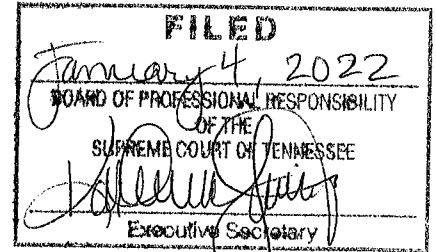


**IN DISCIPLINARY DISTRICT IV
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**IN RE: JOHN TERENCE TENNYSON,
BPR #032777, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Wilson County)**

DOCKET NO. 2021-3182-4-JB

HEARING PANEL REPORT AND RECOMMENDATION

COMES NOW the Hearing Panel (“Panel” or “the Panel”) duly empaneled to hear and consider the above-styled disciplinary matter and would report and recommend as follows:

STATEMENT OF THE CASE

1. This is a disciplinary proceeding against the Respondent, John Terence Tennyson, an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee in 2014.
2. On June 24, 2021, the Board filed a Petition for Discipline against Respondent, John Terence Tennyson (“Mr. Tennyson”) containing one complaint from Yessica Solano (File No. 65043c-5-KB). Mr. Tennyson was personally served on July 30, 2021, by private process server.
3. On August 23, 2021, Mr. Tennyson filed a Petition to Surrender his Tennessee law license. On September 30, 2021 the Supreme Court of Tennessee filed an Order dismissing Mr. Tennyson’s Petition given the disciplinary proceedings pending against him.
4. On August 31, 2021, Disciplinary Counsel agreed to extend the deadline for filing

an Answer until September 20, 2021.

5. Mr. Tennyson failed to file an Answer to the Petition for Discipline within the required time period and on September 29, 2021, the Board filed a Motion for Default Judgment and that Charges in Petition for Discipline be Deemed Admitted.

6. On October 18, 2021, the Hearing Panel filed an Order of Default wherein all allegations contained in the Petition were deemed admitted.

7. On December 7, 2021, an in-person Final Hearing was held in Cookeville, Tennessee and the Board provided access for Mr. Tennyson to appear virtually by Zoom. Mr. Tennyson was sent notice of the Final Hearing by the Executive Secretary; however, he did not file any documents in this disciplinary proceeding, communicate in any way that he could not attend, nor did he appear at the Final Hearing. The Hearing Panel waited to see if he would appear in-person or join virtually via the Zoom link and after it became apparent, he was not going to appear, proceeded with the Final Hearing.

8. After the Board presented its case in chief, the Hearing Panel requested that Disciplinary Counsel submit proposed findings of fact and conclusions of law.

INTRODUCTION

The complaint of Yessica Solano (File No. 65043c-5-KB) is set forth in the Petition for Discipline and is part of the record in this matter. All of the acts of professional misconduct by Mr. Tennyson were deemed admitted by his default pursuant to Tenn. Sup. Ct. R. 9, §15.2(b) (2019), and as set forth in the Petition for Discipline, the Hearing Panel makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

9. On June 4, 2018, Mr. Tennyson agreed to represent Michael Olvera-Gomez,

brother-in-law of Complainant, Yessica Solano, in pending federal criminal charges in the matter of *United States of America v. Michael Olvera-Gomez*, Case No. 1:18-cr-00158-JRS-DML before the U.S. District Court for the Southern District of Indiana.

10. On June 4, 2018, Mr. Tennyson executed a fee agreement requiring a \$25,000.00 flat fee, that could be made in payments and which would cover representation through the conclusion of the proceeding. The fee agreement provided that “[u]pon payment the fee shall be considered ‘earned’ . . .”

11. The fee agreement also provided that the fee would be reduced to a flat fee of \$15,000.00 if the criminal charges were resolved through plea bargain and did not proceed to jury trial. The remaining \$10,000.00 would be “immediately refunded.” Ms. Solano paid the \$25,000.00 fee in payments over time on behalf of her brother-in-law.

12. On June 11, 2018, Mr. Tennyson filed a Notice of Appearance in the pending criminal matter in the U.S. District Court for the Southern District of Indiana. On August 1, 2019, a Petition to Enter Plea of Guilty and Plea Agreement was filed in the U.S. District Court for the Southern District of Indiana signed by Mr. Olvera-Gomez and Mr. Tennyson on July 31, 2019.

