BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

IN THE MATTER OF	§	
ROBIN KATHLEEN BARRY	§	**CAUSE NO.** 61329
STATE BAR CARD NO. 24031845	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Robin Kathleen Barry, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed and is authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Robin Kathleen Barry, 710 Main Street, Richmond, Texas 77469.

3. On or about June 27, 2014, a Petition for Discipline was filed in Disciplinary District 0 of the Board of Professional Responsibility of the Supreme Court of Tennessee in a matter styled, *In Re: Robin Kathleen Barry, Respondent, BPR #21843 An Attorney Licensed and Admitted to the Practice of Law in Tennessee (Houston, Texas), Docket No. 2014-2332-O-WM.* (Exhibit 1).

4. On or about October 8, 2015, a Judgment of the Hearing Panel was filed in Disciplinary District 0 of the Board of Professional Responsibility of the Supreme Court of

Tennessee in a matter styled, *In Re: Robin Kathleen Barry, BPR #21843, Respondent, An Attorney Licensed and Admitted to the Practice of Law in Tennessee (Houston, Texas), Docket No. 2014-2332-O-WM.* (Exhibit 2)

The Judgment of the Hearing Panel found that (1) By distributing $7,691.50 to Ms. Duke from the funds held in trust for Ms. Adams, Ms. Barry knowingly converted client property causing injury to Ms. Adams. In doing so, she violated RPC 1.15 (Safekeeping Property and Funds) and 8.4(c) (Misconduct); (2) By distributing $7,150.00 to herself from the funds held in trust for Ms. Adams, Ms. Barry knowingly converted client property causing injury to Ms. Adams. In doing so, she violated RPC 1.15(a) (Safekeeping Property and Funds) and 8.4(c) (Misconduct); (3) By depositing to her trust account the earned fees received from Lisa Chamberlain and Consensus Mediation Services, Ms. Barry commingled her own funds with those of her clients. In so doing, she violated RPC 1.15(a) (Safekeeping Property and Funds); (4) By failing to promptly distribute the balance of the $100,000.00 after payment of the settlement and failing to provide Ms. Adams with an accounting of the funds, Ms. Barry violated RPC 1.I5(d) (Safekeeping Property and Funds); (5) Ms. Barry failed to adequately communicate with Ms. Adams after her move to Texas. In so doing, she violated RPC 1.4 (Communication); (6) A preponderance of the evidence demonstrates that the acts and omissions by the Respondent constitute ethical misconduct in violation of Rules of Professional Conduct 1.4, Communication; and 1.15(a) and (d), Safekeeping Property and Funds; and (7) The Board has carried its burden and proven the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence.

The Judgment of the Hearing Panel suspended Respondent from the practice of law for eighteen months with sixty days active suspension and the remainder to be served on probation. Following entry of the Judgment of the Hearing Panel, the Board of Professional Responsibility

appealed that decision to the Chancery Court for Davidson County, Tennessee.

5. On or about August 26, 2016, a Memorandum Opinion and Order was filed in the Chancery Court for Davidson County, Tennessee, in a matter styled, *Board of Professional Responsibility of the Supreme Court of Tennessee, Petitioner, v. Robin K. Barry, Respondent, No. 15-120-I, BOPR Docket No. 2014-2332-0-WM*, that states in pertinent part as follows:

> The Court concludes that the panel acted arbitrarily and capriciously by failing to consider and apply the ABA Standards in light of the undisputed facts. Based on this record, the only appropriate sanction in disbarment.
>
> Based on all of the above, the Court hereby orders that respondent be disbarred from the practice of law in this state.

(Exhibit 3).

6. Respondent appealed the Chancery Court's decision to the Supreme Court of Tennessee. On or about February 16, 2018, an Opinion was issued by the Supreme Court of Tennessee at Nashville, June 1, 2017 Session, in a matter styled, *Board of Professional Responsibility of the Supreme Court of Tennessee v. Robin K. Barry, Direct Appeal from the Chancery Court for Davidson County, No. 15-1270-I, Ben H. Cantrell, Senior Judge, No. M2016-02003-SC-R3-BP*, that states in pertinent part as follows:

> For the foregoing reasons, the judgment of chancery court is affirmed, and Ms. Barry is disbarred from the practice of law in Tennessee . . .

(Exhibit 4).

7. On or about February 16, 2018, a Judgment was entered by the Supreme Court of Tennessee at Nashville, June 1, 2017 Session, in a matter styled, *Board of Professional Responsibility of the Supreme Court of Tennessee v. Robin K. Barry, Chancery Court for Davidson County, No. 15-1270-I, No. M2016-02003-SC-R3-BP*, that states in pertinent part as follows:

> This case was heard upon the entire record on direct appeal from the Chancery Court for Davidson County and upon the briefs and argument of counsel. Upon

> consideration thereof, we agree with trial court's decision and conclude that the hearing panel acted arbitrarily and capriciously by failing to impose the presumptive sanction in ABA Standard 4.11, namely, disbarment, in light of Appellant Robin K. Barry's knowing conversion of client funds, her other ethical violations, the finding of five aggravating circumstances, and the absence of any mitigating circumstances. We decline to make Ms. Barry's disbarment retroactive to the date of the temporary suspension of her law license. Accordingly, the judgment of the Chancery Court is affirmed.
>
> In accordance with the opinion filed herein, it is ORDERED and ADJUDGED that the decision of the Chancery Court is affirmed, and Ms. Barry is disbarred from the practice of law in Tennessee . . .

(Exhibit 5).

8. Copies of the Petition for Discipline, Judgment of the Hearing Panel, Memorandum Opinion and Order of the Chancery Court, Supreme Court of Tennessee Opinion, and Supreme Court of Tennessee Judgment are attached hereto as Petitioner's Exhibits 1 through 5, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 through 5 at the time of hearing of this cause.

9. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of Tennessee and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Robin Kathleen Barry by personal service.

Robin Kathleen Barry
710 Main Street
Richmond, Texas 77469

Judith Gres DeBerry

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

Contents

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

(a) "BODA" is the Board of Disciplinary Appeals.

(b) "Chair" is the member elected by BODA to serve as chair or, in the Chair's absence, the member elected by BODA to serve as vice-chair.

(c) "Classification" is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a "complaint" or an "inquiry."

(d) "BODA Clerk" is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "CDC" is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.

(f) "Commission" is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.

(g) "Executive Director" is the executive director of BODA.

(h) "Panel" is any three-member grouping of BODA under TRDP 7.05.

(i) "Party" is a Complainant, a Respondent, or the Commission.

(j) "TDRPC" is the Texas Disciplinary Rules of Professional Conduct.

(k) "TRAP" is the Texas Rules of Appellate Procedure.

(l) "TRCP" is the Texas Rules of Civil Procedure.

(m) "TRDP" is the Texas Rules of Disciplinary Procedure.

(n) "TRE" is the Texas Rules of Evidence.

Rule 1.02. General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 [17.01] applies to the enforcement of a judgment of BODA.

Rule 1.03. Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04. Appointment of Panels

(a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

(b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05. Filing of Pleadings, Motions, and Other Papers

(a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

(1) Email Address. The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

(2) Timely Filing. Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

(3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) Exceptions.

(i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

(ii) The following documents must not be filed electronically:

a) documents that are filed under seal or subject to a pending motion to seal; and

b) documents to which access is otherwise restricted by court order.

(iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

(5) Format. An electronically filed document must:

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

(1) an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06. Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

Rule 1.07. Hearing Setting and Notice

(a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08. Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09. Pretrial Procedure

(a) **Motions.**

(1) Generally. To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) For Extension of Time. All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10. Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11. Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12. BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13. Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14. Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15. Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

II. ETHICAL CONSIDERATIONS

Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02. Confidentiality

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction

Rule 2.03. Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse himor herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02. Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21 [2.20].

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24 [2.23], the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02. Record on Appeal

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) **Responsibility for Filing Record.**

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

a) a notice of appeal has been filed;

b) a party has requested that all or part of the reporter's record be prepared; and

c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) **Preparation of Clerk's Record.**

(1) To prepare the clerk's record, the evidentiary panel clerk must:

(i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) **Preparation of the Reporter's Record.**

(1) The appellant, at or before the time prescribed for

perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise

(6[1]) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

[1] So in original.

Rule 4.03. Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a reporter's record; or

(ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

Rule 4.04. Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05. Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed

within 30 days after the appellant's brief is filed.

(c) **Contents.** Briefs must contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

(d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.

(f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06. Oral Argument

(a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

(c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07. Decision and Judgment

(a) **Decision.** BODA may do any of the following:

(1) affirm in whole or in part the decision of the evidentiary panel;

(2) modify the panel's findings and affirm the findings as modified;

(3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or

(4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

(i) the panel that entered the findings; or

(ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) Mandate. In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08. Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27 [2.26]. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09. Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

(a) for want of jurisdiction;

(b) for want of prosecution; or

(c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23 [2.22].

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23 [2.22], the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02. Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02. Interlocutory Suspension

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA must suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

(i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

(ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02. Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03. Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair must appoint a substitute member.

Rule 8.02. Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03. Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) Motion. The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) Report. The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04. Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05. Respondent's Right to Counsel

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06. Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07. Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08. Confidentiality

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02. Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03. Physical or Mental Examinations

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04. Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

I, Rita Webb, Executive Secretary of said Board, do hereby certify that the attached is a true, accurate, and complete copy of Petition for Discipline, IN RE: Robin Kathleen Barry, BPR Docket No. 2014-2332-0-WM, filed June 27, 2014, of record now on file in my office.

In Testimony Whereof, I have hereunto set my hand at Nashville, on this 19th day of April, 2018.

Rita Webb
Executive Secretary

Sworn to and subscribed before me, this 19th day of April, 2018.

NOTARY PUBLIC

SUZAN J. THURBER
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY
My Commission Expires SEPT. 25, 2021

Exhibit
1

IN DISCIPLINARY DISTRICT 0
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE
(HOUSTON, TEXAS)

IN RE: ROBIN KATHLEEN BARRY
Respondent, BPR #21843
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Houston, Texas)

DOCKET No. 2014-2332-0-WM

PETITION FOR DISCIPLINE

Comes now the Petitioner, the Board of Professional Responsibility of the Supreme Court of Tennessee, by and through Disciplinary Counsel, pursuant to Rule 9 of the Rules of the Supreme Court, and files this Petition for Discipline against Robin Kathleen Barry.

1. Robin Kathleen Barry is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee. Ms. Barry's most recent home address as registered with the Board of Professional Responsibility is 513 West Main Street, Apt. 2, Houston, Texas 77006-5624; and her most recent office address as registered with the Board of Professional Responsibility is 440 Louisiana Street, Suite 1150, Houston, Texas 77002-1673. Prior to July 25, 2011, Ms. Barry's office address as registered with the Board of Professional Responsibility was 329 Union Street, Nashville, Tennessee 37201, in Disciplinary District 5. Ms. Barry's Board of Professional Responsibility number is 21843.

2. Pursuant to Section 1 of Rule 9, any attorney admitted to practice law in Tennessee is 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.

3. Pursuant to Section 3 of Rule 9, 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. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline.

4. Ms. Barry has failed to conduct herself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited below. The Board of Professional Responsibility authorized the filing of formal proceedings on June 13, 2014.

File No. 36188-0-PS - Complaint of Miranda Adams

5. On May 22, 2013, the Board of Professional Responsibility received a complaint of disciplinary misconduct by Miranda Adams alleging ethical misconduct by Ms. Barry. A true and exact copy of the May 22, 2013 complaint is attached hereto as Exhibit A.

6. On May 28, 2013, Disciplinary Counsel sent a copy of the Complaint to Ms. Barry. A true and exact copy of the May 28, 2013 letter is attached hereto as Exhibit B.

7. Ms. Barry was suspended from the practice of law on August 6, 2013 for failure to respond to the Board regarding the complaint of misconduct.

8. Ms. Barry provided a response on September 3, 2013. A true and exact copy of the response is attached hereto as Exhibit C.

9. On February 4, 2009, Ms. Barry was retained by Ms. Adams to represent her in a

matter involving the father of her child, Daniel Gill. A true and exact copy of the retainer agreement is attached hereto as Exhibit D.

10. Pursuant to the retainer agreement, Ms. Barry prepared and filed a petition and restraining order in Davidson County Juvenile Court on February 9, 2009.

11. Mr. Gill passed away on or about February 13, 2009 rendering the petition and restraining order moot.

12. Ms. Barry agreed to represent Ms. Adams in an estate matter resulting from the death of Mr. Gill, on a flat fee basis, for the amount of the retainer referred to in paragraph 9.

13. The estate matter resulted in $100,000 of the proceeds from a life insurance policy being paid into Ms. Barry's trust account pending resolution of a dispute between Ms. Adams and Mr. Gill's ex-wife.

14. As a result of a compromise and settlement of the estate matter, Ms. Adams was to receive $5,000, less court costs and expenses, from the insurance proceeds held in Ms. Barry's trust account and $95,000 was paid to Mr. Gill's ex-wife.

15. Ms. Barry failed to promptly deliver to Ms. Adams her share of the insurance proceeds.

16. Ms. Adams attempted to communicate with Ms. Barry regarding the insurance proceeds by telephone and email. Ms. Barry failed to adequately communicate with Ms. Adams and eventually ceased communicating with her altogether.

17. Without advising Ms. Adams that she was going to do so, having failed to present Ms. Adams with any statements claiming she was entitled to additional fees for her services performed in the estate matter, and in violation of her agreement to handle the estate matter for

the $1,650 retainer previously paid, Ms. Barry converted to her own use the $5,000 in insurance proceeds held in her trust account for Ms. Adams as payment for her services. Ms. Barry never advised Ms. Adams that she had done so.

18. By her actions, Ms. Barry has violated the following Rules of Professional Conduct: 1.4 (Communication), 1.5(a) and (b) (Fees), 1.15(a) and (d) (Safekeeping Property) and 8.4(a) (Misconduct).

ALLEGED VIOLATIONS

19. The acts and omissions by Ms. Barry constitute ethical misconduct in violation of Rules of Professional Conduct 1.4, 1.5(a) and (b), 1.15(a) and (d) and 8.4(a) as set forth below:

Rule 1.4
COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.5: FEES
(Effective January 2011)

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent;

(9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and

(10) whether the fee agreement is in writing.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

Rule 1.15
SAFEKEEPING PROPERTY AND FUNDS

(a) 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.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, 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.

RULE 8.4
MISCONDUCT

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;

AGGRAVATING FACTORS

20. After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanctions to impose.

22. Ms. Barry's prior disciplinary offense is an aggravating circumstance justifying an increase in discipline.

23. Ms. Barry's dishonest or selfish motive is an aggravating circumstance justifying an increase in discipline.

24. Ms. Barry's multiple offenses are an aggravating circumstance justifying an increase in discipline.

25. Ms. Barry's bad faith obstruction of the disciplinary proceeding is an aggravating circumstance justifying an increase in discipline.

26. Ms. Barry's refusal to acknowledge the wrongful nature of her conduct is an

aggravating circumstance justifying an increase in discipline.

27. Ms. Barry's substantial experience in the practice of law, having been licensed in Tennessee in 2002, is an aggravating circumstance justifying an increase in discipline.

28. Ms. Barry's indifference to making restitution is an aggravating circumstance justifying an increase in discipline.

PRAYER FOR RELIEF

WHEREFORE, PETITIONER REQUESTS that a Hearing Panel be appointed to hear testimony and to receive evidence in this cause and to make such findings of fact and order such disciplinary action as it may seem appropriate.

