

APPENDIX

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Appendix A

[Tennessee Supreme Court]
[Opinion Filed on April 14, 2026]

FILED

04/14/2026

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 04, 2025

**ELLIOTT J. SCHUCHARDT v. BOARD OF
PROFESSIONAL RESPONSIBILITY OF THE
SUPREME COURT OF TENNESSEE**

**Direct Appeal from the Chancery Court for
Knox County No. 207706-3 D. Kelly Thomas,
Jr., Senior Judge**

No. E2024-00812-SC-R3-BP

This is an attorney discipline case. Elliott J. Schuchardt was licensed to practice law in Tennessee in 2008. Beginning in 2019, several individuals reported Mr. Schuchardt to the Board of Professional Responsibility. These complaints detailed conduct that implicated the following rules of professional conduct ("RPC"): RPC 1.1 (Competence), 1.3 (Diligence), 1.4(a)-(b) (Communication), 1.5(b) (Fees), 1.7(a)(1) (Conflict of Interest), 1.16(d) (Declining or Terminating

Representation), 3.2 (Expediting Litigation), 3.3(a)(1) (Candor Toward the Tribunal), 3.4(c) (Fairness to Opposing Party and Counsel), 4.2 (Communication with a Person Represented by Counsel), 4.4(a)(1) (Respect for the Rights of Third Persons), 8.1(a) (Bar Admission and Disciplinary Matters), 8.2(a)(2) (Judicial and Legal Officials), 8.4(c) (Misconduct-Dishonesty/ Fraud/ Deceit/ Misrepresentation), and 8.4(d) (Misconduct-Administration of Justice). A Hearing Panel of the Board of Professional Responsibility found that Mr. Schuchardt violated these RPCs on forty-seven occasions and recommended disbarment. The Knox County Chancery Court affirmed. Mr. Schuchardt now asks us to reverse. Because ample evidence supports the decisions below, we affirm Mr. Schuchardt's disbarment.

**Tenn. Sup. Ct. R. 9, § 33.1(d); Judgment of the
Chancery Court Affirmed**

MARYL.WAGNER, J., delivered the opinion of the Court, in which JEFFREYS. BIVINS, C.J., and HOLLY KIRBY, SARAH K. CAMPBELL, and DWIGHTE. TARWATER, JJ., joined.

Elliott J. Schuchardt, Knoxville, TN, Pro Se.

James W. Milam, Nashville, TN, for the appellee,
Board of Professional Responsibility of the Supreme
Court of Tennessee.

OPINION**I. FACTUAL AND PROCEDURAL
BACKGROUND**

Attorney Elliot J. Schuchardt was licensed to practice law in Tennessee in 2008.¹ After the Board of Professional Responsibility ("BPR" or "Board") investigated and prosecuted several ethics complaints against Mr. Schuchardt, a BPR Hearing Panel found numerous violations of the Rules of Professional Conduct and recommended disbarment. On appeal, the Knox County Chancery Court affirmed. We review the decisions below and the recommendation of disbarment.

*Factual Background***A. Jamie McBryar**

Jamie McBryar hired Mr. Schuchardt to obtain a divorce and spousal support from her then-spouse Janine McBryar (nee Lefler).² Ms. McBryar also sought custody over a minor child she had co-parented with Ms. Lefler. Mr. Schuchardt filed a divorce petition on behalf of Ms. McBryar on January 26, 2019 in Knox County Circuit Court.

Following the filing of Ms. McBryar's divorce petition, Ms. Lefler initiated a separate divorce action against Ms. McBryar in Knox County Chancery Court. Rather than consolidating the two cases, Mr.

¹ Mr. Schuchardt graduated from law school in 1993 and initially practiced out of state. However, Mr. Schuchardt was not licensed in Tennessee until 2008. See <https://www.tbpr.org.attorneys.027016>.

² To avoid confusion, we will refer to Janine McBryar as Ms. Lefler.

Schuchardt engaged only in the action filed by Ms. Lefler.

Serious issues occurred in both lawsuits. We begin by noting issues with the first action filed by Mr. Schuchardt. First, Mr. Schuchardt failed to include divorce as a cause of action or to include a prayer for divorce. Second, Mr. Schuchardt failed to seek an order restraining Ms. Lefler from taking the couple's minor child out of the jurisdiction, but he did request the child be returned to the jurisdiction. Third, Mr. Schuchardt failed to submit a proposed temporary parenting plan, contrary to the court's local rules.³ Fourth, Mr. Schuchardt failed to include Ms. Lefler's best-known address in the summons attached to the complaint, despite having an Oregon address for Ms. Lefler and stating it in the complaint. Fifth, Mr. Schuchardt neglected to effectuate service of process on Ms. Lefler, even after eventually obtaining her Tennessee address. Ultimately, Mr. Schuchardt abandoned the Circuit Court case once Ms. Lefler filed her complaint in Chancery Court.

Problems also occurred with Mr. Schuchardt's lawyering in the Chancery Court action. First, Mr. Schuchardt violated several local rules.⁴ Second, Mr.

³ See Knox Cnty., Fourth Cir. Ct. R. 15(A) ("In all actions seeking the establishment of residential schedules and/or parenting responsibilities, the plaintiff or petitioner shall file with the complaint temporary parenting plans agreed upon by the parties, or, if no agreement has been reached, a proposed temporary parenting plan of the plaintiff or petitioner.").

⁴ Mr. Schuchardt did not include in his response to Ms. Lefler's complaint information required under the Uniform Child Custody Jurisdiction and Enforcement Act. See Knox Cnty. Ch. Ct. R. 13(8) ("Each initial pleading or motion shall

Schuchardt failed to comply with Tennessee Code Annotated section 29-14-107(b), which requires a party to notify the Tennessee Attorney General when challenging the constitutionality of a statute.⁵ Finally, Mr. Schuchardt did not conduct any discovery for over six months, while Ms. Lefler's action was pending.

Issues also arose from Mr. Schuchardt's communications with Ms. McBryar. Mr. Schuchardt failed to explain and adequately communicate with Ms. McBryar regarding their fee arrangement. Mr. Schuchardt explained to Ms. McBryar that "[t]here do not (sic) seem to be sufficient assets to make it

set forth the information required by Rule 4 of these rules and as required by Tenn. Code Ann. § 36-4-106. Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, Tenn. Code Ann. § 36-6-201 et. seq., all filings in which the custody of a child is at issue shall set forth in the first filing the information required by the Act and in particular by Tenn. Code Ann. § 36-6-224."). Mr. Schuchardt did not include the required affidavit in his motion for spousal support and interim counsel fees. *See* Knox Cnty. Ch. Ct. R. 13(E) ("Upon the filing of a petition or motion seeking the modification of child support or alimony, each party shall file, no later than 5 days prior to the hearing, an affidavit listing the assets, debts, gross monthly income and monthly living expenses of each party to the extent known to the filing party, as well as any other relevant financial facts that the filing party desires the Court to consider."). Mr. Schuchardt also failed to submit a proposed parenting plan. *See* Knox Cnty. Ch. Ct. R. 13(F)(ii) ("If no agreement has been reached, the defendant or respondent shall file with the answer, the defendant's or respondent's proposed temporary parenting plan.").

⁵ Mr. Schuchardt challenged the constitutionality of Tennessee Code Annotated section 36-2-304, which provides a presumption of parentage on gender-based grounds, because Ms. McBryar and Ms. Lefler were a same-sex couple.

worthwhile to handle the case on credit[,]" and that he would withdraw if Ms. McBryar did not pay him \$1,500. This surprised Ms. McBryar. She recalled paying Mr. Schuchardt a \$500 deposit, and Mr. Schuchardt agreeing to forgo receiving payment until Ms. McBryar received spousal support or disability benefits. Ms. McBryar repeatedly asked Mr. Schuchardt to seek a continuance in lieu of withdrawal and offered to pay him a small sum for that service. Mr. Schuchardt waffled. At times he assured Ms. McBryar that he would attend the hearing, and at other times he suggested the opposite. Lacking a straight answer from Mr. Schuchardt, Ms. McBryar contacted another attorney to represent her at the last minute, Abby Rubenfeld.

Mr. Schuchardt did not withdraw in a responsible manner or communicate clearly with Ms. Rubenfeld. Ms. Rubenfeld asked Mr. Schuchardt whether Ms. McBryar would have competent counsel at the hearing. Mr. Schuchardt told Ms. Rubenfeld to "[e]nter an appearance, if you want to get involved." But Mr. Schuchardt also assured Ms. Rubenfeld that he would represent Ms. McBryar "competently and effectively" at the custody hearing, and that Ms. Rubenfeld could report him to the Board. Ultimately, Mr. Schuchardt filed a motion to withdraw, and Ms. Rubenfeld entered a notice of appearance one day prior to the custody hearing. In order to represent Ms. McBryar competently, Ms. Rubenfeld had to reschedule the hearing, which delayed the case by nearly six months and further frustrated Ms. McBryar's attempt to obtain spousal support.

B. Bennett Hirschhorn

Bennett Hirschorn, a real estate attorney licensed in Tennessee, filed a complaint against Mr. Schuchardt with the Board in January 2020. Mr. Hirschorn represented Ann Richards and Mary Jane Douglas, both real estate agents, in two unrelated matters.

Ms. Richards is a Knoxville-based real estate professional who hired Mr. Hirschorn in a dispute with several of her former employees. Mr. Schuchardt previously represented Ms. Richards, and the two also dated.

Ms. Douglas, a Nashville-based real estate professional, hired Mr. Schuchardt in September 2019 to represent her in a medical malpractice action. At the time, Ms. Douglas was facing eviction and Mr. Schuchardt allowed her to live in his home for \$500 a month. He also recommended that she reach out to Ms. Richards for work. This arrangement was short lived as in October 2019, while still representing her, Mr. Schuchardt filed a detainer action seeking to evict Ms. Douglas from his home. Ms. Douglas hired Mr. Hirschorn to represent her in the eviction action filed against her by Mr. Schuchardt.

Seeking to gain leverage in his detainer action against Ms. Douglas, Mr. Schuchardt called Mr. Hirschorn on October 22, 2019. Among several threats, Mr. Schuchardt informed Mr. Hirschorn he would file a complaint against Ms. Richards with Tennessee's Real Estate Commission to place Ms. Richards' "real estate license ... in jeopardy," by "saying some really

bad stuff."⁶ However, Mr. Schuchardt stated that he would not file this complaint if Mr. Hirschorn persuaded Ms. Douglas to vacate Mr. Schuchardt's property in the eviction action. This was a clear quid pro quo exchange: Mr. Schuchardt threatened to jeopardize Ms. Richards' career unless Mr. Hirschorn convinced Ms. Douglas to vacate Mr. Schuchardt's property.

Mr. Schuchardt then went a step further. Mr. Schuchardt threatened to inform the judge presiding over Ms. Richards' case that she had testified falsely, stating "I don't care if evidence is closed, I'm gonna say that Ann Richards is a liar in that letter. So, fuck you and fuck Ann Richards." Finally, when Mr. Hirschorn requested that Mr. Schuchardt cease communication with Ms. Douglas, Mr. Schuchardt declined, stating "fuck that ... [y]ou can report me to the Board[,] I'm not going to comply with that."

To summarize, Mr. Hirschorn alleged that Mr. Schuchardt violated several RPCs by threatening two of Mr. Hirschorn's clients (Ms. Douglas and Ms. Richards), taking adverse actions against Mr. Schuchardt's then-current client (Ms. Douglas), and communicating with a person represented by counsel (Ms. Douglas).

⁶ We rely on "Appendix A" to the Hearing Panel's Summary Judgment Order, which contains a partial transcript of the recording Mr. Hirschorn made of his phone call with Mr. Schuchardt. The Hearing Panel reviewed the audio recording and the Board's Second Rule 56.03 Statement of Undisputed Facts in producing the transcript. The audio recording was not made a part of the record before us.

C. Aaron King

On April 8, 2019, Mr. King hired Mr. Schuchardt in a divorce action and two juvenile court proceedings. A dispute arose regarding the payment of fees. Due to nonpayment of legal fees, Mr. Schuchardt withdrew from the divorce case and one of the two juvenile proceedings.

Mr. King requested his case file from Mr. Schuchardt. Mr. Schuchardt refused, claiming that he would hold the file as security until Mr. King paid his outstanding legal fees to Mr. Schuchardt. Mr. Schuchardt's case file was critical to a criminal case where Mr. King was the defendant because it contained information impeaching Mr. King's wife in the divorce litigation. Mr. King's attorney in the criminal matter, Robert Kurtz, also requested the case file from Mr. Schuchardt. Mr. Schuchardt again refused. Mr. Kurtz provided Mr. Schuchardt with a formal ethics opinion that explained it was improper for him to hold Mr. King's case file for security because releasing the file was "necessary to avoid [a] materially adverse effect on the client." Formal Ethics Op. 2015-5-160, [https:// perma.cc/D9SP-TSNY](https://perma.cc/D9SP-TSNY). Mr. Schuchardt again refused to turn over the file and further responded by threatening to harm Mr. King's credibility with the criminal court.

Mr. King, through his attorney, served Mr. Schuchardt with a subpoena to produce the file. Mr. Schuchardt moved to quash the subpoena. The criminal court denied Mr. Schuchardt's motion to quash and then ordered Mr. Schuchardt to produce the file.⁷

⁷ At the hearing for the motion to quash, Mr. Schuchardt represented to the court that he had discussed the formal

As the dispute over the client file was unfolding, Mr. Schuchardt sued Mr. King for breach of contract and failure to pay legal fees. At the time of filing suit, Mr. Schuchardt was still counsel of record for Mr. King in one of his pending juvenile court cases. Mr. Schuchardt did not effectively withdraw from his representation of Mr. King until August of 2020, nearly six months after filing suit against Mr. King.

D. Cherie Dunn

Mr. Schuchardt represented Cherie Dunn to contest a conservatorship petition filed by her ex-husband in Anderson County Chancery Court.⁸ The couple's son, Dustin Welsh, has autism, and Ms. Dunn's ex-husband believed he would require full-time care after attaining the age of majority. Ms. Dunn hired Mr. Schuchardt to challenge the conservatorship petition. The conservatorship hearing was initially set for September 28, 2020. Mr. Schuchardt moved for a continuance, and the hearing was reset for November 9, 2020. Mr. Schuchardt did not seek or obtain an extension to file an answer. Instead, Mr. Schuchardt filed an answer to the petition the afternoon following the hearing.

Mr. Schuchardt does not dispute these basic facts. Rather, he denies any fault by pointing to the logistical difficulties of the COVID-19 pandemic and

ethics opinion Mr. Kurtz provided with disciplinary counsel. But Ethics Counsel for the Board, Laura Chastain, submitted an affidavit where she stated that Mr. Schuchardt had not contacted the Board from January 26, 2006 to September 22, 2022, indicating that Mr. Schuchardt made a false representation to the court.

⁸ To avoid confusion, we will refer to Derek Welsh as Mr. Welsh, and to the couple's son as Mr. Dustin Welsh.

his claim that the chancellor presiding over the conservatorship petition accepted his late answer during the hearing. Regardless of these explanations, Mr. Schuchardt's late filing violated the court's local rules, which required responses to motions to be filed "no later than 48 hours prior to the hearing on the motion." Anderson Cnty. Loe. R. 117.02.

Moreover, Mr. Schuchardt neglected to draft the pleading as Ms. Dunn instructed. Ms. Dunn e-mailed Mr. Schuchardt a week prior to the conservatorship hearing and asked him whether he would file a response as required. Mr. Schuchardt assured her that he would send her a draft of the response. After receiving the draft, Ms. Dunn sent Mr. Schuchardt a document containing suggested edits. Mr. Schuchardt claimed that he could not open her document. Ms. Dunn then sent him an e-mail containing a list of questions and suggested edits. For example, the draft response misspelled "Welsh." Ms. Dunn also requested that Mr. Schuchardt amend the response to state that "[i]t is in the best interest of the child for the court to consider the least restrictive alternative plan with supported decision making plan." The response filed shows that Mr. Schuchardt did not address all of Ms. Dunn's concerns. For example, the filed response still misspelled "Welsh" as "Welsch." Additionally, the response did not request that the court consider "the least restrictive alternative plan with supported decision making plan." According to Mr. Schuchardt, he provided Ms. Dunn with a draft and was not required to include all of her comments.⁹

⁹ Even if Mr. Schuchardt was not required to make all the edits Ms. Dunn proposed, he should have, at a minimum,

In addition to the deficient response, another issue emerged during the disciplinary proceedings regarding Ms. Dunn's complaint. Mr. Schuchardt alleged that Ms. Dunn's son was present at the conservatorship hearing and testified. This conflicted with the recollection of the trial court judge, the guardian *ad litem*, and Ms. Dunn, who all stated that Mr. Dustin Welsh was not present at the hearing. The Board gave Mr. Schuchardt an opportunity to retract his statement, but he declined. As an alternative, the Board offered Mr. Schuchardt a private reprimand for this misstatement, which he also declined. Instead, Mr. Schuchardt doubled down by engaging in abusive and wasteful discovery tactics to try proving that an autistic child attended a hearing that he simply did not attend. For example, Mr. Schuchardt e-mailed disciplinary counsel with the Board and stated "[b]e careful signing a pleading. You will be ... putting your career at risk." In the same email, Mr. Schuchardt stated "I have warned you. My distribution list will get progressively bigger, if your office continues in this unethical and illegal course of conduct."

Procedural History

A. The Hearing Panel's Summary Judgment Order

corrected the errors that Ms. Dunn noted. In addition to misspelling Welsh, Mr. Schuchardt's initial draft denied that Ms. Dunn's address was correct in the petition. Ms. Dunn informed Mr. Schuchardt that the address in the petition was her correct address, so denying it was incorrect. Instead of correcting this error by admitting the address, Mr. Schuchardt included the denial and stated "[i]t is denied that Cherie Dunn resides at the address in the Petition. Her correct address is _____"(blank in original).

In its Summary Judgment Order, the Hearing Panel reviewed Mr. Schuchardt's motion to dismiss and motion for summary judgment, as well as the Board's motion for summary judgment. The Hearing Panel also resolved several allegations in a Sanctions Order. In that Order, the Hearing Panel found that Mr. Schuchardt committed several rules violations related to the Board's prosecution of Ms. Dunn's complaint. For example, Mr. Schuchardt made several false representations to the Board, made several false allegations about the Board, and threatened disciplinary counsel for the Board. Deeming these allegations admitted, the Hearing Panel found that Mr. Schuchardt violated RPC 8.1(a) (Bar Admission and Disciplinary Matters), 8.2(a)(2) (Judicial and Legal Officials), 8.4(c) (Misconduct- Dishonesty/ Fraud/ Deceit/ Misrepresentation), and 8.4(d) (Misconduct- Administration of Justice). Then, the Hearing Panel denied Mr. Schuchardt's motion to dismiss, where he argued that *Brady v. Maryland* applied to his case. The Hearing Panel also denied Mr. Schuchardt's motion for summary judgment.

Finally, the Hearing Panel granted in part and denied in part¹⁰ the Board's motion for summary judgment. In granting summary judgment, the Hearing Panel made several findings on different rules violations based upon the undisputed facts. First, the Hearing Panel made the following findings related to Ms. McBryar's complaint:

¹⁰ The Hearing Panel found genuine disputes of material fact related to portions of Ms. McBryar's complaint and portions of Mr. Hirschorn's complaint.

Respondent committed the following ethics violations related to his representation of Jamie McBryar:

a. Failing to move for an Order in the Knox County Fourth Circuit Court case to restrain [Ms. Lefler] from taking the minor child out of the jurisdiction or, alternatively, failing to seek an order commanding the return of the child to the jurisdiction, in violation of RPCs 1.1 ([C]ompetence), 1.3 ([D]iligence), and 3.2 ([E]xpediting [L]itigation); Failing to take any action in the Knox County Chancery Court case to effectuate the clear goals of his client, Jamie McBryar, in violation of RPCs 1.1 ([C]ompetence), 1.3 ([D]iligence), and 3.2 ([E]xpediting [L]itigation);

b. Failing to dispute, in his Answer to [Ms. Lefler's] Chancery Court Complaint, the specified "Number of Children: 0" in the "STATISTICAL DATA" section of the complaint, in violation of RPC 1.1 ([C]ompetence);

c. Failing to submit a proposed temporary parenting plan with the Answer as required by ... Local Rule 13(F)(ii) of the Knox County Chancery Court, in violation of RPC 1.1 ([C]ompetence);

d. Failing to file an Affidavit in support of Respondent's Motion for Spousal Support and Interim Counsel Fees, listing the assets, debts, gross monthly income, and monthly living expenses of each party to the extent known by the filing party, as required by Local Rule 13(E) of the Knox County Chancery Court, in violation of RPC 1.1 ([C]ompetence);

e. Seeking only a determination that Jamie McBryar is the "lawful parent" of the minor at issue, and failing to seek actual "custody" in the prayer for relief in his Motion for Custody Order, in violation of RPC 1.1 ([C]ompetence);¹¹

f. Failing to provide the statutory notice to the Tennessee Attorney General, as required by Tenn. Code Ann. § 29-14-107(b), because the Motion for Custody Order challenges the constitutionality of Tenn. Code Ann. § 36-2-304, in violation of RPC 1.1 ([C]ompetence);

g. Failing to conduct any discovery on behalf of Jamie McBryar client as to the substantive issues in the Chancery Court case while the case was pending for over six (6) months, in violation of RPCs 1.3 ([D]iligence), and 3.2 ([E]xpediting [L]itigation);

h. Failing to explain adequately or communicate fully the fee arrangement with

¹¹ The Hearing Panel found no genuine issue of material fact as to "whether [Mr. Schuchardt] failed to dispute, in his Answer to [Ms. Lefler's] Chancery Court complaint, the number of children in the 'Statistical Data' section." As stated, this is factually accurate. However, it is also incomplete. While it is true that Mr. Schuchardt did not dispute the number of children in that specific section, his answer included a counter-complaint that stated "[t]he parties have one minor child." To be sure, a better practice would have been for Mr. Schuchardt to include this statement in his answer, rather than his counter-complaint section. But for the purpose of this case, we disagree with the Hearing Panel's finding that there was no genuine dispute of material fact on this issue.

Jamie McBryar, in violation of RPCs 1.4(a)-(b) ([C]ommunication) and 1.5(b) ([F]ees);

i. Failing to keep his client informed as to the status of the fees that had been incurred, in violation of RPCs 1.4(a)-(b) ([C]ommunication) and 1.5(b) ([F]ees);

j. Failing to cooperate with successor counsel, Abby Rubinfeld, in violation of RPC 1.16(d)(3) ([D]eclining or [T]erminating [R]epresentation);

k. Improperly withholding Ms. McBryar's client file from Ms. McBryar and Ms. Rubinfeld, in violation of RPC 1.16(d)(5) ([D]eclining or [T]erminating [R]epresentation); and

l. Engaging in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

Second, the Hearing Panel made the following findings related to Mr. Hirschorn's complaint:

Respondent also committed the following ethics violations relating to the Hirschhorn complaint:

a. Creating a concurrent conflict of interest between himself and his client, Mary Jane Douglas, by filing a detainer action against Ms. Douglas while simultaneously having an attorney-client relationship regarding her medical malpractice claim, in violation of RPC 1.7(a)(1) ([C]onflict of [I]nterest);

b. During a 10/22/19 telephone call with Informant Hirschorn, refusing to refrain from communicating directly with Mary Jane Douglas (Hirschhorn's client) regarding the detainer action, in violation of RPC 4.2

([C]ommunication with a [P]erson [R]epresented by [C]ounsel);

c. Communicating to Informant Hirschhorn threats (i) to file a complaint with the Tennessee Real Estate Commission against Ann Richards (another client of Hirschhorn's in a matter wholly unrelated to the detainer action against Ms. Douglas) and (ii) to correspond with the presiding judge of Ms. Richards' unrelated case against Bruce Klassen to persuade the judge that Ms. Richards is dishonest, unless a "quid pro quo" could be reached with respect to Respondent's detainer action against Ms. Douglas, in violation of RPC 4.4(a)(1) ([R]espect for the [R]ights of [T]hird [P]ersons);

d. Communicating to Informant Hirschhorn his intention to "threaten" Ms. Douglas with adverse action against her real estate license unless a "quid pro quo" could be reached with respect to Respondent's detainer action against Ms. Douglas, in violation of RPC 4.4(a)(1) ([R]espect for the [R]ights of [T]hird [P]ersons); and

e. Threatening the licenses and livelihoods of Ms. Richards and Ms. Douglas as leverage to settle his detainer action against Ms. Douglas, in violation of RPC 8.4(d) ([M]isconduct-[A]dministration of [J]ustice).

Third, the Hearing Panel made the following findings related to Mr. King's complaint:

As to the King complaint, the Panel found that Respondent committed the following ethics violations:

a. Creating a concurrent conflict of interest between himself and his client, Aaron King, by filing a civil action against Mr. King while still formally representing him in the juvenile court child support case, in violation of RPC 1.7(a)(1) ([C]onflict of [I]nterest);

b. Improperly withholding Mr. King's client file from Mr. King and his attorney, Robert Kurtz, in violation of RPC 1.16(d) ([D]eclining or [T]erminating [R]epresentation);

c. Knowingly and intentionally making false statements of fact to Judge Scott Green that (i) Respondent previously had "conversations" with the Disciplinary Board which never occurred and (ii) Formal Ethics Opinion 2015-F-160 "is no longer valid law," in violation of RPCs 3.3(a)(1) ([F]alse [S]tatement to a [T]ribunal), 8.4(c) ([M]isconduct- [D]ishonesty/ (F)raud/ [D]eceit/ [M]isrepresentation), and 8.4(d) ((M)isconduct- [A]dministration of [J]ustice); and

d. Threatening to testify against Mr. King as to Mr. King's reputation for dishonesty in an effort to gain an advantage in Respondent's case, in violation of RPCs 1.7(a)(1) ([C]onflict of [I]nterest) and 1.16(d) ([D]eclining or [T]erminating [R]epresentation).

Finally, the Hearing Panel made the following findings related to Ms. Dunn's complaint:

Respondent committed the following ethics violations relating to the Dunn complaint:

a. Knowingly disobeying Local Rule 117.02 of the Anderson County Chancery Court

by failing to file his Answer on behalf of his client, Cherie Dunn, no later than 48 hours prior to the scheduled court hearing, in violation of RPCs 1.1 ([C]ompetence), 1.3 ([D]iligence), and 3.4(c) ([F]aithless to [O]pposing [P]arty and [C]ounsel); and

b. Knowingly filing the Answer on behalf of Complainant Dunn in draft form, and without consideration of Ms. Dunn's comments and edits concerning the content of the Answer, in violation of RPCs 1.1 ([C]ompetence), 1.3 ([D]iligence), and 1.4(a) ([C]ommunication).

B. Hearing Panel's Final Order

The Hearing Panel conducted a hearing to resolve the remaining allegations of ethical violations made against Mr. Schuchardt, and to determine an appropriate sanction. The Hearing Panel considered the following issues in its Final Order:

a. Whether [Mr. Schuchardt] violated RPCs 1.1 ([C]ompetence) and 1.4(a) ([C]ommunication) by filing a complaint in the Knox County Fourth Circuit Court on behalf of [Ms.] McBryar that sought 'shared custody' of a minor child and 'spousal support' without affirmatively stating a cause of action for divorce-even though [Mr. Schuchardt] knew Ms. McBryar wanted a divorce and even though he invoked the Tennessee divorce statute ... ;

b. Whether [Mr. Schuchardt] violated RPCs 1.1 ([C]ompetence) and 3.4(c) ([F]aithless to [O]pposing [P]arty and [C]ounsel) by failing to submit a proposed temporary parenting plan with the Circuit Court Complaint, as required by Fourth Circuit Court Local Rule 15(A);

c. Whether [Mr. Schuchardt] violated RPC 1.1 ([C]ompetence) by failing to include, on the Circuit Court Summons, the best-known address for Defendant [Ms. Lefler], even though Respondent explicitly stated her Oregon address in the body of the complaint;

d. Whether [Mr. Schuchardt] violated RPCs 1.1 ([C]ompetence) and 1.3 ([D]iligence) by failing to effectuate service upon [Ms. Lefler] in the Circuit Court case, after her Tennessee address became known through [Ms. Lefler's] competing Chancery Court Complaint;

e. Whether [Mr. Schuchardt] violated RPC 1.1 ([C]ompetence) by concluding that the second-filed Chancery Court action filed by [Ms. Lefler] "mooted" Respondent's first-filed action in the Fourth Circuit Court;

f. Whether [Mr. Schuchardt] violated RPCs I. 1 ([C]ompetence) and 3.4(c) ([F]airness to [O]pposing [P]arty and [C]ounsel) by failing, in the Knox County Chancery Court action, to comply with Knox County Chancery Court Local Rule 13(b) by not providing in his "first filing" a recitation of all information required by the Uniform Child Custody Jurisdiction and Enforcement Act;

g. Whether [Mr. Schuchardt] violated RPC I.1 ([C]ompetence) by seeking "spousal support" in the first sentence of a three-page "Motion for Custody Order" that never affirmatively asked for "custody"; and

h. Whether [Mr. Schuchardt] violated RPCs 1.4 ([C]ommunication) and 1.16(d)(1)-(2) ([D]eclining or [T]erminating [R]epresentation)

by failing to provide reasonable notice to [Ms.] McBryar regarding his withdrawal from representation and thereby failing to allow sufficient time for engagement of new counsel. The Hearing Panel found that the Board failed to prove "a," "c," "d," and "e" by a preponderance of the evidence, but did prove "b," "f," "g," and "h."¹²

First, the Hearing Panel addressed RPC 1.1 (Competence) in connection with Mr. Schuchardt's representation of Ms. McBryar. The Hearing Panel found that Mr. Schuchardt's failure to state divorce as the cause of action or include it in a prayer for divorce in the complaint violated RPC 1.1. The Hearing Panel found that a reprimand was the presumptive sanction.

Second, the Hearing Panel addressed RPCs 1.3 (Diligence) and 1.4(a)-(b) (Communications with the Client). In the context of Ms. McBryar's complaint, the Hearing Panel found that Mr. Schuchardt's failure to conduct discovery and support the motions he filed on

¹² As to the allegations in paragraph "g," the Hearing Panel found that the Board proved, by a preponderance of the evidence, that Mr. Schuchardt violated RPC 1.1 (Competence) by seeking "spousal support" in the first sentence of a three-page "Motion for Custody Order" that never affirmatively asked for "custody". In making this finding, the Hearing Panel omitted the fact that Mr. Schuchardt's "Motion for Custody Order," albeit in the body and not the prayer for relief, affirmatively stated that "[t]he movant, Jamie McBryar, respectfully seeks custody of Hannah [McBryar]." So, while it is true that Mr. Schuchardt sought "spousal support" in a "Motion for Custody Order," which implicates RPC 1.1 (Competence), it is not accurate to state that "the body of the document never affirmatively requested the relief specified in its title."

behalf of Ms. McBryar violated RPCs 1.3 and 1.4(a)-(b). The Hearing Panel found that disbarment was the presumptive sanction because Mr. Schuchardt's rule violations were egregious and caused serious injury to Ms. McBryar. The Hearing Panel also considered Ms. Rubenfeld's testimony that Mr. Schuchardt's lack of diligence and failure to pursue discovery "seriously compromised Ms. McBryar's ability to obtain spousal support and custody of the child at issue." The Hearing Panel also addressed RPCs 1.3 and 1.4(a)-(b) in the context of Ms. Dunn's complaint. The Hearing Panel found that Mr. Schuchardt's failure to timely file a response to the conservatorship petition and failure to draft the response in accordance with Ms. Dunn's comments violated RPCs 1.3 and 1.4(a)-(b). The Hearing Panel found that a reprimand was the presumptive sanction.

