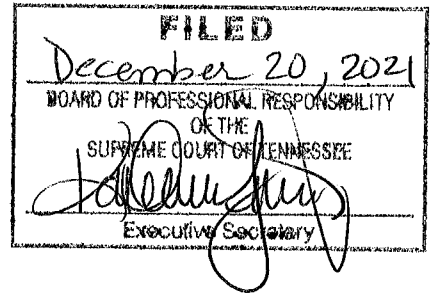


IN DISCIPLINARY DISTRICT 1  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE



IN RE Kyle Douglas Vaughan  
BPR No. 032416 Respondent,  
an Attorney Licensed to  
Practice Law in Tennessee  
(Sullivan County)

DOCKET NO. 2021-3165-1-DB-22.3

---

FINDINGS OF FACT AND CONCLUSIONS OF LAW

---

This matter came on for hearing before a duly appointed Hearing Panel on October 1 1, 2021 upon a Petition for Final Discipline filed by the Board pursuant to Tenn. Sup. Ct. R. 9, § 22. Present were Hearing Panel member, Olen G. Haynes; Hearing Panel member, Mark Albert Skelton; Hearing Panel Chair, Nikki C. Pierce; Frank Santore, Counsel for Respondent; Respondent Kyle Douglas Vaughan, and Disciplinary Counsel, Douglas R. Bergeron. Upon statements of counsel, evidence presented, and upon the entire record in this cause, the Panel makes the following findings and judgment.

STATEMENT OF THE CASE

On April 27, 2021, the Tennessee Supreme Court suspended Mr. Vaughan pursuant to Section 22 of Tenn. S. Ct. R. 9 due to Mr. Vaughan's conviction entered on July 21, 2020, in the Criminal Court for Washington County, Tennessee, Docket No. 46339, for theft of property over \$60,000 but less than \$250,000, a Class B felony, in violation of T.C.A. § 39-1-103, involving a serious crime under Rule 9. The theft by Mr. Vaughan from his law partners involved the unlawful taking of \$235,302.20 over a period of time spanning from August 1, 2017, to December 1, 2019.

The April 27, 2021, order referred the matter to the Board of Professional Responsibility for the institution of formal proceedings. Accordingly, the Petition for Final Discipline was filed in this cause on May 13, 2021. Mr. Vaughan through counsel filed an answer on July 13, 2021, admitting the allegations submitting himself to disciplinary proceedings. An evidentiary hearing was held in this matter via Zoom on October 11, 2021. Following the submission of post-trial briefs, a post-hearing conference was held on November 17, 2021.

### FINDINGS

On July 21, 2021, Mr. Vaughan pled guilty by information to felony theft of property over \$60,000 but less than \$250,000 in the Criminal Court for Washington County, Tennessee, a Class B felony. Mr. Vaughan was sentenced to 10 years' imprisonment suspended to serve 12 months in jail and the remainder on supervised probation. Mr. Vaughan was further ordered as part of supervised probation to provide restitution to the aggrieved parties at \$500.00 per month with credit of \$11,850.00 already paid. Mr. Vaughan has not appealed that judgment.

The evidence consisted of the certified copy of Mr. Vaughan's criminal conviction and the testimony of Mr. Vaughan and his law partners, attorney Kara Page, and attorney James Cook, II. The testimony of Kara Page and James Cook were similar in nature. Their testimony was that Mr. Vaughan entered into a law partnership with Ms. Page in August 2017 and from that date until December 1, 2019, stole money from the partnership, which Mr. Cook, II had joined in 2018. Mr. Cook, II, testified that Mr. Vaughan told him that he would have continued his criminal conduct had he not been found out. Their testimony was that since Mr. Vaughan had been released from jail on January 20, 2021, he had only provided one payment of \$150 in restitution to them. The two attorneys testified as to the extreme hardship that was brought upon them by the theft.

Mr. Vaughan testified that he had returned to college later in life and upon obtaining his law license practiced as a solo practitioner from 2013 until 2017 at which time he and Attorney

Page formed the firm of Page and Vaughan, adding Attorney Cook, II as a partner in 2018. Mr. Vaughan admitted stealing \$235,302.20 from the partnership and acknowledged he had no excuse for his actions. He admitted he had been dishonest and that his actions impacted his partners personally. Mr. Vaughan testified he apologized to his partners and their families on the day of his plea. He also testified regarding medical conditions and hospitalizations that began after his release from jail January 20, 2021, which he said impacted his ability to work. The Board acknowledged the absence of a prior disciplinary record.

The Panel finds that the Respondent's conviction is conclusive evidence of the commission of the serious crime of felony theft of property in the amount of \$235,302.20 in violation of T.C.A. § 39-1-103. The Respondent admitted his commission of a serious crime. Pursuant to Tenn. Sup. Ct. R. 9, § 22, the sole issue to be determined in this matter is the extent of final discipline.

The Hearing Panel concludes that ABA Standard 5.11(a), recommending disbarment, applies to the Respondent's conduct. The Hearing Panel further finds that Respondent's conduct seriously adversely reflects on his fitness to practice law. "After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what discipline to impose." ABA Standard 9.1. The Hearing Panel may consider aggravating and mitigating factors, pursuant to ABA Standards 9.22 and 9.32.

Based on the evidence presented and the testimony of Mr. Vaughan and the two aggrieved parties, attorney Kara Page and attorney, James Cook, II, the following aggravating factors apply to this matter pursuant to ABA Standards 9.22: a dishonest or selfish motive, a pattern of misconduct<sup>1</sup>, and illegal conduct. Respondent through his attorney acknowledges the application of these aggravating factors. The Hearing Panel will not apply the aggravating factors of

---

<sup>1</sup> Two of the Hearing Panel members would give less weight to the aggravating factor involving a pattern of misconduct (ABA Standard 9.22(c)) because of the application of the illegal conduct aggravating factor (ABA Standard 9.22(k)) given the similarity of the factors.

substantial experience in the practice of the law or indifference to making restitution, as the willfulness of nonpayment was not sufficiently established.