Respectfully Submitted,

William C. Moody, #6752
Disciplinary Counsel – Litigation
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Nashville, TN 37217
(615) 361-7500

NOTICE TO PLEAD

TO: Robin Kathleen Barry
513 West Main Street – Apt. 2
Houston, TX 77006-5624

You are hereby notified that you are required to file your Answer with **Rita Webb, Executive Secretary, Board of Professional Responsibility, 10 Cadillac Drive, Suite 220, Brentwood, TN 37027** and serve a copy of your Answer upon Disciplinary Counsel within twenty (20) days after service of this Petition. If you fail to file an Answer, the matters shall be deemed admitted and a default judgment taken.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon the Respondent, Robin Kathleen Barry, Esq., by First Class U. S. Mail and by Certified Mail No. 7012 2210 0000 4913 4608, Return Receipt Requested, addressed to her at 513 West Main Street, Apt. 2, Houston, Texas 7706-5624, on this the 27 day of June, 2014.

William C. Moody

IN DISCIPLINARY DISTRICT 0
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE
(HOUSTON, TEXAS)

IN RE: ROBIN KATHLEEN BARRY
Respondent, BPR #21843
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Houston, Texas)

DOCKET No. 2014- 2332-E-LIM

LICENSING INFORMATION STATEMENT

Pursuant to Tennessee Supreme Court Rule 9, Section 8.2, the following information is given simultaneously with filing an Answer or Response to formal disciplinary proceedings or Petition for Discipline:

(I) Disclosure of all jurisdictions, courts or agencies in which the Respondent has been previously or currently admitted to practice law or has an application for admission pending:

(II) Disclosure of Disbarment, Suspension or any public disciplinary action imposed or pending on Respondent in any other jurisdiction, court or agency as a result of professional misconduct:

Robin Kathleen Barry, #21843

BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE

MEMORANDUM OF COMPLAINT

Your Name: ☐ Mr. ☐ Mrs. ☑ Ms. ☐ Miss ☐ Other Miranda Adams

Your Home Address: 318 Red Bud Trail Sparta (City) TN (State) 38583 (Zip)

Email mandygayle78@hotmail.com Check box, if incarcerated: ☐ Inmate ID#:

Your Home Phone: 931 738 0881 Your Work Phone: 931 837 8085 Your Cell Phone: 931 481 4107

Your Employer: Neighbors Together

Your Work Address: PO Box 388 Pleasant Hill (City) TN (State) 38578 (Zip)

How do you prefer to receive correspondence? ☐ Home address ☐ Work Address

Name of Lawyer You Are Complaining About: **(Fill out a separate form for each attorney. Do not list law firm.)**

Robin K. Barry Lawyer Phone: 713-659-9090 office in TX (015 500 0814 cell)

Address of Lawyer: 440 Louisiana St Suite 150 Houston (City) TX (State) 77002-1605 (Zip)

Date of first contact with Attorney: 2/09 Date of last Contact with Attorney: 7/12

Is your case: Criminal ☐ Civil ☑ Case# _____ County: _____ or Federal District: Eastern ☐ Middle ☐ Western ☐

The above lawyer is: ☑ My attorney ☐ Opposing attorney ☐ Other, Explain: _____

CLEARLY DESCRIBE YOUR COMPLAINT AND ATTACH SUPPORTING DOCUMENTS:

See attached

FAX RECEIVED
MAY 22 2013
BOARD OF PROFESSIONAL RESPONSIBILITY
SUPREME COURT OF TENNESSEE
3:55 pm By

Exhibit A

If more space is needed, please attach other pages. Please do not write on back.

OPTIONAL: PLEASE PROVIDE THE NAME AND ADDRESS OF SOMEONE WE CAN CONTACT IF WE HAVE DIFFICULTY CONTACTING YOU:

NAME OF CONTACT PERSON: ☐ Mr. ☑ Mrs. ☐ Ms. ☐ Miss ☐ Other Rhonda Adams

ADDRESS OF CONTACT PERSON: 535 Cacala Rd Sparta TN 38583
City State Zip

NOTE: The filing of this complaint does not create an attorney-client relationship and the Board will not provide you any legal advice. The Board does not intervene in any on-going legal matter. The Board cannot require a lawyer to do, or not do, anything until a finding of misconduct is made. Due to our significant caseload, we can make no prediction when a determination may be made on your complaint. Filing a complaint with the Board will not preserve your legal rights and remedies. You should pursue independent legal advice and counsel concerning your legal matters. You may have limited time (statute of limitations) to file a legal malpractice lawsuit.

The information given in this complaint is true to the best of my knowledge and belief. I am aware that the lawyer may be notified of my complaint.

YOUR SIGNATURE: Rhonda Adams Date: _____

MAIL TO: Board of Professional Responsibility
10 Cadillac Drive Suite 220
Brentwood, TN 37027
FAX NO: 615-367-2480

OFFICE USE ONLY
Log: 6 5/24/13
DC: 56 Action: Open

To Whom It May Concern:

In January of 2009 I hired Ms. Barry to represent me on a restraining order and custody battle with the father of my oldest son. He committed suicide within two days of me leaving the home and she agreed to handle my affairs for the money I had already paid her as a retainer. There was a matter of a life insurance policy that was left to me with funds being owed to his ex wife. I deposited another $100k with Ms. Barry to be set aside for this as that was the amount set in the ex wife divorce decree. However, she settled for $95k and I was to receive the remaining balance minus court costs and the fees that were incurred to get the paperwork to me. The last time we spoke it would be a little over $4500 returned to me. This matter was settled in spring of 2011 and the estate was finally closed in June of 2011. Ms. Barry was awaiting confirmation that the estate was closed and then on the amount of court costs so that she could return the remainder of the funds to me. In November of 2011 I still had not heard from her and contacted your Board, where I found out that she had relocated to TX. I called her office there and she responded. We corresponded over the next month, I was supposed to receive an email from her during the Christmas/New Year holidays in winter 2012. She continued to put me off until July 2012 at which time reponses from her ceased. I have tried her via email, telephone, and text. I do have texts on two separate phones of our correpspondance and then her lack of response.

All I want is the remainder of my money to be refunded to me. She claimed to have moved to TX due to family obligations and that she was very busy due to working for another firm rather than for herself. I think that I have been understanding and patient considering the situation. She went months after the estate closed and disappeared without notice. I did not hear from her until I tracked her down at her new office. Then six-seven months of promises and then no contact again for almost a year now. I do have proof of our other correspondance through text messaging and am ready to step up with legal action if necessary. I feel that this is extremely unprofessional behavior and I am sorely disappointed that someone with such licensure in the State of Tennessee has behaved this way towards a client. I would like my money repaid to me that is owed to me, rightfully mine, and to be through with Ms. Barry. Please contact me in regards to this matter.

Miranda Adams

(931)261-4267

(No Subject)

From: **Miranda Adams** (mandygayle78@hotmail.com) You moved this message to its current location.
Sent: Wed 11/07/12 10:18 AM
To: Robin Barry (rkbarry.attorney@gmail.com)

Ms. Barry,
I am attempting to get in touch with you through another form of communication. Hope all is well and that you or your family is not currently is any sort of distress. Please contact me via email or through cellular phone (text or call) to let me know something. The final form of communication I have for you is the firm you currently work for, and I am refraining from contacting you there as I do not wish to cause trouble. Thanks, Miranda Adams (931)265-0821

Re: Miranda Adams

From: **Robin Barry** (rkbarry.attorney@gmail.com) You moved this message to its current location.
Sent: Tue 10/25/11 9:08 AM
To: Mandy Adams (mandygayle78@hotmail.com)

Miranda:

I got a message that you called yesterday. I am sorry to have lost touch! Things have been crazy for several months. I had to come to Texas for family reasons and ended up needing to stay. I took a job working for someone else and have been trying to wrap up all my TN cases/business from here. We work ridiculous hours, so that's nearly impossible. (I was in mediation yesterday until 7:30, then back at the office until after 10, which is typical.)

In any event, I believe I have your file here with me (in TX, versus in storage in TN). I will make a point this weekend to get it so we can finish this up.

Also, please don't phone the office. I don't practice indpendently anymore; I work for someone else. I cannot discuss my old cases during our business hours and this firm does not have any involvement in my old practice. You have my cell number, which is 615-500-0814. Feel free to phone me there, but keep in mind that I usually cannot answer during business hours.

Thank you for you patience and understanding.

Robin

On Tue, Aug 30, 2011 at 4:07 PM, Mandy Adams <mandygayle78@hotmail.com> wrote:

> I have tried multiple times to contact you through both email and by telephone. Please respond to this email address or (931)2650821 in reference to the estate, life insurance, and finalizing this please.
> Thank you so much,
> Miranda Adams
>
> Sent from my iPhone

--

Robin K. Barry, Esq.
Attorney & Rule 31-Listed Family Mediator
Specially Trained in Domestic Violence Issues

The Barristers Building
329 Union Street
Nashville, Tennessee 37201
(615) 346-9642
(615) 346-9621 (Fax)

****

This message from Robin K. Barry, Attorney may contain confidential or privileged information. If you received this transmission in error, please call me immediately at 615-346-9642 x 11 or contact me by email at rkbarry.attorney@gmail.com. Disclosure or use of any part of this message by persons other than the intended recipient is prohibited.

****

Pursuant to Section 10.35(b)(4) and (5) of the IRS Circular 230 (31 CFR Part 10), if and to the extent that this communication (including any attachments) contains any tax advice, we advise you that such tax advice is not intended to be used, and cannot be used, by you for the purpose of avoiding any U.S. tax penalties that may be imposed on you, or for the purpose of promoting, marketing or recommending to another party any transaction or matter addressed herein.

****

RE: Miranda Adams

From: **Robin K. Barry** (rkbarry.attorney@gmail.com) You moved this message to its current location.
Sent: Sat 6/18/11 10:50 PM
To: 'Mandy Adams' (mandygayle78@hotmail.com)

Mandy:

I have received the bill for the court costs. All I need is the order closing the estate to make sure we are all done, then I can do the accounting and refund you the balance.

I think the hearing to close the estate was earlier this month. I'll follow up on that so we can wrap this up!

Robin K. Barry

Attorney & Rule 31-Listed Mediator

Specially Trained in Domestic Violence Issues

The Barristers Building

329 Union Street

Nashville, TN 37201

(615) 346-9621 x 11

(615) 472-7988 (Fax)

rkbarry.attorney@gmail.com

me by email at rkbarry.attorney@gmail.com. Disclosure or use of any part of this message by persons other than the intended recipient is prohibited.

****

Pursuant to Section 10.35(b)(4) of the IRS Circular 230 (31 CFR Part 10), if and to the extent that this communication (including any attachments) contains any tax advice, we advise you that such tax advice is not intended to be used, and cannot be used, by you for the purpose of avoiding any U.S. tax penalties that may be imposed on you, or for the purpose of promoting, marketing or recommending to another party any transaction or matter addressed herein.

****

From: Mandy Adams [mailto:mandygayle78@hotmail.com]
Sent: Thursday, June 02, 2011 4:03 PM
To: Robin Barry
Subject: Miranda Adams

I was checking with you again to see if you ever received the court cost bill and settled up this matter. It was mid-April that I last heard from you, so I was hoping it would be settled by now. Possibly using the remaining funds to attend LPN school, so just trying to see where I stand financially! Please contact me at your earliest convenience! Thanks again, hopefully this is done and settled. If you need my contact information again, it is:
Miranda Adams
318 Red Bud Trail
Sparta, TN 38583
(931)265-0821

RE: Harris Vs. Adams

From: **Robin K. Barry** (rkbarry.attorney@gmail.com) You moved this message to its current location.
Sent: Thu 4/14/11 11:15 AM
To: 'Mandy Adams' (mandygayle78@hotmail.com)

Everything is settled. I'll get copies of all the docs for you. I am waiting for the court cost bill.

Robin K. Barry

Attorney & Rule 31-Listed Mediator

Specially Trained in Domestic Violence Issues

The Barristers Building

329 Union Street

Nashville, TN 37201

(615) 346-9621 x 11

(615) 472-7988 (Fax)

rkbarry.attorney@gmail.com

****

From: Mandy Adams [mailto:mandygayle78@hotmail.com]
Sent: Thursday, April 14, 2011 8:28 AM
To: Robin Barry
Subject: Harris Vs. Adams

Just checking with you on this and whether or not is settled, do I need to sign anything else, when you think may send remaining funds and be done with this!

Miranda Gayle

BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

SANDY L. GARRETT
CHIEF DISCIPLINARY COUNSEL
KRISANN HODGES
DEPUTY CHIEF DISCIPLINARY COUNSEL – LITIGATION
JAMES A. VICK
DEPUTY CHIEF DISCIPLINARY COUNSEL - INVESTIGATION
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ELIZABETH C. GARBER
ALAN D. JOHNSON
WILLIAM C. MOODY
PRESTON SHIPP
EILEEN BURKHALTER SMITH
A. RUSSELL WILLIS
DISCIPLINARY COUNSEL

May 28, 2013

CONFIDENTIAL

Robin Kathleen Barry, Esquire
513 W. Main St. Apt. 2
Houston, TX 77006

When Responding Please Use:
Re: File No. 36188-0-PS

Dear Ms. Barry:

Enclosed is a complete copy of the original complaint received by the Board of Professional Responsibility concerning your conduct. It is necessary that you **submit a clear and concise statement within ten days of your receipt of this letter** concerning your acts surrounding the above matters for the purpose of a disclosure of the truth. Your response will serve as preliminary information to determine if there has been a misunderstanding or if there has been any impropriety. A copy of your response will be sent to the Complainant to ascertain the Complainant's comments.

Your failure to timely respond to this complaint of misconduct will result in the filing of a Notice of Petition for Temporary Suspension, pursuant to Section 4.3 of Tennessee Supreme Court Rule 9.

Your cooperation will enable a proper disposition to be made of this matter in a manner consistent with the rights of the public and the protection of attorneys from unfounded complaints. Please note that Tennessee Supreme Court Rule 9, Section 25, addresses the extent of confidentiality applicable to this matter.

Sandy Garrett
Chief Disciplinary Counsel

By: *Preston Shipp*
Disciplinary Counsel
615-695-0942

PS:cg

Enclosure

Exhibit B

513 W. Main Street, No. 2
Houston, Texas 77006

August 29, 2013

Preston Shipp
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

Re: File No. 36188-0-PS

Dear Mr. Shipp:

In response to Ms. Adams' complaint, please be advised that I was retained by Ms. Adams on February 4, 2009, to represent her in a petition to establish paternity, custody, visitation and child support. Ms. Adams paid a non-refundable retainer of $1,650.00 for my representation in that case, with my hourly rate being set at $200.00 per hour, billed in increments of one-tenth of an hour.

On February 9, 2009, a Petition to Set Parenting Time and Child Support was filed on Ms. Adams' behalf, including a request for a Restraining Order. It took several days for the Court to sign the Restraining Order and return the pleadings to us for service of process.

This matter was particularly sensitive because Ms. Adams and her son still shared a home with her son's father, Mr. Daniel Gill, at the time the petition was filed. Mr. Gill had a history of domestic violence and Ms. Adams was concerned that someone in the Juvenile Court Clerk's Office might alert Mr. Gill to the fact that she had filed a petition before she could move out of the house. (Matters were further complicated by the fact that Mr. Gill's parents lived nearby.) Due to these concerns and Ms. Adams' need to vacate the residence while Mr. Gill was at work, we took great care to coordinate service of process with a private process server.