Third, the Hearing Panel addressed RPC 1.16(d) (Terminating Representation). In the context of Ms. McBryar's complaint, the Hearing Panel found that Mr. Schuchardt's openly hostile and uncooperative conduct violated RPC 1.16 and caused serious injury and serious potential injury to Ms. McBryar. In the context of Mr. King's complaint, the Hearing Panel found that Mr. Schuchardt's failure to turn over Mr. King's client file, which "fore[ed] [his] attorney to subpoena the file[.]" also violated RPC 1.16. The Hearing Panel found that Mr. Schuchardt caused Mr. King serious potential harm and placed his own pecuniary interest in collecting unpaid fees over the interests of his client. Accordingly, the Hearing Panel found that disbarment was the presumptive sanction for these rule violations.

Fourth, the Hearing Panel addressed RPCs 4.4(a)(1) (Respect for the Rights of Third Persons) and (8.4) (Misconduct) in the context of Mr. Hirschorn's complaint. The Hearing Panel found that Mr. Schuchardt's multiple threats violated RPCs 4.4 and 8.4 and demonstrated a disregard for basic principles of fairness and respect for others. The Hearing Panel addressed the matters giving rise to the violations of RPC 8.4(c)-(d) in its Summary Judgment Order. For both complaints, the Hearing Panel determined that the presumptive sanction was disbarment. Additionally, the Hearing Panel found that Mr. Schuchardt's "explicit attempt to extract a quid pro quo" was incredibly destructive to the legal system. Accordingly, the Hearing Panel found disbarment to be the presumptive sanction.

The Hearing Panel also briefly addressed Mr. Schuchardt's violations of RPCs 4.4(a)(1) (Respect for the Rights of Third Persons) and 8.4 (Misconduct) in relation to Mr. King and Ms. Dunn's complaints. The Hearing Panel found that disbarment was the presumptive sanction for Mr. Schuchardt's conduct in both complaints.

To summarize, the Hearing Panel found that Mr. Schuchardt violated the following RPCs: 1.1 (Competence), 1.3 (Diligence), 1.4(a)-(c) (Communication), 1.5(b) (Fees), 1.7(a)(1) (Conflict of Interest: Current Clients), 1.16(d) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 3.3(a)(1) (Candor Toward the Tribunal), 3.4(c) (Fairness to Opposing Party and Counsel), 4.2 (Communication with a Person Represented by Counsel), 4.4(a)(1) (Respect for the Rights of Third Persons), 8.1(a) (Bar Admission and Disciplinary

Matters), 8.2(a)(2) (Judicial and Legal Officials), and 8.4(a), (d) (Misconduct). This list includes the Hearing Panel's findings from both its Summary Judgment Order and Final Order. In total, the Hearing Panel found that Mr. Schuchardt committed forty-seven rule violations. Having found disbarment to be the presumptive sanction for ten instances of the forty-seven rule violations, the Hearing Panel then examined the following aggravating factors: past disciplinary offenses, dishonest/selfish motive, pattern of misconduct/multiple offenses, bad faith obstruction of disciplinary proceedings and submission of false evidence during the disciplinary process, refusal to acknowledge the wrongful nature of his conduct, vulnerability of victims, and substantial experience in the practice of law.

The Hearing Panel found that Mr. Schuchardt had a history of disciplinary offenses, including discipline enforced by then-Chief Judge Pamela Reeves of the United States District Court for the Eastern District of Tennessee and four other times by various courts. The Hearing Panel also found that Mr. Schuchardt had a dishonest or selfish motive, as he would often prioritize collecting his fees ahead of the interests of his clients like Ms. McBryar and Mr. King.

The Hearing Panel also found that Mr. Schuchardt's offenses reflected a "pattern of misconduct," as he committed a multitude of ethical violations throughout several complaints.¹³ The

¹³In many cases, the same conduct can underly both the "prior disciplinary offenses" and "pattern of misconduct" factors. See, e.g., *Bd. of Pro. Resp. v. Daniel*, 549 S.W.3d 90, 103 (Tenn. 2018) (noting that "multiple instances of [misconduct] would underlie both the pattern of misconduct factor and multiple offenses factor").

Hearing Panel then found that Mr. Schuchardt engaged in bad faith obstruction of the disciplinary proceedings and submitted false evidence during the disciplinary process. For example, Mr. Schuchardt repeatedly claimed that Mr. Dustin Welsh was present during the conservatorship hearing, even after evidence upon evidence showed that was false. Moreover, during the disciplinary proceedings, Mr. Schuchardt "repeatedly ... asserted fantastic and wholly unsupported claims of hiding evidence, bias, prejudice, criminal conduct, and conspiracy theories directed at ... witnesses, other members of the bar, disciplinary counsel, and the Board itself." The Hearing Panel also found as an aggravating factor that Mr. Schuchardt refused to acknowledge the wrongful nature of his conduct. Instead, Mr. Schuchardt conducted a 'campaign of character assassination with respect to each of [the] individuals" who filed complaints against him. The Hearing Panel found that all of these claims were made to "deflect attention from his own conduct" and manifested an unwillingness to acknowledge his own wrongdoing.

The Hearing Panel found as an aggravating factor that several of the complainants were vulnerable individuals. For example, Ms. McBryar did not have a college degree and had limited knowledge about the workings of the legal system. Ms. McBryar was also of modest financial means and "desperate for [Mr. Schuchardt's] help[.]" Similarly, Mr. King, who was facing serious criminal charges and Mr. Schuchardt's refusal to turn over the file 'potentially severely hampered Mr. King and his counsel."

Finally, the Hearing Panel noted as an aggravating factor Mr. Schuchardt's "extensive

experience in the practice of law." Mr. Schuchardt has practiced law for decades and, by his own account, "has had a long [and] distinguished career in the law."¹⁴

Mr. Schuchardt and the Board stipulated to a single mitigating factor, that three witnesses would testify ... that [Mr. Schuchardt] is a man of the highest level of competence and integrity in ... unrelated matters." The Hearing Panel found no basis to depart from the presumptive sanction of disbarment based on the aggravating factors and sole mitigating factor. Accordingly, the Hearing Panel recommended disbarment. Mr. Schuchardt appealed to the Knox County Chancery Court.

C. Trial Court Proceedings

The Trial Court found no basis to reverse or modify the Hearing Panel's decision. The Trial Court undertook an extensive review of the Hearing Panel's Summary Judgment Order and Final Order. The Trial Court examined the factual allegations of all four complaints, the conclusions of law regarding the RPCs, and the propriety of the sanctions imposed by the Hearing Panel. Following this thorough assessment, the Trial Court "affirm[ed] the Hearing Panel's decision in all regards."

II. STANDARD OF REVIEW

This Court "is the final arbiter of the professional conduct of all lawyers practicing in Tennessee." *Gray v. Bd. of Pro. Resp.*, 710 S.W.3d 664,673 (Tenn. 2025) (citing *Sneed v. Bd. of Pro. Resp.*, 301 S.W.3d 603, 612 (Tenn. 2010)). When reviewing

¹⁴ See *supra*, n. I.

attorney discipline appeals, we seek[] to ensure that [disciplinary] rules are enforced in a manner that preserves both the integrity of the bar and the public trust in our system of justice." *Id.* at 674 (citation omitted).

Our system provides ample process before a court or administrative body enforces sanctions on an attorney. To begin, attorneys have the "right to an evidentiary hearing before a panel." *Id.* at 673 (citation omitted). Next, both the Board and the attorney have the right to appeal a hearing panel's decision to a circuit or chancery court. *Id.* (quoting Tenn. Sup. Ct. R. 9, § 33.1(b)). Finally, both parties have the right to appeal to this Court. *Id.* (citing Tenn. Sup. Ct. R. 9, § 33.1(d)).

On appeal, we review "the transcript of the record from the circuit or chancery court, which shall include the transcript of evidence before the hearing panel." *Id.* (quoting Tenn. Sup. Ct. R. 9, § 33.1(d)). We reverse or modify a decision below only when it is:

- (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, § 33.1(b).

When we find no grounds for reversal under subsections (1), (2), or (3), we must uphold a hearing panel's decision unless the decision was arbitrary or capricious, an abuse of discretion, a clearly

unwarranted exercise of discretion, or unsupported by substantial and material evidence. *Bd. of Pro. Resp. v. Allison*, 284 S.W.3d 316, 322 (Tenn. 2009) (quotation omitted). "A hearing panel abuses its discretion when it applies an incorrect legal standard or reaches a decision that is against logic or reasoning that causes an injustice to the complaining party." *Manookian v. Bd. of Pro. Resp.*, 685 S.W.3d 744, 777-78 (Tenn. 2024) (citation modified). A decision is supported by substantial and material evidence "if it furnishes a reasonably sound factual basis for the decision being reviewed." *Allison*, 284 S.W.3d at 322 (quoting *City of Memphis v. Civ. Serv. Comm'n of Memphis*, 216 S.W.3d 311, 316-17 (Tenn. 2007)).

Although we do not substitute our judgment for that of the hearing panel as to the weight of the evidence on questions of fact," we review questions of law de novo. *Maddux v. Bd. of Pro. Resp.*, 409 S.W.3d 613, 622 (Tenn. 2013) (citing *Bd. of Pro. Resp. v. Cowan*, 388 S.W.3d 264, 267 (Tenn. 2012)). We will uphold a sanction by the Hearing Panel when the evidence before the Hearing Panel "furnishes a reasonably sound factual basis for the decision being reviewed." *Sneed*, 301 S.W.3d at 612 (quotation omitted). Even if "reasonable minds can disagree" about the Hearing Panel's sanction, we will uphold it unless the decision is reversible under Tennessee Supreme Court Rule 9, Section 33.1. *Harris v. Bd. of Pro. Resp.*, 645 S.W.3d 125, 140 (Tenn. 2022) (quoting *Bd. of Pro. Resp. v. Sheppard*, 556 S.W.3d 139, 146 (Tenn. 2018)).

III. ANALYSIS

From constitutional challenges to unconventional legal arguments, Mr. Schuchardt leaves no stone unturned. Mr. Schuchardt makes

many disparate arguments. We categorize these arguments as Mr. Schuchardt did in the following manner: (A) due process challenges; (B) fair hearing challenges; and (C) challenges to disbarment as a sanction. As we explain below, several of Mr. Schuchardt's arguments are waived under our rules of appellate procedure. See Tenn. R. App. Proc. 27(a)(7)(A). Despite this waiver, we explain why these arguments also fail on the merits. In addressing Mr. Schuchardt's arguments, we explain why the decisions below are supported by substantial and material evidence, and do not demonstrate any abuse of discretion. We conclude by upholding the sanction of disbarment against Mr. Schuchardt.

A. Due Process Challenges

Mr. Schuchardt's first set of arguments contends that Tennessee's hearing panel system for attorney discipline violates due process. First, he claims that Tennessee's method for selecting hearing panel members does not comply with the Fourteenth Amendment's Due Process Clause. Next, he claims that the same selection method also violates the Equal Protection Clause of the Fourteenth Amendment. Finally, Mr. Schuchardt claims that, for various reasons, panel members have an improper interest in the outcome of attorney discipline cases, violating due process principles. We address each argument in turn.

i. *Due Process Clause*

Mr. Schuchardt challenges Tennessee Supreme Court Rule 9, section 15.2(d), which permits the Board to select hearing panel members based on a list of available attorneys. Mr. Schuchardt claims that the Board, in selecting the panel, is afforded too much

discretion, violating his due process rights. See U.S. Const. Amend. XIV, § 1 (prohibiting a state from depriving 'any person of life, liberty, or property, without due process of law").

We previously addressed similar arguments. In *Hyman v. Board of Professional Responsibility*, Mr. Hyman "contend[ed] that the method for selecting hearing panel members deprive[d] him of his right to due process under the United States and Tennessee Constitutions." 437 S.W.3d 435,445 (Tenn. 2014) (citation omitted). We explained how the procedural rights afforded to attorneys facing disciplinary proceedings were more than sufficient for Fourteenth Amendment Due Process purposes. *Id.* at 446, "our current disciplinary framework provides adequate protection to attorneys who are accused of professional misconduct and is not 'in violation of constitutional or statutory provisions.'" *Id.* (quoting Tenn. Sup. Ct. R. 9, § 1.3); see also *Moncier v. Bd. of Pro. Resp.*, 406 S.W.3d 139, 156 (Tenn. 2013) (noting that Tennessee's disciplinary framework provides sufficient due process protections by giving lawyers notice and an opportunity to be heard, as well as the right to have counsel present, cross examine witnesses, and present evidence). Mr. Schuchardt's due process arguments are threadbare and provide no reason to disturb our prior case law. The hearing panel selection process did not violate Mr. Schuchardt's due process rights.

ii Equal Protection Clause

In three perfunctory paragraphs, Mr. Schuchardt also claims that Tennessee's method for selecting hearing panel members violates the Equal Protection Clause of the U.S. Constitution and *Brown v. Board of Education*, 347 U.S. 483 (1954). Other than

the citation to *Brown*, Mr. Schuchardt makes no attempt to relate that legal standard to his case.

Even when an issue "has been expressly raised," if "the brief fails to include an argument satisfying the requirements" of Tennessee Rule of Appellate Procedure 27, it will be deemed waived. *City of Memphis v. Edwards ex rel. Edwards*, No. W2022-00087-SC-R1 1-CV, 2023 WL 4414598, at *2 (Tenn. July 5, 2023) (per curiam); see also *Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012) (citing *Baugh v. Novak*, 340 S.W.3d 372, 381 (Tenn. 2011); *Sneed*, 301 S.W.3d at 615) (same). So, when a party raises an issue but fails to "explain how the Panel or the trial court erred in resolving the issue," we consider it waived. *Sneed*, 301 S.W.3d at 614. It is not the responsibility of this Court to "scour[] the appellate record for any reversible error the [court below] may have committed." *Donovan v. Hastings*, 652 S.W.3d 1, 9 (Tenn. 2022) (quotation omitted). As here, where Mr. Schuchardt fails to draw a connection between the Equal Protection Clause or *Brown* to his case, we deem the argument waived. See, e.g., *id.* (deeming issue waived when litigant failed to include "a sufficient argument"); *Sneed*, 301 S.W.3d at 614-15 (deeming issue waived when litigant failed to explain Hearing Panel's error); *Forbess v. Forbess*, 370 S.W.3d 347, 356 (Tenn. Ct. App. 2011) (deeming issue waived when litigant's argument cited only one authority and did nothing to further advance a legal argument), *perm. app. denied* (Tenn. Apr. 12, 2012); *Bean v. Bean*, 40 S.W.3d 52, 55-56 (Tenn. Ct. App. 2000) ("[A]n issue is waived where it is simply raised without any argument regarding its merits." (citation modified)), *perm. app. denied* (Tenn. Feb. 26, 2001).

But putting waiver aside, we do not view this argument as substantively different from Mr. Schuchardt's claim that the Hearing Panel selection method violates the Due Process Clause to the Fourteenth Amendment to the U.S. Constitution. Accordingly, this argument fails for the same reasons discussed above.

iii. Improper Interest of Hearing Panel Members

Mr. Schuchardt next alleges that hearing panel members are "biased as a matter of law." Mr. Schuchardt makes several contentions in this regard, many of which overlap with his due process arguments. We will address each one in turn.

First, Mr. Schuchardt claims that because hearing panel members are members of the Board, the hearing panel members are *per se* biased in favor of the Board. According to Mr. Schuchardt, the hearing panel members are agents for the Board - a litigant in this matter. He goes on to contend that the members "owe their position on the panel - which is an honor - to the Chairman of the Board."

We addressed a similar argument in *Long v. Board of Professional Responsibility*, where an attorney facing discipline argued that it was improper for the Board to have investigatory, enforcement, and adjudicative processes all under the auspices of one authority. 435 S.W.3d 174, 186 (Tenn. 2014). We determined that the attorney's due process rights were not denied "[b]ecause the investigatory/enforcement responsibilities and the adjudicative responsibilities are functionally separate within the Board." *Id.* at 187; *see also Moncier*, 406 S.W.3d at 163 ("[T]he Board's performance of overlapping functions does not, without more, establish bias or a constitutionally intolerable

risk of actual bias."). We find no basis to modify our precedent.

Mr. Schuchardt's arguments also fail to account for this Court's rules and the Board's policies and procedures. First, hearing panels are comprised of attorneys who are members of the district committee. Tenn. Sup. Ct. R. 9, § 6.1. The district committee members are appointed by the Tennessee Supreme Court, not the Chairman of the Board. Tenn. Sup. Ct. R. 9, § 6.1 (noting that the Tennessee Supreme Court appoints district committees). Further, the appointment of the hearing panel must comply with this Court's rules and the Board's policies. *See* Tenn. Sup. Ct. R. 9 § 15.2(d) ("The hearing panel shall be selected pursuant to written procedures approved by the Board."). Both this Court's rules and the Board's policies and procedures provide limitations for who may be appointed to a hearing panel. *See* Tenn. Sup. Ct. R. 9, § 6.5 ("A district committee member shall not take part in any matter in which a judge, similarly situated, would have to recuse himself or herself in accordance with Tenn. Sup. Ct. R. 10."); Policies and Rules of the Bd. of Pro. Resp. 2.2 (limiting hearing panel members to avoid conflicts of interest). Once assigned, any "hearing panel members are compelled to recuse themselves if 'a judge, similarly situated, would have to recuse himself or herself.'" *Hyman*, 437 S.W.3d at 446 (quoting Tenn. Sup. Ct. R. 9, § 6.5) (citing *Moncier*, 406 S.W.3d at 160).¹⁵

¹⁵ In making this argument, Mr. Schuchardt failed to include in his brief the entirety of Policy 2.2, which provides:

A. Following the service of the answer or upon failure to answer, the matter shall be assigned by the Board Chair or the

Like the attorney in *Long*, Mr. Schuchardt has failed to show how hearing panel members generally, or those specifically presiding over his case, are *per se* biased against attorneys facing discipline. See *generally Long*, 435 S.W.3d at 187-89. Accordingly, this argument fails.

Second, Mr. Schuchardt claims that because the panel members are attorneys whose licenses are regulated by the Board, counsel for the Board "can

Vice-Chair to a hearing panel. Rule 9, § 15.2(d). In assigning the members of the hearing panel, the Chair shall select them from the members of the district committee in the district in which the respondent practices law with consideration given to their availability and willingness to serve and to the number of panels on which the Hearing Committee Member currently serves. If there is an insufficient number of committee members in that district who are able to serve on the hearing panel, the Chair or Vice Chair may appoint one or more members from the district committee of an adjoining district to serve on the panel. Rule 9, § 15.2(d).

B. District committee members from the same law firm or office may not serve together on the same hearing panel.

C. District Committee Members may not participate in cases against respondent attorneys defended by members or associates of their law firm.

D. District Committee Members are prohibited from serving on a hearing panel wherein a judge is a respondent and the member practices before the judge.

Policies and Rules of the Bd. of Pro. Resp. Rule 2.2.

promise de facto immunity to the panel members in future ethics cases, if the panel members decide cases" in a particular way. Going one step further, Mr. Schuchardt claims that "[e]ven if no quid pro quo is offered or discussed, the panel members have an economic incentive to keep (the Board's) counsel happy, by handling cases the way [the Board] counsel wants to resolve the case."

While Mr. Schuchardt offers plenty by way of insinuation and innuendo, this argument is wholly without merit. The record is devoid of any evidence of untoward dealings between the Board and the Hearing Panel. Nothing in the record indicates that Hearing Panel members received immunity or pressure for certain results. Further, once again, Mr. Schuchardt's argument fails to recognize the rules of this Court. Panel members are appointed by this Court, not disciplinary counsel. *See* Tenn. Sup. Ct. R. 9, § 6.1. Also, any action by disciplinary counsel must be approved by district committee members who are appointed by this Court and not answerable to disciplinary counsel. *See* Tenn. Sup. Ct. R. 9, § 6.1. And neither members of the Board nor district committee members receive any payment for their services. Tenn. Sup. Ct. R. 9, § 4.4 ("Members shall receive no compensation for their services."). There is simply no incentive to "keep [the Board's] counsel happy." This argument fails.

Third, Mr. Schuchardt claims that hearing panel members have a pecuniary interest in the outcome of a case, denying him a fair and impartial arbitrator. Although Mr. Schuchardt discusses several United States Supreme Court opinions that prohibit judges from having a pecuniary interest that interferes

with their role as neutral and detached arbiters, Mr. Schuchardt fails to show any connection between those cases and his. Mr. Schuchardt fails to argue, let alone provide evidence of, any pecuniary interest by the hearing panel members. As we discussed above, failure to include an argument results in the waiver of this issue. *See* Tenn. R. App. Proc. 27(a)(7); *see also supra* § A.ii. We also find this contention to be wholly without merit.

Finally, Mr. Schuchardt claims that the Board is filing ethics cases for improper purposes. In support of this argument, Mr. Schuchardt claims that attorneys in similar situations have alleged that the Board pursues ethics complaints in retaliation for protected speech. However, the record contains zero evidence-not even an insinuation-that the Board brought these charges as retaliation against Mr. Schuchardt. The record is similarly devoid of any evidence or allegation of protected speech. This argument is wholly irrelevant and also fails.

For these reasons, we reject Mr. Schuchardt's claim that the hearing panel members are *per se* biased.

B. Fair Hearing Challenges

Mr. Schuchardt raises eight arguments related to the fairness of his disciplinary process. First, Mr. Schuchardt claims that the Hearing Panel denied him discovery on material issues of fact. Second, Mr. Schuchardt contends that the rule delivered in *Brady v. Maryland* should apply in his case. In his third, fourth, and fifth arguments, Mr. Schuchardt raises challenges to the Hearing Panel's grant of summary judgment and findings on the merits. We find that these three arguments relate to the sufficiency of the

evidence against him. Sixth, Mr. Schuchardt claims that the Hearing Panel erred by refusing to allow Mr. Schuchardt to call certain witnesses to testify as to mitigating evidence. Seventh, Mr. Schuchardt argues that this Court erred by temporarily suspending him without notice and an opportunity to be heard. Finally, Mr. Schuchardt argues that the Hearing Panel erred by failing to consolidate another disciplinary matter against Mr. Schuchardt with those discussed in this opinion. We address these arguments in turn and explain why each fails.

i. Denial of Discovery

Mr. Schuchardt argues that the Hearing Panel prevented him from conducting discovery on material issues of fact. This argument stems from Ms. Dunn's case. Specifically, Mr. Schuchardt claims that he was not allowed to depose Mr. Dustin Welsh-the autistic child at issue in the conservatorship matter-Mr. Dustin Welsh's brother, or his school personnel regarding his whereabouts the day of the Chancery Court hearing.

In the disciplinary proceedings related to this matter, Mr. Schuchardt claimed that Mr. Dustin Welsh was present during the conservatorship hearing. But "every other witness present at the hearing with personal knowledge, including two members of the Bar, testified that Dustin Welsh was not present and did not testify, and the Court's Order contemporaneously approved by [Mr. Schuchardt] reflected this." The Hearing Panel prevented Mr. Schuchardt from deposing Mr. Dustin Welsh or the others on this issue. However, the Panel allowed Mr. Schuchardt to obtain attendance records for the child and would re-visit the issue if the records indicated that the child was not in school the day of the hearing.

School attendance records, however, showed that Mr. Dustin Welsh was present at school on the day of the hearing. Mr. Schuchardt admitted that he "was apparently mistaken."

Because it concerns a discovery dispute, we review the Hearing Panel's decision for abuse of discretion. *Walwyn v. Bd. of Pro. Resp.*, 481 S.W.3d 151, 165 (Tenn. 2015). We find no such abuse here. The Hearing Panel allowed Mr. Schuchardt to obtain school attendance records to determine whether Mr. Dustin Welsh was at school on the day of the hearing. Mr. Schuchardt did not seek any other discovery or contend that he still needed these depositions after school records showed that Mr. Dustin Welsh was in school on the date of the hearing. More importantly, Mr. Schuchardt fails to show how the appearance of Mr. Dustin Welsh at the Chancery Court hearing has any relevance to the merits of the disciplinary complaints against him, and we can see none. We see no abuse of the Hearing Panel's discretion on this discovery issue.

ii. *Brady v. Maryland*

Mr. Schuchardt argues that he is entitled to dismissal because the Hearing Panel failed to comply with *Brady v. Maryland*. In *Brady*, the United States Supreme Court held that a criminal prosecutor's failure to provide a defendant with exculpatory evidence violated due process. 373 U.S. 83, 87 (1963). Mr. Schuchardt claims that *Brady* should apply here because attorney disciplinary matters are "quasi-criminal," a term the United States Supreme Court has used in describing attorney discipline cases. *In re Ruffalo*, 390 U.S. 544, 551 (1968). However, Mr. Schuchardt fails to identify what, if any, evidence the Board withheld from him in violation of *Brady*.

Accordingly, this argument is waived. *See Newcomb v. Kohler Co.*, 222 S.W.3d 368, 400 (Tenn. Ct. App. 2003) ("A skeletal argument that is really nothing more than an assertion will not properly preserve a claim." (citing *United States v. Dunkel*, 927 F.2d 955,956 (7th Cir. 1991) (per curiam))).

Even still, as this Court previously held, attorney discipline proceedings are not criminal proceedings. *See, e.g., Green v. Bd. of Pro. Resp.*, 567 S.W.3d 700, 715 (Tenn. 2019) ("Disciplinary hearings are not criminal trials and do not include all the due process protections that apply in criminal trials." (citing *Moncier*, 406 S.W.3d at 157)); *Walwyn*, 481 S.W.3d at 171 ("[A]ttorney disciplinary proceedings are not criminal proceedings." (quoting *Long*, 435 S.W.3d at 186)).¹⁶ Because attorney discipline cases are not criminal proceedings, the full panoply of protections afforded in criminal proceedings are often inapplicable in attorney discipline cases. *See, e.g., In re Sitton*, 618 S.W.3d 288, 295 (Tenn. 2021) ("Attorney disciplinary proceedings are not criminal proceedings in which there is a presumption of innocence." (citations omitted)); *Mabry v. Bd. of Pro. Resp.*, 458 S.W.3d 900, 907 (Tenn. 2014) ("[T]here is no Sixth Amendment right to effective assistance of counsel in an attorney disciplinary proceeding." (citation omitted)). Like the presumption of innocence in *Sitton* and the right to effective assistance of counsel in *Mabry*, the protections of *Brady v. Maryland* simply do not apply

¹⁶ Other courts have reached similar holdings. *See Matter of Roberts*, 877 S.E.2d 266, 270 (Ga. 2022) (declining to apply *Brady* in attorney discipline case); *Smigelski v. Dubois*, 100 A.3d 954, 967 (Conn. App. Ct. 2014) (same).

in Mr. Schuchardt's case. Setting aside the waiver of this issue, Mr. Schuchardt's argument is meritless.

iii. *Sufficiency of the Evidence*

Mr. Schuchardt next makes three different arguments that all essentially challenge the sufficiency of the evidence against him. First, Mr. Schuchardt claims that the Hearing Panel failed to comply with the plain meaning of the law on thirty-nine issues. Second, Mr. Schuchardt claims that the Hearing Panel's conclusions are not based on evidence. Third, Mr. Schuchardt claims that the Hearing Panel granted summary judgment despite thirty issues of material fact.

First, we find all of these arguments waived. These arguments consist largely of unsupported claims of legal error or disputes of fact without identifying either the error or the fact in support. Each of these arguments reference lengthy charts that list the allegations made against him and purported citations to the applicable law via citations to an appendix.¹⁷

¹⁷ It appears that the "applicable law" section of Mr. Schuchardt's charts references two appendices filed with his principal brief. But his principal brief, including the attached appendices, fail to comply with our rules of appellate procedure. First, his "applicable law" section references scattered portions of the record, which do not constitute "citations to the authorities." Tenn. R. App. Proc. 27(a)(7)(A). Second, it seems that Mr. Schuchardt used an appendix to incorporate arguments he made in courts below by reference, in an apparent attempt to circumvent our word limit for principal briefs. Tenn. R. App. Proc. 30(e). Although our rules contemplate the use of an appendix to a party's brief, a party cannot use an appendix to circumvent this Court's word-count

Mr. Schuchardt relies on this Court to make his arguments for him. *See Dunkel*, 927 F.2d at 956 ("Judges are not like pigs, hunting for truffles buried in briefs."); *see also Bd. of Pro. Resp. v. Justice*, 577 S.W.3d 908,924 n.16 (Tenn. 2019) (declining to consider certain arguments that are 'too outlandish to dignify with discussion' or 'absurd'). As we explained above, our rules of appellate procedure require litigants to includ[e] the reasons why [their] contentions require appellate relief, with citations to the authorities and appropriate references to the record." Tenn. R. App. Proc. 27(a)(7)(A). Accordingly, because Mr. Schuchardt fails to make a legal argument regarding these issues, we deem them waived. *See, e.g., Yebuah v. Ctr.for Urological Treatment, PLC*, 624 S.W.3d 481, 491 (Tenn. 2021) (deeming issue waived when party's brief merely mention[s] potential 'constitutional problems' without properly explaining or giving adequate legal support for such claims" (citation modified)); *Lovlace v. Copley*, 418 S.W.3d 1, 33 n. 17 (Tenn. 2013) (deeming issue waived when party's brief failed to "provide any argument or citation to the record regarding [an] issue in the argument section of their brief" (citation modified)).

Nevertheless, we have soldiered on to ensure that the record contains substantial and material evidence of the RPC violations found by the Hearing Panel. Upon review of the voluminous record spanning thousands of pages, as illustrated by the summary of the facts above, we find substantial and material evidence to support the Hearing Panel's findings that

requirement. *See* Tenn. R. App. Proc. 28(a) (allowing litigants to file an appendix).

Mr. Schuchardt violated numerous RPCs. Accordingly, we find more than enough evidence of Mr. Schuchardt's misconduct. Mr. Schuchardt's arguments regarding the sufficiency of the evidence fail.

iv. Refusal of Witnesses

Additionally, Mr. Schuchardt takes issue with the Hearing Panel's refusal to allow him to call witnesses to testify regarding the quality of his legal services. According to Mr. Schuchardt, this was reversible error. We disagree.

