, Mr. Teets was particularly stressed and having a difficult time; by his own admission, he found an escape through gambling.

19. During November and December 2016, Mr. Teets spent 3 or more days weekly at a casino, including Thanksgiving and Christmas, to escape his rejection he felt from his own family.

20. During November and December, 2016, Mr. Teets abused his role as Treasurer for Lace Up With Love by misappropriating funds from the organization to fund his gambling problem and took the funds described in ¶12 and ¶13 above.

21. Mr. Teets and his colleagues of the Board of the organization tried to work out the issue on their own, and Mr. Teets agreed to do the things requested of him by the organization's Board.

22. Mr. Teets cooperated with the Board members from the beginning, including driving home immediately from the casino where he was gambling on the day the Board members called him about discovering misappropriations.

23. Mr. Teets resigned from the Board of Lace Up With Love on January 1, 2017, posted his resignation on his social media accounts that same day, and made restitution to the organization of more than they determined he had misappropriated.

24. Mr. Teets made full restitution before he knew that Ms. Thurmond was going to file a disciplinary complaint against him.

25. On his own, Mr. Teets also contacted four friends to create what he called a "Circle of Accountability[,"] friends who are available to confer with and consult with Mr. Teets concerning his personal issues, his therapy, and his the effects of this matter.

26. In early January 2017, Mr. Teets voluntarily contacted the appropriate authorities at the Evansville casino he frequented and requested that his name be put on a list of people who are barred from entering; he has not entered a casino since January 1, 2017.

27. Mr. Teets also voluntarily began counseling to address his gambling and depression.

28. Ms. Thurmond filed a complaint against Mr. Teets with the Board of Professional Responsibility on January 2, 2017.

29. Following the temporary suspension of Mr. Teets' law license, his misconduct became public; he had to notify clients, co-counsel; and opposing counsel by certified mail of the suspension of his law license, and he could not take on any new matters.

30. The temporary suspension of Mr. Teets['] law license was publicized on local and even national media.

31. Mr. Teets engaged Nashville lawyer, William Leader, Esq., as his practice monitor following the lifting of his suspension.

32. The relationship between Mr. Leader and Mr. Teets developed into a mentoring relationship in which Mr. Teets has continued to meet with him and maintain contact with Mr. Leader for the purpose of seeking guidance in his law practice.

33. Mr. Leader testified that Mr. Teets' rehabilitation efforts have been commendable and that he is sincerely contrite.

34. Both Mr. Teets and Mr. Leader intend to continue this monitor and mentor/mentee relationship.

35. Mr. Teets has been engaged in the practice of law since his suspension was lifted without further complaint concerning his conduct as a lawyer.

36. No proof was presented that Mr. Teets is currently a threat to the public.

37. No criminal charges were brought against Mr. Teets.

38. In written testimony admitted without objection and which was not refuted, Mr. Teets' therapist, Stephen Daniel Williams, LPC/MHSP, state emphatically that it is unlikely that Mr. Teets will repeat the behavior that constituted misconduct:

In my opinion, Mr. Teets' prognosis is very good. As noted above, his coping skills which allow him to address underlying issues are excellent. It is my opinion that continued periodic therapy would be helpful for Mr. Teets. It is further my opinion that any repetition of the sorts of actions in which Mr. Teets engaged in November and December, 2016 is extremely unlikely.

*Ruling of the Hearing Panel ("Ruling"), pages 1 – 6, filed August 9, 2018,*

#### STANDARD OF REVIEW

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

The review shall be on the transcript of the evidence before the hearing panel and its findings and judgment. If allegations of irregularities in the procedure before the hearing panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The trial court may, in its discretion, permit discovery on appeals limited only to allegations of irregularities

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

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

"When none of the first three grounds for reversal are present, as is the case here, the hearing panel should be upheld unless the decision was either arbitrary or capricious, "characterized by an abuse, or clearly unwarranted exercise, of discretion" or lacking in support by substantial and material evidence." *Hughes* at 641 (citing *CF Indus. V. Tenn. Pub. Serv. Comm'n.*, 599 S.W.2d 536, 540 (Tenn. 1980)). "An arbitrary [or capricious] decision is one that is not based on any course of reasoning or exercise of judgment, or one that disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion." *Id.* at 641.