On or about February 13, 2009, Mr. Gill was served with the Petition and Restraining Order, which prohibited him from contacting Ms. Adams in any way or from interfering with her possession of their son. Mr. Gill attempted to avoid service by refusing to accept the Petition and trying to push it under the doormat at the home; however, Mr. Gill was properly served. Mr. Gill immediately violated the order by contacting Ms. Adams directly and having his family members contact her.

Sadly, on approximately February 15, 2009, Mr. Gill committed suicide. Unfortunately, this increased the tension between Ms. Adams and Mr. Gill's family, who allegedly made threats against Ms. Adams and her son. As a result, on February 17, 2009, Ms. Adams sought and received an Ex Parte Order of Protection, which was set for hearing on March 2, 2009. I attended that hearing with Ms. Adams. The Court, recognizing the high emotion between the parties as a result of Mr. Gill's death, admonished the parties to stay away from and refrain from contacting each other. As we were leaving the courtroom, however, a member of Mr. Gill's

Exhibit C

family said something inappropriate to Ms. Adams, forcing us to bring the behavior to the Court's attention. After the Court, again, admonished Mr. Gill's family, we were asked to wait to leave the courtroom until Mr. Gill's family. We waited for some time with a court officer, who then escorted us to our cars for safety.

After Mr. Gill's death, a number of unique issues arose, including the fact that paternity of Ms. Adams' son had not been formally established; return of personal property belonging to the child and Ms. Adams which was still at the residence they shared; and, Mr. Gill's obligation under a previous divorce decree to keep a life insurance policy for the benefit of his daughter, Ashley, naming Ashley's mother as the beneficiary.

I agreed to assist Ms. Adams with the resolution of these issues without requesting a new retainer fee. I did not agree that her retainer fee for the Juvenile Court action would operate as a "flat fee" to handle all matters. I merely did not request an additional retainer and viewed my continued representation of her as an extension of our initial agreement.

My additional representation of Ms. Adams involved numerous communications and negotiation with the probate attorney handling Mr. Gill's estate and the resolution of another suit filed against Ms. Adams on behalf of Mr. Gill's daughter, Ashley, to recover the amount of the life insurance policy Mr. Gill had been ordered to keep in effect. The suit against Ms. Adams was resolved in approximately April 2011; and, the estate was finally closed in approximately July 2011.

As Ms. Adams knows, I moved to Texas for personal reasons in 2011, while the matter was still ongoing. Although I had some of Ms. Adams' records with me, due to multiple computer "crashes" which ultimately left my computer irreparable, I have had to re-create a timeline of the case and timekeeping records based on the hard copies of documents I have, along with my phone messages and emails.

As evidenced by the attached timesheet, which I do not believe reflects all time spent on Ms. Adams' representation, I have expended at least 32.6 hours, resulting in attorney's fees of $6,520.00. In addition, there were approximately $325.00 in expenses associated with the case. Giving credit for Ms. Adams' retainer of $1,650.00, I do not believe Ms. Adams in entitled to a refund of any monies.

Please review the enclosed. If I can provide further information, please do not hesitate to contact me.

Sincerely,

Robin Barry

Enclosure

Date		Activity	Time
2/4/2009		Initial Consultation	1.50
2/4/2009		Email communications w/ client x 5	0.50
2/6/2009		Email from client	0.10
2/6/2009		Telephone call from client	0.10
2/6/2009		Draft Petition and Restraining Order	1.00
2/9/2009		Review file; revise petition; email communications w/ client	0.50
2/9/2009		To Juvenile Court to file Petition	0.50
2/9/2009		Telephone call w/ client	0.10
2/10/2009		Email communications w/ client x 2	0.20
2/11/2009		Telephone call to Juv. Ct. Clerk	0.20
2/11/2009		Email communications w/ client x 10	1.00
2/11/2009		Telephone call to Juv. Judge's Clerk	0.20
2/12/2009		Email communications w/ client x 12	1.10
2/12/2009		Telephone calls w/ court clerk x 2	0.50
2/12/2009		To Juvenile Court to pick up Petition for Service	0.50
2/12/2009		Telephone call w/ client for description of D. Gill for service	0.20
2/12/2009		Telephone call w/ K. Williams to arrange service (declined to serve due to safety concerns)	0.20
2/12/2009		Telephone call w/ B. Sulfridge to arrange service; email to B. Sulfridge w/ description of D. Gill	0.50
2/13/2009		Telephone call w/ client	0.10
2/17/2009		Telephone call w/ client	0.10
2/18/2009		Email to client re: phone message	0.10
2/19/2009		Telephone call w/ client	0.10
3/2/2009		Court appearance: Ex Parte Order of Protection	1.50
3/5/2009		Telephone call w/ client	0.10
3/5/2009		Prepare Notice of Voluntary Dismissal and Order of NonSuit	0.40
3/9/2009		Telephone call w/ K. Hewitt re: life ins. Requirement in FDD	0.30
3/9/2009		Email correspondence from Client in response to telephone call re: ins. Pol.	0.10
3/11/2009		Telephone call w/ client re: life insurance payout received	0.20
3/13/2009		Telephone call w/ K. Hewitt re: life insurance; email to client re: same	0.50
3/18/2009		Telephone call w/ client	0.10
3/18/2009		Email correspondence w/ client re: insurance agent	0.10

3/20/2009		Telephone call w/ T. Burkhalter re: child's belongings and client's car	0.20
3/20/2009		Telephone call w/ Probate Court Clerk re: estate	0.10
3/25/2009		Telephone call w/ clerk re: status of estate filings	0.30
3/25/2009		Telephone call w/ Sherry @ insurance co. re: claims/releases	0.20
3/26/2009		Email correspondence w/ client	0.20
3/26/2009		Telephone call w/ T. Burkhalter	0.10
3/27/2009		Fax correspondence to T. Burkhalter re: property	0.20
3/27/2009		Telephone call w/ B. Bradshaw @ Probate re: legitimation issue	0.40
3/27/2009		Email from client re: policy number; Regions account, etc.	0.20
4/1/2009		Email from client	0.10
4/6/2009		Email to client	0.20
4/6/2009		Telephone call w/ Marsha @ State Farm; referred to J. Negele; left message	0.10
4/6/2009		Telephone call w/ J. Negele re: release issues	0.20
4/6/2009		Telephone calls w/ K. Hewitt re: funds to be deposited	0.20
4/8/2009		Telephone call w/ Jenn @ State Farm	0.20
4/14/2009		Email from client; telephone call w/ client re: tax issues	0.40
4/14/2009		Consult w/ colleague re: CPA referral for tax issues	0.20
4/16/2009		Telephone call w/ C. Dawson re: tax issues	0.30
4/20/2009		Telephone call w/ C. Dawson (CPA) re: tax issues	0.40
4/20/2009		Email to client re: consult w/ CPA	0.10
4/21/2009		Email from client	0.10
4/21/2009		Correspondence from T. Burkhalter	0.20
4/23/2009		Review email and attached letter to T. Burkhalter from client	0.30
4/23/2009		Email correspondence w/ client x2	0.20
4/28/2009		Email correspondence x 3 w/ K. Hewitt	0.30
5/1/2009		Letter to T. Burkhalter	0.50
5/8/2009		Telephone call w/ client	0.10
5/11/2009		Telephone call w/ T. Burkhalter	0.10
5/11/2009		Telephone call w/ client	0.10
5/13/2009		Email to client re: movers	0.10
5/13/2009		Telephone call w/ T. Burkhalter	0.10
5/14/2009		Telephone call w/ T. Burkhalter	0.10
5/28/2009		Telephone call re: movers	0.10
6/2/2009		Telephone call w/ client	0.10

6/5/2009		Multiple telephone calls w/ T. Burkhalter re: items in storage and key to storage	0.50
6/7/2009		Email correspondence w/ K. Hewitt x 3	0.50
6/8/2009		Telephone call w/ Elaine @ T. Burkhalter re: storage unit/key	0.10
6/9/2009		Telephone call w/ client re: storage unit key	0.10
6/11/2009		Telephone call w/ client re: items in storage unit	0.10
6/23/2009		Telephone call w/ T. Burkhalter re: auction	0.10
6/23/2009		Fax from T. Burkhalter	0.10
6/23/2009		Email to client	0.10
6/26/2009		Email from client re: items in storage	0.10
7/20/2009		Telephone call w/ client	0.10
8/19/2009		Fax correspondence to T. Burkhalter re: motions, notes to Jackson & auto titled jointly	0.20
9/8/2009		Review correspondence, pleadings, etc. re: Estate of D. Gill	1.00
9/8/2009		Email correspondence w/ client x 3	0.20
9/9/2009		Email correspondence from client	0.20
9/18/2009		Email from client	0.10
9/22/2009		Email to T. Burkhalter	0.10
9/23/2009		Review all filings in Probate Court	1.00
10/15/2009		Letter to T. Burkhalter encl. Heir's Affidavit	0.20
11/12/2009		Correspondence from T. Burkhalter; review Notice of Hearing and O/Pet. Sell RE	0.60
3/15/2010		Telephone call w/ client	0.10
3/17/2010		Telephone call w/ client	0.10
7/15/2010		Review proposed settlement agreement from T. Burkhalter; email to client re: same	0.60
7/16/2010		Email from client	0.10
7/19/2010		Emails w/ client	0.10
7/26/2010		Telephone call w/ client	0.10
7/29/2010		Email communication w/ client	0.10
8/26/2010		Research case law relative to obligation to release insurance proceeds to satisfy terms of Final Decree	1.30
8/26/2010		Telephone call w/ client	0.10
8/27/2010		Email to K. Hewitt re: settlement offer	0.30

11/5/2010		Review Petition for Declaratory Judgment and for Imposition of Constructive Trust	0.50
11/5/2010		Email to K. Hewitt re: August settlement offer	0.10
11/9/2010		Email from K. Hewitt	0.10
11/10/2010		Telephone call w/ K. Hewitt re: accepting service	0.10
11/17/2010		Telephone call w/ K. Hewitt re: service of process	0.10
12/20/2010		Review Motion for Service of Process by Publication from K. Hewitt	0.20
2/4/2011		Review Motion to Order Payment of Funds into Court	0.40
2/11/2011		Telephone call w/ client re: additional settlement offer	0.20
2/14/2011		Several emails w/ K. Hewitt re: offer of $92,000	0.40
2/15/2011		Email correspondence w/ client x2	0.20
2/16/2011		Telephone call w/ client re: Final Offer	0.10
2/16/2011		Telephone call w/ K. Hewitt re: Final Offer	0.10
2/16/2011		Email to client re: conversation w/ K. Hewitt	0.10
3/22/2011		Review Settlement Agreement and Agreed Order; several emails w/ client; emails w/ K. Hewitt re: proposed revision to agreement	1.00
3/23/2011		Numerous emails w/ client; phone calls w/ K. Hewitt re: obtaining signature on settlement docs	0.80
3/23/2011		To FedEx to ship signed agreement, etc.	0.50
3/25/2011		Email from K. Hewitt	0.10
		TOTAL	32.60

ROBIN K. BARRY
Attorney at Law
The Barristers Building
329 Union Street
Nashville, Tennessee 37201
(615) 530-7250
(615) 472-7988 (Fax)

CONTRACT FOR LEGAL SERVICES

I, **MIRANDA ADAMS**, hereby retain Robin K. Barry, to represent me **in a petition to establish custody, visitation, etc., in Juvenile Court**. I understand the following:

(1) This is a Contract for Legal Services between **MIRANDA ADAMS** (hereinafter "Client") and Robin K. Barry (hereinafter "Attorney"). Attorney agrees to represent Client to the best of her ability in the cause of action described above.

(2) Client will be charged an initial retainer of **$1,650.00**. Attorney's time will be billed against Client's initial retainer at a rate of **$200.00** per hour, in increments of not less than one-tenth of one hour. This retainer is due in advance of Attorney beginning any work on Client's case. This retainer is NON-REFUNDABLE once work on Client's case has begun. Attorney's time for the initial consultation will be deducted from Client's retainer.

(3) Client will be responsible for all expenses associated with the cause of action described above which may include, but are not limited to, filing fees, court costs, depositions, expert witnesses, service of process, and out-of-pocket expenses such as photocopies, courier services, long-distance telephone calls, and postage. Attorney reserves the right to require Client to advance any expenses. Expenses not advanced by Client, including the initial filing fee, will be billed against Client's retainer.

(4) No settlement of Client's case will be made without Client's approval.

(5) Attorney will attempt to promptly return all telephone calls which Client makes to her. However, Client understands that there are times when Attorney will not be available to return Client's calls on the same day, and that Attorney will make every effort to return Client's calls within a reasonable time.

(6) There is no agreement for Attorney to handle an appeal at this time. Client understands that an appeal would be a separate case and require a new Contract for Legal Services.

(7) Attorney will represent Client to the best of Attorney's ability; however, Client understands that Attorney cannot guarantee any particular outcome in Client's case. Client acknowledges that Attorney has not promised any particular result in Client's case.

Exhibit D

(8) Client agrees that Attorney may, at her discretion, associate another attorney to assist in the Client's representation. In that event, and unless otherwise agreed, the fee arrangement between Client and Attorney shall remain as set forth herein. Any fees for an associated attorney shall be paid by Attorney under such arrangements as she and the associate may agree.

(9) Client agrees that Attorney may, at her discretion, retain the services of a Paralegal to work on the Client's cause of action by performing such work as Attorney deems may be adequately handled by a Paralegal. Client acknowledges that Paralegal time will be billed at a rate of $60.00 per hour in the same manner as Attorney's time.

(10) Attorney will present Client with periodic statements. Client will be responsible for reviewing said statements and contacting Attorney within ten (10) days of the date of said statements in the event Client believes there are errors contained therein. If Client does not contact Attorney within the ten-day period set forth, Attorney shall deem Client's acceptance of the accuracy of the charges contained therein. Attorney expects prompt payment of any outstanding balance on Client's account and in no event shall Client maintain an outstanding balance for longer than thirty (30) days from the date of any statement. A balance which remains unpaid for more than thirty (30) days shall accumulate interest at a rate of ten percent (10%) per annum. Client understands that Attorney may withdraw from representation of Client in the event Client's account remains unpaid for more than sixty (60) days.

(11) Client acknowledges that Attorney is not a tax specialist and will provide no tax-related advice to Client. Attorney may suggest that Client seek such advice from a tax lawyer or accountant. Attorney shall bear no responsibility for Client's failure to seek other counsel on tax-related matters.

(12) Client agrees to notify Attorney of any changes in Client's home or work addresses or telephone numbers and to keep Attorney informed of any significant developments in Client's case. Client further agrees to provide Attorney with any information Attorney may request in a complete and timely manner.

(13) If it becomes necessary for Attorney to take any legal action to enforce the Contract, Client will be responsible for all costs of collection including, but not limited to, attorney fees and court costs.

(14) In appropriate cases, Attorney will request that the Court order the opposing party to pay all or a portion of Client's attorney fees, legal expenses, and court costs. Client understands, however, that even in the event the Court enters such an Order, Client's obligation to pay Attorney under the terms of this Contract is not alleviated. Any such awards collected on behalf of Client will first be applied to any outstanding balance owed to Attorney, and the remainder, if any, will be paid over to the Client.

(15) Client may terminate Attorney's representation at any time.

By signing below, Client acknowledges that he or she has read and understands the foregoing terms of this Contract for Legal Services.

SIGNED this, the 4th day of February, 2009.