At his disciplinary hearing, Mr. Schuchardt and the Board stipulated that three witnesses would have testified that Mr. Schuchardt represented them competently and with integrity. Because of the stipulation, and the fact that the three proposed witnesses had no personal knowledge of the disciplinary charges against Mr. Schuchardt in this case, the Hearing Panel excluded them from testifying before the Panel but "consider[ed] what their testimony would have been for purposes of mitigation." The Hearing Panel allowed Mr. Schuchardt to make offers of proof regarding the three witnesses. However, Mr. Schuchardt declined, waiving the issue for review by failing to make a proper record. An erroneous exclusion of evidence requires reversal only if the evidence would have affected the outcome of the trial had it been admitted. *Pankow v. Mitchell*, 737 S.W.2d 293, 297-98 (Tenn. Ct. App. 1987). Reviewing courts cannot make this determination without knowing what the excluded evidence would have been. *Stacker v. Louisville & N. R.R. Co.*, 61 S.W. 766, 766 (Tenn. 1901); *Davis v. Hall*, 920 S.W.2d 213, 218 (Tenn. Ct. App. 1995); *State v. Pendergrass*, 795 S.W.2d 150, 156 (Tenn. Crim. App. 1989). Accordingly, the party

challenging the exclusion of evidence must make an offer of proof to enable the reviewing court to determine whether the trial court's exclusion of proffered evidence was reversible error. Tenn. R. Evid. 103(a)(2); *State v. Goad*, 707 S.W.2d 846, 853 (Tenn. 1986); *Harwell v. Walton*, 820 S.W.2d 116, 118 (Tenn. Ct. App. 1991). Appellate courts will not consider issues relating to the exclusion of evidence when this tender of proof has not been made. *Dickey v. McCord*, 63 S.W.3d 714, 723 (Tenn. Ct. App. 2001); *Rutherford v. Rutherford*, 971 S.W.2d 955, 956 (Tenn. Ct. App. 1997); *Shepherd v. Perkins Builders*, 968 S.W.2d 832, 833-34 (Tenn. Ct. App. 1997).

We recognize that a hearing panel, like a trial court, has discretion in overseeing its proceedings. See *Hyder v. Bd. of Pro. Resp.*, 696 S.W.3d 532, 542 (Tenn. 2024) ("Rulings on the introduction of evidence are usually within the discretion of the trial judge and will not be reversed except for an abuse of that discretion." (citation modified)). We discern no abuse of discretion in the Hearing Panel's refusal to allow these three witnesses to testify. Moreover, we see no prejudice to Mr. Schuchardt given the agreed stipulation of the parties as to what these witnesses would have testified about and the Hearing Panel's consideration of this information. Accordingly, this argument fails.

v. Substantial Threat of Harm

On September 21, 2022, this Court issued an order temporarily suspending Mr. Schuchardt from the practice of law after finding that Mr. Schuchardt posed a threat of substantial harm to the public. See Tenn. Sup. Ct. R. 9, Sec. 12.3. Mr. Schuchardt claims that he did not receive notice or the opportunity for a hearing in connection with the temporary suspension.

This is false. Mr. Schuchardt received notice and had an opportunity to dissolve the petition. In fact, he took advantage of this opportunity to be heard by filing a Petition for Dissolution of the temporary suspension. In his petition, he continued to make baseless allegations that showed he "pose[d] a threat of substantial harm to the public." *Id.* Accordingly, this argument fails.

vi. Failure to Consolidate

Mr. Schuchardt faces other disciplinary actions unrelated to the complaints before us now. He argues that failure to consolidate those complaints with this matter was error. Mr. Schuchardt provides no rule or case law that mandates consolidation. Indeed, other than insinuations of misconduct by others in the other pending matters, Mr. Schuchardt provides no argument as to how those cases and this matter are linked. Accordingly, this argument fails.

B. Disbarment

We turn now to Mr. Schuchardt's challenges to the sanction of disbarment. When "determin[ing] the appropriate sanction for attorney misconduct, a hearing panel must consider the applicable ABA standards." *Gray*, 710 S.W.3d at 681 (citing Tenn. Sup. Ct. R. 9, § 15.4(a)). After identifying "the presumptive sanction under the ABA [s]tandards," a hearing panel considers whether to increase or decrease that presumptive sanction based on aggravating and mitigating factors. *Id.* (quoting *Dunlap v. Bd. of Pro. Resp.*, 595 S.W.3d 593, 612 (Tenn. 2020)).

Here, the Hearing Panel did just that. It first applied ABA standards 4.41, 4.42, 4.43 4.51, 4.52, 4.53, 4.54, 6.11, 7.1, and 7.2 in determining an appropriate

sanction. Under some of those standards, disbarment was the presumptive sanction. Under others, a lesser penalty like suspension or a reprimand was the presumptive sanction. Applying three of these standards to multiple violations, the Hearing Panel found that disbarment was the presumptive sanction.¹⁸ Next, the Hearing Panel found the following aggravating factors applicable: (a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) pattern of misconduct/multiple offenses; (d) bad faith obstruction of disciplinary proceeding/submission of false evidence during disciplinary process; (e) refusal to acknowledge wrongful nature of conduct; (f) vulnerability of victim; and (g) substantial experience in the practice of law. Finally, the Hearing Panel considered mitigating factors and found one mitigating factor applicable: that three of Mr. Schuchardt's former clients, each without any knowledge of the facts of this case, would testify to his high level of competence as a lawyer and personal integrity.

Mr. Schuchardt raises four specific issues with the sanction of disbarment. We will address each in turn. First, Mr. Schuchardt claims that the Board failed to establish that he violated any duties as

¹⁸ As we discussed above, the Hearing Panel made two factual findings that, in our view, require added context and detail, as these facts were incomplete as stated by the Hearing Panel. *See supra*, n. 11 & 12. However, the outcome for Mr. Schuchardt does not change, because the Hearing Panel recommended a reprimand, not disbarment, for Mr. Schuchardt's violations of RPC 1.1 related to these two violations. Because evidence in the record conflicts with the Hearing Panel's findings we disregard them. Removing these violations from consideration does not affect the Hearing Panel's recommended sanction of disbarment.

counsel and as such the sanction is inappropriate. As explained above, there is ample evidence in the record to support multiple findings of misconduct. Thus, this issue is without merit.

Second. Mr. Schuchardt contends that there is no evidence of damages as required to support disbarment. Astonishingly, he claims that he is the only one damaged. This is false. The complainants discussed above show how Mr. Schuchardt's conduct caused both serious injury and serious potential injury. Ms. McBryar had to find counsel at the final hour, and had her case delayed for months. Mr. Schuchardt's threats to and harassment of Mr. Hirschorn and his clients damaged the administration of justice. Mr. King was forced to subpoena his own client file, causing delay and requiring Mr. King to pay for the subpoena. We also note that, during the proceedings of Ms. Dunn's complaint, Mr. Schuchardt made several false statements to the Hearing Panel and declined to retract them. Accordingly, this argument fails.

Third, Mr. Schuchardt contends that a sanction of disbarment is inconsistent with other Tennessee disciplinary cases. While Mr. Schuchardt cites to three different disciplinary cases, he makes no attempt to explain how those cases are similar to his.¹⁹ He summarily concludes that "Tennessee does not provide for disbarment in the instances before the Court." We disagree.

Finally, Mr. Schuchardt contends that the Hearing Panel failed to consider mitigating factors.

¹⁹ Mr. Schuchardt references the following cases: *Sallee v. Board of Professional Responsibility*, 469 S.W.2d 18 (Tenn. 2015); *Hyman*, 437 S.W.3d 435; and *Flowers v. Board of Professional Responsibility*, 314 S.W.3d 882 (Tenn. 2010).

Specifically, Mr. Schuchardt claims that the following factors should be found as mitigating circumstances: (1) his lack of disciplinary record; (2) that he did not have a dishonest or selfish motive;²⁰ and (3) his reputation and character, evidence of which allegedly includes a book he was writing about currency, his pro bono work, that he is active in politics, that he prevented a private college from closing, and that he is active in his community.²¹

With regard to Mr. Schuchardt's disciplinary record and motive, the Hearing Panel clearly considered these factors. In fact, it found two of them to be aggravating factors. The Hearing Panel found that Mr. Schuchardt had been disciplined once by the Eastern District of Tennessee, twice by the Western District of Pennsylvania, once by the Middle District of Tennessee, and once by the Pennsylvania Supreme Court. Accordingly, the Hearing Panel properly held this to be an aggravating factor and not a mitigating one.

Additionally, the Hearing Panel considered Mr. Schuchardt's argument that he had no dishonest or selfish motive. It affirmatively held that Mr. Schuchardt put his personal financial motives ahead of his clients, causing serious injury or serious potential injury, and in other matters sought to gain personal

²⁰ Demonstrating his lack of remorse, in support of this point, Mr. Schuchardt contends that he "was victimized by all of the complaining parties in this case."

²¹ Like many of his other arguments, Mr. Schuchardt fails to comply with our rules in this part of his brief-which lacks any reference to the record as to where he presented these facts or made these arguments. *See* Tenn. R. App. Proc. 27(a)(7)(A) (requiring briefs to include appropriate references to the record).

advantage in his own cases. The record supports this finding.

Finally, Mr. Schuchardt alleges that the Hearing Panel failed to consider his character and reputation as a mitigating factor. This is false. The Hearing Panel "accept[ed] [Mr. Schuchardt's] proffered evidence" that three individuals would testify that Mr. Schuchardt "is a man of the highest level of competence and integrity . . . as establishing the mitigating factor of Mr. Schuchardt's 'character' and 'reputation.'"²² Although the Hearing Panel's Final Order did not discuss all of the arguments Mr. Schuchardt made regarding the mitigating factor of character / reputation, the Hearing Panel credited the evidence presented and found Mr. Schuchardt's "character" and "reputation" as a mitigating factor. The fact that the Hearing Panel's Final Order did not discuss at length each of Mr. Schuchardt's arguments as to this mitigating factor is unavailing. Consequently, we find that the Hearing Panel appropriately considered mitigating factors.

The Hearing Panel aptly observed how these proceedings have "dealt with fundamental duties of competence, diligence, trust, honesty, and professionalism that every attorney owes to his or her clients, to members of the bar, and to the judicial system." Considering the entire record in this matter, the only appropriate sanction is disbarment.

²² However, despite the "Hearing Panel credit[ing] this evidence and find[ing] the existence of this mitigating factor," the Hearing Panel noted that it was of limited value because the three proffered witnesses had "no first-hand knowledge of the substantive facts in [Mr. Schuchardt's] case."

IV. CONCLUSION

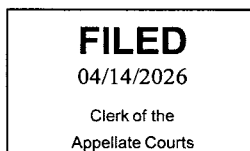
The Hearing Panel's decision was supported by substantial and material evidence and was neither arbitrary and capricious nor an abuse of discretion. We therefore affirm the judgment of the Chancery Court and the decision of the Hearing Panel to disbar Mr. Schuchardt. The costs of this appeal are taxed to Mr. Schuchardt, for which execution may issue if necessary.

/s/ Mary L. Wagner
MARY L. WAGNER, JUSTICE

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Appendix B

[Tennessee Supreme Court]
[Judgment Filed on April 14, 2026]



IN THE SUPREME COURT OF TENNESSEE AT
KNOXVILLE

Assigned on Briefs September 04, 2025

ELLIOTT J. SCHUCHARDT

v.

**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE**

Chancery Court for Knox County No. 207706-3

No. E2024-00812-SC-R3-BP

JUDGMENT

This attorney discipline case was heard on direct appeal as of right from the Chancery Court for Knox County. We have reviewed the entire record and the briefs and arguments of the parties. Upon consideration thereof, we affirm the conclusions of the hearing panel and the chancery court that disbarment is the appropriate sanction for Mr. Schuchardt's

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numerous violations of Tennessee's Rules of Professional Conduct. Disbarment shall be effective upon entry of this Order. See Tenn. Sup. Ct. R. 9, § 28.1.

Consistent with the Court's accompanying Opinion, it is therefore ordered and adjudged that the judgment of the Knox County Chancery Court, disbarring Elliott J. Schuchardt, is affirmed.

The costs of this appeal are taxed to Elliott J. Schuchardt, for which execution may issue if necessary.

It is SO ORDERED.

PER CURIAM

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Appendix C

**[Knox County Chancery Court]
[Opinion Filed on May 7, 2024]**

ENTERED
MAY 07 2024
J. SCOTT GRISWOLD

**IN THE CHANCERY COURT FOR KNOX
COUNTY, TENNESSEE**

IN RE:

No. 207706-3

ELLIOTT JAMES
SCHUCHARDT,

BPR No. 2021-3195-2-AJ

BPR # 027016

Respondent.

FINAL ORDER

Respondent Elliott James Schuchardt has appealed the decision of a Hearing Panel of the Tennessee Board of Professional Responsibility determining that he should be disbarred for multiple violations of the Rules of Professional Conduct in four separate cases. This court affirms the Hearing Panel's decision in all regards.

Factual and Procedural Background

The Board of Professional Responsibility ("Petitioner") filed a petition for discipline against Mr. Schuchardt, arising from complaints against him filed by his former clients Jamie McBryar and Aaron King, and opposing counsel in a previous case, Bennett Hirschhorn. Petitioner later filed a supplemental petition stemming from a complaint brought by another of Mr. Schuchardt's clients, Cherie Dunn. Following discovery and other preliminary matters, the Board's Hearing Panel entered an order on Petitioner's motion for sanctions, finding that Mr. Schuchardt made numerous false representations to the Panel and in his sworn affidavit testimony. The Hearing Panel found Mr. Schuchardt's conduct during the disciplinary proceedings to be "blatant, belligerent, haphazard, and contradictory to his own representations to this Panel and to the Circuit Court." The Hearing Panel further found:

[Mr. Schuchardt's] conduct has caused substantial harm in the form of unnecessary work not only for the Panel and disciplinary counsel, but also the father and stepmother of Dustin Welsh, who were deposed; the Attorney General; the Circuit Court; counsel representing the subpoenaed parties; and the subpoenaed parties themselves. As in *Dockery v. Bd. of Prof'l Responsibility*, 937 S.W.2d 863, 864 (1996), Respondent has sought to "thwart, stymie, and delay the orderly progress of the cause, and its procedural path is paved with [Respondent's] unkept promises and dilatory ploys." In the interest of justice and to protect the integrity of

the disciplinary rules and disciplinary process,
this conduct cannot be condoned or tolerated.

Through this proceeding Respondent, in his submissions to the Panel and the Knox County Circuit Court, has also repeatedly asserted fantastic and wholly unsupported claims of hiding evidence, bias, prejudice, criminal conduct, and conspiracy theories directed at these witnesses, other members of the bar, disciplinary counsel, and the Board itself.

The Hearing Panel concluded that Mr. Schuchardt's "statements and conduct ... have been reckless, if not intentional," and that he "poses a present threat of substantial harm to the public by virtue of his lack of candor and his abuse of process." The Panel directed disciplinary counsel to petition the Supreme Court for a temporary suspension of Mr. Schuchardt's law license pending the Panel's final order. The Supreme Court granted this petition in an order entered September 21, 2022, determining that Mr. Schuchardt does pose a threat of substantial harm to the public. He later filed a petition for dissolution of this order, which the Supreme Court denied on January 30, 2023, finding that "[r]ather than establishing good cause, the allegations of Mr. Schuchardt's petition establish that he is continuing to engage in the same conduct that initially resulted in the hearing panel's findings and this Court's determination that he poses a substantial risk of harm to the public."

Petitioner moved for partial summary judgment. Mr. Schuchardt responded with his own motion for summary judgment. After a hearing, the Hearing Panel granted partial summary judgment to Petitioner. Regarding the McBryar complaint, which

primarily involved a custody dispute in a same-sex marriage between Mr. Schuchardt's client Jamie McBryar and her spouse Janine McBryar, the Hearing Panel found no genuine issue of material fact with regard to the allegations that Mr. Schuchardt failed to: (1) seek an order restraining Janine McBryar from taking the child at issue out of the jurisdiction; (2) effectuate his client's clear goals; (3) dispute the incorrect statement of "number of children" in Janine McBryar's complaint; (4) submit a proposed temporary parenting plan, in violation of local rules; (5) file an affidavit of assets and expenses, in violation of local rules; (6) seek custody of the minor child; (7) provide notice to the Attorney General of his constitutional challenge in the case; (8) conduct any discovery for over six months; (9) explain and communicate the fee arrangement with his client; (10) keep his client informed as to the status of the fees he was charging; (11) cooperate with his client's successor counsel, Abby Rubenfeld; and (12) provide his client's file to her and successor counsel.

The Hearing Panel found that "the undisputed facts demonstrate that Respondent contemporaneously (a) advised [Jamie] McBryar that he was *not* going to work with her any further, (b) had a motion to withdraw pending before the Chancery Court, and (c) advised Ms. McBryar's new counsel - Ms. Rubenfeld - that he would represent [Ms. McBryar] competently and effectively at an upcoming hearing on the Motion for Custody Order."

Regarding Attorney Hirschhorn's complaint, the Hearing Panel found as follows: The Hearing Panel further finds that no other genuine issues of material fact exist with respect to the matters raised by the

Hirschhorn complaint, and GRANTS summary judgment in favor of the Board and against Mr. Schuchardt as follows.

a. Respondent Schuchardt created a concurrent conflict of interest between himself and his client, Mary Jane Douglas, by filing a detainer action against Ms. Douglas while simultaneously having an attorney-client relationship with her with respect to her medical malpractice claim.

b. During a 10/22/19 telephone call with Complainant Hirschhorn, Respondent Schuchardt refused to refrain from communicating directly with Mary Jane Douglas regarding the detainer action.

c. Respondent Schuchardt communicated to Complainant Hirschhorn his threats (i) to file a complaint against Ms. Richards [Hirschhorn's client and Schuchardt's former paramour] with the Tennessee Real Estate Commission and (ii) to correspond with the presiding judge of Ms. Richards' case against Bruce Klassen to persuade the judge that Ms. Richards is dishonest, unless a "quid pro quo" could be reached with respect to Respondent's detainer action against Ms. Douglas.

d. Respondent Schuchardt told Complainant Hirschhorn of his intention to "threaten" Ms. Douglas with adverse action against her real estate license unless a "quid pro quo" could be reached with respect to Respondent's detainer action against Ms. Douglas.

e. Respondent Schuchardt threatened the licenses and livelihoods of Ms. Richards and Ms. Douglas as leverage to settle his detainer action against Ms. Douglas.

Respondent is a lawyer; he spoke directly about the subject matter of his self-representation with a person he knew to be represented regarding the matter; and he did so without the other lawyer's consent. Indeed, when Mr. Hirschhorn instructed him not to communicate with Ms. Douglas, Respondent responded "Oh, f_k that." When Mr. Hirschhorn specifically cited Rule 4.2, Respondent stated that "I am a party. Rule 4.2 doesn't apply" and later said "Go ahead and report me, because I'm going to speak with her. I mean, I will probably threaten her." . . . [T]he Hearing Panel finds ... Respondent's conduct on October 22, 2019-as reflected in the recorded conversation with Mr. Hirschhorn-to be egregious. (Footnote omitted).

The Hearing Panel granted Petitioner summary judgment with respect to all the allegations of the Aaron King complaint. The Panel found that:

a. Respondent Schuchardt created a concurrent conflict of interest between himself and his client, Aaron King, by filing a civil action against Mr. King while still formally representing him in the juvenile child support case.

b. Respondent Schuchardt improperly withheld Mr. King's client file from Mr. King and his attorney, Robert Kurtz.

c. Respondent Schuchardt knowingly and intentionally made false statements of fact to Judge Scott Green regarding "conversations"

with the Disciplinary Board that never occurred and regarding the validity of Formal Ethics Opinion 2015-F-160.

d. Respondent Schuchardt threatened to testify against Mr. King as to Mr. King's reputation for dishonesty in an effort to gain an advantage in Respondent's case.

(Footnotes omitted).

Regarding the Cherie Dunn complaint, the Hearing Panel found that Mr. Schuchardt knowingly disobeyed Anderson County local rule 117.02 by failing to file his client's answer no later than 48 hours prior to the scheduled court hearing, and that he knowingly filed the answer in draft form without consideration of Ms. Dunn's comments and suggested edits concerning the content of the answer.

The Hearing Panel also found genuine issues of material fact regarding some of the allegations in the McBryar and Hirschhorn complaints. A final disciplinary hearing took place on April 5, 2023 to resolve these issues. Testifying were Mr. Schuchardt and attorneys Abby Rubenfeld (Complainant McBryar's successor counsel) and Complainant Hirschhorn. The Panel accepted a stipulation that three witnesses proffered by Mr. Schuchardt, former clients, would testify that they had no personal knowledge of any of the alleged facts by the complainants in this case, but that Mr. Schuchardt "demonstrated a high level of professional competence and personal and professional integrity in their respective - but unrelated - matters for which they had engaged" him.

After the final disciplinary hearing, the Hearing Panel entered a comprehensively thorough

57-page memorandum and order of final judgment. Regarding the McBryar complaint, the Hearing Panel identified eight issues, found that Petitioner did not prove the allegations pertaining to four of the eight issues, and granted Mr. Schuchardt judgment on these four issues. On the remaining four issues, the Panel found that he: (1) violated Knox County Fourth Circuit Local Rule 1 5(A) by failing to submit a proposed temporary parenting plan with his initiating pleadings; (2) violated Knox County Chancery Court Local Rule 13(B) by failing to provide all information required by the Uniform Child Custody Jurisdiction and Enforcement Act in his pleadings; (3) acted incompetently by seeking "spousal support" in a three-page "motion for custody order" that never affirmatively asked for custody, rejecting Mr. Schuchardt's argument that the motion merely contained a "typographical error"; and (4) failed to provide reasonable notice of his proposed withdrawal to his client Ms. McBryar, failed to allow sufficient time for her engagement of new counsel, and acted unethically by attempting to terminate all communications with his client, while deliberately refusing her requests to ask for a continuance and "professing to act as her counsel."

The Hearing Panel concluded that in his representation of Ms. McBryar, Mr. Schuchardt violated Rules of Professional Conduct ("RPC") 1.1 (competence); 1.3 (diligence); 1.4(a)&(b) (communication); 1.5(b) (fees); 1.16(d) (declining or terminating representation); 3.2 (expediting litigation); 3.4(c) (fairness to opposing party and counsel); and 8.4(d) (misconduct-administration of justice). Regarding the Hirschhorn complaint, the

Panel found that Mr. Schuchardt violated RPC 1.7(a)(1) (conflict of interest); 4.2 (communication with person represented by counsel); 4.4(a)(1) (respect for rights of third persons); and 8.4(d) (misconduct-administration of justice). In the King case, the Panel found violations of RPC 1.7(a)(1) (conflict of interest); 1.16(d) (declining or terminating representation); 3.3(a)(1) (candor toward the tribunal); 8.4(c) (misconduct/ dishonesty/ fraud/ deceit/ misrepresentation); and 8.4(d) (misconduct- administration of justice). In the Dunn case, the Panel found violations of RPC 1.1 (competence); 1.3 (diligence); 1.4(a) (communication); and 3.4(c) (fairness to opposing counsel). The Panel further found that each of the violations enumerated above constituted a violation of RPC 8.4(a) (misconduct-violation of RPCs).

In determining the appropriate punishment for these numerous violations, the Hearing Panel carefully analyzed and applied the ABA standards for imposing lawyer sanctions. The Hearing Panel held that "while [it] has found multiple violations of multiple rules, this Panel does not give each violation equal weight. The Panel finds some violations egregious and warranting severe sanction. Other violations are much less significant." After a thorough analysis in its final order, the Panel concluded that Mr. Schuchardt should be disbarred. Mr. Schuchardt has appealed this ruling.

Standard of Review

Tennessee Supreme Court Rule 9, section 33.1 provides the following standard of review in pertinent part:

- (b) The review shall be on the transcript of the evidence before the hearing

panel and its findings and judgment. The court may affirm the decision of the hearing panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the party filing the Petition for Review have been prejudiced because the hearing panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the hearing 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. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the hearing panel as to the weight of the evidence on questions of fact.

"A hearing panel's decision is supported by substantial and material evidence where the evidence furnishes a reasonably sound factual basis for the decision being reviewed." *Waggoner v. Bd. of Pro. Resp.*, 673 S.W.3d 227, 235 (Tenn. 2023) (quoting *Bd. of Pro. Resp. v. Parrish*, 556 S.W.3d 153, 163 (Tenn. 2018)) (internal quotation marks omitted). "A reasonably sound basis is less than a preponderance of the evidence but more than a scintilla or glimmer." *Id.* (quoting *Harris v. Bd. of Pro. Resp.*, 645 S.W.3d 125, 137 (Tenn. 2022)).

As the Supreme Court has recently stated, "A decision is arbitrary or capricious if it 'is not based on any course 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.' " *Meehan v. Bd of Pro. Resp.*, 584 S.W.3d 403, 413 (Tenn. 2019) (quoting *Hughes v. Bd. of Pro. Resp.*, 259 S.W.3d 631, 641 (Tenn. 2008)). An abuse of discretion occurs when the hearing panel "appl[ies] an incorrect legal standard, or reach[es] a decision which is against logic or reasoning that causes an injustice to the party complaining." *Id.* (quoting *Ed. of Pro. Resp. v. Reguli*, 489 S.W.3d 408,418 (Tenn. 2015)) (alterations in original).

Bd. of Pro. Resp. v. Prewitt, 647 S.W.3d 357, 366 (Tenn. 2022) (ellipsis and brackets in original). This court reviews questions of law de novo with no presumption of correctness, but does not substitute its judgment for that of the hearing panel on questions of fact. *Id.* "To the extent that the hearing panel's findings hinged on its assessment of the credibility of witnesses, credibility and the weight given to evidence are questions of fact. Our standard of review requires us to give deference to the factual findings made by the hearing panel." *Manookian v. Bd. of Pro. Resp.*, 685 S.W.3d.744, 791-92 (Tenn. 2024).

Findings of Fact

This court's review and following summary of the Hearing Panel's findings of fact is undertaken in light of the Panel's specific findings that Mr.

Schuchardt's "testimony lacks credibility," and "in this Panel's experience, it appears [Mr. Schuchardt] says and does whatever he believes to be expedient under any given set of circumstances."

I. *Jamie McBryar Complaint*

Complainant Jamie McBryar hired Mr. Schuchardt to represent her in a same-sex marriage/child custody case against her spouse, Janine McBryar. She paid him \$500 toward a \$1,500 retainer at their meeting on January 26, 2019. Two days later, Mr. Schuchardt filed a complaint in Knox County Fourth Circuit Court on Ms. McBryar's behalf, alleging that she and Janine McBryar were lawfully married in California and have one minor child. The complaint alleged that Janine McBryar took the child and left Tennessee, and "it is presently believed that [she] is living with her mother, in Oregon." Invoking the divorce statute, Tenn. Code Ann. § 36-1-101 *et seq.*, the complaint included three counts, seeking spousal support, shared custody, and attorney's fees, but did not request a divorce. Although the complaint listed the address for Janine McBryar as 53286 Rosa Road, Bandon, OR 97411, service of process was never effectuated upon her in the Circuit Court action.

On February 4, 2019, Janine McBryar filed her own action in Knox County Chancery Court, seeking a divorce on alleged grounds of irreconcilable differences and inappropriate marital conduct. This complaint stated that "0" children were at issue in the marriage and requested no custody relief. Mr. Schuchardt filed an answer and counter-complaint in Chancery Court, asking for a divorce, spousal support, shared custody, and attorney's fees. The answer failed to correct or deny the complaint's allegation that "0" children were

involved in the case. The counter-complaint alleged that the parties have one minor child, but did not include a proposed temporary parenting plan or an affidavit listing the assets, debts, income, and expenses of each party, contrary to Knox County Chancery Court local rules.

As found by the Hearing Panel, Mr. Schuchardt "made no further attempts to serve process upon Janine McBryar in the Fourth Circuit case. Indeed, [he] took no further action of any kind in the Fourth Circuit case which remained pending up to and including [Mr. Schuchardt's] withdrawal in July of 2019." In the Chancery Court action, Mr. Schuchardt filed a "motion for custody order" in which he asked for a determination that Jamie McBryar was "the lawful parent" of the child, but never affirmatively asked for custody. The Panel observed that he "mis-described the relief requested, stating that [his client] files this motion for *spousal support*." (Emphasis in original). The motion for custody order was set for hearing on July 16, 2019.

On June 13, 2019, Mr. Schuchardt sent Jamie McBryar an email stating, "This is going to be too complicated to litigate on a credit basis. Are you able to make a payment? Otherwise, I am going to need to withdraw from the case." There followed a string of email communications, wherein Ms. McBryar expressed confusion about his potential withdrawal, and concern about her inability to pay his fees on her limited income without spousal support. On June 19, 2019, Mr. Schuchardt sent Ms. McBryar his first and only invoice for attorney's fees in the amount of \$1,568.89. On July 1, 2019, Mr. Schuchardt filed a motion to withdraw from the Chancery Court case.

Three days later, Ms. McBryar reached out to Nashville attorney Abby Rubenfeld, explaining her situation, and closing with, "I am desperate for help!" Ms. Rubenfeld agreed to help find Ms. McBryar an attorney to assist her in the Chancery case. As found by the Panel, "[i]n the meantime, and as demonstrated by emails submitted into evidence by [Mr. Schuchardt] himself, Complainant McBryar repeatedly asked [him] to obtain a continuance of the July 16, 2019 hearing."

In response to Ms. McBryar's first email request, "can you get this continued for me from 7/16," Mr. Schuchardt replied, "I am still in the case, and will defend the upcoming hearing." In response to her second request, asking "why will you not continue it," he said, "It's expensive. If you have an attorney, get her to do it." On July 13, 2019, Ms. Rubenfeld sent Mr. Schuchardt an email several paragraphs long, saying, among other things, "I am happy to help her find another attorney and get a continuance ... I am willing to help Ms. McBryar file something pro se (letting the court know I am helping her) and then help her look for counsel in Knoxville, or get someone there to do it with me ... I am happy to try to resolve this Tuesday [hearing on July 16] issue so you can get out of the case." Mr. Schuchardt's response, in its entirety, said: "Enter an appearance, if you want to get involved." On apparently the same day, Mr. Schuchardt sent an email to Ms. McBryar saying: "Stop communicating with me. You are in breach of our agreement. I am not interested in working with you any further."

Ms. McBryar forwarded this email to Ms. Rubenfeld, who in turn emailed Mr. Schuchardt, saying:

Respectfully, our ethical rules do not allow you to do that. You are Ms. McBryar's attorney of record and you have a hearing set for Tuesday. Even if she breached an agreement, how can you ethically tell her you won't even talk to her right before her hearing when you have not yet withdrawn? And, talk about cutting off your nose to spite your face - I wrote you offering to help you get out of the case. Why on earth are you resisting that? You have written her that you are done - so help me help you get out.