13. On February 26, 2020, Mr. Tennyson appeared in court with Mr. Olvera-Gomez for a sentencing hearing and to enter a plea agreement. At the hearing, Ms. Solano inquired about the refund of the \$10,000.00 fee and Mr. Tennyson advised her that it would be refunded upon processing of paperwork.

14. After the approval of the plea agreement, Ms. Solano began contacting Mr. Tennyson by phone and by email requesting recoupment of the \$10,000.00 portion of the fee pursuant to the fee agreement.

15. Defendant was deported shortly after entry of the guilty plea and Mr. Tennyson

failed to refund any part of the fee to Ms. Solano.

CONCLUSIONS OF LAW

The jurisdiction and authority of this Panel is derived from Tenn. Sup. Ct. R. 9, and the specific provisions prescribed therein. Attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts. (Tenn. Sup. Ct. R. 9, § 8 (2014)). The license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. (Tenn. Sup. Ct. R. 9, § 1 (2014)). Acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. (Tenn. Sup. Ct. R. 9, § 11 (2014)). The Hearing Panel finds the conduct as set out in the Petition for Discipline and set forth above violated the following Tennessee Rules of Professional Conduct:

RULE 1.5(a): FEES

16. Pursuant to RPC 1.5(a), a “lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.”

17. Comment 4 to RPC 1.5 provides a “lawyer may require advance payment of a fee but is obliged to return any unearned portion.”

18. The amount of the fee charged by Mr. Tennyson for the representation outlined in the Agreement is a fair and reasonable fee, but Mr. Tennyson’s failure to honor his own agreement that he repared to return the amounts paid over \$15,000.00 is improper.

19. The “Client-Attorney Agreement Federal Criminal Case” prepared by Mr. Tennyson very clearly and explicitly provides that the fee arrangement requires any amount paid over \$15,000.00 to be immediately refunded in the event the case ends in a plea bargain, which the record establishes did happen. The agreement prepared by Mr. Tennyson also provides that “Attorney shall forfeit all fees under this Agreement, excluding costs associated with defending the Client according to Section 2, if Attorney defaults under this Agreement or applicable Tennessee law, or Attorney commits misconduct.”

20. By keeping fees that were not earned under the fee agreement, Mr. Tennyson charged an excessive fee in violation of RPC 1.5(a).

21. Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence that John Terrence Tennyson accepted an unreasonable fee by not refunding the \$10,000.00 portion of the fee to Ms. Solano in violation of RPC 1.5(a).

RULE 8.4(a): MISCONDUCT

22. RPC 8.4(a) provides it is professional misconduct for a lawyer to “violate or attempt to violate the Rules of Professional Conduct.”

23. RPC 1.16(d) provides a “lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client’s interests.” Protecting the client’s interests may include “promptly surrendering papers and property to which the client is entitled. . .”

24. Mr. Tennyson failed to refund the \$10,000.00 after the representation terminated and that was not earned in violation of RPC 1.16(d).

25. In failing to refund the \$10,000.00 paid by Ms. Solano, Mr. Tennyson violated the Tennessee Rules of Professional Conduct and accordingly, violated RPC 8.4(a).

26 Based upon the evidence presented and the record as a whole, the Hearing Panel finds by a preponderance of the evidence that John Terrence Tennyson violated the Tennessee Rules of Professional Conduct in violation of RPC 8.4(a).

RULE 1.15: SAFEKEEPING PROPERTY AND FUNDS

27. RPC 1.15(a) provides a lawyer “shall hold property and funds of clients or third persons that are in a lawyer’s possession in connection with a representation separate from the lawyer’s own property and funds.”

28. RPC 1.15(c) provides a “lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.”

29. RPC 1.15(d) provides upon receiving funds in which a client or third party has an interest, a lawyer “shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such funds or other property.”

30. RPC 1.15(e) provides that when in the course of representation, a lawyer is in possession of funds in which two or more persons (one of whom may be the lawyer) claim interests, the lawyer “shall promptly distribute all portions of the property or funds as to which the interests are not in dispute.”