Miranda Adams

Miranda Adams

Robin K. Barry

Robin K. Barry

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

I, Rita Webb, Executive Secretary of said Board, do hereby certify that the attached is a true, accurate, and complete copy of Judgment of the Hearing Panel, IN RE: Robin Kathleen Barry, BPR Docket No. 2014-2332-0-WM, filed October 8, 2015, of record now on file in my office.

In Testimony Whereof, I have hereunto set my hand at Nashville, on this 19th day of April, 2018.

Rita Webb
Executive Secretary

Sworn to and subscribed before me,
this 19th day of April, 2018.

NOTARY PUBLIC

SUZAN J. THURBER
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY
My Commission Expires SEPT. 25, 2021

Exhibit
2

IN DISCIPLINARY DISTRICT 0
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

IN RE: ROBIN KATHLEEN BARRY
BPR # 21843, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Houston, Texas)

DOCKET No. 2014-2332-0-WM

JUDGMENT OF THE HEARING PANEL

This matter came to be heard on the 30th day of September, 2015 for final hearing on the Board's Amended Petition for Discipline before Peter Christopher Sales, Panel Chair; Aaron Tillman Raney, Panel Member; and Janelle Anne Simmons, Panel Member. William C. Moody, Disciplinary Counsel, appeared for the Board. Ms. Barry appeared *pro se*.

STATEMENT OF THE CASE

This is a disciplinary proceeding against the Respondent, Robin K. Barry, an attorney licensed to practice law in Tennessee. Ms. Barry was licensed to practice Texas in 2001 and in Tennessee in 2002. A Petition for Discipline, Docket No. 2014-2332-0-WM, was filed on June 27, 2014. An Amended Petition for Discipline was filed on January 7, 2015. Ms. Barry filed an Answer to Amended Petition for Discipline on February 6, 2015. Because this matter was initiated before the Board prior to January 1, 2015, it is governed by Tenn. Sup. Ct. R. 9 (2006).

FINDINGS OF FACTS

File No. 36188-0-WM- Complaint of Miranda Adams

Ms. Barry was temporarily suspended in Tennessee for failing to respond to this complaint on August 6, 2013 and has not been reinstated. Ms. Barry has not practiced in Tennessee since 2011 and is licensed and practicing in Texas.

Daniel Gill fathered a child by Miranda Adams. Ms. Adams retained Ms. Barry on February 4, 2009 to represent her in a juvenile court custody petition against Mr. Gill. The retainer agreement called for a $1,650.00 retainer against which Ms. Barry would bill Ms. Adams $200 per hour. The agreement stated that Ms. Barry would provide Ms. Adams with periodic statements. (Exhibit 1)

Shortly afterwards, Mr. Gill died. Ms. Adams was the beneficiary of an insurance policy on the life of Mr. Gill. Alicia Harris is a former wife of Mr. Gill by whom Mr. Gill also fathered a child. As a result of the terms of the divorce decree between Ms. Harris and Mr. Gill, Ms. Harris made a claim upon Ms. Adams that she was entitled to a share of the insurance proceeds. Ms. Barry and Ms. Adams verbally modified the terms of the retainer agreement so that Ms. Barry would represent her in the dispute over the insurance proceeds. Ms. Barry told Ms. Adams that she was not required to pay an additional retainer.

The only trust account records that Ms. Barry maintained were the check stubs. She kept no ledger or journal documenting the transactions in her trust account. She is unable to locate her check stubs at this time. It was Ms. Barry's routine to write on the deposit slip the name of the client whose funds were being deposited. It was also her routine to write on the memo line of trust account checks the name of the client on whose account the check was being written.

On May 4, 2009, Ms. Barry deposited $100,000.00 of the insurance proceeds to her trust account. At the time of the deposit, the balance in her trust account was $5.00. (Exhibit 9, pp. 6, 16-17) The $100,000.00 was to be held in her trust account until such time as the dispute with Ms. Harris was resolved. Until such time, the balance in her trust account should never have dropped below $100,000.00.

A written agreement dated March 28, 2011 was entered into between Ms. Adams and Ms. Harris by which Ms. Harris was to be paid $95,000.00 from the insurance proceeds held in trust by Ms. Barry. (Exhibit 2) Between the $100,000.00 deposit of May 4, 2009 and the settlement agreement of March 28, 2011, the minimum balance in Ms. Barry's trust account was $87,974.37 on May 1, 2010. (Exhibit 9, p. 30) At the time of the $95,000.00 settlement agreement, the balance in Ms. Barry's trust account was $92,055.46. (Exhibit 9, p. 74) On February 24, 2011, Ms. Barry deposited $3,000.50 to her trust account. (Exhibit 9, pp. 74, 85-87) This deposit was an earned fee from Ms. Barry's client, Lisa Chamberlain, and should have been deposited to her operating account. It was deposited to her trust account instead so Ms. Barry would be able to write a check to Ms. Harris' attorney in the amount of $95,000.00 in satisfaction of the March 28, 2011 settlement agreement. On March 24, 2011, Ms. Barry wrote check number 1079 to Mrs. Harris' attorney in the amount of $95,000.00. (Exhibit 9, pp. 92)

On May 15, 2005, 11 days after depositing the $100,000.00 received from Ms. Adams to her trust account, Ms. Barry wrote trust account check number 1058 in the amount of $7,691.50 to Jennifer Duke. (Exhibit 9, pp. 22) As a result, the balance in the trust account was $92,313.50. (Exhibit 9, p. 7) No other deposits were made to the trust account between the $100,000.00 deposit and the $7,691.50 check.

Ms. Barry testified that she does not remember why the check was written to Ms. Duke. Ms. Barry previously represented Ms. Duke in a divorce action. An order was entered in that divorce on October 9, 2006 whereby the marital residence was to be sold and the proceeds placed in Ms. Barry's trust account. The $7,691.50 was paid to Ms. Duke from the money held in trust for Ms. Adams.

On April 22, 2011, Ms. Barry wrote check number 1079 to herself in the amount of $75.00. (Exhibit 9, p. 91.) In accordance with her routine to write the name of the client on whose account a check was being written, Ms. Barry wrote "Adams" on the memo line of this check. Ms. Barry wrote no other checks on her trust account where she wrote "Adams" on the memo line. At the time this check was written, the balance in the trust account was $80.58. (Exhibit 9, p. 76) The closing balance in the trust account on December 31, 2011 was $.96. (Exhibit 9, p. 78)

On October 11, 2009, Ms. Barry wrote check number 1059 made payable to herself in the amount of $1,000.00. (Exhibit 9, p. 23) On December 17, 2009, Ms. Barry wrote check number 1060 made payable to herself in the amount of $600.00. (Exhibit 9, p. 24) On January 7, 2010, Ms. Barry wrote check number 1062 made payable to herself in the amount of $1,500.00. (Exhibit 9, p. 54) On February 5, 2010, Ms. Barry wrote check number 1063 made payable to herself in the amount of $1,200.00. (Exhibit 9, p. 55) On February 12, 2010, Ms. Barry wrote check number 1064 made payable to herself in the amount of $300.00. (Exhibit 9, p. 56) On April 7, 2010, Ms. Barry wrote check number 1066 made payable to herself in the amount of $1,000.00. (Exhibit 9, p. 57) On July 16, 2010, Ms. Barry wrote check number 1067 made payable to herself in the amount of $1,500.00. (Exhibit 9, p. 58) On January 2, 2011, Ms. Barry wrote check number 1078 made payable to herself in the amount of $50.00. (Exhibit 9, p. 90) Ms. Barry testified that she did

not know why these checks were written nor why a client's name does not appear on the memo lines. These eight checks totaling $7,150.00 were written from the funds held in trust for Ms. Adams.

Ms. Barry never sent Ms. Adams any periodic statements as required by the retainer agreement, she never sent her a bill and she never provided her any accounting for the money held in trust.

On December 23, 2009, Ms. Barry wrote check number 1061 to the Circuit Court Clerk in the amount of $264.50. (Exhibit 9, p. 25) Ms. Barry wrote "Messick" on the memo line. Ms. Barry represented Mr. Messick in a divorce and this check was in payment of the filing fee. At the time this check was written, no other money had been deposited to the trust account since the deposit of Ms. Adams' $100,000.00 on May 4, 2009 except for a deposit of $1,500.00 in cash on October 20, 2009. (Exhibit 9, p. 18) Ms. Barry did not write a client's name on the October 20, 2009 deposit slip. Ms. Barry testified that she does not recall the source of the $1,500.00 deposit. Ms. Barry made no deposits to her trust account where she wrote "Messick" on the deposit slip. Unless the $1,500.00 deposit was a retainer paid by Mr. Messick, the $264.50 was paid from another client's funds. Ms. Barry wrote no other checks where she wrote "Messick" on the memo line. If the $1,500.00 deposit was a retainer paid by Mr. Messick, the balance of the $1,500.00 after paying the filing fee went either to Ms. Barry or the Adams settlement.

On October 8, 2011, Ms. Barry deposited a check in the amount of $1,000 from Chad Charles to her trust account on which he wrote "legal services" on the memo line. (Exhibit 9, p.51) Ms. Barry wrote three checks on the trust account where she wrote "Charles" on the memo line,

number 1072 for $600.00, number 1075 for $500.00, and number 1077 for $500.00, totaling $1,600.00. (Exhibit 9, pp. 63, 65, and 67) Since Ms. Barry received $1,000.00 from Mr. Charles and disbursed $1,600.00 on his account, she utilized $600 from the funds of Ms. Adams or another client in the process.

On August 26, 2010, Ms. Barry deposited a check in the amount of $2,500.00 from Kimberly McGahey to her trust account. Ms. McGahey wrote "retainers (sic) fee" on the memo line of her check. (Exhibit 9, p. 49) Ms. Barry wrote five checks on the trust account where she wrote "McGahey" on the memo line, number 1068 for $257.50, number 1070 for $400.00, number 1071 for $400.00, and number 1073 for $700.00, totaling $1,807.50. (Exhibit 9, pp. 59, 60, 61, and 64) Ms. Barry wrote no other checks with "McGahey" on the memo line. Since Ms. Barry received $2,500.00 from Ms. McGahey but disbursed only $1,807.50, $692.50 should remain in her trust account. However, the closing balance in the account was $.96. (Exhibit 9, p. 84) Therefore, $692.50 of Ms. McGahey's funds were used in paying the settlement to Ms. Harris or were paid to Ms. Barry.

On August 18, 2011, Ms. Barry deposited a check in the amount of $1,000.00 from Timothy Dawson to her trust account. Mr. Dawson wrote "lawyer fees" on the memo line of his check. (Exhibit 9, p. 46) Ms. Barry wrote check number 1076 in the amount of $750.00 with "Dawson" written on the memo line. (Exhibit 9, p. 66) Ms. Barry wrote no other checks with "Dawson" on the memo line. Since Ms. Barry received $1,000.00 from Mr. Dawson but disbursed only $750.00, $250.00 should remain in her trust account. Since the closing balance in the account was $.96, $250.00 of Mr. Dawson's funds were used in paying the settlement to Ms. Harris or were paid to Ms. Barry.

On June 30, 2010, Ms. Barry deposited a check in the amount of $1,013.96 from Consensus Mediation Services to her trust account. On September 1, 2010, Ms. Barry deposited a check in the amount of $1, 340.37 from Consensus Mediation Services to her trust account. (Exhibit 9, pp. 41 and 50) These checks were in payment for services rendered. As earned fees, they should have been deposited to Ms. Barry's operating account.

Ms. Barry moved to Texas a few weeks prior to execution of the Harris settlement agreement. She ceased practicing in Tennessee and commenced practicing in Houston, Texas at that time. She did not inform Ms. Adams of her move.

Ms. Adams originally deposited $100,000.00 in Ms. Barry's trust account but only $95,000.00 had been paid to Ms. Harris in the settlement. Therefore, there should have remained $5,000.00 for Ms. Barry to provide an accounting. In the months following the settlement, Ms. Adams and Ms. Barry exchanged a series of emails. Ms. Adams emailed Ms. Barry on March 22, 2011 inquiring about the amount of court costs and when the balance of the funds would be distributed. Ms. Barry replied the same date by saying, "I will send you the remaining funds after court costs and the 150 and any balance to me (if any) are paid." (Exhibit 4) However, at the time Ms. Barry told Ms. Adams she would send "the remaining funds" after paying the court costs there was a balance in her trust account of only $55.96. (Exhibit 9, p. 75)

On April 14, 2011, Ms. Adams email Ms. Barry again to ask when Ms. Barry would be sending her the remaining funds. Ms. Barry replied that day explaining that she was waiting for the court cost bill. (Exhibit 5)

On June 2, 2011, Ms. Adams emailed Ms. Barry yet again inquiring about the status of the balance. Ms. Barry responded on June 18, 2011 saying that she had received the court cost bill but

was now waiting on the order closing the estate, "then I can do the accounting and refund you the balance." (Exhibit 6) At this time, the balance in her trust account was $.96. (Exhibit 9, p. 78) The order closing the estate was entered June 8, 2011. (Exhibit 3)

Having heard nothing in the interim, Ms. Adams emailed Ms. Barry on August 30, 2011 saying the she had tried to contact her multiple times by email and telephone without success and asking Ms. Barry to reply. Ms. Barry did not reply until October 25, 2011. She only replied at that time because Ms. Adams had managed to learn of Ms. Barry's move to Texas and telephoned her at her Houston office, leaving a voicemail message. In her reply, Ms. Barry asked Ms. Adams not to call her at her office. She told Ms. Adams that the file was at her home and she would review the file "this weekend...so we can finish this up." (Exhibit 7) Ms. Barry never attempted to communicate with Ms. Adams again. Ms. Adams' final attempt to communicate with Ms. Barry regarding the balance of the funds was an email of November 7, 2012 to which Ms. Barry did not reply. (Exhibit 8)

Approximately two months prior to this hearing, Ms. Barry paid $5,000.00 to Ms. Adams.

Ms. Barry's prior disciplinary history consists of a private informal admonition issued on June 28, 2010 for a lack of diligence in representing a client and failing to adequately communicate with that client. (Exhibit 10)

Ms. Barry testified that at the time of these events she was not familiar with running a business and did not realize how important it was to maintain contact with her clients and be diligent about bookkeeping and record keeping. There were unspecified "personal circumstances" at the time. She moved to Texas to get away from those circumstances and testified that she does everything differently now. Ms. Barry testified that she now utilizes a computerized case

management system and keeps meticulous accounting records.

CONCLUSIONS OF LAW

Pursuant to Tenn. Sup. Ct. R. 9, § 3 (2006), 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. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline. The Respondent has failed to conduct herself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited within the Amended Petition for Discipline.

By distributing $7,691.50 to Ms. Duke from the funds held in trust for Ms. Adams, Ms. Barry knowingly converted client property causing injury to Ms. Adams. In doing so, she violated RPC 1.15 (Safekeeping Property and Funds) and 8.4(c) (Misconduct).

By distributing $7,150.00 to herself from the funds held in trust for Ms. Adams, Ms. Barry knowingly converted client property causing injury to Ms. Adams. In doing so, she violated RPC 1.15(a) (Safekeeping Property and Funds) and 8.4(c) (Misconduct).

By depositing to her trust account the earned fees received from Lisa Chamberlain and Consensus Mediation Services, Ms. Barry commingled her own funds with those of her clients. In so doing, she violated RPC 1.15(a) (Safekeeping Property and Funds).

By failing to promptly distribute the balance of the $100,000.00 after payment of the settlement and failing to provide Ms. Adams with an accounting of the funds, Ms. Barry violated RPC 1.15(d) (Safekeeping Property and Funds).