(Capitalization added). Mr. Schuchardt's response was: "If you think I am in violation of an ethical rule, cite it or report me. You have no standing in this case. If you wish to enter an appearance, do so. Otherwise, do not contact me concerning this matter again. I am counsel of record for Ms. McBryar, and I will represent her competently and effectively on Tuesday. Period."

The Hearing Panel found that

At the same time, between July 12 and July 15, 2019, Complainant McBryar and Ms. Rubenfeld repeatedly sought from [Mr. Schuchardt] a complete copy of her file. [He] refused these requests as well, choosing to provide only the materials that had been submitted to the Chancery Court and asserting an attorney's lien on the remainder of the file.

The Panel quoted numerous emails entered into evidence at the hearing, wherein Ms. McBryar repeatedly asked for her entire file and was rebuffed, culminating in Mr. Schuchardt's email saying, "You have all the pleadings. I have a lien on your file, and will be holding it, pending payment." Ms. Rubenfeld responded to this by emailing him, "Our rules of

Professional Conduct prohibit you from withholding a client's file, even if you have not been fully paid, where, like here, it will have a 'potentially adverse effect on the client with respect to the subject matter of the representation.' Ms. McBryar needs to know all that was done in this case ... withholding her materials will negatively affect her case." Mr. Schuchardt did not provide Ms. McBryar anything further from her own client file.

On July 15, 2019, one day before the hearing on Mr. Schuchardt's "motion for custody order," Ms. Rubenfeld entered an appearance on behalf of Ms. McBryar. She testified that she did so reluctantly, but felt it was necessary because she could not find other replacement counsel on such short notice. As of the date of the Panel hearing, Ms. Rubenfeld was continuing to represent Ms. McBryar on a pro bono basis. In August of 2019, Mr. Schuchardt received notice from Knox County Fourth Circuit Court, saying that his complaint would be dismissed for failure to prosecute if no action was taken. He sent it to Ms. Rubenfeld, who voluntarily dismissed the Circuit Court action.

II. Bennett Hirschhorn Complaint

Bennett Hirschhorn is a Knoxville attorney who represented Mary Jane Douglas and Ann Richards in unrelated lawsuits. Ms. Douglas is a real estate agent who was prevented from working due to injuries from a car accident. Ms. Richards is also a real estate agent and a former client and paramour of Mr. Schuchardt. On September 4, 2019, Mr. Schuchardt agreed to represent Ms. Douglas in a medical malpractice action. A couple of weeks later, he agreed to let her stay in his home for \$500 per month. On October 14, 2019, Mr.

Schuchardt filed a lawsuit against Ms. Douglas, seeking to evict her from his house. On October 22, 2019, Mr. Hirschhorn entered a notice of appearance on behalf of Ms. Douglas in the eviction case. That same day, Ms. Douglas and Mr. Schuchardt terminated their attorney-client relationship in the medical malpractice case.

Mr. Hirschhorn also represented Ms. Richards in her action against Bruce Klassen for breach of contract, conversion, and fraud. Mr. Schuchardt called Mr. Hirschhorn on October 22. Mr. Hirschhorn's law clerk recorded the phone call. The audio recording, over 20 minutes long, was entered into evidence before the Hearing Panel. The Panel reviewed and quoted it at length in its final judgment. About 20 seconds in, after Mr. Hirschhorn asks why he is calling, Mr. Schuchardt sets the tone of the conversation by saying, "You need to get the f_k out of my living room with your ... client, or I'm gonna destroy your-your other client's real estate license." Mr. Hirschhorn requested that Mr. Schuchardt not speak to Ms. Douglas, Mr. Hirschhorn's client, referring to RPC 4.2 (communication with person represented by counsel) and RPC 1.7 (conflict of interest), and Mr. Schuchardt replied, "I'm not going to comply with that. You can report me to the Board. I'm not going to comply with that." In reply to the third request that he not speak directly with Ms. Douglas, Mr. Schuchardt said, "Go ahead and report me, because I'm going to speak with her. I mean, I will probably threaten her ... Now, as I said, we're gonna blow Ann Richards up, and she's gonna have to watch out for her license, because we've got a lot of stuff on her."

In response to Mr. Hirschhorn's observation that Ms. Douglas had statutory rights under the Uniform Residential Landlord and Tenant Act that would preclude her immediate eviction, Mr. Schuchardt replied, "None of that is going to happen, and you need to pay attention to what I'm saying, because Ann [Richards'] license is in jeopardy. I know a lot of information about Ann." Soon thereafter the following exchange took place:

Mr. Hirschhorn: OK, so you're threatening me with the Mary Jane [Douglas] case, if I don't do something- are you threatening me with Ann [Richards'] case if I don't do something in the Mary Jane case?

Mr. Schuchardt: Yes.

Mr. Hirschhorn: Do you see any problem with that?

Mr. Schuchardt: No. Nothing at all. If you got a problem, you can f_king report me.

Mr. Hirschhorn: OK.

Mr. Schuchardt: They know me very well at the Disciplinary Board. Believe me, you will get zero out of the Disciplinary Board.

Mr. Hirschhorn told Mr. Schuchardt he did not understand the threats he was making. Mr. Schuchardt replied:

OK. Then you're obviously not bright enough to follow *quid pro quos* here. I'm not gonna explain it a third time. Ok - I - you- you go ahead and do whatever you're planning to do. You're aware of the consequences. I'm going to pull the trigger. And I'm not talking about a real gun, but the consequences are gonna be just as devastating.

Mr. Schuchardt's eviction case against Ms. Douglas settled, with him paying her \$1,500 to help with moving expenses in return for her vacating the house on October 25, 2019.

III. *Aaron King Complaint*

In 2018, Mr. King was arrested and charged with rape of a child, statutory rape by an authority figure, incest, sexual assault, and aggravated kidnapping. The alleged victim was Mr. King's daughter. The charges led to the filing of a divorce action by Mr. King's wife. Mr. Schuchardt was retained in April of 2019 to represent Mr. King in the divorce action and in Juvenile Court proceedings for dependency and neglect and child support. Mr. King agreed to pay attorney's fees of \$150 per hour plus costs. He ultimately paid Mr. Schuchardt a total of \$4,320.00.

During the divorce litigation, Mr. Schuchardt successfully impeached Ms. King. He acknowledged that this impeachment was important to the defense of Mr. King's criminal case, in which Mr. King was represented by attorney Robert Kurtz. In December of 2019, Mr. Schuchardt sent Mr. King an invoice for attorney's fees approximating \$19,000. A dispute arose about payment, and Mr. Schuchardt withdrew from the divorce and dependency and neglect cases. He did not withdraw from the child support case. In January of 2020, Mr. Kurtz requested Mr. Schuchardt to provide him with Mr. King's client files, which Mr. Kurtz said was needed to help in the criminal defense of Mr. King. Mr. Schuchardt refused, claiming he had a right to withhold the file until he got paid his claimed outstanding attorney's fees.

On February 20, 2020, Mr. Schuchardt sued Mr. King for breach of contract. He filed a motion to withdraw in the child support case afterwards, but remained Mr. King's counsel of record until the juvenile court granted it on August 12, 2020. In June of 2020, Mr. Kurtz again requested the client file for Mr. King, and Mr. Schuchardt again refused. As found by the Hearing Panel, Mr. Schuchardt "affirmatively recognized the value of the information contained therein. In fact, [he] *taunted* Mr. Kurtz with the value of the file in an email, saying: 'By the way, the information I have is very useful for your case, because it shows that [Ms. King] is a liar. However, that information was never paid for.'" Mr. Kurtz served a subpoena on Mr. Schuchardt directing him to appear in Knox County Criminal Court and bring the client file. Mr. Schuchardt filed a motion to quash the subpoena, which was heard by the Criminal Court on July 9, 2020.

At the hearing, Mr. Kurtz argued to Judge Scott Green that he had been informed that "during the course of the litigation, Kimberly King had testified falsely under oath ... I have had to subpoena records from my client's own attorney to get the records that we were requesting because Mr. Schuchardt refuses to provide them." Mr. Schuchardt argued that the records were "protected" and his client Mr. King "should be required to at least make a reasonable payment for them." Mr. Kurtz told Judge Green that he had provided Mr. Schuchardt a copy of Tennessee Ethics Opinion 2015-F-160, 2015 WL 10059378, which opines that "[t]he entire client file, for which the lawyer has been compensated, belongs to the client" and "[i]f the lawyer has not been compensated, the lawyer may

retain work product, but only if retention of the work product will not have a materially adverse effect on the client with respect to the subject matter of the representation." Mr. Kurtz argued that "to refuse to give it to him is going to adversely affect Mr. King."

Mr. Schuchardt represented to the court that "I've had conversations with the Disciplinary Board over this particular issue ... So, I can assure you the 2015 opinion is no longer valid law." The Hearing Panel found that "[c]ontrary to his representations to Judge Green, [Mr. Schuchardt] had no 'conversations' with the Board regarding 'this particular issue' [and] the Board of Professional Responsibility has not withdrawn Opinion 2015-F-160, and it remains a current statement of an attorney's ethical obligations[.]" The Panel expressly concluded that Mr. Schuchardt's "representations to Judge Green were both false and deceitful." Judge Green ultimately refused to quash the subpoena and ordered Mr. Schuchardt to provide Mr. King the records in his client file.

IV. Cherie Dunn Complaint

Complainant Cherie Dunn's ex-husband, Derek Welsh, filed a petition for appointment of a conservator for Mr. Welsh and Ms. Dunn's son, Dustin, who is autistic, in Anderson County Chancery Court. Ms. Dunn retained Mr. Schuchardt on September 22, 2020. The next day Mr. Schuchardt moved for a continuance of the hearing on the petition, set for September 28, but did not move for an extension of time to file an answer to the petition. The hearing was rescheduled and took place on November 9, 2020. At the time of the hearing, Mr. Schuchardt had not filed an answer. He filed it the day of the hearing, after the hearing had been

concluded, in violation of Anderson County Chancery Court Local Rule 117.02, which provides that responses in opposition to motions must be filed no later than 48 hours before hearing on the motion. Although Ms. Dunn had requested Mr. Schuchardt to make changes, some substantive and some correcting typographical errors, to her answer, he made none of them, leaving out her correct address and filing the answer in draft form.

On November 16, 2020, the Chancery Court granted Mr. Welsh's petition, determining that Dustin Welsh was "incapable of managing his own affairs" and appointing Derek Welsh as his son's conservator. In the course of the investigation of Ms. Dunn's complaint, Mr. Schuchardt told disciplinary counsel that the witnesses at the hearing included each of Dustin Welsh's parents, and Dustin himself. Ms. Dunn responded by telling disciplinary counsel that Mr. Schuchardt's assertion that Dustin was present was false. She said that "Dustin Welsh was not present at this hearing," and "as [his] mother, I WAS in attendance at this hearing, from beginning to end, and my son was NOT in attendance[.]" Thereafter, disciplinary counsel sent an email to Mr. Schuchardt, saying:

In your initial response ... you assert that Dustin Welsh, the ward, appeared and testified at the conservatorship hearing on November 9, 2020. However, according to the trial court's order and guardian *ad litem*, the ward was not present at the hearing and did not testify. Please explain the discrepancy and respond to the position that, in making a false statement of material fact to the Board

in connection with a disciplinary matter, you violated RPC 8.1(a).

Mr. Schuchardt responded by email saying, "I would be very careful about signing a pleading that makes these statements. This case will be very carefully scrutinized, by both the media and the Tennessee Supreme Court. There will be a motion for sanctions. You have a statutory duty to investigate this case. I can prove this young man testified."

Thereafter, on March 18, 2022, Mr. Schuchardt sent a "demand for formal hearing and complaint regarding disciplinary counsel" to disciplinary counsel, BPR member and attorney Jennifer Hagerman, and Tennessee Supreme Court Justice Jeffrey Bivins, in which he stated that "Disciplinary Counsel did not investigate this matter [and has] pushed through false allegations, as part of its larger smear campaign, on behalf of [Mr. Schuchardt's] adversaries in the pending civil litigation." Mr. Schuchardt again asserted that "Dustin Walsh *[sic]* was present at the hearing, and he did testify," and "at least four persons have actual knowledge of such testimony[, including] attorney Adam Priest, who called Mr. Walsh *[sic]*." Around the same time, Mr. Schuchardt threatened another disciplinary counsel on the case, emailing that "you will putting your career at risk" by signing a pleading related to the investigation, and "your office has a history of filing claims in violation of Rule 11, to assist my firm's adversaries in litigation."

The Hearing Panel, in its order on Petitioner's expedited motion for sanctions entered September 13, 2022, explained its efforts to allow Mr. Schuchardt to substantiate his allegations, and the result:

Mr. Schuchardt claimed that Dustin Welsh (an autistic minor) was present and testified at a conservatorship hearing. The complainant, who is the boy's mother and a former client of Mr. Schuchardt, denied her son was present or testified, and the Board gave Mr. Schuchardt the opportunity to correct his prior statement. Rather than simply admitting his error, as he later temporarily admitted to attorney Adam Priest, Mr. Schuchardt "doubled down" and repeatedly claimed that he had information showing that the witness was present at the hearing and could prove that he testified[.]

Petitioner subsequently produced affidavit or deposition testimony from five witnesses who were present at the hearing who each testified that Dustin Welsh was not present. ... In the face of this overwhelming evidence, Mr. Schuchardt submitted his own affidavits wherein he testified that Mr. Welsh was present and testified at the hearing....

Mr. Schuchardt then began an odyssey seeking to depose witnesses who were undisputedly not present at the subject hearing, apparently hoping to establish that Dustin Welsh was not in school on the date of the hearing, and therefore could have been at the hearing. He also sought to depose Dustin Welsh, an autistic young man who witnesses had testified could not understand the testimonial oath and would be emotionally harmed from being deposed.

* * *

[T]he Panel allowed Mr. Schuchardt to obtain the school attendance record for Dustin Welsh on the date

of the hearing at issue and agreed to revisit the issue of further depositions if the attendance record showed the boy was not in school on the date of hearing....[T]he attendance record was produced by attorney Adam Priest and showed the boy was in school as his father and stepmother had previously testified.

* * *

The Panel finds Mr. Schuchardt's initial representations to the Board that Dustin Welsh was present and testified at the subject hearing, Mr. Schuchardt's subsequent representations that he had information to prove the witness was present, Mr. Schuchardt's sworn affidavit testimony that the witness was present, and his assertions that everyone else is lying and/or hiding the truth are all false. (Footnote and citations to the record omitted; "Respondent" in original replaced by "Mr. Schuchardt").

In its final order, the Hearing Panel concluded that (1) Mr. Schuchardt "falsely represented to Disciplinary Counsel, the Board, and Justice Bivins that he was not provided with Complainant Dunn's written allegation that Dustin Welsh did not testify at the conservatorship hearing"; (2) his representation that disciplinary counsel violated RPC 4.4 in pursuing this matter was false; (3) his "numerous representations" that Dustin Welsh testified at the hearing and was called by attorney Priest were all false; and (4) his "false public statements ... were knowingly made without any factual basis and/or knowingly made with reckless disregard for the truth or falsity of the statements or without reasonable justification."

Conclusions of Law

The Hearing Panel summarized the conclusions in its summary judgment order regarding Mr. Schuchardt's ethical violations as follows:

1. *McBryar* complaint.

Respondent committed the following ethics violations related to his representation of Jamie McBryar:

a. Failing to move for an Order in the Knox County Fourth Circuit Court case to restrain Janine McBryar from taking the minor child out of the jurisdiction or, alternatively, failing to seek an order commanding the return of the child to the jurisdiction, in violation of RPCs 1.1 (competence)¹, 1.3 (diligence)², and 3.2 (expediting litigation)³;

b. Failing to take any action in the Knox County Chancery Court case to effectuate the clear goals of his client, Jamie McBryar, in violation of RPCs 1.1 (competence), 1.3 (diligence), and 3.2 (expediting litigation);

c. Failing to dispute, in his Answer to Janine McBryar's Chancery Court Complaint, the specified "Number of Children: 0" in the

¹ RPC 1.1 provides that "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

² RPC 1.3 provides that "A lawyer shall act with reasonable diligence and promptness in representing a client."

³ RPC 3.2 provides that "A lawyer shall make reasonable efforts to expedite litigation."

"STATISTICAL DATA" section of the complaint, in violation of RPC 1.1 (competence);

d. Failing to submit a proposed temporary parenting plan with the Answer as required by of Local Rule 13(F)(ii) of the Knox County Chancery Court, in violation of RPC 1.1 (competence);

e. Failing to file an Affidavit in support of Respondent's Motion for Spousal Support and Interim Counsel Fees, listing the assets, debts, gross monthly income, and monthly living expenses of each party to the extent known by the filing party, as required by Local Rule 13(E) of the Knox County Chancery Court, in violation of RPC 1.1 (competence);

f. Seeking only a determination that Jamie McBryar is the "lawful parent" of the minor at issue, and failing to seek actual "custody" in the prayer for relief in his Motion for Custody Order, in violation of RPC 1.1 (competence);

g. Filing to provide the statutory notice to the Tennessee Attorney General, as required by Tenn. Code Ann. § 29-14-107(b), because the Motion for Custody Order challenges the constitutionality of Tenn. Code Ann. § 36-2-304, in violation of RPC 1.1 (competence);

h. Failing to conduct any discovery on behalf of Jamie McBryar client as to the substantive issues in the Chancery Court case while the case was pending for over six (6) months, in violation of RPCs 1.3 (diligence), and 3.2 (expediting litigation);

i. Failing to explain adequately or communicate fully the fee arrangement with

Jamie McBryar, in violation of RPCs 1.4(a)-(b) (communication)⁴ and 1.5(b) (fees);

j. Failing to keep his client informed as to the status of the fees that had been incurred, in violation of RPCs 1.4(a)-(b) (communication) and 1.5(b) (fees)⁵;

k. Failing to cooperate with successor counsel, Abby Rubenfeld, in violation of RPC

⁴ RPC 1.4 provides:

(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.

⁵ RPC 1.5 provides in pertinent part:

(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.

1.16(d)(3) (declining or terminating representation)⁶;

I. improperly withholding Ms. McBryar's client file from Ms. McBryar and Ms. Rubinfeld, in violation of RPC 1.16(d)(5) (declining or terminating representation); and

m. Engaging in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d)⁷.

After the April 5, 2023, disciplinary hearing, the Panel found additional violations in the *McBryar* case. It found that Knox County Fourth Circuit Court Local Rule I 5(A), (which does not contain any exceptions) requires the submission of a proposed parenting plan when the initiating pleadings are submitted - i.e., *before* any rights are established by the court

⁶ RPC 1.16(d) provides:

(d) A lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client's interests. Depending on the circumstances, protecting the client's interests may include: (1) giving reasonable notice to the client; (2) allowing time for the employment of other counsel; (3) cooperating with any successor counsel engaged by the client; (4) promptly surrendering papers and property to which the client is entitled and any work product prepared by the lawyer for the client and for which the lawyer has been compensated; (5) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse [e]ffect on the client with respect to the subject matter of the representation[.]

⁷ RPC 8.4 provides that "It is professional misconduct for a lawyer to: ... (d) engage in conduct that is prejudicial to the administration of justice."

Respondent admitted that he did not file a motion to seek relief from meeting the requirement of Rule 15. Finally, Respondent admitted that the Fourth Circuit Court would have the discretion to dismiss a lawsuit for failing to comply with Rule 15. By failing to comply with Local Rule 15(A), the Panel finds that Respondent violated RPCs 1.1 [competence] and 3.4(c) [fairness to opposing counsel]. (Citations to record omitted).

The Panel found that Mr. Schuchardt violated RPCs 1.1 and 3.4(c) by failing to set forth information required by the Tennessee Uniform Child Custody and Jurisdiction Enforcement Act in his initial pleading, and violated RPC 1.1 by seeking "spousal support" in the first sentence of a three-page "motion for custody order" that never affirmatively asked for custody. Finally, the Panel found that Mr. Schuchardt violated RPCs 1.4 (communication) and 1.16(d)(1), (2) (terminating representation) by failing to withdraw in a manner that does not prejudice his client, stating that Mr. Schuchardt compounded his client's [Ms. McBryar's] dilemma by advising his client on July 9, 2019: "I am still *in* the case, and will defend the upcoming hearing." [He] similarly advised Ms. Rubinfeld on July 13th: "I am counsel of record for Ms. McBryar, and will represent her competently and efficiently on Tuesday. Period." Yet, the same day (July 13th), [Mr. Schuchardt] *also* told his client: "Stop communicating with me. You are in breach of our agreement. I am not interested in working with you further."

These communications put Ms. McBryar in a no-win situation. [Mr. Schuchardt] refused all entreaties to continue the hearing on the Motion for Custody Order, refused to communicate with [Ms.] McBryar

any further, and -yet- intended to argue the Motion for Custody Order on July 16, 2019.

* * *

[Mr. Schuchardt's] latest testimony stands in direct conflict with his own 2019 emails to Complainant McBryar. . . Thus, the Panel finds [Mr. Schuchardt's] testimony lacks credibility. In addition, it is worth noting that [Mr. Schuchardt's] (a) refusal to continue the Motion for Custody Order and (b) professed intent to argue the Motion, while (c) simultaneously moving to withdraw from the case, is contrary to what [Mr. Schuchardt] himself has acknowledged his ethical obligations to be.

* * *

The Panel finds that [Mr. Schuchardt] did not provide reasonable notice to Ms. McBryar under RPC 1.16(d)(1). Further, [he] did not afford adequate time for Ms. McBryar to engage new counsel, or for that new attorney - Ms. Rubinfeld - to prepare adequately for the motion hearing. Further, by attempting to terminate all communications with his client through his July 13, 2019, email, while deliberately refusing to seek a continuance of the July 16th hearing and professing to act as her counsel, [Mr. Schuchardt] violated RPC 1.4(a)(2). (Internal citations omitted).

The Hearing Panel's findings and conclusions that Mr. Schuchardt violated the above-discussed and cited Rules of Professional Conduct are not arbitrary or capricious, and they are fully supported by substantial and material evidence in the record. In his petition, Mr. Schuchardt asserts that (1) "the panel erred as a matter of law when it found that [he] should have filed a *divorce* case for Jamie McBryar"; (2) "[t]he panel erred as a matter of law when it found that the

form of [his] summons was improper"; and (3) "[t]he panel erred as a matter of law when it found [he] did not properly serve the 4th Circuit summons." The Hearing Panel made none of these asserted findings. Mr. Schuchardt has attempted to mislead this court by stating that the Hearing Panel made findings it did not. Mr. Schuchardt also asserts that it is "uncontested" that Ms. McBryar did not want a divorce, stating that "[t]he only evidence on this issue was Schuchardt's affidavit stating that Jamie McBryar did not want a divorce, when she first approached Schuchardt." This statement is not true. At the hearing, Ms. Rubenfeld testified: "[t]he client wanted a divorce, not just spousal support." This court affirms the Panel's findings and conclusions that Mr. Schuchardt violated the above-discussed RPCs.

As found by the Panel in the *Hirschhorn* matter:

2. *Hirschhorn* complaint.

Respondent also committed the following ethics violations relating to the *Hirschhorn* complaint:

- a. Creating a concurrent conflict of interest between himself and his client, Mary Jane Douglas, by filing a detainer action against Ms. Douglas while simultaneously having an attorney-client relationship regarding her medical malpractice claim, in violation of RPC 1.7(a)(1) (conflict of interest)⁸;

⁸ RPC 1.7 (a)(1) provides that "Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client[.]"

b. During a 10/22/19 telephone call "with Informant Hirschhorn, refusing to refrain from communicating directly with Mary Jane Douglas (Hirschhorn's client) regarding the detainer action, in violation of RPC 4.2 (communication with a person represented by counsel)⁹;

c. Communicating to Informant Hirschhorn threats (i) to file a complaint with the Tennessee Real Estate Commission against Ann Richards (another client of Hirschhorn's in a matter wholly unrelated to the detainer action against Ms. Douglas) and (ii) to correspond with the presiding judge of Ms. Richards' unrelated case against Bruce Klassen to persuade the judge that Ms. Richards is dishonest, unless a "*quid pro quo*" could be reached with respect to Respondent's detainer action against Ms. Douglas, in violation of RPC 4.4(a)(1) (respect for the rights of third persons)¹⁰;

d. Communicating to Informant Hirschhorn his intention to "threaten" Ms. Douglas with adverse action against her real estate license unless a "*quid pro quo*" could be reached with respect to Respondent's detainer action against Ms. Douglas, in violation of RPC

⁹ RPC 4.2 provides: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order."

¹⁰ RPC 4.4 provides: "(a) In representing a client, a lawyer shall not: (1) use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person[.]"

4.4(a)(1) (respect for the rights of third persons);
and

e. Threatening the licenses and livelihoods of Ms. Richards and Ms. Douglas as leverage to settle his detainer action against Ms. Douglas, in violation of RPC 8.4(d) (misconduct-administration of justice).

The Hearing Panel's conclusions are established and supported by the recording of the telephone call from Mr. Schuchardt to Mr. Hirschhorn, which was properly entered into evidence and considered by the Panel. The Panel set forth the substance of this recorded call in an appendix to its summary judgment order. Mr. Hirschhorn testified at some length at the hearing about the call and the respective situations of his clients Ms. Richards and Ms. Douglas. In its final order, the Panel noted that, "while the transcript supplied by the Board and quoted extensively herein is powerful, it does not do justice to just how appalling the audio is." This court has also listened to the audio recording, and agrees with the Panel's assessment. It, along with other evidence and pleadings in the record, substantiates the conclusions that Mr. Schuchardt filed a lawsuit against his own client while he still admittedly had an attorney-client relationship with her in another matter, expressly threatened the licenses and livelihoods of both Ms. Richards and Ms. Douglas in an attempt to gain leverage to get a favorable outcome to his detainer action against Ms. Douglas, and proposed a "*quid pro quo*" to Mr. Hirschhorn wherein he would refrain from attacking his former clients in return for help in his lawsuit.

Mr. Schuchardt does not dispute the authenticity or content of the recording. He argues

instead that the audio recording was tampered with, resulting in the end portion of it being deleted. The Hearing Panel considered and rejected this argument, finding that Mr. Schuchardt's "testimony on that point is demonstrably false ... The Panel finds that [he] did *not* disclaim his demand for a *quid pro quo* at the end of the call and that the audio recording had *not* been tampered with." This court finds no reason to disturb the Panel's evaluation of the facts on this point. There is substantial and material evidence in record supporting the Panel's conclusions regarding Mr. Schuchardt's ethical violations in the *Hirschhorn* matter as outlined above, and this court affirms them.

Addressing the *King* complaint, the Panel found:

3. *King* complaint.

As to the *King* complaint, the Panel found that Respondent committed the following ethics violations:

- a. Creating a concurrent conflict of interest between himself and his client Aaron King, by filing a civil action against Mr. King while still formally representing him in the juvenile court child support case, in violation of RPC 1.7(a)(1) (conflict of interest);
- b. Improperly withholding Mr. King's client file from Mr. King and his attorney, Robert Kurtz, in violation of RPC 1.16(d) (declining or terminating representation);
- c. Knowingly and intentionally making false statements of fact to Judge Scott Green that (i) Respondent previously had "conversations" with the Disciplinary Board which never occurred and (ii) Formal Ethics Opinion 2015-F-160 "is no longer valid law," in violation of RPCs 3.3(a)(1) (false statement to a

tribunal)"¹¹, 8.4(c) (misconduct- dishonesty/ fraud/ deceit/ misrepresentation)¹², and 8.4(d) (misconduct- administration of justice); and

d. Threatening to testify against Mr. King as to Mr. King's reputation for dishonesty in an effort to gain an advantage in Respondent's case, in violation of RPCs 1.7(a)(1) (conflict of interest) and 1.16(d) (d_s::clining or terminating representation).

In his petition for review, Mr. Schuchardt admits that his representation of Mr. King "was not limited in any way," that he sued Mr. King on February 20, 2020, before he filed a motion to withdraw from Mr. King's child support case, and that he remained Mr. King's attorney of record until August 12, 2020.

It is also undisputed that Mr. Schuchardt refused attorney Kurtz's requests to provide him with Mr. King's file, and filed a motion to quash the subpoena that Mr. Kurtz was forced to have issued in Mr. King's criminal court case. As found by the Hearing Panel, Mr. Schuchardt "recognized the value of the divorce case file, telling Mr. Kurtz: '[b]y the way, the information I have is very useful for your [criminal] case, because it shows Kim [i.e., Mr. King's ex-wife] to be a liar. *However, that information was never paid for.*'" The Panel also noted that Mr. Schuchardt threatened Mr. Kurtz by saying "I will let the criminal court judge know that Aaron [King] has committed fraud in his relationship with me, and that I am

¹¹ RPC 3.1 provides: "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal[.]"

¹² RPC 8.4(c) provides that "It is professional misconduct for a lawyer to:... (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation[.]"

available to testify as to his reputation for dishonesty in the criminal case." Mr. Schuchardt did these things *while he was still Mr. King's attorney of record* in the juvenile court case.

Mr. Schuchardt asserts that he was justified in asserting an attorney's lien on Mr. King's client file and refusing to release it unless and until Mr. King paid him, despite the analysis and conclusion of the BPR's Formal Ethics Opinion 2015-F-160, 2015 WL 10059378, which opined that

The entire client file, for which the lawyer has been compensated, belongs to the client. If the lawyer wants a copy, the lawyer should bear that expense. If the lawyer has not been compensated, the lawyer may retain work product, *but only if retention of the work product will not have a materially adverse effect on the client with respect to the subject matter of the representation.*

Mr. Schuchardt was not a lawyer who "has not been compensated" by Mr. King; the Panel found that "Complainant King paid Respondent \$4,320.00 during the course of the case," and Mr. Schuchardt has not challenged this finding. He was not paid in full everything he claimed he was owed for work on the case, but that is not an excuse for holding Mr. King's client file for ransom in the hopes of using it to gain leverage for more payment. More importantly, it is clear that Mr. Schuchardt's retention of the file, which "belongs to the client," and which he recognized as "very useful" and valuable for the defense of his client's criminal case, had a materially adverse effect on Mr. King's criminal defense.

Mr. Schuchardt argued before the Hearing Panel and this court that the Court of Appeals' opinion in *McCarter v. McCarter*, No. E2015-00549-COA-R3-CV, 2016 WL 3209462 (Tenn. Ct. App. June 1, 2016), supports his position that the retention of Mr. King's client file was justified. It does not. *McCarter* involved a very different factual situation and addressed the question of whether a party's due process rights were violated by not receiving proper notice of an evidentiary hearing on an attorney's claim for an enhanced judgment lien. *Id.* at *1-*2. The *McCarter* Court did not address a situation where an attorney refused requests to turn over a client file because of non-payment of attorney's fees. It is inapposite and does not cite or discuss Ethics Opinion 2015-F-160.