31. Mr. Tennyson did not deposit into his IOLTA nor protect the \$10,000.00 refundable part of the fee in violation of RPC 1.15(a).

32. Mr. Tennyson did not promptly distribute the \$10,000.00 of Ms. Solano’s funds in violation of RPC 1.15(c) – (e).

33. Based upon the evidence presented and the record as a whole, the Hearing Panel

finds by a preponderance of the evidence that John Terrence Tennyson violated the Tennessee Rules of Professional Conduct in violation of RPC 1.15(a), (c), (d) and (e).

APPLICATION OF THE ABA STANDARDS

Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, (“ABA Standards”). Pursuant to Tenn. Sup. Ct. R. 9, § 15.4(a), “[i]f the hearing panel finds one or more grounds for discipline of the respondent attorney, the hearing panel’s judgment shall specify the type of discipline imposed: disbarment (Section 12.1), suspension (Section 12.2), or public censure (Section 12.4).” In imposing a sanction after a finding of lawyer misconduct, the Panel should consider the following factors: (a) the duty violated; (b) the lawyer’s mental state; (c) the actual or potential injury caused by the lawyer’s misconduct; and d) the existence of aggravating or mitigating factors. (ABA Standard 3.0). Under the ABA Standards, intent is defined as “the conscious objective or purpose to accomplish a particular result” and knowledge is defined as “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 for Imposing Lawyer Sanctions are guideposts for determining the appropriate level of discipline for attorney misconduct. *Lockett v. Bd. of Prof'l Responsibility*, 380 S.W.3d 19, 26 (Tenn.2012). The ABA Standards are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct, and a hearing panel may consider the full panoply of sanctions applicable to lawyer misconduct even if a particular ABA Standard does not explicitly describe the fact pattern in question. *Bd. of Prof'l Responsibility v. Daniel*, 549 S.W.3d 90, 100 (Tenn. 2018). In cases where lawyer misconduct seems to fall between presumptive sanctions or within multiple ABA Standards identifying different presumptive

sanctions, hearing panels and the Supreme Court are able and authorized to make an ultimate determination on the appropriate sanction. *Id.* at * 102. Under such circumstances, hearing panels should identify all relevant ABA Standards and then determine a sanction within the range of the presumptive sanctions identified in the relevant ABA Standards. *Id.* The ABA Standards suggest the appropriate baseline sanction and aggravating and mitigating factors provide a basis for increasing or reducing the sanction imposed. (ABA Standard 3.0). See also *Hancock v. Bd. of Prof'l Responsibility*, 447 S.W.3d 844, 857 (Tenn. 2014) (length of an attorney's suspension, however, depends in large part on the aggravating and mitigating circumstances).

34. The Hearing Panel finds that the facts as deemed admitted constitute circumstances inferring that Mr. Tennyson acted “knowingly” in violating the Rules of Professional Conduct. See RPC 1.0(f). Accordingly, the Hearing Panel infers from these circumstances that Mr. Tennyson 1) accepted a fee and knowingly refused to refund the fee depriving Ms. Solano of her rightful property; 2) knowingly and wrongfully retained \$10,000.00 that was the property of Ms. Solano for his own financial benefit, causing his client and Ms. Solano harm; and 3) knowingly deceived Ms. Solano by misrepresenting that refunding her funds required cooperation of his previous law firm and by this act, Mr. Tennyson benefitted financially, causing harm to his client and Ms. Solano.

35. Based upon the facts and misconduct previously cited, the Hearing Panel finds the following ABA Standards applicable and relevant to its determination of the appropriate discipline to be imposed upon Mr. Tennyson:

4.1 FAILURE TO PRESERVE THE CLIENT'S PROPERTY

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, 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.** [emphasis added]

4.6 LACK OF CANDOR

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

4.61 Disbarment is generally appropriate when **a lawyer knowingly deceives a client with the intent to benefit the lawyer or another and causes serious injury or potential serious injury to a client.** [emphasis added]

5.0 VIOLATIONS OF DUTIES OWED TO THE PUBLIC

5.1 Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving 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.** [emphasis added]

7.0 VIOLATIONS OF DUTIES OWED AS A PROFESSIONAL

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

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

36. Pursuant to the ABA Standards, Mr. Tennyson's knowing and intentional acts are grounds for a lengthy suspension, and the Hearing Panel finds the baseline sanction is suspension. Based upon the aggravated factors, discussed *infra*, the Panel believes disbarment is appropriate. Accordingly, the length of the appropriate suspension is a pretermitted issue.