Ms. Barry failed to adequately communicate with Ms. Adams after her move to Texas. In so doing, she violated RPC 1.4 (Communication).

A preponderance of the evidence demonstrates that the acts and omissions by the Respondent constitute ethical misconduct in violation of Rules of Professional Conduct 1.4, Communication; and 1.15(a) and (d), Safekeeping Property and Funds.

The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has carried its burden and proven the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence.

We find that the following aggravating factors are present in this case and are listed below.

a. Ms. Barry has a prior disciplinary offense which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against her.

b. Ms. Barry has shown a dishonest or selfish motive, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against her.

c. Ms. Barry has shown a pattern of misconduct, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against her.

d. Ms. Barry has committed multiple offenses, which is an aggravating circumstance justifying an increase in the degree of discipline to be imposed against her.

e. Ms. Barry has substantial experience in the practice of law, having been licensed since 2001, which is an aggravating circumstance justifying an increase in the degree of discipline

to be imposed against her.

Though the Board recommends disbarment based upon ABA Standard 4.11, based upon the evidence and admissions in this matter, we find the appropriate discipline is a suspension from the practice of law. Ms. Barry shall be suspended for eighteen (18) months. Sixty (60) days of the suspension shall be served on active suspension prospectively. The suspension shall not be retroactive. The remaining sixteen (16) months of the suspension shall be suspended and served on probation pursuant to Tenn. Sup. Ct. R. 9, § 8.5 (2006) subject to the following conditions: 1) Ms. Barry shall commit no further violations of the Rules of Professional Conduct; and, 2) Ms. Barry shall have a practice monitor throughout the period of probation. Within fifteen (15) days of reinstatement to the active practice of law, Ms. Barry shall submit to the Board a list of three (3) proposed practice monitors, all of whom shall be licensed to practice law in Tennessee and/or Texas and whose licenses are in good standing with the Board, and none of whom are in practice with Ms. Barry. The Board shall have sole discretion to designate the practice monitor from the list provided. If Ms. Barry fails to timely provide the list, or if the Board determines that none of the proposed practice monitors is acceptable, the Board shall designate a practice monitor. Ms. Barry shall be responsible for compensating the practice monitor. Ms. Barry will have monthly in-person meetings with the practice monitor who shall provide monthly written reports to the Board. The practice monitor will provide supervision of Ms. Barry's client communications and trust account management.

JUDGMENT

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Ms. Barry should be suspended prospectively

from the practice of law for eighteen (18) months with sixty (60) days active suspension and the remainder to be served on probation subject to the conditions set forth herein.

It is so ordered this 8th day of October, 2015.

Peter Christopher Sales, Hearing Panel Chair

Aaron Tillman Raney, Hearing Panel Member

Janelle Anne Simmons, Hearing Panel Member

NOTICE TO RESPONDENT

NOTICE: This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 (2006) by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ. See Tenn. Code Ann. § 27-8-104(a) and 27-8-106.

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE	)	
Petitioner,	)	**No. 15-1270-I**
v.	)	
ROBIN K. BARRY,	)	**BOPR DOCKET NO. 2014-2332-0-WM**
Respondent.	)	

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MEMORANDUM OPINION AND ORDER

A hearing panel of the Board of Professional Responsibility (BPR) found that the Respondent violated the following Rules of Professional Conduct (RPC): §1.4 (Communication); §1.15(a) and (d) (Safekeeping of property and funds), and §8.4(c) (Misconduct). The panel also found five aggravating factors: 1) a prior disciplinary history; 2) a dishonest or selfish motive; 3) a pattern of misconduct; 4) multiple offenses; and 5) substantial experience in the practice of law. The panel did not find any mitigating factors. Despite the serious nature of the Respondent's conduct and the aggravating factors, the panel assessed an 18-month suspension with 60 days served on active suspension and the rest served on probation.

The BPR filed this petition alleging that the panel's decision was arbitrary, an abuse of discretion, and unsupported by substantial evidence. According to the petition, the American Bar Association's Standards for Imposing Lawyer Sanctions recognize disbarment as the only appropriate action.

Exhibit 3

I. Facts

The following facts are established by substantial and material evidence:

1. On February 4, 2009, Ms. Barry represented Miranda Adams in a custody dispute in juvenile court. Ms. Adams gave Ms. Barry a $1,650.00 retainer which was deposited in the Respondent's trust account. Ms. Barry was to bill against the retainer at $200.00 per hour and provide Ms. Adams. with periodic statements.

2. The defendant in the juvenile court case died shortly thereafter, covered by a $100,000.00 life insurance policy designating Ms. Adams as the beneficiary. The decedent's ex-wife made a claim that she was entitled to a portion of the insurance proceeds, and Ms. Barry agreed to represent Ms. Adams in that dispute and agreed to apply the original retainer to her representation in the insurance dispute.

3. On May 4, 2009, Ms. Barry collected the insurance proceeds and placed the $100,000.00 in the trust account to be held until the dispute with the ex-wife was resolved. After the $100,000.00 deposit, the balance in the trust account was $100,005.00.

4. The record shows the following deposits to and withdrawals from the trust account:

> a. On May 15, 2009 a $7,691.50 check to Jennifer Duke, a former client, whom Ms. Barry had previously represented in a divorce action. Apparently the $7,691.50 represented money owed by Ms. Barry to Ms. Duke arising out of a sale of some property in the divorce settlement. Ms. Barry testified that she did not remember why the check was written.
>
> b. A $1,000.00 check on October 11, 2009 to Ms. Barry.
>
> c. A $1,500.00 cash deposit on October 20, 2009.
>
> d. A $600.00 check on December 17, 2009 to Ms. Barry.
>
> e. A $264.50 check to the Circuit Court Clerk on December 23, 2009. The memo line contained the word "Messick." This check was the filing fee in Ms. Messick's divorce case.

f. A $1,500.00 check on January 7, 2010 to Ms. Barry.

g. A $1,200.00 check on February 5, 2010 to Ms. Barry.

h. A $300.00 check on February 12, 2010 to Ms. Barry.

i. A $1,000.00 check on April 7, 2010 to Ms. Barry.

j. A $50.00 check on July 16, 2010 to Ms. Barry.

k. A $3,000.00 deposit on February 24, 2011. This deposit came from a fee paid Ms. Barry from another client.

5. On March 2, 2011, Ms. Adams agreed to pay Ms. Harris $95,000.00 of the insurance proceeds. Ms. Barry wrote the check to Ms. Harris' attorney on March 24, 2011.

6. At various times in 2010 and 2011, Ms. Barry deposited in the trust account a total of $6,854.33 from other clients as retainers or as earned fees. These deposits helped raise the balance in the account to the level where the $95,000.00 settlement check would clear the bank.

7. The balance in the trust account on December 31, 2011 was $0.96. At least $5,000.00 was still owed to Ms. Adams. There is no accounting for the funds of other clients that were deposited in the trust account.

8. Ms. Barry moved to Texas a few weeks prior to the Harris settlement. She did not inform Ms. Adams of her move.

9. Beginning in March of 2011, Ms. Adams asked Ms. Barry in various e-mails about her case. Ms. Barry replied with various excuses for not getting the matter finalized, but she did not tell Ms. Adams that she had moved to Texas. Finally, in October of 2011, Ms. Adams learned that Ms. Barry had moved to Texas and called her office. She told Ms. Adams that the file was at her home and that she would review it that weekend. Ms. Adams never heard from Ms. Barry again. Ms. Adams attempted to contact Ms. Barry again in November of 2012 but received no reply.

10. In July of 2015, after the BPR filed this petition for discipline and it had been set for a hearing, Ms. Barry paid Ms. Adams $5,000.00.

The hearing panel concluded that Ms. Barry knowingly converted client property causing injury to Ms. Adams 1) by the payment of $7,691.50 to Ms. Duke and 2) by paying herself $7,150.00 from the trust fund. The panel further concluded that Ms. Barry deposited her own funds in the trust account, thereby commingling her funds with those of her clients, a violation of §1.15(a) of the Rules of Professional Conduct (RPC). By failing to promptly account to Ms. Adams after the Harris settlement, Ms. Barry violated RPC §1.15(d) (Safekeeping property and funds) and by failing to communicate with Ms. Adams after moving to Texas, she violated RPC §1.4 (Communication).

Based on all the proof, the panel found the five aggravating factors listed in the first part of this Memorandum. The Court concludes that the aggravating factors are established by substantial and material evidence. The prior discipline was a 2010 incident involving a lack of diligence in representing a client and failing to adequately communicate with that client.

The panel did not find any mitigating factors.

II. The American Bar Association's Standards for Imposing Lawyer Sanctions

Rule 9 §8.4 of the Rules of our Supreme Court requires a hearing panel to consider the applicable provisions of the ABA Standards in determining the appropriate type of discipline.

With respect to preserving a client's property, the ABA Standards provide:

> 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.
>
> 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.

The ABA Standards are not absolute. The Supreme Court said in *Lockett v. Board of Professional Responsibility*, 380 S.W. 3d 19, 26 (Tenn. 2012) that they are guideposts. But this Court has difficulty finding any authority for imposing a sanction less than disbarment when the lawyer knowingly converts client funds causing injury to the client without any mitigating factors and a finding of five aggravating factors.

The Court finds the cavalier treatment of Ms. Adams the most troubling. By moving to Texas without informing Ms. Adams and avoiding her inquiries for years, it seems that Ms. Barry had decided to stonewall Ms. Adams in the hope that Ms. Adams would just go away.

III. Standard of Review

Under Supreme Court Rule 9, the court may reverse or modify the panel's decision "if the rights of the petitioner have been prejudiced because of the panel's findings, inferences, conclusions or decisions are: ... 4) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion ..." Tenn. S. Ct. R. 9, §1.3.

A decision is arbitrary and capricious if it "is not based on any cause of reasoning or exercise of judgment, or ... disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion." *Jackson Mobile Phone Co. v. Tennessee Public Service Commission*, 876 S.W. 2d 106, 110-111 (Tenn. Ct. App. 1993).

The Court concludes that the panel acted arbitrarily and capriciously by failing to consider and apply the ABA Standards in light of the undisputed facts. Based on this record, the only appropriate sanction is disbarment.

ORDER

Based on all of the above, the Court hereby orders that the respondent be disbarred from the practice of law in this state.

This the 25th day of August, 2016.

Ben H. Cantrell
Special Judge

CERTIFICATE OF SERVICE

I certify that I have sent a copy of the foregoing to counsel for the Board of Professional Responsibility, William Moody, Esq. at 10 Cadillac Drive, Suite 220, Brentwood, Tennessee 37027 and to counsel for the Respondent, William W. Hunt, Esq. at 1409 Hampshire Place, Nashvile Tennessee 37221 on this 25th day of August, 2016.

Ben H. Cantrell
Ben H. Cantrell

I HEREBY CERTIFY THAT THIS IS A TRUE COPY
OF ORIGINAL INSTRUMENT FILED IN MY OFFICE.
THIS 22nd DAY OF May 2018
MARIA M. SALAS, CLERK & MASTER
BY Elaine Harper
DEPUTY

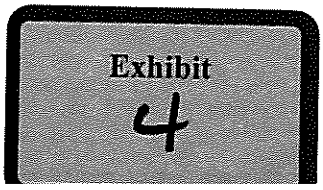
IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
June 1, 2017 Session

BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE v. ROBIN K. BARRY

Direct Appeal from the
Chancery Court for Davidson County
No. 15-1270-I Ben H. Cantrell, Senior Judge

No. M2016-02003-SC-R3-BP

This is an appeal from attorney disciplinary proceedings based on the attorney's knowing conversion of client funds. In this case, disputed insurance funds were placed in the attorney's trust account pending resolution of the dispute. Shortly after the disputed insurance funds were deposited, the attorney began to comingle funds in her trust account and use the insurance proceeds for her own purposes. At about the time the dispute over the insurance funds was resolved, the attorney moved out of state. 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. After the client filed a complaint with the Tennessee Board of Professional Responsibility against the attorney, the hearing panel found violations of RPC 1.4, RPC 1.15(a) and (d) and RPC 8.4, which included the knowing conversion of client funds and the failure to communicate. The hearing panel found five aggravating circumstances and no mitigating circumstances. It suspended the attorney's Tennessee law license for eighteen months, two months of which were to be served on active suspension. After the Board appealed, the chancery court held that the hearing panel's decision was arbitrary and capricious and that disbarment was the only appropriate sanction. The attorney now appeals to this Court, arguing that disbarment is not warranted. In the alternative, the attorney argues that the disbarment should be made retroactive to the date of her original temporary suspension. Under the circumstances of this case, we affirm the chancery court and disbar the attorney from the practice of law in Tennessee, and we decline to make the disbarment retroactive.



Tenn. Sup. Ct. R. 9, § 1.3 (2006) (currently Tenn. Sup. Ct. R. 9, § 33.1(d) (2014))
Direct Appeal; Judgment of the Chancery Court Affirmed

HOLLY KIRBY, J., delivered the opinion of the Court, in which JEFFREY S. BIVINS, C.J., and CORNELIA A. CLARK, SHARON G. LEE, and ROGER A. PAGE, JJ., joined.

William W. (Tripp) Hunt III, Nashville, Tennessee,[1] for the appellant, Robin Kathleen Barry.

William Moody, Brentwood, Tennessee, for the appellee, Board of Professional Responsibility of the Supreme Court of Tennessee.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

This appeal arises out of disciplinary proceedings against Appellant/Respondent Robin K. Barry. Ms. Barry was licensed to practice law in Texas in 2001 and in Tennessee in 2002.[2]

This proceeding arose out of Ms. Barry's 2009 representation of Miranda Adams. At that time, Ms. Barry was a solo practitioner in Nashville, Tennessee.

As background, Ms. Barry's client, Ms. Adams, cohabited with Daniel Gill and had a child with him. Ms. Adams moved out of their home with the child and contacted Ms. Barry to represent her in legal matters against Mr. Gill.[3] To that end, in February 2009, Ms. Barry and Ms. Adams entered into a retainer agreement. Under the agreement, Ms. Adams paid Ms. Barry a $1,650 retainer, against which Ms. Barry was to bill Ms.

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[1] The record contains both a Nashville, Tennessee address and a Forney, Texas address for Mr. Hunt.

[2] Our recitation of the facts is taken from the undisputed evidence submitted in the administrative proceedings below, which consisted of Ms. Barry's testimony and ten exhibits.

[3] Ms. Adams sought to establish Mr. Gill's paternity as to their child and to obtain a temporary restraining order against Mr. Gill.

Adams $200 per hour. The agreement required Ms. Barry to provide Ms. Adams with periodic statements.

Shortly after the legal proceedings were initiated, Mr. Gill died. This rendered moot the legal proceedings for which Ms. Barry was retained.

Other issues arose, however, that required Ms. Adams to need legal representation. The primary one was a dispute over a $100,000 life insurance policy on the life of Mr. Gill. Although Ms. Adams was the named beneficiary on the policy, Mr. Gill's former wife, Alicia Harris, claimed that she was entitled to the proceeds pursuant to a provision in her divorce decree with Mr. Gill.[4] Based on this turn of events, Ms. Barry and Ms. Adams verbally modified their retainer agreement to apply it to Ms. Barry's representation of Ms. Adams in the dispute over the insurance proceeds. Ms. Barry did not require Ms. Adams to pay her an additional retainer.