The Hearing Panel found that Mr. Schuchardt's representations to Judge Green that he had engaged in "conversations" with the disciplinary board were intentionally falsely made. He told the court that "I've had conversations with the Disciplinary Board over this particular issue, and they are respecting the [*McCarter*] opinion from the Court of Appeals. So, I can assure you the 2015 opinion letter is no longer valid law." The Panel found that Mr. Schuchardt "had no 'conversations' at any time regarding 'this particular issue.'" It concluded that Mr. Schuchardt's "representations to Judge Green were both false and deceitful." The Hearing Panel's findings and conclusions regarding the *King* matter are not arbitrary or capricious, and are supported by substantial and material evidence in the record, and therefore they are affirmed by this court.

4. *Dunn* complaint.

Lastly, the Panel found that Respondent committed the following ethics violations relating to the *Dunn* complaint:

a. Knowingly disobeying Local Rule 117.02 of the Anderson County Chancery Court by failing to file his Answer on behalf of his client, Cherie Dunn, no later than 48 hours prior to the scheduled court

hearing, in violation of RPCs 1.1 (competence), 1.3 (diligence), and 3.4(c) (fairness to opposing party and counsel)¹³; and

b. Knowingly filing the Answer on behalf of Complainant Dunn in draft form, and without consideration of Ms. Dunn's comments and edits concerning the content of the Answer, in violation of RPCs 1.1 (competence), 1.3 (diligence), and 1.4(a) (communication).

(Citations to record omitted).

Regarding Mr. Schuchardt's conduct during the course of disciplinary counsel's investigation of the *Dunn* complaint, the Hearing Panel, as already noted above, found that that Mr. Schuchardt knowingly made false statements in his "numerous representations" that Dustin Welsh was present and testified at the conservatorship hearing; that he threatened disciplinary counsel who were investigating complaints against him; and that he made false statements to the BPR and Supreme Court.

¹³ RPC 3.4(c) provides that "A lawyer shall not: ... (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists[.]"

The Panel stated that "[b]ased on these admitted allegations, [it] found that [Mr. Schuchardt] violated RPCs 8.1(a) (bar admission and disciplinary matters)¹⁴, 8.2(a)(2) Judicial and legal officials)¹⁵, 8.4(c) (misconduct - dishonesty/ fraud/ deceit/ misrepresentation), and 8.4(d) (misconduct - administration of justice)." The Hearing Panel's findings and conclusions regarding the *Dunn* matter are not arbitrary or capricious, and are supported by substantial and material evidence in the record, and they are affirmed by this court.

ABA Standards for Imposing Lawyer Sanctions

Under Supreme Court Rule 9, § 15.4(a), "[i]n determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions." As stated by our Supreme Court,

To determine the appropriate punishment, the Court looks first to the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards")....

The ABA Standards serve as "guideposts" for determining the appropriate punishment rather than "rigid rules" that would dictate any particular outcome. *In re Vogel*, 482 S.W.3d at 533-34 (quoting *Hyman v.*

¹⁴ RPC 8.1 provides in pertinent part that "a lawyer in connection with a ... disciplinary matter, shall not: (a) knowingly make a false statement of material fact[.]"

¹⁵ RPC 8.2(a) provides that "A lawyer shall not make a statement that the lawyer knows to be false or that is made with reckless disregard as to its truth or falsity concerning the qualifications or integrity of the following persons: (1) a judge; (2) an adjudicatory officer or public legal officer[.]"

Bd. of Prof'l Responsibility, 437 S.W.3d 435, 447 (Tenn. 2014)). As this Court has explained:

The Standards recommend the type of sanction-such as disbarment or suspension-that the ABA Sanctions Committee deems generally appropriate for various kinds of misconduct. As the Preface explains, the ABA model does not consider the intent of the attorney but looks instead to the duty violated, the attorney's mental state, and any actual or potential injury.

In re Sitton, 618 S.W.3d 288, 298-99 (Tenn. 2021) (quoting *Bd. of Prof'l Responsibility v. Cowan*, 388 S.W.3d 264, 267 (Tenn. 2012)). "[T]he severity of the presumptive sanction varies depending upon the lawyer's mental state-whether the lawyer acted intentionally, knowingly, or negligently-and the seriousness of the actual or potential injury caused by the lawyer's misconduct." *Bd. of Prof'l Responsibility v. Barry*, 545 S.W.3d 408, 422 (Tenn. 2018) (quoting *Maddux v. Bd. of Prof'l Responsibility*, 409 S.W.3d 613,624 (Tenn. 2013)).

The Hearing Panel carefully and thoroughly considered the ABA Standards and pertinent factors in determining the appropriate sanctions for Mr. Schuchardt's multiple violations of roughly sixteen identified Rules of Professional Conduct. The court quotes at length and adopts the Hearing Panel's analysis and conclusions in pertinent part as follows:

Based upon the findings contained herein, the rulings stated in the Sanctions Order, and the rulings in the Summary Judgment Order, the Panel has determined that Respondent violated the following RPCs: 1.1, 1.3, 1.4(a)-(b),

1.5(b), 1.7(a)(1), 1.16(d), 3.2, 3.3(a)(1), 3.4(c), 4.2, 4.4(a)(1), 8.1(a), 8.2(a)(2), 8.4(a), 8.4(c), and 8.4(d).

While it is plain from the list above that the Panel has found multiple violations of multiple Rules, this Panel does not give each violation equal weight. The Panel finds some violations egregious and warranting severe sanction. Other violations are much less significant. Regardless, it is not necessary to discuss each one of these violations at length. The Panel, however, highlights its determination regarding the presumptive sanction for certain violations to assist later review of this Order. In particular, the Panel discusses all the violations it has found to warrant a presumptive sanction of disbarment.

1. RPC 1.1 (Competence).

For violations of RPC 1.1, the ABA Standards are as follows: 4.51 ("Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client"); 4.52 ("Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client"); 4.53 ("Reprimand is generally appropriate when a lawyer: (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client"); and 4.54 ("Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in

determining whether he or she is competent to handle a legal matter, and causes little or no actual injury or potential injury to a client").

With respect to Respondent's conduct from the beginning of the representation of McBryar until the beginning of discussions regarding withdrawal in late June-in particular Respondent's conduct with respect to the initial pleadings in the two cases-the Panel finds that the appropriate presumptive sanction is reprimand under ABA Standard 4.53(a). The Panel similarly finds that the appropriate presumptive sanction for Respondent's conduct with respect to the pleadings in the *Dunn* matter is reprimand under ABA Standard 4.53(a).

The Board strenuously asserts that some of Respondent's conduct in the *McBryar* matter (e.g., his failure to specifically seek "custody" in his pleadings even though it was one of the primary issues in the case) warrants a presumptive sanction of disbarment. The Panel disagrees. The Panel does not find that these episodes demonstrate that Respondent does not "understand *the most fundamental legal doctrines or procedures*" (emphasis added) Far from demonstrating a failure to understand *fundamental legal doctrines and procedures*, Respondent's behavior indicates a level of knowledge that enabled his abuse and misuse. But in the Panel's view Respondent's violations of RPC 1.1 in this matter demonstrate a disregard for local rules and negligent preparation of pleadings.

2. RPCs 1.3 (Diligence) and 1.4(a)-(b)
(Communications with the Client).

Under ABA Standards 4.41 and 4.42, the distinction between disbarment and suspension for violations of 1.3 and 1.4(a)-(b) is the degree of injury suffered by the

client, with disbarment being appropriate for "serious or potentially serious injury" and suspension being appropriate for "injury or potential injury." While the Standards define "injury" as being "harm" that ranges in scope from "little or no" injury to "serious" injury, the ABA Standards do not define when such injury should be considered "serious." Thus, consistent with the discretionary nature of the ABA Standards themselves, the Panel is free to consider all factors in applying ABA Standards 4.41 and 4.42.

a. *McBryar*.

While the Panel has found multiple violations of RPC 1.3 (diligence) and 1.4(a)-(b) (communication), the Panel finds that Respondent's lack of diligence by failing to pursue discovery in the *McBryar* Chancery Court litigation for over six (6) months was egregious. This failure seriously compromised Ms. McBryar's ability to obtain spousal support and custody of the child at issue. Indeed, on cross-examination by Respondent, Abby Rubenfeld testified that

[a] motion for spousal support and a motion for custody was filed in, like, February but not set to be heard until July, and there was no discovery done to support either one of those as far as I know. [S]o neither motion was ready to be heard in May or July.

Regarding Respondent's motion for spousal support, Ms. Rubenfeld elaborated that Respondent had no discovery about Janine McBryar's income, nothing about Jamie's inability to work, nothing about anybody's need. I didn't see where an income and expense statement had even been filed. I mean, you have to show need and ability to pay, and none of that was prepared, as far as I could tell. .. [I]t meant that

she [i.e., Jamie] couldn't go forward with the hearing for desperately needed spousal support because it wasn't properly prepared. When I had to cancel that hearing because it wasn't ready to be heard, we couldn't get a hearing date until December. So she couldn't get any support for basically the whole year, and she had, like, no money.

Accordingly, Respondent's failure to conduct discovery to provide proper support for his motions for spousal support and custody caused serious injury to his client and justifies a presumptive sanction of disbarment.

b. *Dunn*.

With respect to the violations of RPC 1.3 and 1.4(a) arising out of the *Dunn* matter, this Panel finds that the appropriate presumptive sanction is a reprimand under ABA Standard 4.43.

3. RPC 1.16(d) (Terminating Representation).

ABA Standards 7.1 and 7.2, both require a finding that a lawyer "knowingly engage[d] in conduct that is a violation of a duty owed as a professional" and that the violation caused injury or potential "injury to the client, the public, or the legal system." Whether the presumptive sanction should be disbarment or suspension turns on two questions: (1) whether the violation was committed "with the intent to obtain a benefit for the lawyer or another" and (2) whether or not the conduct caused "serious" injury/potential injury.

Here, two specific violations of RPC 1.16(d) and one violation of 1.5(6) support a presumptive sanction of disbarment.

a. *McBryar*.

First, in the *McBryar* matter, Respondent knowingly and deliberately refused to cooperate with Abby Rubenfeld, who reluctantly became successor counsel in the Knox County Chancery Court action. Notably, the transition to new counsel arose after Respondent initiated a fee dispute with his client, which is the subject of the violation of 1.5(6).

After being contacted by Jamie McBryar, Ms. Rubenfeld made repeated requests for information to Respondent regarding the status of the case and the possibility of obtaining a continuance of the July 16, 2019, hearing. These requests were met with open hostility by Respondent, who - apart from advising "Enter an appearance, if you want to get involved" - refused to provide Ms. Rubenfeld any substantive information relating to the case.

With a mere three days before the hearing on what he considered to be a "groundbreaking" motion (albeit, unsupported by any discovery), Respondent-without cause-belligerently refused to cooperate with Ms. Rubenfeld (*see* RPC 1.16(d)(3)) and did not afford adequate time Ms. Rubenfeld to prepare adequately for the motion hearing (*see* RPC 1.16(d)(2)).

* * *

A withdrawing attorney "must take all reasonable steps to mitigate the consequences to the client." RPC 1.16(d), cmt. 9. This obligation even extends to counsel who has not been formally engaged and has not entered an appearance. *See Prewitt*, 647 S.W.3d at 377 n.26. Here, Respondent's obstinate refusal to provide any information to Ms. Rubenfeld, or heed the numerous requests from both Ms. Rubenfeld *and* the client for a continuance of the July 16th hearing,

caused serious injury and serious potential injury to Ms. McBryar and her case.

Moreover, the Panel finds this conduct was intended to obtain at least two benefits for Respondent: namely, financial compensation and the publicity Respondent expected from what he believed to be a "groundbreaking" case.

b. *King*.

As another basis for the presumptive penalty of disbarment, Respondent deliberately withheld his file from his former client, Aaron King and his attorney, Robert Kurtz, in violation of RPC 1.16(d)(5). Mr. King and his attorney sought the file for use in his upcoming criminal trial for the purpose of impeaching the testimony of Mr. King's ex-wife.

Respondent affirmatively recognized the value of the information contained therein. In fact, Respondent *taunted* Mr. Kurtz with the value of the file in an email ... Nevertheless, claiming an attorney's lien for unpaid legal fees, Respondent withheld the file from Mr. King and his attorney from January 2020 until July of 2020, when he was ordered by the criminal court to produce it.

In addition to causing actual harm by forcing Mr. King's attorney to subpoena the file, Respondent's conduct caused serious potential harm to Mr. King. The file was sought for use in a *criminal* trial where Mr. King's personal liberty was at stake. While Respondent clearly understood the importance of the evidence in his possession, he put his own pecuniary interest in collecting an unpaid fee ahead of the liberty interests of his former client. In addition, and in furtherance of his self-interest, Respondent knowingly lied to Judge Green about "conversations with the

Disciplinary Board" that never occurred and misrepresented to the Court that Formal Ethics Opinion 2015♦F-160 was no longer "valid." Such conduct is directly antithetical to a lawyer's duties to practice the "learned art" of law "in the spirit of public service" and "to promote justice and the public good." Tenn. S. Ct. R. 8, Preamble at♦ 1. Accordingly, this conduct was carried out for Respondent's own interest and had the potential to cause serious injury to his client. It therefore justifies the presumptive penalty of disbarment.

4. RPCs 4.4(a)(1) (Respect for the Rights of Third Persons) and 8.4(d) (Conduct Prejudicial to the Administration of Justice).

a. *Hirschhorn*.

With respect to the *Hirschhorn* complaint, Respondent's October 22, 2019, conversation with Bennett Hirschhorn speaks for itself. Respondent's threats against the licenses and livelihoods of Mary Jane Douglas and Ann Richards were unconscionable and violated "the principles underlying the rules [of] basic fairness, respect for others, human dignity, and upholding the quality of justice.: *The Florida Bar v. Buckle*, 771 So.2d 1131, 1134 (Fla. 2000). His attempt to extort a resolution to his detainer action (to benefit himself), by way of threats directed at his client and a third party, severely injures and undermines the public's confidence in the legal profession. Respondent's explicit attempt to extract a "quid pro quo" (his words) is incredibly destructive to the legal profession and is the precise type of behavior that feeds conspiracy theory misconceptions about how the legal system operates. The Panel concludes that disbarment

is the appropriate presumptive sanction for these violations under ABA Standard 7.1.

b. *King*.

The Panel addressed the matters giving rise to the violation of RPC 8.4(c) (engaging in conduct involving dishonesty, deceit, fraud or misrepresentation) and (d) in the *King* complaint in its Summary Judgment Order at 9-10. The Panel finds that this conduct similarly warrants disbarment as the presumptive sanction under ABA Standard 7.1. Moreover, the Panel also finds that disbarment is the appropriate presumptive sanction under ABA Standard 6.11 for Respondent's violation [of] RPC 3.3 (a)(1).

c. *Dunn*.

The Panel addressed the matters giving rise to the violation of RPC 8.4(c) and (d) in the *Dunn* complaint in the Panel's Sanctions Order at 9. As with the *King* matter, the Panel finds that this conduct warrants disbarment as the presumptive sanction under ABA Standard 7.1. Similarly, the Panel also finds that disbarment is the appropriate presumptive sanction under ABA Standard 6.11 for Respondent's violation [of] RPC 8.1 (a), and 8.2(a)(2)(making false statements concerning the integrity of an adjudicatory or public legal officer).(Internal citations and footnotes omitted).

Regarding Mr. Schuchardt's mental state, with the exception of a couple of the relatively minor infractions that he deems as "clerical" or "typographical" errors, his actions constituting ethical violations were admittedly done intentionally, or at a minimum, knowingly. For the most part, he has admitted doing them, but denies that his actions were wrong, unjustified, or unethical. The proof in the

record also fully supports the Hearing Panel's determination that Complainants Ms. McBryar and Mr. King suffered actual and serious injury and/or serious potential injury. For these reasons and those explained by the Hearing Panel's judgment quoted above, the court affirms the Panel's determination that the appropriate sanction under the applicable ABA Standards in this case is disbarment.

Aggravating and Mitigating Factors

In a comprehensive thirteen-page section of its order, the Hearing Panel analyzed the applicable aggravating and mitigating factors, stating:

Based upon the record, the Panel finds multiple aggravating factors to be applicable in this matter, some with multiple applications, and only one mitigating factor. Accordingly, even if the presumptive sanction is found to be suspension rather than disbarment, the aggravating and mitigating factors - on balance - justify an upward departure to a sanction of disbarment.

The Hearing Panel found the following aggravating factors: **(1) prior disciplinary offenses** (noting Mr. Schuchardt's two-year suspension from the federal Eastern District of Tennessee and four additional instances, twice by the federal Western District of Pennsylvania, the Middle District of Tennessee, and the Pennsylvania Supreme Court); **(2) dishonest or selfish motive** (stating, as already noted, that he "put his selfish financial motives (i.e., collecting a fee) ahead of the interests of both Jamie McBryar and Aaron King," and in threatening Mr. King and Mary Jane Douglas); **(3) pattern of misconduct/multiple offenses** ("Respondent has committed a multitude of

ethical violations spread across four separate complaints. Thus, the multiplicity factor is well established"); (4) **bad faith obstruction and submission of false evidence during disciplinary process** (summarizing the above-discussed misrepresentations, "bad faith obstruction," "deliberately and intentionally [seeking] to mislead this Panel," cataloging "repeatedly asserted fantastic and *wholly unsupported* claims of hiding evidence, bias, prejudice, criminal conduct, and conspiracy theories directed at witnesses, other [lawyers], disciplinary counsel, and the Board itself," noting Mr. Schuchardt's "challenging the impartiality and integrity of the Panel," and concluding "it appears Respondent says and does whatever he believes to be expedient under any given set of circumstances"); (5) **refusal to acknowledge wrongful nature of his conduct** (observing refusal to express any remorse and instead "embark[ing] on a campaign of character assassination" of his former clients); (6) **vulnerability of victims** Jamie McBryar and Aaron King, and (7) **substantial experience in the practice of law.**

The Hearing Panel found one mitigating factor, stating as follows:

Respondent proffered the testimony of Rock Ferrone, Douglas Savage, and Robert Sparks - all former clients of Respondent[.]. .. The Board stipulated that each of these witnesses would testify, based on their personal experience with Respondent, their belief that he is a man of the highest level of competence and integrity with regard to Respondent's engagements in those unrelated matters.

While the Panel credits this evidence and finds the existence of this mitigating factor, the weight afforded to this factor is a matter of discretion for the Panel based upon the entire record. The value of this evidence is limited because Messrs. Ferrone, Savage, and Sparks have no first-hand knowledge of the substantive facts in *these* cases.

* * *

Irrespective of the stipulated testimony of Respondent's proffered witnesses ... [his] statements and conduct before this Panel and the state and federal courts paint the picture of an attorney unmoored to our ethical boundaries and willing to recklessly manipulate our system at just about any cost.

This court agrees with and affirms the Hearing Panel's analysis and application of aggravating and mitigating factors, its conclusion that they support an upward increase in the level of sanctions, and the final statement in its order, saying:

Respondent has engaged - and has continued undeterred throughout these proceedings to engage - in a pattern of threats; intimidation; and unfounded accusations against clients, third-party witnesses, adversary counsel and disciplinary counsel alike. Respondent has made multiple material misrepresentations of fact to judges, the Board, counsel for the Board, and this Panel. This conduct should not - and our Rules of Professional Conduct, cannot - be tolerated by a member of the legal profession in the State of Tennessee.

In his petition for review and reply brief, Mr. Schuchardt raises various complaints that he has been unfairly denied due process and that he is in fact the

victim of a biased and unfair system of attorney discipline in this state, perpetrated by a conspiracy of state officials and legal adversaries who are out to destroy him and his law career. This court has read and considered these arguments, and finds them to be without merit.

Conclusion

Mr. Schuchardt has established no ground for reversal or modification of the Hearing Panel's judgment under Tennessee Supreme Court Rule 9, section 33.1. The Hearing Panel's decision is supported by substantial and material evidence and is not arbitrary, capricious, characterized by abuse of discretion, in violation of statutory or constitutional provisions, or in excess of its jurisdiction. Consequently, the decision of the Hearing Panel that Respondent Elliot James Schuchardt should be disbarred as a consequence of his multiple ethical violations is affirmed in its entirety.

Approved for entry and signed this 7 day of May, 2024.

/s/ D. Kelly Thomas, Jr.

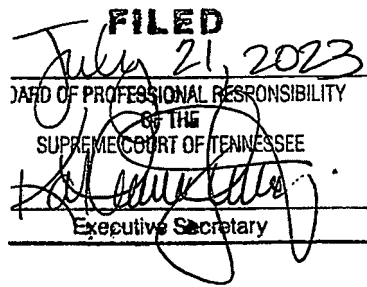
D. KELLY THOMAS, JR., Senior Judge
Sitting by designation

I, James M. Hivner, Clerk, hereby certify that
this is a true and exact copy of the original
filed in the cause.
This 14th day of April, 2024
By: [Signature] Clerk of Court D.C.

105-a

Appendix D

[Board of Professional Responsibility]
[Opinion Filed on July 21, 2023]



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

IN RE: ELLIOTT JAMES
SCHUCHARDT,
BPR No. 027016,

DOCKET NO.
2021-3195-2-AJ

Respondent, an Attorney Licensed
to Practice Law in Tennessee
(Knox County)

MEMORANDUM AND ORDER OF FINAL
JUDGMENT

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

IN RE: ELLIOTT JAMES SCHUCHARDT,

**BPR No. 027016,
Respondent,
an Attorney Licensed to
Practice Law in Tennessee
(Knox County)**

**DOCKET NO.
2021-3195-2-AJ**

**MEMORANDUM AND ORDER OF FINAL
JUDGMENT**

Pending before the Panel is the Board's Petition for Discipline ("Petition"; filed 8/27/21) and the Board's Supplemental Petition for Discipline ("Supplemental Petition"; filed 4/7/22). The Petition sets forth facts related to complaints filed by Jamie McBryar (File No. 61602-2-KB), Bennett Hirschhorn, Esq. (File No. 63230-2-KB), and Aaron King (File No. 64765-2-KB). The Supplemental Petition sets forth facts related to an additional complaint filed by Cherie Dunn (File No. 67074-2-KB). Complainants McBryar, King, and Dunn were former clients of Respondent. Informant Hirschhorn was adversary counsel to Respondent.

The Panel has already resolved certain charges in the petitions in two previous orders: the (a) Order on Petitioner's Expedited Motion for Sanctions ("Sanctions Order"; entered 9/13/22) and (b) Order on

Cross Motions for Summary Judgment ("Summary Judgment Order"; entered 2/9/23).

A final disciplinary hearing in this matter was held on Wednesday, April 5, 2023. The purpose of the hearing was two-fold: first, to resolve outstanding charges of ethical violations left undecided by prior orders of the Panel; second, to determine an appropriate sanction for Respondent upon review of the entire record.

At the hearing, counsel for the Board called three witnesses: Respondent, attorney Abby Rubenfeld (via Zoom), who was successor counsel for Complainant McBryar, and Informant Hirschhorn. Also at the hearing, Respondent called himself as a witness and proffered three additional witnesses-Rock Ferrone, Douglas Savage, and Robert Sparks - all of whom were former clients of Respondent who would testify as to his high level of competence as a lawyer and his high level of personal and professional integrity.

Prior to the submission of evidence, counsel for the Board objected to the relevance of the testimony of Messrs. Ferrone, Savage, and Sparks, arguing that while the proffered witnesses were former clients of Respondent - none of them had any personal knowledge of the facts relating to the complaints at issue in this matter. Respondent, while conceding that point, countered that their testimony pertained to the mitigating factor of "character or reputation" as set forth in Standard 9.32 of American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards"). Whereupon counsel for the Board agreed to stipulate that Messrs. Ferrone, Savage, and Sparks would testify that Respondent demonstrated a high level of professional competence and personal and professional integrity in their respective-but

unrelated-matters for which they had engaged Respondent. The Panel accepted this stipulation *in lieu* of receiving the actual testimony of Messrs. Ferrone, Savage, and Sparks.

Accordingly, having received and considered all of the evidence submitted by Petitioner and Respondent, as discussed below, this Order shall constitute the Final Judgment of the Panel.

I. SUMMARY OF FACTS.

A. *McBryar* Complaint No. 61602-2-KB (Petition 115-59).¹

Respondent's attorney/client relationship with Complainant Jamie McBryar commenced on January 26, 2019, when Complainant McBryar met with Respondent to discuss a single-sex marriage/child custody case against Complainant's partner, Janine McBryar. At this meeting, Complainant McBryar paid Respondent \$'500.00 towards a \$1,500.00 retainer to secure his representation in the matter. After that meeting, Respondent emailed Complainant McBryar a

¹ Many of the substantive issues relating to this complaint were resolved by the Panel's Summary Judgment Order. Accordingly, and unless otherwise cited, the facts stated herein are derived from (a) Petitioner's Second Rule 56.03 Statement of Undisputed Facts ("Petitioner's Second R56.03 Statement"; filed 10/19/22) and (b) Respondent's Statement of Contested Facts (filed 11/21/22). Unless otherwise cited herein, these facts, along with the evidence introduced at the final disciplinary hearing, provide the complete context for this Final Judgment, as they pertain not only to the ethical violations but also to the appropriate sanction.

"petition" that he prepared for her that day. *See* Pet., Ex. 4-1.²

Two days later, on January 28, 2019, Respondent filed a complaint on behalf of Complainant McBryar in the matter *Jamie McBryar v. Janine McBryar*, case no. 145179, in the Fourth Circuit Court of Knox County. *See* Trial Ex. 15. The Circuit Court Complaint, as drafted by Respondent, asserted that Complainant McBryar and Janine McBryar "were lawfully married on August 30, 2013, in San Luis Obispo, California, and said marriage is registered in San Luis Obispo, California." The Circuit Court Complaint further stated that:

- Complainant McBryar and Janine McBryar "separated on January 5, 2019, and from that date up to the present, Petitioner and Respondent have lived separate and apart without any cohabitation";
- Complainant McBryar and Janine McBryar "have one minor child";
- Complainant McBryar and Janine McBryar "are the parents of a minor child, Hannah Emilee Claire McBryar, born March 6, 2012"; and
- Janine McBryar "[o]n January 10, 2019, ... removed the child from the State of Tennessee, to an unknown location. It is presently

² Exhibit 4 to the Petition is a collective document, consisting of a response letter from Respondent, as well as additional documents-supplied by Respondent-which he designated as "exhibits" to his letter. Other response letters from Respondent follow this structure as well. *See* Pet., Exs. 2, 6, 8, and 11. For clarity, these sub-exhibits within the Exhibits to the Petition are referred to as Exhibit 2-1, Exhibit 2-2, etc.

believed that the Respondent is living with her mother, in Oregon."

Id.

The Complaint invoked Tenn. Code Ann. § 36-4-101, *et seq.*,³ as conveying jurisdiction to the Fourth Circuit Court, and asserted three Counts: "COUNT I" seeking "spousal support," "COUNT II" seeking "shared custody" of the minor child, and "COUNT III" seeking "counsel fees." *Id.*

Fourth Circuit Court Local Rule 15(A) requires that:

[i]n all actions seeking the establishment of residential schedules and/or parenting responsibilities, the plaintiff or petitioner shall file with the complaint temporary parenting plans agreed upon by the parties, or, if no agreement has been reached, a proposed temporary parenting plan of the plaintiff or petitioner.

See Trial Ex. 17. However, while the Circuit Court Complaint sought "shared custody" of the minor child, Respondent did not submit a proposed temporary parenting plan with the pleading.

Service of process of the Fourth Circuit Court Complaint was never effectuated upon Janine McBryar. While the Complaint recites the address for Janine McBryar as "53286 Rosa Road, Bandon, OR 97411," *id.* at ¶ 6, Respondent testified that he "had no evidence that she lived there" and "my client said she wasn't there." Transcript of Proceedings (4/5/2023) ("Hearing") (Vol. I) at 101-02. *See also* Resp.'s Ans. to

³ Section 101 lists fifteen (15) different "causes of divorce." However, the complaint did not refer to any specific statutory "cause" or affirmatively request a "divorce" from Janine McBryar.

Pet. for Discipline ("Answer to Petition"; filed 5/6/22) at ¶ 24.

Instead, on February 4, 2019, Janine McBryar filed her own divorce action against Complainant McBryar styled *Janine McBryar v. Jamie McBryar*, case no. 197369-1, in Knox County Chancery Court. See Trial Ex. 18. Upon the filing of this Chancery Court Complaint, Respondent concluded that "[t]here was no need to serve[] the [Fourth Circuit Court] Complaint because the complaint was rendered moot" by the second-filed Chancery Court action. Ans. to Pet. at ¶ 25. See also Hearing (Vol. I) at 100 ("The case was rendered moot six days after it was filed.").

Unlike the Circuit Court Complaint filed by Respondent, the Chancery Court Complaint filed by Janine McBryar sought an "irreconcilable differences" and "inappropriate marital conduct" divorce from Complainant McBryar. See Trial Ex. 18. Also unlike the Circuit Court pleading, Janine McBryar's Chancery Court Complaint asserted that "0" children were at issue in the marriage and sought no custody relief *Id.*

On February 9, 2019, Respondent forwarded the Chancery Court Complaint to Jamie McBryar by email, stating:

Jamie,

Attached is a copy of the petition filed by Janine. Denna Middleton filed the petition in Knox County Court. The case has been assigned to Judge Weaver. Judge Weaver is highly intelligent, highly ethical, and very by the book. He may be inclined to take a literal reading of the statute, thus making it more difficult for you to obtain custody.

I suggest moving forward with Janine's forum, since her petition does not clearly identify her location. Furthermore, we will lose a month trying to consolidate the two cases.

I will file a petition for spousal support, and move forward.

Elliott

Trial Ex. 20. Accordingly, on February 15, 2019, Respondent drafted and filed an Answer and Counter-Complaint to the Chancery Court Complaint. *See* Trial Ex. 21. In addition, and believing the case to have been mooted by Janine McBryar's complaint, Respondent made no further attempts to serve process upon Janine McBryar in the Fourth Circuit Court case. Indeed, Respondent took no further action of any kind in the Fourth Circuit Court case which remained pending up to and including Respondent's withdrawal in July of 2019 (discussed *infra*).

In the Answer to the Chancery Court Complaint, *see* Trial Ex. 21, Respondent failed to deny the "Number of Children: 0" allegation stated on page one of the Chancery Court Complaint. However, Respondent's Counter-Complaint affirmatively alleged: "[t]he parties have one minor child." *Id.* Respondent's Counter-Complaint also sought: (a) divorce from Janine McBryar, (b) spousal support for Complainant McBryar, (c) shared custody of Hannah McBryar, (d) alimony for Complainant McBryar, and (e) attorney's fees. *Id.*

Knox County Chancery Court Local Rule 13(B) states:

INFORMATION AND PLEADINGS. Each initial pleading or motion shall set forth the information required by Rule 4 of these rules and as required by Tenn. Code Ann. § 36-4-106.

Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, Tenn. Code Ann. § 36-6-201, *et seq.*, all filings in which the custody of a child is at issue shall set forth in the first filing the information required by the Act and in particular by Tenn. Code Ann. § 36-6-224. Trial Ex. 22. In addition, Knox County Chancery Court Local Rule 13(F)(ii) provides:

If no agreement has been reached, the defendant or respondent shall file with the answer, the defendant's or respondent's proposed temporary parenting plan.

Id. However, contrary to these Rules, Respondent failed to include either the information required by Tenn. Code Ann. § 36-6-201, *et seq.*, or a proposed temporary parenting plan with his Answer/Counter-Complaint.

On March 25, 2019, Respondent filed a "Motion for Spousal Support and Interim Counsel Fees" in the Chancery Court action. *See* Trial Ex. 41. *See also* Pet. at ¶ 30; Ans. to Pet. at ¶ 30. While Knox County Chancery Court Local Rule 13(E)(ii), requires the submission of "an affidavit listing the assets, debts, gross monthly income and monthly living expenses of each party to the extent known to the filing party," *see* Trial Ex. 22, Respondent's motion did not include such an affidavit.

After filing the Answer / Counter-Complaint, Respondent failed to conduct any discovery, at any time, relating to any of the counts set out in the Counter-Complaint. Specifically, Respondent did not conduct any discovery with respect to Janine McBryar's income or child custody issues. *See* Hearing (Vol. III) at 214, 218, and 235.

Instead, on April 16, 2019, Respondent filed a "Motion for Custody Order" with the Chancery Court. *See* Trial Ex. 23. While Respondent described it as "a groundbreaking document" in an email to his client, *see* Trial Ex. 25, the motion - notwithstanding its title - never affirmatively requested "custody" of the minor child, but only asked for a "determin[ation] that Jamie McBryar is the lawful parent" of the child. Trial Ex. 23. Moreover, in its first sentence, the motion misdescribed the relief requested, stating "Respondent, Jamie McBryar . . . files this motion for *spousal support*." *Id.* (emphasis added).

In addition, the "Motion for Custody Order" quoted Tenn. Code Ann. § 36-2-304(a), which defines the rebuttable presumption of parentage in terms of gender-i.e., setting forth the conditions by which "[a] man is rebuttably presumed to be the father of a child." Thereafter, the motion cited the Supreme Court decision of *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) - which held that a definition of a marital relationship in terms of gender is unconstitutional - and raised a federal constitutional question regarding the interpretation of Section 304(a). *See* Trial Ex. 23. However, despite this constitutional argument, Respondent did not provide appropriate notice to the Tennessee Attorney General, as required by Tenn. Code Ann. § 29-14-107(b). *See* Trial Ex. 69 (7/15/19 email from Respondent to attorney Abby Rubenfeld).

The "Motion for Custody Order" was set to be heard in the Knox County Chancery Court on July 16, 2019. *See* Pet. at ¶ 39; Ans. to Pet. at ¶ 39.

On the morning of June 13, 2019, Respondent sent the following email to his client:

Elliott Schuchardt <elliott016@gmail.com>
Reply-To: elliott016@gmail.com

To: Jamie McBryar
<peytonlover_18@yahoo.com>
Thu, Jun 13, 2019 at 11:44 AM
This is going to be too complicated to litigate on
a credit basis.
Are you able to make a payment? Otherwise, I
am going to need to withdraw from the case.
Elliott Schuchardt

Petition, Ex. 6-1.⁴

In response, Complainant McBryar emailed:

Jamie McBryar <peytonlover_18@yahoo.com>
To: elliot016@gmail.com
Thu, Jun 13, 2019 at 11:58 AM
I'm confused. What are you saying? What has
changed?
Sent from my iPhone

Trial Ex. 63.

Receiving no reply from Respondent, Complainant
McBryar sent a follow-up email:

Jamie McBryar <peytonlover_18@yahoo.com>
To: elliot016@gmail.com
Thu, Jun 13, 2019 at 12:38 PM
Why the sudden change to withdraw from the
case this late in the game?
Sent from my iPhone.

Id.

Approximately 30 minutes later, Respondent
replied:

Elliott Schuchardt <elliot016@gmail.com>
Reply-To: elliot016@gmail.com

⁴ While Respondent submitted into evidence-at the April 5th
hearing-all subsequent emails associated with this chain, *see* Trial
Ex. 63, this initiating email was omitted from the exhibit.
Nevertheless, Respondent authenticated this 6/13/19 email in his
Answer. *See* Pet. at 133.; Ans. to Pet. at 133.

To: Jamie McBryar
<peytonlover_18@yahoo.com>
Thu, Jun 13, 2019 at 1:06 PM
Previously, I thought that Janine's lawyer
would miss the bigamy issue.
She seems to be aware of it. In addition, we
don't seem to have an easy response, since it will
be too complicated to show that the prior
marriage was a sham.
There is no guaranteed payment from Janine.
Thus, the case is getting too expensive to handle
on credit.
Elliott J. Schuchardt

Id.

This email prompted the following exchange
between Respondent and Complainant McBryar,
which carried into June 14, 2019:

Jamie McBryar <peytonlover_18@yahoo.com>
To: elllott016@gmail.com
Thu, Jun 13, 2019 at 1:46 PM
What are the issues her attorney is bringing up
about the bigamy part?
No guaranteed payment by Janine in terms of
attorneys fees or spousal support? How much do
you need to keep you as my attorney in this?

Elliott Schuchardt <elliott016@gmail.com>
Reply-To: elllott016@gmail.com
To: Jamie McBryar
<peytonlover_18@yahoo.com>
Thu, Jun 13, 2019 at 2:36 PM
Can you make a payment of \$600, to cover the
upcoming mediation and hearing?
Elliott J. Schuchardt

Jamie McBryar

<peytonlover_18@yahoo.com>

To: elllott016@gmail.com

Thu, Jun 13, 2019 at 3:16 PM

Unfortunately, I cannot right now and wish that I could and if my wife would've been made to do what she supposed to a long time ago then I wouldn't be in this shape. I thought Janine was responsible for the mediation and hearing costs? Has that changed also?

Sent from my iPhone

Elliott Schuchardt <elllott016@gmail.com>

Reply-To: elllott016@grhall.com

To: Jamie McBryar

<peytonlover_18@yahoo.com>

Thu, Jun 13, 2019 at 3:26 PM

She is covering the cost of the mediator. However, she has not agreed to pay my fees, as of yet.

Elliott J. Schuchardt

Jamie McBryar <peytonlover_18@yahoo.com>

To: elllott016@gmail.com

Fri, Jun 14, 2019 at 10:20 AM

Is that not how it has been the entire time? If she's covering mediation, why would I need to make a \$600 payment to cover upcoming mediation and the hearing?

Was there something new that happened or you found out that prompted this or were you just asking? I ask because Janine has went ghost

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again for couple days now which always means something.
Sent from my iPhone

Elliott Schuchardt <elliott016@gmail.com>
Reply-To: elliott 016@gmail.com
To: Jamie McBryar
<peytonlover_18@yahoo.com>
Fri, Jun 14, 2019 at 10:45 AM
The case is very expensive. I can only do so much on credit. At this point, collection is looking in doubt.
Elliott J. Schuchardt

Jamie McBryar <peytonlover_18@yahoo.com>
To: elliott016@gmail.com
Fri, Jun 14, 2019 at 1:46 PM
Do you have an itemized bill of where we're at currently? I understand, but unfortunately until I start receiving spousal support or something changes, I'm not able to do much of anything myself. Is there any insight on the support end of things by chance?
What do you mean by collection is looking in doubt?
Sent from my iPhone

Id.

On June 19, 2019, Respondent sent his first and only invoice to Complainant McBryar.

Elliott Schuchardt <elllotl016@gmail.com>
Reply-To: elliott016@gmail.com
To: Jamie McBryar
<peytonJovar_18@yahoo.com>
Wed, Jun 19, 2019 at 11:23 AM

I have attached a current invoice.

Thanks!

Elliott J. Schuchardt

Id. See also Ans. to Pet. at ¶ 35 (admitting this to be the "first and only invoice provided" to Complainant).

Thereafter, on July 1, 2019, Respondent filed a Motion to Withdraw from the Chancery Court proceeding, see Trial Ex. 24, which Respondent provided to Complainant McBryar by email on June 28, 2019. See Trial Ex. 65.

On July 4, 2019, Complainant McBryar contacted Nashville attorney Abby Rubenfeld by email- advising that she was "going through a very nasty divorce and custody battle since January," that a court hearing was coming up on July 16, 2019, and that Respondent had filed a motion to withdraw from the case. See Trial Ex. 41. She closed her email by stating "I am desperate for help!" *Id.*

Attorney Rubenfeld sought to assist Complainant McBryar in finding a substitute attorney to represent her. In the meantime, and as demonstrated by emails submitted into evidence by Respondent himself, Complainant McBryar repeatedly asked Respondent to obtain a continuance of the July 16, 2019, hearing. However, Respondent refused each request.

Jamie McBryar

<peytonlover_18@yahop.cpm>

To: Elliott Schuchardt <elliott016@gmail.com>

Tue, Jul 9, 2019 at 10:17 AM

Well, if I had money to pay an attorney of any sort right now, I would have already done so and not be needing a continuance. Or better yet, would have paid you! You have withdrawn from

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the case so therefore I need some sort of legal aid, and finding an attorney to take my case pro bono, or a gay/lesbian rights attorney that will have mine and my daughter's best interest at heart or that will accept payments upon receiving alimony is WHY I need a continuance to give me time to find said attorney! So, can you get this continued for me from 7/16?

Elliott Schuchardt <elliott016@gmail.com>

Reply-To: elliott016@gmail.com

To: Jamie McBryar

<peytorilover_18@yahoo.com>

Tue, Jul 9, 2019 at 10:28 AM

I am still in the case. I will defend the upcoming hearing.

I need approval from the judge to get out of the case. That will likely happen at the end of the hearing.

Elliott J. Schuchardt

Jamie McBryar

<peytonlover_18@yahpo.com>

To: Elliott Schuchardt <elliott016@gmail.com>

Wed, Jul 10, 2019 at 6:53 PM

I have an attorney that is helping me ... for free actually, there are kind souls still left in this world. She is calling me Friday to help me file for a continuance so I can retain new counsel. I'm not risking losing rights to Hannah with you as the attorney with me on Tuesday, I do not feel you will argue my case to the best of your ability and not knowing applicable laws, will not be in my best interest. That's why I asked you to

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please get me a continuance. I will just get my own. And no you haven't seen any payments coming since January until I receive alimony or Janine's made to pay your fees and you were good with that PER OUR agreement, remember? So, no there are many reasons I do not need you arguing my case.

Elliott Schuchardt <elliott016@gmail.com>
Reply-To: elliott016@gmail.com
To: Jamie McBryar
<peytontover_18@yahoo.com>
Wed. July 10, 2019 at 9:18 PM
Good

Jamie McBryar <peytonlover_18@yahoo.com>
To: Elliott Schuchardt <elliott016@gmail.com>
Wed. Jul 10, 2019 at 9:52 PM
why will you not continue it?

Elliott Schuchardt <elliott016@9mail.com>
Reply-to: elliott016@gmail.com
To: Jamie McBryar
<peylonlover_18@yahoo.com>
July 10, 2019 at 10:24 PM
It's expensive.
If you have an attorney, get her to do it.
I've already drafted all the briefs. All she has to do is go in and argue it.
She can make history. I've already done it for her.

Trial Ex. 66.

With Complainant McBryar's requests rebuffed, attorney Rubinfeld contacted Respondent

directly on July 13, 2019, and also inquired about the possibility of a continuance.

On Sat, Jul 13, 2019 at 11:49 AM Abby Rubenfeld

<arubinfeld@rubenfeldlaw.com>wrote:

mr. schuchard:

jamie mcbryar has reached out to me regarding same kind of hearing in her knoxville case set for tuesday in a case in which you have filed to withdraw as her attorney. she has sent me the pleadings you sent, but I do not see anything that sets a hearing for tuesday. I am happy to help her find another attorney and get a continuance if there is a hearing tuesday. all she sent me was a calendar entry you sent her. Is the hearing on one of the two motions you filed? what has happened with the circuit case you initiated (was that a divorce? I did not see a prayer for relief asking for a divorce so I was not sure)?

Trial Ex. 26. Attorney Rubenfeld further informed Respondent that she is "not familiar with the custom in [K]noxville," *id.*, and expressed concern that the judge may "not want a withdrawal or continuance so close to the contested hearing." *Id.* She therefore asked Respondent: "[D]o you think that can happen? [W]ould the other [i.e., adversary] attorney agree to pass it a couple of weeks or a month while [M]s. [M]c[B]ryar retains new counsel?" *Id.* Lastly, attorney Rubenfeld advised:

Id.

I am hesitant to simply enter an appearance since it is so far away (although I have done cases in knoxville before). I am willing to help ms. mcbryar file something pro se (letting the

court know I am helping her) and then help her look for counsel in knoxville, or get someone there to do it with me. we obviously cannot do that by tuesday. do you think the chancellor will allow a continuance while granting your motion? the case cannot go forward under the circumstances. has any discovery been done in either case?

Rather than address Ms. Rubenfeld's concerns or answer her questions, Respondent replied by email with a terse: "Enter an appearance, if you want to get involved." *Id.* To this, Ms. Rubenfeld stated:

On Sat, July 13, 2019 at 12:47 PM Abby Rubenfeld arubenfeld@rubenfeldlaw.com wrote:

mr. schuchardt:

there is an attorney involved so I cannot do that, even if I wanted – which I wrote you I cannot do right now. I am trying to help you get out; no need to be so hostile. the emails ms. mcbryar forwarded to me indicate that you want out; I am offering to help you get out. so could you tell me what the hearing is on tuesday, other than your motion to withdraw.

don't you think it will help you get out – which is what you want – if she supports your motion and lets the court know she is working on getting a different lawyer?

abby rubenfeld

Id. However, Ms. Rubenfeld's email only prompted further rejection from Respondent.

Thank you. I am not interested in any assistance in getting out of the case.

I am familiar with Judge McMillan, and know how he handles withdrawals. The case is fully prepared to move forward on Tuesday. If you want to find alternative counsel, do so.
Elliott Schuchardt

Id.

Around this time, Respondent also sent an email directly to Complainant McBryar, stating:
Schuchardt<elliott016@gmail.com> wrote:

Stop communicating with me. You are in breach of our agreement. I am not interested in working with you any further.

Id. Complainant McBryar forwarded that email to Ms. Rubinfeld, who-in turn-emailed Respondent, saying:

respectfully, our ethical rules do not allow you to do that. you are ms. mcbryar's attorney of record and you have a hearing set for tuesday. even if she breached an agreement, how can you ethically tell her you won't even talk to her right before her hearing when you have not yet withdrawn? and, talk about cutting off your nose to spite your face -- I wrote you offering to help you get out of the case. why are [sic] earth are you resisting that? you have written her that you are done -- so help me help you get out.
abby rubinfeld

Id.

This provoked another hostile response from Respondent, who advised:

If you think I am violating an ethical rule, cite it or report me.

You have no standing in this case. If you wish to enter an appearance, do so. Otherwise, do not contact me concerning this matter again.

I am counsel of record for Ms. McBryar, and will represent her competently and effectively on Tuesday. Period.

Elliott J. Schuchardt

Id.

At the same time, between July 12 and July 15, 2019, Complainant McBryar and Ms. Rubenfeld repeatedly sought from Respondent a complete copy of her file. *See* Trial Ex. 68. Respondent refused these requests as well, choosing to provide only the materials that had been submitted to the Chancery Court and asserting an attorney's lien on the remainder of the file. *Id.*

Jamie McBryar

<peytonlover_18@yahoo.com>

To: elliott016@gmail.com

Fri, July 12, 2019 at 6:17 PM

Elliot,

I would like to come by your office Monday to pick up my file regarding mine and Janine's divorce case, including everything her and Deanna has filed and what you have filed as well. Let me know what time will be best to do so. Thank you.

Jamie McBryar

Id.

On Friday, July 12, 2019, 8:14 PM, Elliott Schuchardt <elliott016@gmail.com> wrote:

Not possible.

The court has not let me out of the case.

I will email you another copy of the pleadings.

Pet., Ex. 1.⁵

⁵ While part of the same chain, Respondent omitted this email (and others) from his Trial Ex. 68.

On Fri, July 12, 2019, 8:36 PM Jamie McBryar
peytonlover_18@yahoo.com wrote:
What's not possible? No, I'm wanting all
information on our case.

Id.

Elliott Schuchardt <elltott016@gmail.com>
Reply-To: elllott016@gmail.com
To: Jamie McBiyar
<peytonlover_18@yahoo.com>
Fri, July 12, 2019 at 8:56 PM
I will e-mail you the pleadings.

Trial Ex. 68.

Jamie McBryar
<peytonlover_18@yahoo.com>
To: elllott016@gmail.com
Fri, July 12, 2019 at 9:05 PM
No, I'm wanting everything on the case. Should
be around 44 pages.

Id.

Elliott Schuchardt <elliott016@gmail.com>
Reply-To: elllott016@gmail.com
To: Jamie McBryar
<peytonlover_18@yahoo.com>
Sat., Jul 13, 2019 at 9:56 AM

The only documents that have been filed are as
follows:

- 1) Complaint in the 4th Circuit Court (by us)
- 2) Complaint in the Chancery Court (by
Janine)
- 3) Answer to Janine's petition - filed by us
- 4) Motion for spousal support - no response
received
- 5) Motion for custody - no response received
- 6) Motion for leave to withdraw

I have previously sent these all to you. I am attaching another copy of each.

As you can see, we have done a great deal of work. The case is ready for you to get an award of spousal support, provided that you can prove Janine's first marriage was a sham, and you have her income information.

Keep in mind, the court is going to expect you to have a job, and will hold you responsible for an earning capacity of about \$24,000. That will limit the amount that you can receive on Tuesday.

Elliott

Id.

From: Jamie McBryar
 <peytonlover_18@yahoo.com>
Sent: Monday, July 15, 2019 2:36 PM
To: elliot016@gmail.com; Abby
 Rubenfeld<arubinfeld@rubenfeldlaw.oom>;
 Joan Gambino <jgambino@rubenfeldlaw.com>;
 Kim Chastain
 <kchastain@rubenfeldlaw.com>
Subject: Requesting case file #197369-1

Elliot,

I would like to come by your office Tuesday to pick up my file regarding mine and Janine's divorce case, Including everything her and Deanna has filed and what you have filed as well. Let me know what time will be best to do so. Thank you.

Jamie McBryar

Petition, Ex. 1.

Elliott Schuchardt

7/15/19

To: Jamie Cc: Abby, Joan & 1 more . . . Details

You have all of the pleadings.
I have a lien on your file, and will be holding it,
pending payment.

Id.

To this specific email, Ms. Rubenfeld replied:

Abby Rubenfeld 7/15/19
To: Elliot, Jamie Cc: Joan, Kim Details

mr. schuchardt:

again, our rules of professional conduct prohibit
you from withholding a client's file, even if you
have not been fully paid, where, like here, it will
have a "materially adverse effect on the client
with respect to the subject matter of the
representation". ms. mcbryar needs to know all
that was done in this case. her case is proceeding.
withholding her material will negatively affect
her case. please provide the materials.

abby rubenfeld

Abby R. Rubenfeld

*Id.*⁶ Nevertheless, on the same day, Respondent
replied:

Elliott Schuchardt 7/15/19
To: Ab... & 3 more Details

Look it up. I have researched the law.

I have already given you thousands of dollars of
free legal advice on this case.

⁶ See Formal Ethics Opinion 2015-F-160, 2015 WL 10059378
at *1 ("If the lawyer has not been compensated, the lawyer may
retain work product, *but only if* retention of the work product will
not have a materially adverse effect on the client with respect to
the subject matter of the representation.") (emphasis added).

If you want to fight over it, you're wasting your time.

I have a lien on your file, and will be holding it, pending payment.

Id.

On July 15, 2019, one day before the hearing on Respondent's "Motion for Custody Order," Ms. Rubenfeld entered an appearance for Complainant McBryar. *See* Trial Ex. 69. Despite her reluctance, Ms. Rubenfeld did so because she could not find replacement counsel for Complainant McBryar on such short notice. *See* Hearing (Vol. III) at 210.

In August of 2019, Respondent received a Notice from the Knox County Fourth Circuit Court, advising that "the last activity on the case was a Complaint for Divorce filed January 28, 2019." Trial Ex. 71. The Notice further advised that, absent further action, it would be "dismissed for failure to prosecute." *Id.* Respondent forwarded the Notice to Ms. Rubenfeld on August 12, 2019, *id.*, and Ms. Rubenfeld dismissed the Fourth Circuit Court case. Trial Ex. 72.

As of the date of the disciplinary hearing, Ms. Rubenfeld has continued to represent Complainant in the Chancery Court action on a *pro bono* basis.

B. Hirschhorn Complaint No. 63230-2-KB
(Pet. ¶¶ 60-97).⁷

Informant, Bennett Hirschhorn, is an attorney in Knoxville, who-as described below-represented Ms. Mary Jane Douglas and Ms. Ann Richards in two

⁷ Because all issues of liability relating to this complaint were resolved in favor of the Board by summary judgment, the facts recited herein are derived from Petitioner's Second R56.03 Statement or the Summary Judgment Order, unless otherwise cited herein.

unrelated lawsuits. Mary Jane Douglas is a real estate agent who lived in Nashville but was prevented from working due to injuries suffered in an automobile accident. Ann Richards is a real estate agent in the Knoxville area and a former client of Respondent.⁸

Ms. Douglas met Respondent through a mutual friend in August of 2019. On September 4, 2019, Respondent agreed to represent Ms. Douglas in a medical malpractice action against certain medical providers who treated her injuries resulting from her car accident.⁹ At that time, Ms. Douglas was facing eviction in Nashville. On September 13, 2019, Respondent agreed to let Ms. Douglas stay in his home for 30 days, provided that Ms. Douglas paid \$500.00 per month. In late September 2019, Respondent also encouraged Ms. Douglas to contact Ms. Richards about working for her as a real estate broker.

Also in September of 2019, Ms. Richards was involved in a lawsuit in Knoxville General Sessions court against Bruce Klassen, in which she sued Mr. Klassen for breach of contract, conversion, and fraud. Informant Hirschhorn represented Ms. Richards in that General Sessions case, a fact which Respondent became aware of sometime later.

On October 14, 2019, Respondent filed an eviction case against Ms. Douglas in the Knox County General Sessions Court. Seven days later, on October 21, 2019, Respondent caused Ms. Douglas to be served

⁸ Respondent also testified that he had dated Ms. Richards. See Hearing (Vol. IV) at 398.

⁹ A copy of the Fee Agreement dated 9/4/19 between Ms. Douglas and Respondent is attached to the Petition at Exhibit 8-1.

with a detainer warrant, seeking her eviction from his home.

On October 22, 2019,. Informant Hirshhorn - who had been contacted by Ms. Douglas at the recommendation of Ms. Richards-served a Notice of Appearance in the eviction case upon Respondent. Also on October 22, 2019, Respondent and Ms. Douglas terminated their attorney-client relationship relating to Ms. Douglas' medical malpractice claim. In addition, Respondent and Ms. Richards exchanged the following text messages on October 22, 2019:

OCT 22 AT 12:17 PM

Our friendship is over.

I will testify for Bruce you are a liar.

No idea what you're talking about.

Pet., Ex. 8-2.

Finally, on October 22, 2019, Respondent contacted Informant Hirschhorn by telephone. The telephone call was recorded by Mr. Hirschhorn's law clerk.

As reflected on the audio recording,¹⁰ Informant Hirschhorn asked Respondent: "Why are you calling me?" In response, Respondent stated (at time index 00:20):

¹⁰ A copy of the recording was filed by the Board on October 19, 2022, as Exhibit C-2 to the summary judgment Affidavit of Bennett Hirschhorn, and considered as part of the record on summary judgment. *See also* S.J. Order, App'x A. At the disciplinary hearing, Respondent claimed that this recording had been surreptitiously altered by either attorney Hirschhorn or Disciplinary Counsel Campbell. Because Respondent's assertion is demonstrably false, as discussed *infra* in Section IV. B. 1. d. iii. ("Aggravating Factors"), the Panel rejects this contention and finds the recording-as authenticated by Mr. Hirschhorn-genuine.

ES: Because- You need to get the fuck out of my living room with your - with your - your - client, or- or I'm gonna destroy your- your other client's real estate license.

I have - I have evidence that I will take to the real estate commission about Ann [Richards] lying - falsely making false accusations about her customers at the, uh, real estate customers.

When Informant Hirschhorn asked Respondent to clarify what he was saying, Respondent responded (at time index 00:59):

ES: I want to hear what you're planning to do regarding Mary Jane. She needs to get the fuck out of my house.

...

So, tell me your position on Mary Jane and I'll tell you my position on Ann.

When Informant Hirschhorn told Respondent that "one has nothing to do with the other," he responded: "Fuck that." Thereafter (at time index 1:40), Respondent asserted "that Ann paid you to fuck up my life."

At time index 2:06, Respondent asked again "What is your position on Mary Jane?" and the following exchange took place:

BH: That you should speak [to her] through me, and do not contact my client.

ES: Oh, fuck that. OK, I understand.

BH: Did you get my letter?

ES: Uhhh, I received a letter. I haven't read it yet.

BH: OK, well take- give it a quick read. Rule 4.2 of the Code of Professional Conduct says that you cannot contact a represented party in a lawsuit, if

you're a lawyer. So, if you want to talk to her, talk to me. '

ES: I don't- I am a party. Rule 4.2 doesn't apply.

BH: Actually, it does, because you're a lawyer and it does actually apply. I attached the whole copy of the Rule, so you should read it. Also, there's-

<crosstalk>

... in Rule 1.7, it talks about the conflict of interest.

..

ES: ... because I'm not going to comply with that. You can report me to the Board. I'm not going to comply with that. I am not represented in this case.

BH: Right, but, what I'm saying is Rule 1.7 also points out that you cannot have an adverse claim against a current client, and my understanding is that you also got to represent her in another matter, and you're living with her, and you filed a lawsuit against her. So, I'm saying you can't talk to her because I'm representing her and you've gotta talk to me. So-

ES: That's- that's not going to happen, and I don't represent her in anything.

BH: You don't represent her in a medic- a <unintelligible> lawsuit?

ES: No, I don't.

BH: OK-

ES: And I have a text to her, confirming that.

BH: Well, I have no idea about that. But, in any event, it certainly is against the Code of Ethics for you to speak with a party who is represented. So, please do not speak with her.

ES: OK, Ben. Go ahead and report me, because I'm going to speak with her. I mean, I will probably threaten her.

BH: What will you threaten her with? I don't understand.

ES: She needs to get the hell out of my house. I'm not gonna play your games or Ann Richards' games, and definitely not Mary Jane's games. Now, as I said, we're gonna blow Ann Richards up, and she's gonna have to watch out for her license, because we've got a lot of stuff on her. On her.

At time index 5:12, Respondent referenced the pending litigation between Informant Hirschhorn's client, Ms. Richards, and Bruce Klassen, saying: "And Bruce is going to win this, because Bruce did not cheat Ann. And I can prove it."

At time index 5:50, Respondent opined that "the law" allowed him to "throw" Ms. Douglas out of his house "with 14-days' notice."

In turn, Mr. Hirschhorn explained to Respondent that-by invoking the Uniform Residential Landlord and Tenant Act-Ms. Douglas had a number of statutory rights available to her, which would preclude immediate eviction. Rather than address the statutory rights available to Ms. *Douglas*, Respondent (at time index 7:08) again threatened the license and livelihood of Ms. *Richards*, saying: "None of that is going to happen, and you need-you need to pay attention to what I'm saying, because Ann's license is in jeopardy. I know a lot of information about Ann."

At time index 7:18, the following exchange took place:

BH: OK, so you're threatening me with the Mary Jane case, if I don't do something-Are you threatening me with Ann's case if I don't do something in the Mary Jane case?

ES: Yes.

BH: Do you see any problem with that?

ES: No. Nothing at all. If you got a problem, you can fucking report me.

BH: OK.

ES: They know me very well at the Disciplinary Board. Believe me, you will get zero out of the Disciplinary Board.

After discussing scheduling and settlement issues regarding Respondent's eviction case against Ms. Douglas, Respondent stated (at time index 13:13):

ES: I'm reporting this entire matter to the real estate commission as well. So, Mary Jane's real estate license is in jeopardy, as well as Ann's. And, believe me, you don't know the shit that I know about Ann. I'm going to be saying some really bad stuff.

Thereafter, Respondent and Informant Hirschhorn had further discussions about the facts of the eviction case and the rights that the applicable statute provides for a tenant. After Informant Hirschhorn explained the statute to Respondent and the rights that Ms. *Douglas* was entitled to, Respondent again pivoted to Ms. *Richards*, and again threatened her real estate license stating (at time index 17:32):

ES: But, Ann has got herself into a great deal of trouble by fucking with me. Ann introduced and encouraged you to fuck with my life - number 1- Ann probably paid you, number 2. Ann has got herself in a great deal of trouble because she's falsely accused one of her customers of ah- of ah, of sexually assaulting her. It was a false accusation. She- she falsely accused her assistant of sexually abusing her children. She's falsely accused me, in texts. Uh, she threatened to falsely accuse me of sexual

abuse, in a text. I'm gonna report all of that to the real estate commission, as well as I'm gonna report this to the real estate commission for Mary Jane as well. And - and Mary Jane threatened me with a false sexual abuse allegation as well. I'm gonna report that to the real estate commission as well. By the time I'm done, both of these people are gonna lose their licenses and you're gonna lose the [Bruce] Klassen case, because it's nothing more than a pack of lies. And I will personally testify that, one, Ann is a liar, and I will write to your judge saying that you put a liar on the stand, that Ann Richards lied her ass off last week. And I don't care if evidence is closed, I'm gonna say that Ann Richards is a liar in that letter. So, fuck you and fuck Ann Richards.

Respondent further stated (at time index 19:44):

ES: I'm gonna write to the real estate commission and say that you knowingly put a liar on the stand. And I'm gonna write to the judge and say that he made the wrong decision, because I have material evidence and the entire office has material evidence. Bruce [Klassen] didn't take those girls away. Ann did, 'cause Ann's a fucking nut.

Thereafter, Respondent stated (at time index 20:44)

ES: I am telling you the consequences of your clients' conduct! The consequences are going to be bad! Ann Richards and Mary Jane! There are consequences to this bullshit! And it's- and I will pull the trigger!

When Informant Hirschhorn told Respondent that he did not understand the threats Respondent was making, Respondent responded (at time index 21:45):

ES: OK. Then you're obviously not bright enough to follow quid pro quos here. I'm not gonna explain it a third time. OK- I- You- you go ahead and do whatever you're planning to do. You're aware of the consequences. I'm going to pull the trigger. And I'm not talking about a real gun, but it's gonna be just as devastating.

The eviction case between Ms. Douglas and Respondent ultimately settled, with Respondent paying a sum of \$1,500.00 to assist Ms. Douglas with her moving expenses in exchange for Ms. Douglas vacating his house on October 25, 2019.