AGGRAVATING FACTORS

Having determined disbarment is the appropriate baseline sanction, the Hearing Panel considered the existence of any aggravating or mitigating factors and their applicability to this disciplinary matter. Finding no mitigating circumstances, pursuant to ABA Standard 9.22, the following aggravating factors were considered by the Hearing Panel to determine the appropriate discipline to be imposed against Mr. Tennyson:

37. Mr. Tennyson's prior disciplinary offenses are aggravating factors justifying an increase in discipline.

- a. On June 13, 2018, Mr. Tennyson received a Private Informal Admonition for violations of RPC 5.3 (responsibilities regarding nonlawyer assistance) and 7.1 (communication concerning a lawyer's services).
- b. On July 19, 2019, Mr. Tennyson received a Public Censure for violations of RPC 1.2 (scope of representation); 1.3 (diligence); 1.4

(communication); 1.5 (fees); 1.15(d) (safekeeping property); 1.16 (terminating representation); 3.4(c) (disobeying obligation under rules of tribunal); 5.3 (responsibilities regarding non-lawyer assistance) and 8.4(a) and (d) (misconduct).

- c. On April 8, 2020, Mr. Tennyson received a Public Censure for violations of RPC 3.4(c) (disobeying an obligation under the rules of a tribunal) and 8.4 (a) and (d) (misconduct).

38. Mr. Tennyson's dishonest or selfish motive is an aggravating factor justifying an increase in discipline.

39. Mr. Tennyson's refusal to acknowledge the wrongful nature of his conduct is an aggravating factor justifying an increase in discipline.

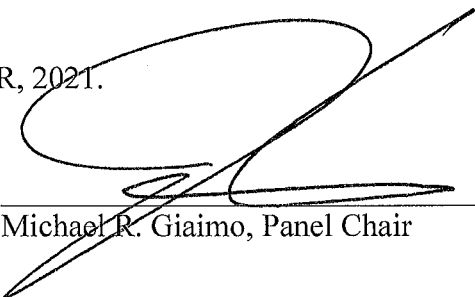
40. Mr. Tennyson's indifference to making restitution is an aggravating factor justifying an increase in discipline.

41. Mr. Tennyson's substantial experience in the practice of law is an aggravating factor justifying an increase in discipline.

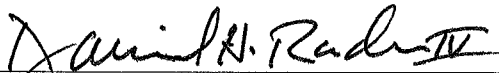
JUDGMENT

Based upon the facts deemed admitted in this action, the application of the Rules of Professional Conduct and considering the ABA Standards, the Hearing Panel finds by a preponderance of the evidence that Mr. Tennyson committed disciplinary misconduct and should be disbarred from the practice of law pursuant to Tenn. Sup. Ct. R. 9, § 12.1. The Hearing Panel further finds that pursuant to Tenn. Sup. Ct. R. 9, § 12.7, Mr. Tennyson shall make restitution to Yessica Solano in the amount of \$10,000.00.

THIS 20th DAY OF DECEMBER, 2021.



Michael R. Giaimo, Panel Chair


Daniel Hurley Rader, Panel Member


Donna S. Simpson, Panel Member

NOTICE

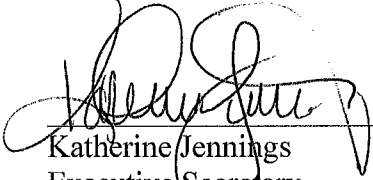
This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a Petition for Review in the Circuit or Chancery Court within sixty (60) days of the date of entry of the hearing panel's judgment.

Respectfully submitted,

Joseph K. Byrd, BPR #022453
Disciplinary Counsel – Litigation
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027
(615) 361-7500

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, John Terence Tennyson, P.O. Box 1166, Mount Juliet, TN 37121, by U.S. First Class Mail, and hand-delivered to Russell Willis, Disciplinary Counsel, on this the 4th day of January 2022.


Katherine Jennings
Executive Secretary

NOTICE

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