In May 2009, the life insurance company paid insurance proceeds of $100,000 to Ms. Adams. Because ownership of the funds was in dispute, Ms. Barry deposited the money into her trust account at SunTrust Bank. The money was to be held in Ms. Barry's trust account until the dispute between Ms. Adams and Ms. Harris was resolved. Immediately prior to the deposit, the balance in the trust account was $5.00, so essentially the only funds in Ms. Barry's trust account were the disputed life insurance proceeds.

Rather than simply keeping the $100,000 in the trust account for Ms. Adams, Ms. Barry used the funds for other purposes. Any effort to discern how the funds were actually used is complicated by the fact that Ms. Barry did not keep proper trust account records. The only "record keeping" done was keeping stubs from checks written on the trust account. Ms. Barry kept neither a ledger nor a journal to document the transactions in her trust account. During her testimony in the disciplinary hearing below, Ms. Barry was unable to locate her check stubs. Consequently, the primary evidence at the hearing of the activity in Ms. Barry's trust account consisted of the SunTrust Bank records for the account; these were submitted as an exhibit at the hearing and corroborated by Ms. Barry.

In her testimony, Ms. Barry said that her routine for indicating the client for whom money was being deposited or expended was to write her clients' names on trust account deposit slips or on the memo line of checks. Despite this routine, some of the deposit slips and checks on the account did not include a client name. To convey a sense of how

[4] Ms. Harris and Mr. Gill had a child during their marriage. The divorce decree between Ms. Harris and Mr. Gill required Mr. Gill to maintain a life insurance policy payable to Ms. Adams and Ms. Harris for the benefit of their minor children in the event of his untimely demise.

Ms. Barry utilized the trust account, we will outline the transactions in the account, as described in Ms. Barry's testimony and as evidenced in the available records.

On May 15, 2009, eleven days after depositing Ms. Adams' $100,000 in life insurance proceeds into her trust account, Ms. Barry wrote check #1058 from the account in the amount of $7,691.50 to Jennifer Duke, one of Ms. Barry's previous divorce clients. This caused the trust account balance to fall to $92,313.50. Ms. Barry could not remember why the check to Ms. Duke was written; she speculated that it was part of the distribution of a real estate transaction for Ms. Duke.[5] At the time the check was written, none of the money in the account belonged to Ms. Duke. Therefore, the $7,691.50 paid to Ms. Duke necessarily came from the money held in trust for Ms. Adams. For the next several months, Ms. Barry wrote no further checks on the trust account.

In the fall of 2009, there was more activity in the trust account. On October 20, Ms. Barry deposited $1,500.00 in cash into the trust account; the deposit slip did not have a client's name on it. Ms. Barry could not recall where the deposited cash came from or whether it related to a client.

On December 23, 2009, Ms. Barry wrote check #1061 for $264.50 to the Tennessee circuit court clerk's office. She wrote "Messick" on the memo line of the check to indicate that it was payment for the filing fee in a divorce action for another client, Mr. Messick. Ms. Barry did not know whether the $1,500 deposit made in October 2009 related to Mr. Messick. Ms. Barry made no other deposits to the trust account before she wrote check #1061 on behalf of Mr. Messick. Consequently, it appears that the check written on Mr. Messick's behalf was drawn from the funds being held in the trust account for Ms. Adams.

Over the course of the next year, Ms. Barry wrote eight checks totaling $7,150 from the trust account, all made payable to herself, that did not include a client's name on the memo line. Those eight checks were:

12/11/2009	check #1059:	$1,000.00
12/17/2009	check #1060:	$600.00
01/07/2010	check #1062:	$1,500.00
02/05/2010	check #1063:	$1,200.00
02/12/2010	check #1064:	$300.00
04/07/2010	check #1066	$1,000.00

[5] Ms. Barry explained that, when the marital residence in Ms. Duke's action was sold, the proceeds should have been placed in Ms. Barry's trust account in October 2006.

07/16/2010 check #1067: $1,500.00
01/02/2011 check #1078: $50.00

Ms. Barry testified that she did not recall why these checks were written or why she failed to put a client's name on the memo line.

There were other transactions in Ms. Barry's trust account during this same period of time. On June 30, 2010, Ms. Barry deposited $3,013.96 into the account. The deposit included $2,000 in cash and a check from Consensus Mediation Services in the amount of $1,013.96. The deposit slip did not contain a client name for the cash deposit. The check indicated on the memo line that it was for "[Rule] 31 GC training/Supplies." Ms. Barry testified that she had already earned this money by teaching and providing other related services. At the hearing, she stated that she did not know why she deposited the $3,013.96 into her trust account.

On August 4, 2010, Ms. Barry deposited a check for $1,300 from Dan Barry[6] into her trust account. The check had no notation on the memo line, and the record does not include an explanation for this check.

Approximately two weeks later, on August 19, 2010, Ms. Barry deposited $1,000 from Timmy Dawson into her trust account, comprised of a $1,500 check minus $500 in cash. The check contained the notation "lawyer fees" on the memo line. Ms. Barry wrote one check to herself, check #1076 for $750, with Mr. Dawson's name on the memo line. Because only $750 of the total $1000 deposit was spent on Mr. Dawson's behalf, it appears that $250 should have remained in Ms. Barry's trust account for the benefit of Mr. Dawson.

On September 1, 2010, Ms. Barry deposited $2,500 from Kimberly McGahey into the trust account; the check said "retainer[] fee" on the memo line. Ms. Barry wrote five checks on the trust account that had Ms. McGahey's name on the memo line. Check #1068 ($257.50) was written to the circuit court clerk for filing fees, and check #1069 ($50) was written to a process server. The other three checks—checks #1070 ($400), #1071 ($400), and #1073 ($700)—were all made payable to Ms. Barry. These five checks totaled $1,807.50 out of the $2500 retainer Ms. McGahey paid. It appears, then, that $692.50 should have remained in the trust account for the benefit of Ms. McGahey.

[6] The record does not indicate whether Dan Barry was a client of Ms. Barry.

As part of the same September 1, 2010 deposit, Ms. Barry deposited another check from Consensus Mediation Services into the trust account, this one in the amount of $1,340.37, less $340.37 taken in cash. The memo line on the check read "[Rule] 31 TRNG thru 8-28-10." Ms. Barry testified that this also was a check for fees she had already earned. Consequently, there was apparently no reason to deposit those monies in a trust account.

The next month, on October 8, 2010, Ms. Barry deposited a $1,000 check from Chad Charles into her trust account. This check included the notation "legal services" on the memo line.[7] Ms. Barry testified that this check was a retainer for legal services she provided to Mr. Charles. Ms. Barry wrote three checks from the trust account, made payable to herself, with the notation "Charles" on the memo line. These three checks totaled $1,600: checks #1072 ($600), #1075 ($500), and #1077 ($500). The amounts expended on Mr. Charles' behalf exceeded the amount deposited by $600. Apparently, then, Ms. Barry used $600 in trust account funds for the benefit of Mr. Charles that may have belonged to Ms. Adams or other clients.[8]

In early 2011, Ms. Adams and Ms. Harris reached a settlement in their dispute over the life insurance proceeds deposited into Ms. Barry's trust account. Around the same time, in early March 2011, Ms. Barry moved to Texas and began practicing law there. Despite the move, Ms. Barry continued to represent Ms. Adams in her settlement with Ms. Harris. Ms. Barry did not tell Ms. Adams that she had moved to Texas.

On March 28, 2011, Ms. Adams and Ms. Harris executed a settlement agreement on the disputed funds. Under the settlement, the parties agreed that Ms. Harris was entitled to $95,000 out of the $100,000 in insurance proceeds being held in the trust account. Just before the agreement was signed, however, Ms. Barry's trust account balance was only $92,055.46. On February 24, 2011, to cover the required $95,000 check, Ms. Barry deposited $3,000.50 (a $3,462.50 less $462 in cash) into the trust account.[9] The deposit was a check from client Lisa Chamberlain, bearing the notation

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[7] The deposit for Mr. Charles was for the gross amount of $2,000, but Ms. Barry took $1,000 in cash from the deposit.

[8] By that point, however, Ms. Barry had also comingled in the trust account monies that were apparently not being held in trust, namely, over $4,000 in payment from Consensus Mediation Services for services she had already rendered.

[9] At the discipline hearing, Ms. Barry agreed that she "had to [comingle these funds] to be able to pay the [$95,000] settlement to [Ms. Harris]."

"attorney fees" on the memo line. Ms. Barry said that these were likely earned fees for work she had performed for Ms. Chamberlain. Pursuant to the settlement agreement, on March 24, 2011, Ms. Barry wrote check #1079 to Ms. Harris's attorney in the amount of $95,000. By the time the check cleared a few days later, the trust account had an ending balance of $80.58.[10]

On April 22, 2011, Ms. Barry wrote check #1080 to herself for $75. Ms. Barry wrote "Adams" on the memo line of this check. She explained at the disciplinary hearing that she wrote the $75 check to "empt[y] out" her trust account because she had moved to Texas and did not intend to continue practicing law in Tennessee.

Around the time Ms. Adams and Ms. Harris executed the settlement agreement on the disputed life insurance funds, Ms. Adams and Ms. Barry exchanged a series of emails regarding the $5,000 balance that should have been in Ms. Barry's trust account. On March 22, 2011, before the agreement was executed, Ms. Barry emailed Ms. Adams and attached the proposed settlement agreement for her review. In Ms. Adams' reply, she asked Ms. Barry about court costs and when the balance of the funds would be distributed to her. On the same day, Ms. Barry responded by telling Ms. Adams that she would send her the "remaining funds" after court costs were paid. In her email, Ms. Barry assured Ms. Adams that the money was "in my trust account." However, when Ms. Barry wrote that email, the balance in her trust account was only $55.96.

The next month, on April 14, 2011, Ms. Adams emailed Ms. Barry again to ask when she would receive the remaining funds held in trust. Ms. Barry replied that same day; she told Ms. Adams that she would send her copies of all relevant documents, but she was waiting to receive the court cost bill before sending Ms. Adams the remaining funds.

Over a month later, on June 2, 2011, Ms. Adams emailed Ms. Barry again, inquiring about when Ms. Barry would send her the balance of the funds. Ms. Barry did not respond until June 18, 2011. In her email, Ms. Barry explained to Ms. Adams that she had received the court cost bill but was waiting for the court order closing the estate, so "then I can do the accounting and refund you the balance." This statement was a misrepresentation, however, because the order closing the estate was entered on June 8,

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[10] The $80.58 consisted of the $55.96 balance at the end of March 2011 plus interest earned on the account.

2011, ten days before Ms. Barry's email to Ms. Adams. At the time of Ms. Barry's response, the balance in the trust account was only 96¢.[11]

On August 30, 2011, having heard nothing in the interim, Ms. Adams emailed Ms. Barry again. She told Ms. Barry that she had tried multiple times to contact her, by email and by telephone, with no success. Ms. Adams implored Ms. Barry to contact her about the remaining balance due her from the funds held in trust. Ms. Barry did not respond.

After that, Ms. Adams discovered that Ms. Barry had moved to Texas and was practicing law there.[12] Ms. Adams left a voicemail message at Ms. Barry's new place of employment. On October 25, 2011, after receiving Ms. Adams' voicemail message, Ms. Barry replied by email. Ms. Barry told Ms. Adams that she moved to Texas for family reasons, had taken a job working for someone else, and was "trying to wrap up all my TN cases/business from" Texas. She promised Ms. Adams that she would "make a point this weekend to get [Ms. Adams file out of storage] so we can finish this up." Ms. Barry gave Ms. Adams a cell phone number and asked Ms. Adams to refrain from calling her at work. Despite her assurances to Ms. Adams, Ms. Barry made no attempt to contact her again.

Over a year went by. On November 7, 2012, Ms. Adams made one last attempt to contact Ms. Barry by email regarding the funds due her. Ms. Barry testified at her disciplinary hearing that she did not reply to this email. Ms. Barry admitted that she had "no good explanation for" her failure to contact Ms. Adams again.

The record indicates that Ms. Barry performed a significant amount of work for Ms. Adams. Despite this, Ms. Barry never sent Ms. Adams a periodic statement or a bill. She never provided Ms. Adams an accounting for the money held in trust, as required by their retainer agreement.

Her efforts to get the remaining insurance funds frustrated, on May 22, 2013, Ms. Adams filed a complaint against Ms. Barry with the Tennessee Board of Professional Responsibility ("the Board"). Notably, Ms. Adams' complaint did not criticize Ms. Barry's representation of her. Ms. Adams' main complaint was Ms. Barry's failure to

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[11] The record reflects no activity on the account after that date.

[12] Ms. Adams discovered that Ms. Barry was living in Texas when she contacted the Tennessee Board of Professional Responsibility about Ms. Barry's conduct.

communicate with her at the conclusion of her representation and Ms. Barry's failure to disburse to her the funds due from the life insurance proceeds. In her complaint, Ms. Adams recounted that Ms. Barry had estimated that Ms. Adams should expect to receive about $4,500 after the deduction of costs and fees from the remaining $5,000 in insurance proceeds.

Ms. Barry did not respond to Ms. Adams' complaint to the Board. Consequently, on August 6, 2013, the Board temporarily suspended Ms. Barry from practicing law in Tennessee.

The suspension apparently prompted action by Ms. Barry. On September 3, 2013, Ms. Barry submitted a response to Ms. Adams' disciplinary complaint. In her response, Ms. Barry summarized her representation of Ms. Adams by explaining that, after Mr. Gill's death, she agreed to assist Ms. Adams with the "unique issues" of her circumstances, such as the disputes over the life insurance proceeds and over Mr. Gill's personal property. Ms. Barry attached to her response a timesheet that detailed the time she expended in legal service to Ms. Adams from February 2009 through March 2011.[13] According to Ms. Barry, she "expended at least 32.6 hours, resulting in attorney's fees of $6,520.00," plus $325 in expenses, for a total of $6,845. Given the $1,650 retainer Ms. Adams had paid, plus the $5,000 of Ms. Adams' insurance proceeds purportedly left in the trust account, Ms. Barry asserted that she did "not believe Ms. Adams [is] entitled to a refund of any monies."

After considering Ms. Adams' complaint and Ms. Barry's response, the Board authorized the filing of formal proceedings. On June 27, 2014, the Board filed the instant complaint against Ms. Barry, alleging several violations of the Rules of Professional Conduct based on Ms. Adams' complaint. An amended petition was filed on January 7, 2015. On February 6, 2015, Ms. Barry filed an answer to the amended petition.

Approximately two months prior to the scheduled disciplinary hearing, Ms. Barry paid Ms. Adams $5,000.

[13] This is the only document in the appellate record indicating the amount of work Ms. Barry performed for Ms. Adams. It is undisputed that Ms. Barry did not provide Ms. Adams with statements or any other accounting of the legal work she performed for Ms. Adams. The timesheet was not submitted as an exhibit at Ms. Barry's disciplinary hearing.

The disciplinary hearing was conducted before the hearing panel on September 30, 2015. Ms. Barry represented herself at the hearing. The sole witness at the hearing was Ms. Barry; her testimony serves as the basis for the undisputed facts recounted above.

After the Board's attorney questioned Ms. Barry, she gave her own statement. Ms. Barry's statement took a different tack than was taken in her written response to Ms. Adams' complaint. Rather than defend her actions with Ms. Adams, Ms. Barry explained to the hearing panel that she had never before practiced law on her own and was not familiar with running a business. She said that she did not "recognize how important it was to maintain contact with [her] clients [and] be diligent about record keeping and bookkeeping." That inexperience combined with unidentified personal challenges at that time, Ms. Barry said, created a situation that was "too much for [her] to handle." Ms. Barry explained that she moved from Tennessee to Texas in order "to rectify [her] personal situation" and to get "away from the circumstances [she] was in."