**C. King Complaint No. 64765-2-KB
(Pet. ¶¶ 6-53).¹¹**

On November 8, 2018, Complainant Aaron King was arrested and charged with rape of a child, statutory rape by an authority figure, incest, sexual assault, and aggravated kidnapping. These criminal charges related to alleged crimes against Complainant King's daughter and led to the filing of a divorce action by Mr. King's wife.

On April 8, 2019, Complainant King retained Respondent to represent him in the divorce action. Complainant King executed an engagement letter and agreed to pay an hourly rate of \$150.00 plus costs to Respondent. The engagement letter indicated that Respondent would provide Complainant King with monthly statements and that failure to timely pay

¹¹ Because all issues of liability relating to this complaint were resolved in favor of the Board by summary judgment, the facts recited herein are derived from Petitioner's Second R56.03 Statement or the Summary Judgment Order, unless otherwise cited herein.

would lead to Respondent's withdrawal from the case. Complainant King paid Respondent \$4,320.00 during the course of the case.

In addition to the divorce action, Respondent also represented Complainant King in two separate proceedings in juvenile court: (a) a dependency and neglect proceeding and (b) a child support proceeding.

During the divorce litigation, Respondent successfully impeached Complainant King's wife. Respondent also acknowledged that this impeachment was important for Mr. King's criminal case, in which Mr. King was represented by other counsel-Robert Kurtz.

On June 10, 2019, Respondent sent Mr. King an invoice with an amount due of \$2,900.00. Respondent stated that if Mr. King could pay \$2,000.00 towards the balance that Respondent would continue the representation. On June 11, 2019, Mr. King replied to the email stating he could pay Respondent \$500.00 that week and make payments, which Respondent accepted.

In December of 2019, Respondent sent Mr. King an invoice for payment of what he alleged was an outstanding bill in the approximate amount of \$19,000.00. A dispute arose about the payment of fees, and Respondent withdrew from the divorce case and the dependency and neglect case in juvenile court. He did not withdraw from the child support case.

In January of 2020, Mr. King requested that Respondent provide him with his client file, which was needed for his criminal defense attorney, Mr. Kurtz. Respondent refused to turn over his file and claimed he had a right to withhold the file from Mr. King until his outstanding fees were paid.

On February 20, 2020, Respondent filed a civil action against Mr. King for breach of contract and failure to pay legal fees. Thereafter, Respondent filed a motion to withdraw from Mr. King's child support case in juvenile court. Even though the motion to withdraw had been filed, Respondent remained counsel of record until the juvenile court granted the motion, which did not occur until August 12, 2020. Accordingly, Respondent remained Mr. King's counsel of record for a period of roughly five and one-half months *after* he filed the civil action for fees.

In June of 2020, Mr. King's criminal defense attorney, Robert Kurtz, requested that Respondent provide him with Mr. King's client file, citing Formal Ethics Opinion 2015-F-160. *See* Aff. of Robert Kurtz ("Kurtz Affidavit"); filed 10/19/22) at ¶¶ 4-7. Respondent again refused to produce the file.¹²

On or about June 26, 2020, Mr. Kurtz served Respondent with a subpoena issued by the Knox County Criminal Court, which directed Respondent to appear in court and bring the files with him. On June 29, 2020, Respondent filed a motion to quash subpoena and took the position that a Tennessee Court of Appeals ruling in *McCarter v. McCarter*, 2016 WL 3209462 (Tenn. Ct. App. June 1, 2016), authorized him

¹² In fact, in an email dated June 25, 2020, Respondent recognized the value of the divorce case file, telling Mr. Kurtz: "[b]y the way, the information I have is very useful for your [criminal] case, because it shows Kim [i.e., Mr. King's ex-wife] to be a liar. However, that information was never paid for." *See* Kurtz Aff. at ¶¶ 4, 8, and Ex. D-1.

to retain Mr. King's file as a possessory lien until his outstanding fees were paid.¹³

On July 9, 2020, arguments were held on Respondent's Motion to Quash before Judge Scott Green of the Knox County Criminal Court.

As reflected in the recording of the argument,¹⁴ Mr. Kurtz - beginning at time index 1:42--argued to Judge Green that he was seeking "specific records that had been provided by Kimberly King, Aaron King's ex-wife, during the course of [the litigation pending in Circuit and Juvenile Court]." Beginning at time index 2:12, Mr. Kurtz further informed Judge Green that he sought these materials, because he had been informed that

during the course of the litigation, Kimberly King had testified falsely under oath. And so, I had requested very specific records from Mr. Schuchardt. So, if I can just frame the argument, I have had to subpoena records from my client's own attorney to get the records that we were requesting because Mr. Schuchardt refuses to provide them.

At time index 3:56, Mr. Kurtz also argued "I think that Mr. Schuchardt also has other information in his file that wouldn't be available to us "

¹³ Prior to filing the Motion to Quash, Respondent informed Mr. Kurtz that "I will let the criminal court judge know that Aaron [King] has committed fraud in his relationship with me, and that I am available to testify as to his reputation for dishonesty in the criminal case." See Kurtz Aff. at ¶ 10, and Ex. D-1 thereto.

¹⁴ See Kurtz Aff., Ex. D-4 thereto. This recording was also considered as part of the record for the Panel's Summary Judgment Order.

Beginning at time index 4:45, Respondent argued:

This is basically an attempt of Mr. King to evade payment in connection with legal services. It is no different than if you were trying to subpoena a transcript and not pay the court reporter. . . . It simply does not work if there is not payment for the underlying services...

Now, as I said in my motion, the Court of Appeals has indicated that attorneys do have liens on their court files, and they're not required to produce them until payment is made..

At time index 6:21, Respondent further argued:

So, I believe that these documents are protected and that there's accordant public policy reason why Mr. King should be required to at least make a reasonable payment for them.

Mr. Kurtz, at time index 6:41, countered:

Your Honor, the Court of Appeals opinion that Mr. Schuchardt cites is just completely off topic. That has to do with possessory interests if a sum of money is deposited into a lawyer's trust account, if- that they were- if it came into their possession, they could retain a possessory lien in those situations. I sent Mr. Schuchardt a formal ethics opinion from the Tennessee Board of Professional Responsibility^[15] that says- from 2015, that states that a client's file belongs to the client. Ah, that's just black-letter law. To refuse to give it to him is going to adversely

¹⁵ See Formal Ethics Opinion 2015-F-160, 2015 WL 10059378.

affect Mr. King. That was contained within the formal ethics opinion. We need that file with that information and that's why we've requested it.

In response, Respondent asserted (at time index 8:47):

Your Honor, if I - may I briefly respond with respect to the ethics opinion? Ah, yes, Mr. Kurtz did provide to me an ethics opinion from the- the Disciplinary Board of the Supreme Court. It is dated 2015. Now, the opinion that I cite is Court of Appeals from 2016. Now, I've had conversations with the Disciplinary Board over this particular issue, and they are respecting the s - the, the opinion from the Court of Appeals. So, I can assure you the 2015 opinion letter is no longer valid law.

Contrary to his representations to Judge Green (who denied Respondent's Motion to Quash), Respondent had no "conversations" with the Board regarding "this particular issue." In fact, Respondent made no telephone calls-at any time-to the Board's ethics hotline to discuss "this particular issue" or any other ethical issue.¹⁶

¹⁶ Respondent sought to justify his representation to Judge Green by directing the Hearing Panel's attention to the correspondence exchanged between him and Disciplinary Counsel during the investigation of the *McBryar* complaint. At summary judgment, Respondent argued that, because Disciplinary Counsel for the Board never told him that withholding Complainant *McBryar*'s file was an ethical violation, he believed he was justified in withholding Complainant *King*'s file and believed that the Board had tacitly withdrawn Opinion 2015-F-160.

In granting summary judgment to the Board, the Panel rejected this argument. First, correspondence with the Board does not constitute a "conversation" as Respondent represented to

Lastly, and also contrary to Respondent's representations to Judge Green, the Board of Professional Responsibility has not withdrawn Opinion 2015-F-160, and it remains a current statement of an attorney's ethical obligations under the Rules of Professional Conduct.

**D. Dunn Complaint No. 67074-2-KB
(Supp. Pet. ¶¶ 98-130).¹⁷**

Respondent began representing Complainant Dunn on September 22, 2020. Approximately four months earlier, Complainant Dunn's ex-husband (Derek F. Welsh) filed a Petition for Appointment of Conservator in the Chancery Court for Anderson County, styled *In re Dustin MacKinley Welsh*, #20-CO-86 (Andrsn. Cnty. Chncy. Ct.). Derek Welsh and Complainant Dunn are the parents of Dustin Welsh. Mr. Welsh filed the Petition for Appointment because their son has Autism Spectrum Disorder and was about to reach majority age. Mr. Welsh sought appointment as conservator for his son because Dustin "require[d] nearly full-time care and attention and [was] unable to fully and properly care for himself or

Judge Green. Secondly, Respondent's correspondence with Disciplinary Counsel occurred within the context of a disciplinary investigation initiated by the Board, and *not* in the context of Respondent seeking ethical guidance *from* the Board. Accordingly, and as discussed below, Respondent's representations to Judge Green were both false and deceitful.

¹⁷ All issues of liability relating to this complaint were resolved in favor of the Board pursuant to the Sanctions Order and the Summary Judgment Order. The facts recited herein are derived from Petitioner's (First) Rule 56.03 Statement of Undisputed Facts (filed 9/16/22) and the Supplemental Petition itself, unless otherwise cited herein or in one of those orders.

oversee his finances and/or medical care decision making." See Pet. for Appointment of Conservator (filed 6/26/2020), appended to the Supp. Pet. as part of Ex. A.

On September 23, 2020, Respondent moved for a continuance of the hearing on the Petition for Appointment, then-scheduled for September 28, 2020. However, Respondent did not move for an extension of time to file an answer to the Petition for Appointment.

Hearing on the Petition for Appointment was rescheduled for 11:30 AM on November 9, 2020, and it commenced on time on that date. At the time the hearing commenced, Respondent had not filed an answer to the Petition for Appointment. Instead, and as reflected on the file stamp itself, Respondent filed an answer on behalf of Ms. Dunn at 1:10 PM, on November 9, 2020, after the hearing had concluded.

Local Rule 117.02 of the Anderson County Chancery Court requires that responses in opposition to motions "must be filed and served no later than 48 hours prior to the hearing on the motion." Thus, Respondent did not comply with this Local Rule.

In addition, Respondent filed the Answer in draft form, without considering certain of Ms. Dunn's comments and edits concerning its content. Specifically, email exchanges between Respondent and Complainant Dunn on November 2 and November 5, 2020, indicate that Ms. Dunn initially provided comments to the Answer in an attachment to an email sent to Respondent. At 4:57 AM on November 5, 2020, Respondent emailed Ms. Dunn: "I can't open the document. Can you send it to me in Word format?" Upon receipt of that email from Respondent, Ms. Dunn re-transmitted her comments within the body of a follow-up email which had no attachment to open.

Specifically, in her November 5th email, Ms. Dunn requested Respondent to include in the Answer a statement that "[i]t is in the best interest of the child for the court to CONSIDER THE LEAST RESTRICTIVE ALTERNATIVE PLAN with SUPPORTED DECISION MAKING PLAN AS PROPOSED BY Respondent, Cherie Dunn." In addition, Ms. Dunn also requested that the Answer "[d]en[y] [that] a conservator is necessary to care for Dustin Welsh RATHER A SUPPORTIVE TEAM BE IN PLACE." Further, Ms. Dunn pointed out that in paragraph 6 of the draft Answer-Respondent had misspelled the name of her ex-husband (i.e., "Welsch" as opposed to "Welsh"). Finally, Ms. Dunn provided Respondent with her correct address for inclusion in paragraph 17 of the Answer, which stated "Her correct address is _____." (blank in original).

Notwithstanding these suggested revisions, the Answer filed by Respondent corrected none of the averments in the draft sent to Complainant Dunn, and specifically retained the misspelling of her ex-husband's name and the blank line which served as a placeholder for her address.

By Order entered on November 16, 2020, the Chancery Court appointed Derek Welsh as conservator of the estate and person of Dustin Welsh.¹⁸ As reflected thereon, the Order was "approved for entry" by Respondent and Adam Priest (as counsel for Derek Welsh).

¹⁸ A copy of the Chancery Court Order is appended to the Supplemental Petition as part of Exhibit A. In turn, a complete copy of the Supplemental Petition, together with all Exhibits "A" through "T," was admitted into evidence as Trial Exhibit 39.

The Order of Appointment recited the record as consisting of:

the Petition for the Appointment of a Conservator, the Medical Affidavits of Dr. Lauren Duren and Dr. Deborah Horton, and the testimony of the petitioner, Derek F. Welsh, Cherie Dunn (Dustin Welsh's Motion), the argument of counsel for the Petitioner, the Mother, and the Guardian Ad Litem.

Order of Appointment at 1. Thereafter, the Court determined the Petition to be "well taken" and that Dustin Welsh was "incapable of continuing to manage his own affairs due to significantly diminished mental capacity." *Id.* Accordingly, the Court "removed" numerous rights from Dustin Welsh and placed them in the hands of his father, as conservator. *Id.* at 2-3..

During the course of the investigation of Ms. Dunn's complaint to the Board, Respondent advised investigating Disciplinary Counsel Kevin Balkwill:

[t]he Court held a hearing on the petition on November 9, 2020. On that day, the Court heard approximately an hour of testimony. The witnesses included Mr. Welsh, Mr. [sic, read "Ms."] Dunn's son, Dustin; and Ms. Dunn herself....

See Trial Ex. 39, Ex. C (correspondence dated 4/8/21 :from Respondent at p. 3).

In response, Ms. Dunn specifically represented to Disciplinary Counsel:

Mr. Schuchardt falsely claims [that], on November 9, 2020, "The witnesses included Mr. Welsh, M[s]. Dunn's son, Dustin; and Ms. Dunn herself." **DUSTIN WELSH WAS NOT PRESENT AT THIS HEARING....**

...

As Mr. Dustin Welsh's Mother, I WAS in attendance at this hearing, from beginning to end, and my son was NOT in attendance as this hearing on November 9, 2020.

Id., Ex. E (correspondence dated 5/21/21 from Complainant at pp. 7-8; emphasis in original).

When offered an opportunity by Disciplinary Counsel to amend his previous representation to the Board and respond to Ms. Dunn's letter of May 21, 2021 (*see id.*, Ex. F), Respondent advised, "I have no further comments to make in response to this matter." *Id.*, Ex. G (correspondence dated June 4, 2021, from Respondent).

After further investigation of the complaint, Disciplinary Counsel Diane Nisbet sent the following email to Respondent on February 16, 2022:

In reviewing this disciplinary file, I note that, in your initial response dated April 8, 2021, you assert that Dustin Welsh, the ward, appeared and testified at the conservatorship hearing on November 9, 2020. However, according to the trial court's order and the guardian *ad litem*, the ward was not at the hearing and did not testify. Please explain the discrepancy and respond to the position that, in making a false statement of material fact to the Board in connection with a disciplinary matter, you violated RPC 8.1(a).

Id., Ex. K (email dated February 16, 2022, from Disciplinary Counsel). On the same day, Respondent replied and specifically stated:

I object to your assertion that I made a false statement to the board.

The ward was present at the hearing, and he did testify....

Id., Ex. K (email dated February 16, 2022, from Respondent).

Thereafter, on March 17, 2022, after rejecting the Private Reprimand and demanding a formal hearing (*see id.*, Exs. L and M), Respondent emailed the legal assistant for Disciplinary Counsel Nisbet, copying Ms. Nisbet, and stated as follows:

I would be very careful about signing a pleading that makes these statements.

This case will be very carefully scrutinized, by both the media and the Tennessee Supreme Court.

There will be a motion for sanctions.

You have a statutory duty to investigate this case. I can prove this young man testified.

Id., Ex. N (email dated March 17, 2022, from Respondent). Also on March 17, 2022, Respondent emailed Disciplinary Counsel Nisbet directly and advised, "I will be filing a formal complaint regarding your conduct." *Id.*, Ex. O (email dated March 17, 2022, from Respondent).

On March 18, 2022, Respondent transmitted-by email to Disciplinary Counsel Nisbet and by U.S. Mail to the Board of Professional Responsibility, Justice Jeffrey Bivins, and Board member, Jennifer S. Hagerman, Esq.-a "DEMAND FOR FORMAL HEARING AND COMPLAINT REGARDING [sic] DISCIPLINARY COUNSEL." *Id.*, Exs. P, R, and S (respectively). In his Demand/Complaint, Respondent stated:

- "Disciplinary counsel has raised this matter as part of a smear campaign, to damage [Respondent's] legal practice and reputation in violation of 42 U.S.C. § 1983";

- "Disciplinary counsel is working with [Respondent's] adversaries in a pending civil matter, where the amount at issue is \$200,000";
- "Disciplinary counsel has pursued this matter in violation of Rule 4.4 of the Tennessee Rules of Professional Conduct . . . in order to gain an *advantage in a civil matter*" (emphasis in original);
- "Disciplinary Counsel did not provide [Respondent] with any written complaint that there was an allegation that Dustin Walsh [sic] was not present at a conservatorship proceeding";
- "Dustin Walsh [sic] was present at the subject hearing, and he did testify";
- "At least four persons have actual knowledge of such testimony[, including] attorney Adam Priest (who called Dustin Walsh [sic])"; and
- "Disciplinary Counsel did not investigate this matter[, and has] pushed through false allegations, as part of its larger smear campaign, on behalf of [Respondent's] adversaries in the pending civil litigation."

Id. at pp. 1-2. In addition, in his letter to Justice Bivins (which also was sent to Board member Hagerman), Respondent stated that "Disciplinary counsel's *modus operandi* is to engage in an abuse of civil process, in violation of Tennessee state law[, by] fil[ing] dozens of claims against my office, without having a good faith basis in either the fact or the law ... in order to harass my law firm " *Id.*, Ex. S (correspondence dated March 18, 2022, from Respondent at 1).

Also on March 18, 2022, in email exchanges with Disciplinary Counsel Andrew Campbell, Respondent contended (among other things):

- "Was this allegation [i.e., that Dustin Welsh did not testify at the conservatorship hearing] made in writing by Ms. Dunn? If so, I have never seen it";
- "I have material information showing that your claim [regarding Dustin Welsh not testifying] is factually incorrect";
- "[y]ou will be putting your career at risk" by "signing a pleading" related to the investigation at issue;
- "your office has a history of filing claims in violation of Rule 11, to assist my firm's adversaries in litigation"; and
- "[t]he *modus operandi* of your office is to file claims when you don't have evidence for all of the elements of the claim."

Id., Ex. Q (email dated March 18, 2022, from Respondent; emphasis in original). In this March 18th email exchange, Respondent further "warned" Disciplinary Counsel Campbell that "[m]y distribution list will get progressively bigger, if your office continues in this unethical and illegal course of conduct." *Id.*

Respondent falsely represented to Disciplinary Counsel, the Board, and Justice Bivens (*see id.* at Exs. P through S) that he was not provided with Complainant Dunn's written allegation that Dustin Welsh did not testify at the conservatorship hearing. Ms. Dunn's written assertion to that effect had been given to Respondent. *See id.*, Exs. E and F. In fact, after receipt of Complainant's written statement to

this effect, Respondent advised, "I have no further comments." *Id.*, Ex. G.

Respondent's representation in his Demand/Complaint (*id.*, Exs. P, R, and S) that Disciplinary Counsel "has pursued this matter in violation of [RPC] 4.4" was false: Neither Disciplinary Counsel Nisbet nor Disciplinary Counsel Campbell were adversary parties or adversary counsel of record to Respondent in any civil matter.¹⁹

Respondent's numerous representations in his correspondence with Disciplinary Counsel, and in his Demand/Complaint, that (a) Dustin Welsh was present at the subject hearing, (b) Dustin Welsh testified at the hearing, and (c) Derek Welsh's attorney, Adam Priest, "called Dustin Welsh" to testify were false. *See id.*, Ex. T (Aff. of Adam Priest); *see also id.*, Exhibit A (Order of Appointment at 1).

Respondent's false public statements of fact that Disciplinary Counsel (and, by extension, the Board) is engaged in a "smear campaign to damage [Respondent's] legal practice and reputation," that the Board "has a history of filing claims in violation of Rule 11," and that the Board's "*modus operandi* ... is to file claims when [it does not] have evidence for all of the elements of the claim" (*id.*, Exs. P, R, and S) were knowingly made without any factual basis and/or knowingly made with reckless disregard as to the truth or falsity of the statements or without reasonable justification. *See id.*, Ex. T (Aff. of Adam Priest).

¹⁹ However, and as discussed below, Disciplinary Counsel Campbell later *became* an adversary party when Respondent filed suit in the U.S. District Court for the Middle District of Tennessee.

II. PRIOR RULINGS OF THE PANEL.

Prior to the disciplinary hearing, the Panel resolved numerous ethical charges via the Sanctions Order and the Summary Judgment Order. Those two Orders are referred to and incorporated herein as if fully stated. For clarity, the Orders are summarized as follows.

A. Sanctions Order

(Dunn complaint).

By its Sanctions Order, the Panel deemed all allegations stated in paragraphs 35-46 of the Supplemental Petition (Trial Ex. 39) to be admitted. See Sanctions Order at 9. Accordingly, the Panel found that Respondent committed the following offenses:

- a. Falsely representing to Disciplinary Counsel on April 8, 2021, that the proof in the Anderson County Chancery Court conservatorship matter, *In re Dustin MacKinley Welsh*, #20-CO-86, included testimony from "[Complainant] Dunn's son, Dustin";
- b. Falsely representing to Disciplinary Counsel on February 16, 2022, that "[t]he ward was present at the hearing, and he did testify";
- c. Threatening investigating Disciplinary Counsel, Diane Nisbet, in an email dated March 17, 2022:

I would be very careful about signing a pleading that makes these statements.
This case will be very carefully scrutinized, by both the media and the Tennessee Supreme Court.
There will be a motion for sanctions.

You have a statutory duty to investigate this case. I can prove this young man testified.

d. Falsely stating to the Board of Professional Responsibility and the Supreme Court in a "DEMAND FOR FORMAL HEARING AND COMPLAINT REGARDING [sic] DISCIPLINARY COUNSEL" dated March 18, 2022, that:

- "Disciplinary counsel has raised this matter as part of a smear campaign, to damage [Respondent's] legal practice and reputation in violation of 42 U.S.C. § 1983";
- "Disciplinary counsel is working with [Respondent's] adversaries in a pending civil matter, where the amount at issue is \$200,000";
- "Disciplinary counsel has pursued this matter in violation of Rule 4.4 of the Tennessee Rules of Professional Conduct ... in order to gain an *advantage in a civil matter*" (emphasis in original);
- "Disciplinary Counsel did not provide [Respondent] with any written complaint that there was an allegation that Dustin Walsh [sic] was not present at a conservatorship proceeding";
- "Dustin Walsh [sic] was present at the subject hearing, and he did testify";
- "[A]t least four persons have actual knowledge of such testimony[, including] attorney Adam Priest (who called Dustin Walsh [sic]); and

- "Disciplinary Counsel did not investigate this matter[, and has] pushed through false allegations, as part of its larger smear campaign, on behalf of [Respondent's] adversaries in the pending civil litigation";
- e. Falsely stating to Justice Jeffrey S. Bivens, in a separate letter dated March 18, 2022, that "Disciplinary counsel's *modus operandi* is to engage in an abuse of civil process, in violation of Tennessee state law[, by] fil[ing] dozens of claims against my office, without having a good faith basis in either the fact or the law ... in order to harass my law firm ";
- f. Falsely stating in email exchanges date March 18, 2022, with Disciplinary Counsel Campbell,
 - "[w]as this allegation [i.e., that Dustin Welsh did not testify at the conservatorship hearing] made in writing by Ms. Dunn? If so, I have never seen it";
 - "I have material information showing that your claim [that Dustin Welsh did not testify] is factually incorrect" (emphasis in original);
 - "your office has a history of filing claims in violation of Rule 11, to assist my firm's adversaries in litigation"; and
 - "[t]he *modus operandi* of your office is to file claims when you don't have evidence for all of the elements of the claim"; and
- g. Knowingly making the false representations above without (i) any

factual basis and/or (ii) without investigation, without reasonable justification, and with reckless disregard as to the truth or falsity of the statements.

See Trial Ex. 39 at 11 35-46. Based upon these admitted allegations, the Panel found that Respondent violated RPCs 8.1(a) (bar admission and disciplinary matters), 8.2(a)(2) Judicial and legal officials), 8.4(c) (misconduct-dishonesty/fraud/deceit/misrepresentation), and 8.4(d) (misconduct-administration of justice). See Sanctions Order at 9.

B. Summary Judgment Order

(McBryar, Hirschhorn, King, and Dunn complaints).

By its Summary Judgment Order, the Panel granted summary judgment in favor of the Board on the following issues.

1. McBryar complaint.

Respondent committed the following ethics violations related to his representation of Jamie McBryar:

- a. Failing to move for an Order in the Knox County Fourth Circuit Court case to restrain Janine McBryar from taking the minor child out of the jurisdiction or, alternatively, failing to seek an order commanding the return of the child to the jurisdiction, in violation of RPCs 1.1 (competence), 1.3 (diligence), and 3.2 (expediting litigation);
- b. Failing to take any action in the Knox County Chancery Court case to effectuate the clear goals of his client, Jamie McBryar, in

- violation of RPCs 1.1 (competence), 1.3 (diligence), and 3.2 (expediting litigation);
- c. Failing to dispute, in his Answer to Janine McBryar's Chancery Court Complaint, the specified "Number of Children: 0" in the "STATISTICAL DATA" section of the complaint, in violation of RPC 1.1 (competence);
 - d. Failing to submit a proposed temporary parenting plan with the Answer as required by of Local Rule 13(F)(ii) of the Knox County Chancery Court, in violation of RPC 1.1 (competence);
 - e. Failing to file an Affidavit in support of Respondent's Motion for Spousal Support and Interim Counsel Fees, listing the assets, debts, gross monthly income, and monthly living expenses of each party to the extent known by the filing party, as required by Local Rule 13(E) of the Knox County Chancery Court, in violation of RPC 1.1 (competence);
 - f. Seeking only a determination that Jamie McBryar is the "lawful parent" of the minor at issue, and failing to seek actual "custody" in the prayer for relief in his Motion for Custody Order, in violation of RPC 1.1 (competence);
 - g. Filing to provide the statutory notice to the Tennessee Attorney General, as required by Tenn. Code Ann. § 29-14-107(b), because the Motion for Custody Order challenges the constitutionality of Tenn. Code Ann. § 36-2-304, in violation of RPC 1.1 (competence);

- h. Failing to conduct any discovery on behalf of Jamie McBryar client as to the substantive issues in the Chancery Court case while the case was pending for over six (6) months, in violation of RPCs 1.3 (diligence), and 3.2 (expediting litigation);
- I. Failing to explain adequately or communicate fully the fee arrangement with Jamie McBryar, in violation of RPCs 1.4(a)-(b) (communication) and 1.5(b) (fees);
- J. Failing to keep his client informed as to the status of the fees that had been incurred, in violation of RPCs 1.4(a)-(b) (communication) and 1.5(b) (fees);
- k. Failing to cooperate with successor counsel, Abby Rubenfeld, in violation of RPC 1.16(d)(3) (declining or terminating representation);
- l. Improperly withholding Ms. McBryar's client file from Ms. McBryar and Ms. Rubenfeld, in violation of RPC 1.16(d)(5) (declining or terminating representation); and
- m. Engaging in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

See S.J. Order at 4-7.

2. *Hirschhorn* complaint.

Respondent also committed the following ethics violations relating to the *Hirschhorn* complaint:

- a. Creating a concurrent conflict of interest between himself and his client, Mary Jane Douglas, by filing a detainer action against Ms. Douglas while simultaneously having an attorney-client relationship regarding her

medical malpractice claim, in violation of RPC 1.7(a)(1) (conflict of interest);

- b. During a 10/22/19 telephone call with Informant Hirschhorn, refusing to refrain from communicating directly with Mary Jane Douglas (Hirschhorn's client) regarding the detainer action, in violation of RPC 4.2 (communication with a person represented by counsel);
- c. Communicating to Informant Hirschhorn threats (i) to file a complaint with the Tennessee Real Estate Commission against Ann Richards (another client of Hirschhorn's in a matter wholly unrelated to the detainer action against Ms. Douglas) and (ii) to correspond with the presiding judge of Ms. Richards' unrelated case against Bruce Klassen to persuade the judge that Ms. Richards is dishonest, unless a "*quid pro quo*" could be reached with respect to Respondent's detainer action against Ms. Douglas, in violation of RPC 4.4(a)(1) (respect for the rights of third persons);
- d. Communicating to Informant Hirschhorn his intention to "threaten" Ms. Douglas with adverse action against her real estate license unless a "*quid pro quo*" could be reached with respect to Respondent's detainer action against Ms. Douglas, in violation of RPC 4.4(a)(1) (respect for the rights of third persons); and
- e. Threatening the licenses and livelihoods of Ms. Richards and Ms. Douglas as leverage to settle his detainer action against Ms. Douglas, in

violation of RPC 8.4(d) (misconduct-administration of justice).

Id. at 8-9.

3. *King* complaint.

As to the *King* complaint, the Panel found that Respondent committed the following ethics violations:

- a. Creating a concurrent conflict of interest between himself and his client, Aaron King, by filing a civil action against Mr. King while still formally representing him in the juvenile court child support case, in violation of RPC 1.7(a)(1) (conflict of interest);
- b. Improperly withholding Mr. King's client file from Mr. King and his attorney, Robert Kurtz, in violation of RPC 1.16(d) (declining or terminating representation);
- c. Knowingly and intentionally making false statements of fact to Judge Scott Green that (i) Respondent previously had "conversations" with the Disciplinary Board which never occurred and (ii) Formal Ethics Opinion 2015-F-160 "is no longer valid law," in violation of RPCs 3.3(a)(1) (false statement to a tribunal), 8.4(c) (misconduct- dishonesty/ fraud/ deceit/ misrepresentation), and 8.4(d) (misconduct-administration of justice); and
- d. Threatening to testify against Mr. King as to Mr. King's reputation for dishonesty in an effort to gain an advantage in Respondent's case, in violation of RPCs 1.7(a)(1) (conflict of interest) and 1.16(d) (declining or terminating representation).

Id. at 9-10.

4. *Dunn* complaint.

Lastly, the Panel found that Respondent committed the following ethics violations relating to the Dunn complaint:

- a. Knowingly disobeying Local Rule 117.02 of the Anderson County Chancery Court by failing to file his Answer on behalf of his client, Cherie Dunn, no later than 48 hours prior to the scheduled court hearing, in violation of RPCs 1.1 (competence), 1.3 (diligence), and 3.4(c) (fairness to opposing party and counsel); and
- b. Knowingly filing the Answer on behalf of Complainant Dunn in draft form, and without consideration of Ms. Dunn's comments and edits concerning the content of the Answer, in violation of RPCs 1.1 (competence), 1.3 (diligence), and 1.4(a) (communication).