The Hearing Panel also finds evidence supports the application of only two mitigating factors: the absence of prior disciplinary record<sup>2</sup> and full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(a) and (e). Given the consideration of ABA Standard 9.32(e), the Hearing Panel will not also give consideration for any expression of remorse as part of the criminal court proceedings pursuant to ABA Standard 9.32(l). Respondent asserted that physical disability (ABA Standard 9.32(h)) should be considered in mitigation. The Hearing Panel rejects this assertion given any physical disability occurred after the commission of the serious crime and therefore had no impact on Mr. Vaughan's decision to steal from his partners. The Hearing Panel also rejects Respondent's argument that the imposition of other penalties and sanctions should be considered a mitigating circumstance. Following the reasoning in *Board of Professional Responsibility v. Cowan*, 388 S.W.3d 264 (Tenn. 2012), we find Respondent's position without merit. The Court in *Cowan* stated:

Although Mr. Cowan has suffered penalties (including imprisonment) for his conviction, this factor is inapplicable here because the criminal penalties were imposed as punishment. "The consideration of other penalties or sanctions imposed on a respondent attorney is appropriate when **those penalties or sanctions arise out of the disciplinary proceedings themselves or have been imposed by another jurisdiction's disciplinary board for the same conduct.**"

*Cowan*, 388 S.W.3d at 270 (emphasis added). Despite the application of mitigating factors, the aggravating factors outweigh the mitigating factors, and the Hearing Panel specifically finds that no downward deviation from the presumptive sanction of Disbarment is warranted.

---

<sup>2</sup> One Hearing Panel Member would give little weight to the lack of a prior disciplinary record, given the rejection of the aggravating factor relating to the substantial experience in the practice of law.

The sanction of Disbarment appears in this instance to provide for permanent disbarment by terminating Mr. Vaughan's status as a lawyer. Tenn. Sup. Ct. R. 9, Section 12.1. Section 30 of Tennessee Supreme Court Rule 9 was amended January 23, 2020, to provide as follows:

30.2. Individuals disbarred on or after July 1, 2020, are not eligible for reinstatement. Individuals disbarred under Rule 9 prior to July 1, 2020, may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

Even though the conduct warranting disciplinary proceedings pre-dated the amendment (August 1, 2017, to December 1, 2019), the criminal conviction was entered July 21, 2020. In post-trial briefing, the parties addressed the application of the amendment to Section 30 of Tennessee Supreme Court Rule 9 to the present case. Respondent through his counsel conceded Section 30 amendment could be applied without violating any constitutional right, as it involves the privilege of the practice of law and not the increase of punishment for a crime, and Mr. Vaughan has been afforded due process. Nonetheless, counsel for Respondent asks the Hearing Panel to structure a sanction "under pre-2020 law, which would allow him to petition the BPR for reinstatement." If the panel had the authority to structure such relief, two of the Hearing Panel Members would do so. However, it does not appear the Hearing Panel has such authority given the changes to Tennessee Supreme Court Rule 9, Section 30, effective January 23, 2020.

#### JUDGMENT

Accordingly, it is the decision of the Hearing Panel that Respondent should be disbarred pursuant to Tenn. Sup. Ct. R. 9, § 12.1. As further sanction it is hereby ordered that Respondent provide full restitution to the victims of his Class B felony conviction in the total amount of \$235,302.20, with a credit of \$11,850.00, as contained in the Washington County Criminal Court Judgment and additional credits for any verifiable payments made by Mr. Vaughan to his victims

prior to the date of this Order. The Board shall file its application for costs within fifteen (15) days of entry of these Findings of Fact and Conclusions of Law pursuant to Tenn. Sup. Ct. R. 9, § 31.3.

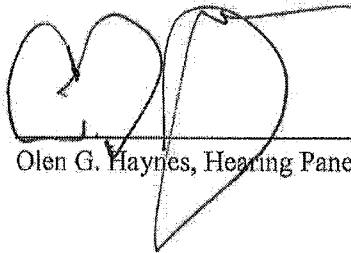
**THIS JUDGMENT MAY BE APPEALED PURSUANT TO § 33.1 OF RULE 9 OF THE TENNESSEE SUPREME COURT RULES BY FILING WITHIN SIXTY DAYS OF THE DATE OF ENTRY OF THE HEARING PANEL'S JUDGMENT A PETITION FOR REVIEW IN THE CIRCUIT OR CHANCERY COURT OF THE COUNTY IN WHICH THE OFFICE OF THE RESPONDENT OR PETITIONING ATTORNEY WAS LOCATED AT THE TIME THE CHARGES WERE FILED WITH THE BOARD.**

ENTERED THIS THE 21<sup>st</sup> DAY OF December, 2021.

IT IS SO ORDERED.



Nikki C. Pierce, Hearing Panel Chair



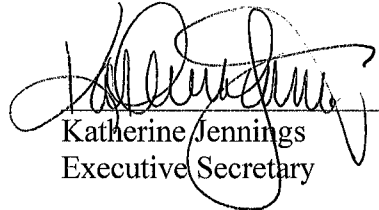
Olen G. Haynes, Hearing Panel Member



Mark Albert Skelton, Hearing Panel Member

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to Kyle Douglas Vaughan, c/o Francis X. Santore, Counsel, 121 E. Depot Street, Greeneville, TN 37743, by U.S. First Class Mail, and hand-delivered to Joseph K. Byrd, Disciplinary Counsel, on this the 21st day of December 2021.

  
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.**