In Texas, Ms. Barry testified, she was working with a partner and doing "everything completely differently" than she did before, maintaining contact with clients and employing a case management system to handle her trust accounts. Ms. Barry acknowledged that she had not communicated well with Ms. Adams. She said that she "should have gotten a second [retainer] agreement" from Ms. Adams and recognized "that's my fault that I didn't." Ms. Barry told the hearing panel that she had learned from her mistakes and had "taken steps to make sure that my failures don't happen again."

The Board submitted ten exhibits at the hearing, including the SunTrust Bank trust account documents. The exhibits also included a record of Ms. Barry's disciplinary history, which consisted of one private formal admonition issued in June 2010 for lack of diligence in representing a client (RPC 1.3) and failing to adequately communicate with that client (RPC 1.4).

On October 8, 2015, the hearing panel issued its written decision.[14] Based on the above facts, it determined that Ms. Barry had committed the following ethical violations:

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[14] The hearing panel applied the 2006 version of Tennessee Supreme Court Rule 9 because the matter was initiated before January 1, 2014, when comprehensive changes to Rule 9 became effective. *See Garland v. Bd. of Prof'l Responsibility*, No. E2016-01106-SC-R3-BP, 2017 WL 3440558, at *4 (Tenn. Aug. 10, 2017) ("Cases initiated before the effective date are governed by the pre-2014 version of Rule 9."). The parties do not dispute that this is the applicable version of the Rule. Accordingly, citations in this opinion to Rule 9 are to the 2006 version of the Rule unless otherwise noted.

1. Violation of RPC 1.15[15] (Safekeeping Property and Funds) and RPC 8.4(c) (Misconduct—dishonesty, fraud, deceit, or misrepresentation) by knowingly converting property of Ms. Adams by distributing $7,691.50 to Ms. Duke from the funds held in trust for Ms. Adams;

2. Violation of RPC 1.15(a) (Safekeeping Property and Funds—commingling) and RPC 8.4(c) (Misconduct—dishonesty, fraud, deceit, or misrepresentation) by distributing $7,150 to herself from the funds held in trust for Ms. Adams; in doing this, Attorney knowingly converted client property, causing injury to Ms. Adams;

3. Violation of RPC 1.15(a) (Safekeeping Property and Funds—commingling) by depositing earned fees from Ms. Chamberlain and Consensus Mediation Services into the trust account, commingling her own funds with those of her clients;

4. Violation of RPC 1.15(d) (Safekeeping Property and Funds—prompt distribution) by failing to promptly distribute the balance of the $100,000 after payment of the settlement and failing to provide Ms. Adams with an accounting of the funds; and

5. Violation of RPC 1.4 (Communication) by failing to adequately communicate with Ms. Adams after her move to Texas.

The hearing panel found that the Board had established those violations by a preponderance of the evidence. The hearing panel also found the presence of five aggravating circumstances:

a. Attorney had a prior disciplinary offense;

b. Attorney has shown a dishonest or selfish motive;

c. Attorney has shown a pattern of misconduct;

d. Attorney has committed multiple offenses;

[15] The hearing panel did not identify which subsection of RPC 1.15 was violated by this conduct.

e. Attorney has substantial experience in the practice of law, having been licensed since 2001.

The hearing panel made no findings as to any mitigating factors.

In determining an appropriate punishment, the hearing panel noted the Board's recommendation that Ms. Barry be disbarred, in accordance with the American Bar Association Standards for Imposing Lawyer Sanctions ("ABA Standards"). ABA Standard 4.11 states: "Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." The panel rejected the Board's recommendation, however, and determined that suspension, rather than disbarment, was appropriate under the circumstances. It entered a judgment finding that Ms. Barry should be suspended from the practice of law in Tennessee for eighteen months, with the first two months to "be served on active suspension prospectively. The suspension shall not be retroactive."[16] The remaining sixteen months of suspension were to be served on probation pursuant to Rule 9, section 8.5, on the condition that Ms. Barry commit no further ethical violations and that she have a practice monitor to supervise her client communications and trust account management.

The Board timely filed a petition for certiorari in the Davidson County Chancery Court ("trial court") challenging the hearing panel's decision.[17] It argued that disbarment was the only appropriate punishment under the circumstances.[18]

The trial court agreed with the Board. It held that the hearing panel's findings of fact, as well as the five aggravating circumstances, were supported by substantial and material evidence. The trial court noted that the hearing panel found no mitigating circumstances.

After considering the record, the trial court held that the hearing panel's decision was arbitrary and capricious and that Ms. Barry should be disbarred. The trial court reasoned:

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[16] By the time of its October 2015 decision, Ms. Barry had been suspended from the practice of law in Tennessee for over two years. During that entire time, however, she was practicing law in Texas.

[17] This Court appointed Senior Judge Ben H. Cantrell to hear the case in the trial court.

[18] It is unclear whether the trial court conducted a hearing in the matter. If a hearing was conducted, there is no transcript of it in the appellate record.

> The ABA standards are not absolute. . . . [T]hey are guideposts. But this Court has difficulty finding any authority for imposing a sanction less than disbarment when the lawyer knowingly converts client funds causing injury to the client without any mitigating factors and a finding of five aggravating factors.
>
> The Court finds the cavalier treatment of Ms. Adams the most troubling. By moving to Texas without informing Ms. Adams and avoiding her inquiries for years, it seems that Ms. Barry had decided to stonewall Ms. Adams in the hope that Ms. Adams would just go away.
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> . . . .
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> The Court concludes that the panel acted arbitrarily and capriciously by failing to consider and apply the ABA Standards in light of the undisputed facts. Based on this record, the only appropriate sanction is disbarment.

Thus, the trial court found that, although the hearing panel referenced the ABA Standards in its decision, it failed to consider them, as required under Tenn. Sup. Ct. Rule 9. Ms. Barry now appeals to this Court. *See* Tenn. Sup. Ct. R. 9, § 1.3 (now Tenn. Sup. Ct. R. 9, §33.1(d) (2014)).

STANDARD OF REVIEW

"The Supreme Court of Tennessee is the source of authority of the Board of Professional Responsibility and all its functions." *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 903 (Tenn. 2014) (citing *Brown v. Bd. of Prof'l Responsibility*, 29 S.W.3d 445, 449 (Tenn. 2000)); *see also Nevin v. Bd. of Prof'l Responsibility*, 271 S.W.3d 648, 655 (Tenn. 2008); *Brown*, 29 S.W.3d at 449. It is our solemn duty to regulate the practice of law in the State of Tennessee. Doing so includes enforcement of the rules of the legal profession. *Mabry*, 458 S.W.3d at 903 (citing *Doe v. Bd. of Prof'l Responsibility*, 104 S.W.3d 465, 470 (Tenn. 2003)). "In furtherance of this duty, we have established a system where attorneys charged with disciplinary violations have a right to an evidentiary hearing before a hearing panel, which must determine the disciplinary penalty." *Bd. of Prof'l Responsibility v. Cowan*, 388 S.W.3d 264, 267 (Tenn. 2012) (citing Tenn. Sup. Ct. R. 9, § 8.2); *see also Napolitano v. Board of Prof'l Responsibility*, 2017 WL 2265593, at *11 (Tenn. May 24, 2017).

"A lawyer dissatisfied with a hearing panel's decision may prosecute an appeal to the circuit or chancery court and then directly to this Court, where our review is upon the transcript of the record from the trial court, including the record of the evidence presented to the hearing panel."[19] *Walwyn v. Bd. of Prof'l Responsibility*, 481 S.W.3d 151, 162 (Tenn. 2015) (citing Tenn. Sup. Ct. R. 9, § 1.3). In reviewing the decision of a disciplinary hearing panel, this Court employs the same standard of review as the trial court; we may not reweigh the evidence or substitute our judgment for that of the hearing panel. *Napolitano*, 2017 WL 2265593, at *11; *Long v. Bd. of Prof'l Responsibility*, 435 S.W.3d 174, 178 (Tenn. 2014); *Moncier v. Bd. of Prof'l Responsibility*, 406 S.W.3d 139, 150 (Tenn. 2013) (citing *Cowan*, 388 S.W.3d at 267). Under Rule 9, § 1.3, a reviewing court may reverse or modify a hearing panel's decision only under specific circumstances:

> The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the panel's findings, inferences, conclusions[,] or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the panel's jurisdiction; (3) made upon unlawful 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, § 1.3. As in all cases, we review questions of law de novo with no presumption of correctness. *Cowan*, 388 S.W.3d at 267 (citing *Sneed v. Bd. of Prof'l Responsibility*, 301 S.W.3d 603, 612 (Tenn. 2010)).

ANALYSIS

In the instant appeal, Ms. Barry argues that, in reversing the decision of the hearing panel and entering a judgment of disbarment, the trial court erroneously substituted its judgment for that of the hearing panel. She does not deny that she commingled personal funds with the funds held in trust in her trust account, nor does she deny that she failed to pay Ms. Adams the remaining $5,000 in a timely manner and failed to communicate with her. Ms. Barry argues, however, that the trial court failed to

[19] The reviewing court may take additional proof "[i]f allegations of irregularities in the procedure before the panel are made." Tenn. Sup. Ct. R. 9, § 1.3. No such allegations were made in this case.

identify any of the five bases for reversal listed in Rule 9, section 1.3. For this reason, she contends, the trial court's reversal of the hearing panel's decision was improper. She further argues that the trial court failed to recognize comparable Tennessee cases holding that disbarment is not the only appropriate sanction for trust fund violations. Given the overall circumstances of this case, Ms. Barry maintains, the trial court's "insistence upon [] disbarment was arbitrary and excessive" and should be reversed.

In response, the Board argues that the trial court was correct in holding that the hearing panel's decision not to impose disbarment was arbitrary and capricious. It first points out that Supreme Court Rule 9 mandates consideration of the ABA Standards in imposing sanctions. It argues that ABA Standard 4.11 makes disbarment the baseline sanction in this situation, where the attorney converted client funds, had several aggravating factors, and the hearing panel found no mitigating factors. Emphasizing the lack of mitigating factors, the Board insists that disbarment is the only appropriate sanction.

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. Tenn. Sup. Ct. R. 9, § 8.4 (now § 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*"); *see Walwyn*, 481 S.W.3d at 166; *Sneed*, 301 S.W.3d at 617. The Board has adopted the ABA Standards for disciplinary matters. *Bd. of Prof'l Responsibility v. Maddux*, 148 S.W.3d 37, 40 (Tenn. 2004). Likewise, this Court "turn[s] to the ABA Standards for Imposing Lawyer Sanctions" in assessing the appropriate discipline to be issued in a given case. *Bailey v. Board of Prof'l Responsibility*, 441 S.W.3d 223, 232 (Tenn. 2014) (citing Tenn. Sup.Ct. R. 9, § 8.4; and *Maddux v. Bd. of Prof'l Responsibility*, 409 S.W.3d 613, 624 (Tenn. 2013)); *Lockett v. Bd. of Prof'l Responsibility*, 380 S.W.3d 19, 26 (Tenn. 2012). The ABA Standards are designed to promote: "(1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; [and] (3) consistency in the imposition of disciplinary sanctions." ABA Standard 1.3. The ABA Standards provide "guideposts" for attorney discipline but are not considered "rigid rules that dictate a particular outcome." *Hyman v. Bd. of Prof'l Responsibility*, 437 S.W.3d 435, 447 (Tenn. 2014); *see Napolitano*, 2017 WL 2265593, at *16; *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 424 (Tenn. 2015); *Lockett*, 380 S.W.3d at 26.

Under ABA Standard 3.0, in deciding the severity of the discipline to impose, the hearing panel should consider four factors: "(a) the duty violated; (b) the lawyer's mental

state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors." The ABA Standards set forth a number of aggravating and mitigating factors to consider in determining the appropriate sanction. *See* ABA Standard 9.22 (aggravating); ABA Standard 9.32 (mitigating). Generally speaking, "[t]he 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." *In re Vogel*, 482 S.W.3d 520, 534 (Tenn. 2016) (citing *Maddux*, 148 S.W.3d at 41); *see also* ABA Standard 9.21 ("[A]ggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed."); ABA Standard 9.31 ("[M]itigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed."). The ABA list of aggravating and mitigating factors is "illustrative rather than exclusive"; this Court has recognized that "the purpose of the ABA Standards is to 'promote . . . consideration of *all factors* relevant to imposing the appropriate level of sanction in an individual case.'" *Lockett*, 380 S.W.3d at 28.

In arguing that disbarment is the only appropriate discipline for Ms. Barry, the Board relies on the ABA Standards that relate to an attorney's "failure to preserve the client's property." Those Standards provide:

> 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.
>
> 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.
>
> 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

As can be seen, "the 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." *Maddux*, 409 S.W.3d at 624. The presumptive sanction is most severe if the attorney "knowingly converts" client property, less severe if the attorney knowingly "deal[s] improperly" with client property, and the least severe for the attorney who is merely negligent. *See In re Vogel*, 482 S.W.3d at 535 n.16 (discussing the difference between a knowing violation and a negligent one). 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. *See id.* at 535 n.17 (discussing the difference between injury and potential injury).

In the instant case, the hearing panel found, and Ms. Barry does not dispute, that she *knowingly converted* Ms. Adams' funds by distributing $7,691.50 to Ms. Duke and $7,150 to herself from the funds held in trust for Ms. Adams and that these actions caused actual injury to Ms. Adams. The record indicates that Ms. Barry intermittently replaced some of the disputed insurance funds before it was time to disburse them, but she never had sufficient funds in the trust account to disburse the $5,000 in remaining insurance proceeds to Ms. Adams. Regardless of the amount converted, the record contains substantial and material evidence to support the hearing panel's conclusion that Ms. Barry knowingly converted Ms. Adams' funds, and in doing so she caused actual injury to Ms. Adams.

Because the hearing panel found that Ms. Barry knowingly converted her client's funds and caused injury to her client, the ABA Standard that should be considered is Standard 4.11. It states: "Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." Under this ABA Standard, then, the baseline sanction for Ms. Barry's offenses is disbarment. *See id.* at 534-38 (looking to applicable ABA Standard for the baseline sanction).

Having found the baseline sanction to be disbarment, we next consider any aggravating or mitigating circumstances. *See id.* at 538. The hearing panel found the presence of five aggravating circumstances: Ms. 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. Ms. Barry does not challenge the hearing panel's finding on these five aggravating circumstances.

The hearing panel did not make any findings regarding mitigating circumstances in Ms. Barry's case. Despite this fact, in her appellate brief, Ms. Barry claims that the

record demonstrates the existence of some mitigating factors in this case. She points out that her disciplinary history was minor, that she did not deny her guilt at the hearing, that she cooperated during the administrative process, that she has demonstrated remorse, and that she has made restitution. *See* ABA Standard 9.32 (listing mitigating factors). However, the hearing panel was apparently not persuaded to find any mitigating circumstances, and the record demonstrates the likely reason. We agree with Ms. Barry that her prior disciplinary history is not overly serious, but it is exacerbated by the temporary suspension imposed when she initially failed to respond to Ms. Adams' complaint. Only after Ms. Barry learned of her suspension did she respond to the complaint. In her response, instead of taking responsibility, Ms. Barry contested her guilt and asserted that she had earned the $5,000 in retained funds as a fee. This is neither an admission of guilt nor cooperation. Furthermore, although Ms. Barry eventually paid restitution to Ms. Adams, the payment came over two years after the amount was due—after Ms. Adams tracked down Ms. Barry in Texas and not long before the disciplinary hearing. Under all of these circumstances, we are not persuaded by Ms. Barry's argument that we should find significant mitigating circumstances when the hearing panel did not.