Likewise, a reviewing court should not apply Tenn. Code Ann. § 4-5-322(h)(5)'s "substantial and material evidence" test mechanically. Instead, the court should

review the record carefully to determine whether the administrative agencies decision is supported by "such relevant evidence as a rational mind might expect to support a rational conclusion.".... The evidence will be sufficient if it furnishes a reasonably sound factual basis for the decision being reviewed.

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

### DECISION OF THE HEARING PANEL

The Hearing Panel found that "the actions of Mr. Teets in misappropriating for himself funds from a non-profit organization on whose Board he sat and to the bank accounts of which he had access by virtue of his Board role constitute a violation of Rule 8.4,<sup>[1]</sup> as they involve dishonesty and deceit, at the least." *Ruling* at page 7, ¶43.

The Panel considered the ABA Standards' aggravating and mitigating factors in determining the sanction. The panel found there were no aggravating factors but several mitigating factors. In particular, the Panel found the following mitigating factors were proven in this case:

- (a) absence of a prior disciplinary record;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and fee disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;
- (k) imposition of other penalties or sanctions; and
- (l) remorse.

The Panel ultimately found that the record, the ABA Standards, and the aggravating and mitigating factors present in this case established Mr. Teets' violation of Tennessee Rule of

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<sup>1</sup> Tennessee Rules of Professional Conduct, Rule 8.4 (a) – (c) states:

- It is professional misconduct for a lawyer to:
- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
  - (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; [or]
  - (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Professional Responsibility, Rule 8.4 and the appropriate sanction for his violation was “a public censure, with the prior conditions imposed March 15, 2017 continuing for a year: use of a practice monitor (preferably continuing with William Leader); weekly counseling with Mr. Williams and following his recommendations, continue working with TLAP; and paying the costs of this proceeding.” *Ruling* at page 10, ¶51.

### RULING

The issue, as stated by the Board is that “the hearing panel acted arbitrarily, abused its discretion and made a decision unsupported by substantial and material evidence by finding that Mr. Teets should be publicly censured instead of suspended, when it specifically found that he had misappropriated funds to his personal use, and violated RPC 8.4(a), (b) and (c).” *Brief of the Board of Professional Responsibility*, page 6, Filed April 8, 2019.

The Board correctly argues that the Hearing Panel failed to specifically include ABA Standards relating to presumptive sanctions in its ruling. The Board contends that the following standards are applicable in this matter:

#### 4.1 FAILURE TO PRESERVE THE CLIENT’S PROPERTY

Absent aggravating or mitigating circumstances..., the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

#### 5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY



Absent aggravating or mitigating circumstances..., the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

- 5.11 Disbarment is generally 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; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
  - (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
- 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.
- 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

The framework for establishing the appropriate sanction is well established by

Tennessee law and is summarized in *Board of Professional Responsibility v. Justice*:

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

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

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

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

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

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

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

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

The Board correctly notes that Tennessee Supreme Court Rule 9 specifically

requires the hearing panel to consider the applicable ABA Standards when determining the proper discipline in a given case.

...

Generally speaking, the ABA Standards suggest the appropriate baseline sanction, and aggravating and mitigating factors may justify an increase or reduction in the degree of punishment to be imposed.

...

[T]he severity of the presumptive sanction varies depending upon the lawyer's mental state—whether the lawyer acted intentionally, knowingly, or negligently—and the seriousness of the actual or potential injury caused by the lawyer's misconduct. The presumptive sanction is most severe if the attorney knowingly convert[s] client property, less severe if the attorney knowingly deals improperly with client property, and the least severe for the attorney who is merely negligent. The severity of the presumptive sanction also increases if the attorney's actions cause the client to suffer actual injury, as opposed to little or no actual or potential injury.