Thus, we have established that the baseline sanction in this case is disbarment, that there are significant aggravating circumstances, and that the record supports the hearing panel's decision not to find any significant mitigating circumstances. Without elaborating on its reasons, the hearing panel declined to disbar Ms. Barry and instead imposed a prospective eighteen-month suspension. Coupled with the temporary suspension that preceded this sanction, under the hearing panel's decision, Ms. Barry would have been suspended from the practice of law in Tennessee for a total of approximately three and a half years, all while she continued to practice law in Texas. The trial court, on the other hand, looked at the undisputed facts, the aggravating circumstances, and the lack of any mitigating circumstances and held that "the only appropriate sanction is disbarment."

As noted above, Ms. Barry argues that comparable Tennessee cases hold that disbarment is not the only appropriate sanction for trust fund violations. Although a review of comparable cases in Tennessee reveals a range of sanctions imposed for the misappropriation of client funds, "[t]he sanctions imposed are typically lengthy suspensions or disbarment."[20] *Lockett*, 380 S.W.3d at 29 (citing *Threadgill v. Bd. of*

[20] For more serious transgressions, disbarment has been found appropriate. *Skouteris v. Bd. of Prof'l Responsibility*, 430 S.W.3d 359, 370-71 (Tenn. 2014) (upholding disbarment, even though attorney insisted that his conversion of client funds "was limited to trivial accounting errors"); *Rayburn v. Bd. of*

Prof'l Responsibility, 299 S.W.3d 792, 810-12 (Tenn. 2009)). To counter Ms. Barry's argument on comparable cases, the Board asks us to consider cases from other jurisdictions to support its assertion that disbarment is the only appropriate remedy when an attorney knowingly converts a client's funds to his or her own use.[21] *See Maddux*, 148 S.W.3d at 40 (noting parties' reliance on cases from other jurisdictions when case was "first of its kind in Tennessee").

Clearly, "there are widely varying degrees of misappropriation of funds . . . . In our view, the objective of achieving uniformity of punishment in disciplinary proceedings does not require that every named offense be accorded identical punishment. Like murder in the first degree, lawyer misappropriation of funds is subject to more than one punishment." *Bd. of Prof'l Responsibility v. Bonnington*, 762 S.W.2d 568, 570-71 (Tenn.

Prof'l Responsibility, 300 S.W.3d 654, 664 (Tenn. 2009) (upholding disbarment when attorney "knowingly and repeatedly deprived his clients of funds to which they were entitled"). In other circumstances, suspension has been imposed rather than disbarment. *Napolitano*, 2017 WL 2265593, at *18-19 (upholding five-year suspension when attorney misappropriated client funds); *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 901-02 (Tenn. 2010) (upholding one-year suspension and requirement of restitution when attorney misappropriated client funds and finding ABA Standard 4.12 to be applicable); *Bd. of Prof'l Responsibility v. Allison*, 284 S.W.3d 316, 327 (Tenn. 2009) (upholding sixty-day suspension, with a one-year period of monitoring, when attorney misappropriated client funds; finding ABA Standard 4.12 to be applicable); *Nevin v. Bd. of Prof'l Responsibility*, 271 S.W.3d 648, 658 (Tenn. 2008) (upholding six-month suspension when attorney misappropriated client funds and finding ABA Standard 4.12 and 4.42 to be applicable); *Milligan v. Bd. of Prof'l Responsibility*, 166 S.W.3d 665, 673 (Tenn. 2005) (ordering two-year suspension for misappropriation of funds when hearing panel ordered disbarment and chancery court reduced sanction to public censure, citing ABA Standards 5.11 and 5.12). In a few cases, public censure has been deemed appropriate. *See, e.g., Long*, 435 S.W.3d 174, 181 (Tenn. 2014) (upholding public censure when attorney failed to deposit a fee into his trust account, failed to refund unearned fees, and failed to provide an accounting); *Bd. of Prof'l Responsibility v. Curry*, 266 S.W.3d 379, 381 (Tenn. 2009) (reversing panel's sanction of six-month suspension and affirming trial court's public censure when attorney did not convert or misappropriate client funds).

[21] For example, the Board cites *People v. Young*, 864 P.2d 563, 564 (Colo. 1993) ("When a lawyer knowingly converts client funds, disbarment is 'virtually automatic,' at least in the absence of significant factors in mitigation."); *In re Adams*, 579 A.2d 190, 191 (D.C. 1990) ("In virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence."); *Carter v. Ross*, 461 A.2d 675, 676 (R.I. 1983) ("We . . . are convinced that continuing public confidence in the judicial system and the bar as a whole requires that the strictest discipline be imposed in misappropriation cases."); *In re Discipline of Johnson*, 48 P.3d 881, 885 (Utah 2001) (holding that, in cases involving misappropriation of client funds, a downward departure from the presumptive sanction of disbarment is only appropriate when the lawyer demonstrates "truly compelling mitigating circumstances").

1988). "We evaluate each proceeding involving the discipline of a lawyer in light of its particular facts and circumstances." *Curry*, 266 S.W.3d at 394 (citing *Maddux*, 148 S.W.3d at 40).

The facts of this particular case present a close question. Ms. Barry's disciplinary history prior to her representation of Ms. Adams is significant but not alarming. Ms. Barry's initial comingling of funds in her trust account, while serious, seems more bungling than nefarious. Her behavior progressed, however, to conduct even more concerning. Ms. Barry persisted in misappropriating funds from the trust account. Later, in response to Ms. Adams' multiple inquiries, she repeatedly misrepresented to Ms. Adams that she had the remaining funds for her in safekeeping and would distribute them to her when the case was over. In reality, without informing Ms. Adams, Ms. Barry had already moved to Texas to start a new law practice there, and there were essentially no funds in the trust account whatsoever. Finally, Ms. Barry simply stopped responding, even after Ms. Adams tracked her down in Texas. As noted by the trial court, at some point, Ms. Barry apparently decided to stonewall Ms. Adams in the hopes that she "would just go away." In this way, Ms. Barry sought to keep the funds that rightfully belonged to Ms. Adams. In the disciplinary proceedings, Ms. Barry offered little excuse or explanation for her actions.

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." *Talley v. Bd. of Prof'l Responsibility*, 358 S.W.3d 185, 194 (Tenn. 2011) (citing ABA Standards, §§ 5.1, 5.11, 5.12). 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. *See Lockett*, 380 S.W.3d at 24. The hearing panel also found that Ms. Adams suffered actual injury from Ms. Barry's actions. It found no less than five aggravating circumstances. Under the evidence presented, the hearing panel might have found some mitigating circumstances, but it found none. Its decision to impose suspension instead of disbarment seems at odds with its factual findings and its assessment of Ms. Barry's level of intent and culpability.

We are "reluctant to impose a hard and fast rule that disbarment must follow in every case of embezzlement or defalcation by an attorney. Nevertheless, there is hardly any misconduct less tolerable or excusable on the part of a lawyer than to embezzle funds of a client." *Bonnington*, 762 S.W.2d at 571-72 (Harbison, C.J., dissenting) (noting that no mitigating circumstances were shown in the case). "We do not administer the sanction of disbarment lightly; we understand its devastating effects on an attorney. However, we are charged with protecting the public and the legal system of our state from those attorneys who do not abide by their professional responsibilities, and we cannot tolerate the intentional misappropriation of a client's funds." *In re Discipline of Johnson*, 48 P.3d at 886. 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.

As an alternative argument, Ms. Barry contends that, should this Court agree with the trial court's imposition of disbarment, we should make the disbarment retroactive to August 6, 2013, the date Ms. Barry's law license was temporarily suspended. The effective date of disbarment affects the date on which Ms. Barry becomes eligible to reapply for reinstatement of her Tennessee law license. *See* Tenn. Sup. Ct. R. 9, § 19.2 (stating a disbarred attorney "may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment").

In oral argument to this Court, counsel for the Board argued that Ms. Barry waived any retroactivity argument because she did not argue for retroactivity until her appeal to this Court. We disagree. In the proceedings before the hearing panel, Ms. Barry sought to avoid disbarment altogether, and her arguments persuaded the hearing panel to impose only suspension, so there was no judgment of disbarment at that juncture. In the Board's appeal, Ms. Barry contended that the trial court should affirm the suspension imposed by the hearing panel. This time her arguments did not succeed; the trial court entered the judgment of disbarment that Ms. Barry now appeals. Ms. Barry was not required to propose in advance of the trial court's judgment that any disbarment, if imposed, should be made retroactive to the date of her temporary suspension. Under these circumstances, the question of retroactivity of the disbarment was not waived. *See Hornbeck v. Bd. of Prof'l Responsibility*, No. M2016-01793-SC-R3-BP, 2018 WL ---, slip op. at 13 (Tenn. Feb. XX, 2018). Therefore, we will consider Ms. Barry's argument that her disbarment should be made retroactive to the date of the temporary suspension of her Tennessee law license.

"[A] license to practice law in this state is not a right, but a privilege." *Sneed*, 301 S.W.3d at 618 (citing *Milligan v. Bd. of Prof'l Responsibility*, 301 S.W.3d 619, 630

(Tenn. 2009)). "'The license to practice law in this State is a continuing proclamation by the 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.'" *Cowan*, 388 S.W.3d at 272 (quoting Tenn. Sup. Ct. R. 9, § 3.1). As we stated in *Hornbeck*: "While the attorney disciplinary process is punitive in some respects, its purpose is to safeguard the administration of justice, protect the public from the misconduct or unfitness of members of the legal profession, and preserve the confidence of the public in the integrity and trustworthiness of lawyers in general." Slip op. at 14-15 (citing ABA Standard 1.1).

In *Hornbeck*, we explained that disbarment and suspension of an attorney's law license are two wholly distinct remedies. *Id.* at 15. With suspension, the lawyer remains a member of the bar but is temporarily prevented from exercising the privileges associated with his or her law license. "Suspension specifically contemplates that, once the conditions imposed under the suspension are met, the attorney will be permitted to return to law practice." *Id.*

Disbarment, however, is not a temporary state. It "terminates the individual's status as an attorney." *Id.* (quoting Tenn. Sup. Ct. R. 9, § 12.1 (2014)). "The purpose of disbarring an attorney is to remove from the profession a person who has proven to be unfit or unworthy of being entrusted with the duties and responsibilities accorded to those who have gained the privilege of a law license." *Id.* In contrast to suspension, disbarment "does not contemplate that the disbarred attorney will return to the practice of law" in Tennessee.[22] *Id.*

Although Tennessee permits a disbarred attorney to apply for reinstatement of his or her law license, the possibility of reinstatement "does not transform disbarment into a temporary suspension of the license to practice law. Regardless of any hope of reinstatement, disbarment means that the individual has been expelled from the bar in Tennessee and his license to practice law in this State has been terminated." *Id.*

In this appeal, Ms. Barry claims that "[t]he failure to make this date retroactive would be unfair and unjust" because a prospective disbarment order would effectively

[22] As noted in *Hornbeck*, the "difference between suspension and disbarment is reflected in the Tennessee Supreme Court's Rules regarding the two forms of discipline." Slip op. at 15. Under the current version of Rule 9, the possibility of retroactivity is included in the rules on suspension, but the possibility of retroactivity is not mentioned in connection with disbarment. *Id.*; *see* Tenn. Sup. Ct. R. 9, § 12.2 (2014) (suspension); *id.* § 12.1 (disbarment).

prevent her from seeking "reinstatement until 10 years have elapsed since her law license was suspended." Appellant's Brief at p. 12. We see no unfairness. As noted in *Hornbeck*, any lawyer facing disbarment "has the right to participate in the appeal process set forth in the Tennessee Supreme Court Rules." Slip op. at 16 (citing applicable version, Tenn. Sup. Ct. R. 9, § 1.3 (2006), and current version, Tenn. Sup. Ct. R. 9, § 33 (2014)). "However, the disbarment does not go into effect until after the entry of this Court's order, which is delayed while the appeal is ongoing. Thus, participation in the appeal process necessarily postpones the date on which the disbarred attorney becomes eligible to apply for reinstatement."[23] *Id.* at 16-17 (citations and footnote omitted). Consequently, in deciding whether to accept disbarment or file an appeal, "[t]he delay in eligibility for reinstatement must be factored into the lawyer's calculus." *Id.*

"It is by no means a pleasant duty to enter a decree of disbarment." *State v. Bomer*, 162 S.W.2d 515, 521 (Tenn. 1942). We decline to make Ms. Barry's disbarment retroactive to the date of her temporary suspension. Pursuant to the version of Rule 9 that is applicable in this case, Ms. Barry's disbarment will be effective 10 days after entry of this Court's order of disbarment. *See* Tenn. Sup. Ct. R. 9, § 18.5 (2006). *But see* Tenn. Sup. Ct. R. 9, § 28.1 (2014) (providing that, for cases initiated after the effective date of the new Rule 9, "[o]rders imposing disbarment . . . are effective upon entry").

CONCLUSION

In sum, we affirm the trial court's decision and conclude that the hearing panel acted arbitrarily and capriciously by failing to impose the presumptive sanction in ABA Standard 4.11, namely, disbarment, in light of Ms. Barry's knowing conversion of client funds, her other ethical violations, the finding of five aggravating circumstances, and the absence of any mitigating circumstances. We decline to make Ms. Barry's disbarment retroactive to the date of the temporary suspension of her law license.

[23] As noted in *Hornbeck*, there are "extremely limited instances," not applicable here, in which the Court may choose to make disbarment retroactive. Slip op. at 16 n.21.

For the foregoing reasons, the judgment of the chancery court is affirmed, and Ms. Barry is disbarred from the practice of law in Tennessee, which disbarment is to be effective ten days after the entry of this Court's disbarment order. *See* Tenn. Sup. Ct. R. 9, § 18.5. Costs in this appeal are to be taxed to Appellant Robin K. Barry and her surety, for which execution may issue, if necessary.

HOLLY KIRBY, JUSTICE

I, James M. Hivner, Clerk, hereby certify that this is a true and exact copy of the original filed in the cause.
This 1st day of November, 2018
CLERK OF COURT
By _____ D.C.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
June 1, 2017 Session

BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE v. ROBIN K. BARRY

Chancery Court for Davidson County
No. 15-1270-I

No. M2016-02003-SC-R3-BP

JUDGMENT

This case was heard upon the entire record on direct appeal from the Chancery Court for Davidson County and upon the briefs and argument of counsel. Upon consideration thereof, we agree with trial court's decision and conclude that the hearing panel acted arbitrarily and capriciously by failing to impose the presumptive sanction in ABA Standard 4.11, namely, disbarment, in light of Appellant Robin K. Barry's knowing conversion of client funds, her other ethical violations, the finding of five aggravating circumstances, and the absence of any mitigating circumstances. We decline to make Ms. Barry's disbarment retroactive to the date of the temporary suspension of her law license. Accordingly, the judgment of the Chancery Court is affirmed.

In accordance with the opinion filed herein, it is ORDERED and ADJUDGED that the decision of the Chancery Court is affirmed, and Ms. Barry is disbarred from the practice of law in Tennessee, which disbarment is to be effective ten days after the entry of this order. *See* Tenn. Sup. Ct. R. 9, § 18.5 (2006). Costs in this appeal are to be taxed to Appellant Robin K. Barry and her surety, for which execution may issue, if necessary.