...

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

...

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

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

In the present case, the record is clear that the Hearing Panel failed to address or consider the ABA Standards in determining the sanction to be imposed upon Mr. Teets. Under the foregoing authority, the failure to consider such standards was arbitrary or capricious.

The Board argues that ABA Standard 4.1, Failure to Preserve the Client's Property, or 5.1, Failure to Maintain Personal Integrity, is the presumptive sanction.

The Court finds that the applicable standard is ABA Standard 5.1(a). According to the undisputed evidence found by the Hearing Panel, Mr. Teets committed the crime of theft while serving on the Board of Directors and as Treasurer of the organization from which he embezzled the funds. He was not acting as an attorney. Thus, the appropriate standard is 5.1, Failure to Maintain Personal Integrity. Because his actions constituted theft, the presumptive sanction is disbarment.

After establishing the baseline sanction, the Court must determine whether aggravating or mitigating factors warrant an increase or reduction in the baseline sanction imposed.

The Board argues that the Hearing Panel failed to properly consider the ABA Standards' aggravating factors. In particular, the Board argues the Panel failed to consider sections 9.22 (b) dishonest or selfish motive, (d) multiple offenses, and (h) vulnerability of victim. Further, the board argues the Hearing Panel inaccurately considered section 9.32, mitigating factor, (d) timely good faith effort to make restitution or to rectify consequences of misconduct.

The record supports the Panel's findings of mitigating factors and the absence of aggravating factors. The Board's argument for inclusion of aggravating factors is without merit. The factor of dishonest or selfish motive is duplicative of the underlying charge (i.e., an element of theft is dishonesty). The factor of multiple offenses is also duplicative in that the charge against Mr. Teets is a charge of theft and not multiple separate theft charges. (His offense is embezzlement which is a series of criminal acts.) Finally, as to the factor of vulnerability of victim, there is nothing in this record to distinguish this victim from any other victim. Vulnerability applies to most victims in a theft case.

The Board's argument for exclusion of the mitigating factor of timely good faith effort to make restitution or to rectify consequences of misconduct is also without merit. It is true that

Mr. Teets made full restitution after his theft was discovered. However, he made restitution promptly and in full. The ruling of the Hearing Panel makes detailed findings of fact of the circumstances surrounding Mr. Teets' unlawful act as well as the actions he took after the act was discovered. The Panel found, for example, he has admitted his wrongdoing, made full restitution in a timely manner, served a period of suspension, undergone counseling, and is being monitored by a prominent member of the Nashville Bar.

This Court finds that there is substantial and material evidence to support the Panel's findings of mitigating factors and the absence of enhancement factors. Considering that the presumptive sentence is disbarment, the findings of five mitigating factors and no enhancing factors, this Court finds the appropriate sanction is an additional sanction of thirty days suspension rather than a public censure. The Court is aware that a suspension, irrespective of its duration, is disruptive of an attorney's practice, results in adverse financial consequences, and is publicly humiliating. However, Mr. Teets' committed an unlawful act and such a sanction is necessary to protect the integrity of the profession.

In addition, the remaining sanctions imposed by the Panel are affirmed to wit, the prior conditions imposed March 15, 2017 continuing for a year: use of a practice monitor (preferably continuing with William Leader); weekly counseling with Mr. Williams and following his recommendations, continue working with TLAP; and paying the costs of this proceeding.

IT IS SO ORDERED this the 23 day of August, 2019.

  
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WILLIAM B. ACREE, JR.  
Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that I will dispatch a true and correct copy of the foregoing Judgment to the following at their respective addresses on this \_\_\_\_ day of \_\_\_\_\_, 2019:

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CLERK