Id at 10.

**C. Outstanding Issues to be Tried
at the Disciplinary Hearing
(*McBryar* complaint).**

As a consequence of these rulings, as well as Petitioner's decision to non-suit two issues without prejudice,²⁰ the following unresolved issues were submitted to the Panel at the April 5, 2023, final hearing:

²⁰ See Petitioner's Notice Regarding Issues for Final Hearing (filed 2/21/23) at 2-3.

- a. Whether Respondent violated RPCs 1.1 (competence) and 1.4(a) (communication) by filing a complaint in the Knox County Fourth Circuit Court on behalf of Jamie McBryar that sought "shared custody" of a minor child and "spousal support" without affirmatively stating a cause of action for divorce-even though Respondent knew Ms. McBryar wanted a divorce and even though he invoked the Tennessee divorce statute, Tenn. Code Ann. § 36-4-101;
- b. Whether Respondent violated RPCs 1.1 (competence) and 3.4(c) (fairness to opposing party and counsel) by failing to submit a proposed temporary parenting plan with the Circuit Court Complaint, as required by Fourth Circuit Court Local Rule 15(A);
- c. Whether Respondent violated RPC 1.1 (competence) by failing to include, on the Circuit Court Summons, the best-known address for Defendant Janine McBryar, even though Respondent explicitly stated her Oregon address in the body of the complaint²¹;
- d. Whether Respondent violated RPCs 1.1 (competence) and 1.3 (diligence) by failing to effectuate service upon Janine McBryar in the Circuit Court case, after her Tennessee address

²¹ At the final disciplinary hearing, Disciplinary Counsel incorrectly informed the Hearing Panel that the Board also had non-suited this issue. See Hearing (Vol. III) at 272. However, after further discussion on the record, Disciplinary Counsel corrected himself and advised that while the Board concedes that the Tennessee Rules of Civil Procedure do not require a defendant's address to be recited on the summons-the issue had not been non-suited and remained "open" because it goes to Respondent's competence. See *id.* at 272-74.

became known through Janine McBryar's competing Chancery Court Complaint;

- e. Whether Respondent violated RPC 1.1 (competence) by concluding that the second-filed Chancery Court action filed by Janine McBryar "mooted" Respondent's first-filed action in the Fourth Circuit Court²²;
- f. Whether Respondent violated RPCs I.I (competence) and 3.4(c) (fairness to opposing party and counsel) by failing, in the Knox County Chancery Court action, to comply with Knox County Chancery Court Local Rule 13(b) by not providing in his "first filing" a recitation of all

²² See S.J. Order at 4, ¶ e (denying summary judgment on this issue). There is some uncertainty regarding what issues the Board non-suited prior to the Hearing. In its February 21, 2023, Notice Regarding Issues for Final Hearing, the Board stated the issue as "whether Respondent (in consultation with Ms. McBryar) determined that the Chancery Court forum was acceptable and improperly failed to expeditiously dismiss the Circuit Court case." Notice Regarding Issues for Final Hearing at 2 (Issue No. 5). But in its Pre-Hearing Brief, the Board stated the issue as "concluding that the second-filed Chancery Court action filed by Janine McBryar 'mooted' Respondent's first-filed action in the Fourth Circuit Court, in violation of RPC 1.1 (competence)." Respondent's Pre-Hearing Br. at 4 (Issue e). This created some confusion at the final hearing about which issues had been non-suited and which remained pending. See Hearing (Vol. III at pp. 273-73). It is clear that the Board non-suited the issue of whether Respondent, in consultation with Ms. McBryar, determined the Chancery Court forum to be acceptable and failed to expeditiously dismiss the Circuit Court action. At most, the question that remains is whether Respondent was incompetent for believing the case to be "moot."

information required by the Uniform Child Custody Jurisdiction and Enforcement Act;

- g. Whether Respondent violated RPC 1.1 (competence) by seeking "spousal support" in the first sentence of a three-page "Motion for Custody Order" that never affirmatively asked for "custody"; and
- h. Whether Respondent violated RPCs 1.4 (communication) and 1.16(d)(1)-(2) (declining or terminating representation) by failing to provide reasonable notice to Complainant McBryar regarding his withdrawal from representation and thereby failing to allow sufficient time for engagement of new counsel.

III. RULINGS OF THE PANEL ON OUTSTANDING ETHICAL ISSUES.

Upon consideration of all the evidence offered at the April 5th hearing, the Panel finds that the Board did not prove by a preponderance of the evidence issues "a," "c," "d," and "e" identified in Section II C., *supra*, and accordingly grants judgment in favor of Respondent on those issues.²³

²³ As noted above, there is some question regarding the Board's framing of the issue with respect to whether Respondent violated the RPC in his evaluation of whether to pursue the Fourth Circuit Court case (issue "e" identified in Section II.C. Regardless, the Panel is not persuaded that the Board has presented sufficient evidence to find a violation on this issue.

At the disciplinary hearing, Respondent repeatedly testified that the decision to not pursue the Fourth Circuit case was a strategic matter discussed with the client. *See* Hearing (Vol. II) at I04 ("I told my client we then had to choose between the two courts, and I advised her as to the advantages and disadvantages as to each of these two courts, and we decided to move forward

The Panel further finds - for the following reasons - that the Board proved by a preponderance of the evidence issues "b," and "f" through "h" identified in Section IL C., *supra*.

**A. Whether Respondent Violated
RPCs 1.1 and 3.4(c) by Failing to Submit
a Proposed Temporary Parenting Plan
with the Fourth Circuit Court
(Section 11.C., Issue b).**

As stated above, Local Rule 15(A), of the Knox County Fourth Circuit Court, requires the submission of proposed parenting plans "[i]n *all* actions seeking the establishment of ... parenting responsibilities." Trial Ex. 17 (emphasis added). In the event that an "agreed upon" plan cannot be reached between the parties, Local Rule 15(A) states that the plaintiff" shall file ... a proposed temporary parenting plan " *Id*.(emphasis added).

with the Chancery Court case....")*see also id.* at 108 and 114-16. In the absence of testimony from the client, the record persuades the Panel that the decision to not pursue the Fourth Circuit Court case could have been a strategic one.

To be sure, Respondent asserted, in both his Answer to the Petition and at the disciplinary hearing, that the Fourth Circuit Court case against Janine McBryar was rendered moot by Janine McBryar's subsequent filing of her own complaint in Knox County Chancery Court. *See* Ans. To Pet. at ¶¶ 24-25. *See also* Hearing (Vol. II) at 100 and 108./ On the record before the Panel, Respondent presented the strategic options to his client and in doing so did not remove the issue from the universe of options given to his client. Perhaps this is a semantic dispute about the use of the word moot, it would have affected the strategic decision he testified that he made with his client.

The evidence demonstrates that Respondent's Fourth Circuit Court Complaint fails to include a proposed parenting plan even though the Complaint plainly seeks "an order granting shared custody to the Petitioner." Trial Ex. 15 (Complaint at p. 3). Respondent contends that the submission of a proposed parenting plan was not required because "parental rights were never established in this case." Hearing (Vol. II) at 96. *See also id.* at 98 ("[t]here are no parental rights in this case ever established, and a parenting plan would have been a complete waste of time....").

However, as Disciplinary Counsel pointed out during his questioning of Respondent, Rule 15 (which does not contain any exceptions) requires the submission of a proposed parenting plan when the initiating pleadings are submitted - i.e., *before* any rights are established by the court. *See* Trial Ex. 15; *see also* Hearing (Vol. II) at 96-98. Further, Respondent admitted that he did not file a motion to seek relief from meeting the requirement of Rule 15. *See* Hearing (Vol. II) at 98. Finally, Respondent admitted that the Fourth Circuit Court would have the discretion to dismiss a lawsuit for failing to comply with Rule 15. *Id.* at 99.

Accordingly, the evidence demonstrates that Respondent did not comply with Local Rule 15(A). Compliance with the Local Rules is both a matter of competency under RPC I.I and fairness to opposing counsel under RPC 3.4(c). By failing to comply with Local Rule 15(A), the Panel finds that Respondent violated RPCs I.I and 3.4(c).

**B. Whether Respondent Violated
RPCs 1.1 and 3.4(c) by Failing, in the
Chancery Court Action, to Provide All
Information Required by the Uniform Child
Custody Jurisdiction and Enforcement Act
(Tenn. Code Ann. § 36-6-201, *et seq.*)
(Section 11.C., Issue f).**

As stated above, Knox County Chancery Court Local Rule 13(B) requires "[e]ach initial pleading" in which "custody of a child is at issue" to set forth all information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Tenn. Code Ann. § 36-6-201, *et seq.* Trial Ex. 22.

The evidence demonstrates that Respondent's Counter-Complaint, filed with the Chancery Court on February 15, 2019, does not provide this information. *See* Trial Ex. 21. *See also* Hearing (Vol. II) at 118-20. Count III of Respondent's Counter-Complaint sought "shared custody" of the minor child. Trial Ex. 21 (emphasis added).

Accordingly, the evidence demonstrates that Respondent did not comply with Local Rule 13(B), and therefore violated RPC 1.1 (competency) and 3.4(c) (fairness to opposing counsel).

**C. Whether Respondent Violated RPC 1.1
by Seeking "Spousal Support" in the
First Sentence of a Three-Page "Motion for
Custody Order" that Never Affirmatively
Asked for "Custody." (Section 11.C., Issue g)**

As stated above, the Panel already has found that Respondent violated RPC 1.1 (competence) by affirmatively requesting *only* a determination that Jamie McBryar is the "lawful parent" of the minor at

issue in Motion for Custody Order and failing to request actual "custody" in the prayer for relief. See S.J. Order at 5 and 6-7.

Based upon the evidence received at the final hearing, the Panel further finds that Respondent also violated RPC 1.1 insofar as his Motion for Custody Order professed-in the first sentence-to seek "spousal support," see Trial Ex. 23 at 1, which was the subject of a separate count in his Counter-Complaint, and (as Respondent admits) a separate motion. See Trial Ex. 19 at ¶¶ 16-17. The body of the document never affirmatively requested the relief specified in its title. To the contrary, the Motion requested two different-and entirely unrelated-forms of relief.

Respondent argues that the reference to "spousal support" in the first sentence of the Motion for Custody Order is nothing more than a "typographical error because this was a shoestring case where I had not been paid." Hearing (Vol. II) at 121. But the question of whether or not Respondent had been paid for his legal services is no justification to relax the standard for competency. RPC 1.1 states that "[a] lawyer shall provide competent representation to a client [which] requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." The Rule contains no exception based upon payment/non-payment for legal services.

Respondent has endeavored to explain away numerous errors on his part as mere "typos" and "scrivener's errors."²⁴ While a stray typographical

²⁴ See, e.g., Hearing (Vol. II) at 88-89 (claiming that his invocation of the Tennessee divorce statute in his Fourth Circuit Court Complaint was "a typo" and a "scrivener's error"), 154-55

error may not amount to an ethical violation in certain circumstances, *repeated* errors-in different cases and affecting matters of substance-highlight a pattern of lack of the "thoroughness" required by RPC 1.1. In light of the evidence presented in this case, the Panel rejects Respondent's claim that his reference to "spousal support" was only a "typographical error."

**D. Whether Respondent Violated
RPCs 1.4 and 1.16(d)(1)-(2) by Failing
to Provide Reasonable Notice
to Complainant McBryar Regarding
his Withdrawal from Representation
and Failed to Allow Sufficient Time
for Engagement of New Counsel.
(Section 11.C., Issue h)**

While Respondent agrees that an attorney withdrawal should be done in such a manner that the client is not prejudiced, *see* Hearing (Vol. II) at 134, the evidence demonstrates that he failed to do so.

As stated above, Respondent set the Motion for Custody Order to be heard in the Knox County Chancery Court on July 16, 2019. Approximately one month earlier, on June 13th, Respondent first notified Complainant McBryar that "[t]his [case] is going to be

(claiming that the omission of any mention of Dustin Welsh's testimony from the Anderson County Chancery Court's order appointing a conservator-which Respondent approved for entry-to be a "scrivener's error"), and 171-72 (claiming that the Board is "trying to get money out of my pocket by making us go round and round on all the fluff issues involving typographical errors"). *See also* Resp. Br. in Opp. to Pet.'s S.J. Mot. (filed 11/21/23) at 22 (claiming that failure in Answer to Chancery Court Complaint to dispute assertion that "0" children were at issue was a "scrivener's error").

too complicated to litigate on a credit basis" and that-if she does not make "a payment" in some unspecified amount-he will "need to withdraw from the case." Pet., Ex. 6-1.

After a series of emails between Respondent and Complainant on June 13-14, *see* Trial Ex. 63, the issue remained unresolved. Complainant McBryar advised Respondent that she was "confused" by Respondent's "sudden change" and asked why he needed "to withdraw from the case so late in the game[.]" *Id.* She further advised that she could not make a payment of \$600 "right now" and would not be able to "until I start receiving spousal support or something changes." *Id.*

Two weeks later, on June 28, 2019, Respondent emailed Complainant McBryar his Motion to Withdraw, *see* Trial Ex. 65, which was filed on July 1st. On July 4th, Complainant McBryar contacted Nashville attorney Abby Rubinfeld by email, stating "I am desperate for help!" Trial Ex. 41.

From that time forward, both Complainant McBryar and Ms. Rubinfeld made numerous requests to Respondent to continue the upcoming hearing. *See* Trial Ex. 66 (requests from Complainant) and Trial Ex. 26 (requests from Rubinfeld).

Respondent remained unmoved. In response to his own client, Respondent declined to seek a continuance for only one reason: "It's expensive." Trial Ex. 66. Respondent was equally as curt to Ms. Rubinfeld, telling her alternatively "[e]nter an appearance, if you want to get involved," and "[i]f you want to find alternative counsel, do so." Trial Ex. 26. Respondent thereafter compounded his client's dilemma by advising his client on July 9, 2019:

I am still in the case, and will defend the upcoming hearing.

Trial Ex. 66. Respondent similarly advised Ms. Rubinfeld on July 13th:

I am counsel of record for Ms. McBryar, and will represent her competently and effectively on Tuesday. Period.

Trial Ex. 26. Yet, the same day (July 13th), Respondent *also* told his client:

Stop communicating with me. You are in breach of our agreement.

I am not interested in working with you any further.

Id.

These communications put Ms. McBryar in a no-win situation. Respondent refused all entreaties to continue the hearing on the Motion for Custody Order, refused to communicate with Complainant McBryar any further, and-yet-intended to argue the Motion for Custody Order on July 16, 2019.

In addition, Ms. Rubinfeld testified at the disciplinary hearing that she "called several people that [she] knew who did family law, [but] it was so last minute, and it's a complicated case, and she doesn't have any money, so I couldn't find someone" to replace Respondent. Hearing (Vol. III) at 208. She further stated that "I don't think anybody could have been ready [for the hearing] by then [i.e., July 16th]." *Id.* at 211. This testimony stands uncontroverted.

At the final disciplinary hearing, Respondent repeatedly insisted that-notwithstanding the setting of the Motion for Custody Order-the Chancery Court was *not* going to hear the Motion on July 16, 2019. *See* Resp. Pretrial Br. at 26 (stating "[n]o hearing was going to be

held on that day"). *See also* Hearing (Vol. II) at 136-37 (stating that he "wasn't going to present the groundbreaking motion" because "the hearing was not going to happen"); *id.* at 137-140. Respondent further testified that the hearing would not occur because "it's customary to withdraw at the beginning" of the hearing, and "there definitely wasn't going to be a hearing because ... of the conflict with McBryar." *Id.* at 137.

However, Respondent's latest testimony stands in direct conflict with his own 2019 emails to Complainant McBryar. Just one week before the scheduled hearing, Respondent advised Ms. McBryar: "I am still in the case, *and will defend the upcoming hearing.*" Trial Ex. 66 (email from Respondent dated 7/9/19 at 10:28 AM) (emphasis added). Respondent, in fact, transmitted that email in the face of a specific request from his client to continue the hearing, *id.* (email from Complainant McBryar dated 7/9/19 at 10:17 AM), and later urged to his client "*Let's just do the hearing on Tuesday.*" *Id.* (email from Respondent dated 7/12/19 at 11:53 AM) (emphasis added). *See also id.* ("I need approval from the judge to get out of the case. That will likely happen *at the end of the hearing*"; email dated 7/9/19 from Respondent at 10:28 AM; emphasis added). Thus, the Panel finds Respondent's testimony lacks credibility.

In addition, it is worth noting that Respondent's (a) refusal to continue the Motion for Custody Order and (b) professed intent to argue the Motion, while (c) simultaneously moving to withdraw from the case, is contrary to what Respondent himself has acknowledged his ethical obligations to be. In his Pretrial Brief (filed 3/16/23), Respondent clearly states:

the law *requires* withdrawal because the client's non-payment creates a conflict of interest between the attorney's interests and those of the client. According to the rules of ethics, Schuchardt was required to withdraw from Jamie McBryar's case, as he did. See Tenn. R. Prof. Cond. 1.7 (2023) (lawyer shall withdraw if client creates concurrent conflict of interest on part of the attorney).

Resp. Pretrial Br. at 24.

Based upon this evidence, the Panel finds that Respondent did not provide reasonable notice to Ms. McBryar under RPC 1.16(d)(1). *Board of Professional Responsibility v. Prewitt*, 647 S.W.3d 357, 377 (Tenn. 2022) (affirming hearing panel's finding of 1.16 violation when attorney withdrew while summary judgment motions were pending). Further, Respondent did not afford adequate time for Ms. McBryar to engage new counsel, or for that new attorney-Ms. Rubenfeld-to prepare adequately for the motion hearing. See RPC 1.16(d)(2).

Further, by attempting to terminate all communications with his client through his July 13, 2019, email, while deliberately refusing to seek a continuance of the July 16th hearing and professing to act as her counsel, Respondent violated RPC 1.4(a)(2).

These violations are separate from, but closely connected to, the violations this Panel has already found with respect to Respondent's hostility and obstinance in transitioning to new counsel. See S.J. Order at 7.

IV. SANCTION RULING OF THE PANEL.

The imposition of punishment by the Panel is governed by Tenn. S. Ct. Rule 9, § 15.4(a). As stated

therein, the ABA Standards serve as the appropriate yardstick for determining such punishment. *Id.* (stating that "[i]n determining the appropriate type of discipline, the hearing panel *shall* consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions"; emphasis added). See also *Thompson v. Board of Professional Responsibility*, 600 S.W.3d 317, 320-21 (Tenn. 2020); *In re Vogel*, 482 S.W.3d 520, 533 (Tenn. 2016).

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. These standards serve as "guideposts" for determining the appropriate punishment rather than "rigid rules that dictate a particular outcome."

Vogel, 482 S.W.3d at 533-34 (other citations omitted).

Further, while "[h]earing panels should 'precisely and clearly identify all ABA Standards that are relied upon for guidance in determining an appropriate sanction,'" *Board of Professional Responsibility v. Sheppard*, 556 S.W.3d 139, 149 (Tenn. 2018) (citation omitted), Hearing Panels also "may consider other factors in its discretion." *Id.* In that respect, each of the Standards discussed below are subject to Standard 3.0, which states:

[i]n imposing a sanction after a finding of lawyer misconduct, a court should consider the following 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.

See also Vogel, 482 S.W.3d at 534 (quoting ABA Standard 3.0).

Thus, "[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." *Id.* The imposition of discipline is a "two-step process"-i.e., determination of the appropriate presumptive sanction under the ABA Standards followed by "consider[ation] [of] whether the presumptive sanction should be increased or decreased based upon aggravating or mitigating factors." *Meehan v. Board of Professional Responsibility*, 584 S.W.3d 403,413 (Tenn. 2019). "With no aggravating or mitigating factors, the presumptive sanction applies." *Id.*

A. Presumptive Sanction.

Based upon the findings contained herein, the rulings stated in the Sanctions Order, and the rulings in the Summary Judgment Order, the Panel has determined that Respondent violated the following RPCs: 1.1, 1.3, 1.4(a)-(b), 1.5(b), 1.7(a)(1), 1.16(d), 3.2, 3.3(a)(1), 3.4(c), 4.2, 4.4(a)(1), 8.1(a), 8.2(a)(2), 8.4(a), 8.4(c), and 8.4(d).

While it is plain from the list above that the Panel has found multiple violations of multiple Rules, this Panel does not give each violation equal weight. The Panel finds some violations egregious and warranting severe sanction. Other violations are much less significant. Regardless, it is not necessary to discuss each one of these violations at length. The

Panel, however, highlights its determination regarding the presumptive sanction for certain violations to assist later review of this Order. In particular, the Panel discusses all the violations it has found to warrant a presumptive sanction of disbarment.

1. RPC 1.1 (Competence).

For violations of RPC 1.1, the ABA Standards are as follows: 4.51 ("Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury²⁵ to a client"); 4.52 ("Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client"); 4.53 ("Reprimand is generally appropriate when a lawyer: (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client"); and 4.54 ("Admonition is generally

²⁵ The ABA Standards define "potential injury" as "the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." However, the Supreme Court has held that "[t]he lack of proof of an intervening factor or event which *prevents* actual injury from occurring does not undermine or preclude a finding of potential injury." *Maddux v. Board of Professional Responsibility*, 409 S.W.3d 613, 627 (Tenn. 2013) (emphasis in original).

appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual injury or potential injury to a client").

With respect to Respondent's conduct from the beginning of the representation of McBryar until the beginning of discussions regarding withdrawal in late June - in particular Respondent's conduct with respect to the initial pleadings in the two cases-the Panel finds that the appropriate presumptive sanction is reprimand under ABA Standard 4.53(a). The Panel similarly finds that the appropriate presumptive sanction for Respondent's conduct with respect to the pleadings in the *Dunn* matter is reprimand under ABA Standard 4.53(a).

The Board strenuously asserts that some of Respondent's conduct in the *McBryar* matter (e.g., his failure to specifically seek "custody" in his pleadings even though it was one of the primary issues in the case) warrants a presumptive sanction of disbarment. The Panel disagrees. The Panel does not find that these episodes demonstrate that Respondent does not "understand *the most fundamental legal doctrines or procedures*" (emphasis added). Rather, the Panel finds that these episodes, along with the other instances the Panel finds violate RPC 1.1, demonstrate Respondent's failure to "understand relevant legal doctrines or procedures" in the particular instances in which they arise. Respondent's flippant disregard of local rules contrasts with his intentional, abusive manipulation of process and procedure in this disciplinary matter, which the Panel discussed in its Sanctions Order. Far from demonstrating a failure to understand *fundamental legal doctrines and procedures*, Respondent's behavior indicates a level of knowledge

that enabled his abuse and misuse. But in the Panel's view Respondent's violations of RPC 1.1 in this matter demonstrate a disregard for local rules and negligent preparation of pleadings.

**2. RPCs 1.3 (Diligence) and 1.4(a)-(b)
(Communications with the Client).**

Under ABA Standards 4.41 and 4.42, the distinction between disbarment and suspension for violations of 1.3 and 1.4(a)-(b) is the degree of injury suffered by the client, with disbarment being appropriate for "*serious or potentially serious injury*" and suspension being appropriate for "injury or potential injury." While the Standards define "injury" as being "harm" that ranges in scope from "little or no" injury to "serious" injury,²⁶ the ABA Standards do not define when such injury should be considered "serious." Thus, consistent with the discretionary nature of the ABA Standards themselves, the Panel is free to consider all factors in applying ABA Standards 4.41 and 4.42. *See Maddux*, 409 S.W.3d at 624.

a. *McBryar*.

While the Panel has found multiple violations of RPC 1.3 (diligence) and 1.4(a)-(b) (communication), the Panel finds that Respondent's lack of diligence by failing to pursue discovery in the *McBryar* Chancery Court litigation for over six (6) months was egregious. This failure seriously compromised Ms. McBryar's ability to obtain spousal support and custody of the

²⁶ Injuries/potential injuries related to an act or a failure to act are determined from the time of the act. *Walwyn v. Board of Professional Responsibility*, 481 S.W.3d 151, 167 (Tenn. 2015).

child at issue. Indeed, on cross-examination by Respondent, Abby Rubenfeld testified that

[a] motion for spousal support and a motion for custody was filed in, like, February but not set to be heard until July, and there was no discovery done to support either one of those as far as I know [S]o neither motion was ready to be heard in May or July.

Hearing (Vol. III) at 288. Regarding Respondent's motion for spousal support, Ms. Rubenfeld elaborated that Respondent

had no discovery about Janine McBryar's income, nothing about Jamie's inability to work, nothing about anybody's need. I didn't see where an income and expense statement had even been filed. I mean, you have to show need and ability to pay, and none of that was prepared, as far as I could tell. [I]t meant that she [i.e., Jamie] couldn't go forward with the hearing for desperately needed spousal support because it wasn't properly prepared....

...

When I had to cancel that hearing because it wasn't ready to be heard, we couldn't get a hearing date until December. So she couldn't get any support for basically the whole year, and she had, like, no money.

Id. at 218-19. *See also* Trial Ex. 67 (email from Rubenfeld dated 7/13/19 at 1:05 PM, inquiring "how is this ready for an alimony hearing when you have done no discovery?").

Accordingly, Respondent's failure to conduct discovery to provide proper support for his motions for spousal support and custody caused serious injury to

his client and justifies a presumptive sanction of disbarment.

b. *Dunn*.

With respect to the violations of RPC 1.3 and 1.4(a) arising out of the *Dunn* matter, this Panel finds that the appropriate presumptive sanction is a reprimand under ABA Standard 4.43.

3. RPC 1.16(d) (Terminating Representation).

ABA Standards 7.1 and 7.2, both require a finding that a lawyer "knowingly engage[d] in conduct that is a violation of a duty owed as a professional" and that the violation caused injury or potential "injury to the client, the public, or the legal system." Whether the presumptive sanction should be disbarment or suspension turns on two questions: (1) whether the violation was committed "with the intent to obtain a benefit for the lawyer or another" and (2) whether or not the conduct caused "serious" injury/potential injury.

Here, two specific violations of RPC 1.16(d) and one violation of 1.5(b) support a presumptive sanction of disbarment.

a. *McBryar*.

First, in the *McBryar* matter, Respondent knowingly and deliberately refused to cooperate with Abby Rubinfeld, who reluctantly²⁷ became successor counsel in the Knox County Chancery Court action. Notably, the transition to new counsel arose after Respondent initiated a fee dispute with his client,

²⁷ See Hearing (Vol. III) at 210 and 233.

which is the subject of the violation of 1.5(b). *See* S.J. Order at 7.

After being contacted by Jamie McBryar, Ms. Rubenfeld made repeated requests for information to Respondent regarding the status of the case and the possibility of obtaining a continuance of the July 16, 2019, hearing. These requests were met with open hostility by Respondent, who-apart from advising "Enter an appearance, if you want to get involved"²⁸ - refused to provide Ms. Rubenfeld any substantive information relating to the case. *See* Hearing (Vol. II) at 129-34.

In response, Ms. Rubenfeld asked:

I am trying to help you get out; no need to be so hostile. [T]he emails [M]s. [M]c[B]ryar forwarded to me indicate that you want out; I am offering to help you get out. [S]o could you tell me what the hearing is on [T]uesday, other than your motion to withdraw?

[D]on't you think it will help you get out - which is what you want - if she supports your motion and lets the court know she is working on getting a different lawyer?

Trial Ex. 26 (email from Rubenfeld dated 7/13/19 at 12:47 PM). *See also* Trial Ex. 67 (email from Rubenfeld dated 7/13/19 at 1:00 PM).

Ms. Rubenfeld's incredulity was warranted. With a mere three days before the hearing on what he considered to be a "groundbreaking" motion (albeit, unsupported by any discovery), Respondent - without cause-belligerently refused to cooperate with Ms.

²⁸ Trial Ex. 26 (email from Respondent dated 7/13/19 at 11:34 AM).

Rubinfeld (*see* RPC 1.16(d)(3)) and did not afford adequate time Ms. Rubinfeld to prepare adequately for the motion hearing (*see* RPC 1.16(d)(2)).

At the disciplinary hearing, Respondent testified that he "wasn't working for Abby Rubinfeld," Hearing (Vol. II) at 130, who "refused to enter an appearance in the case," *id.* at 127, and therefore he "had no legal obligation to answer her question[s]." *Id.* at 132. He further accused Ms. Rubinfeld of "attempt[ing] to backseat the entire case," *id.* at 127, and "interfering with the client relationship." *Id.* at 131.

These explanations do not justify Respondent's conduct. A withdrawing attorney "must take all reasonable steps to mitigate the consequences to the client." RPC 1.16(d), cmt. 9. This obligation even extends to counsel who has not been formally engaged and has not entered an appearance. *See Prewitt*, 647 S.W.3d at 377 n.26. Here, Respondent's obstinate refusal to provide any information to Ms. Rubinfeld, or heed the numerous requests from both Ms. Rubinfeld *and* the client for a continuance of the July 16th hearing, caused serious injury and serious potential injury to Ms. McBryar and her case. *See* Hearing (Vol. III) at 218-29. *See also* Trial Ex. 69 (email from Rubinfeld dated 7/15/19 at 5:03 PM, stating "you have cost [M]s. [M]c[B]ryar thousands of dollars to clean up the mess you have made").

Moreover, the Panel finds this conduct was intended to obtain at least two benefits for Respondent: namely, financial compensation and the publicity Respondent expected from what he believed to be a "groundbreaking" case.

b. King.

As another basis for the presumptive penalty of disbarment, Respondent deliberately withheld his file from his former client, Aaron King and his attorney, Robert Kurtz, in violation of RPC 1.16(d)(5). *See* S.J. Order at 9-10. Mr. King and his attorney sought the file for use in his upcoming criminal trial for the purpose of impeaching the testimony of Mr. King's ex-wife.

Respondent affirmatively recognized the value of the information contained therein. In fact, Respondent *taunted* Mr. Kurtz with the value of the file in an email, saying:

On Thu, Jun 25, 2020 at 2:16 PM Elliott Schuchardt <elliott016@gmail.com> wrote:

By the way, the information I have is very useful for your case, because it shows that Kim is a liar. However, that information was never paid for.

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See Kurtz Aff. at ¶ 8. Nevertheless, claiming an attorney's lien for unpaid legal fees, Respondent withheld the file from Mr. King and his attorney from January 2020 until July of 2020, when he was ordered by the criminal court to produce it.

In addition to causing actual harm by forcing Mr. King's attorney to subpoena the file,²⁹

²⁹ *See Sallee v. Tennessee Board of Professional Responsibility*, 469

Respondent's conduct caused serious potential harm to Mr. King. The file was sought for use in a *criminal* trial where Mr. King's personal liberty was at stake. While Respondent clearly understood the importance of the evidence in his possession, he put his own pecuniary interest in collecting an unpaid fee ahead of the liberty interests of his former client. In addition, and in furtherance of his self-interest, Respondent knowingly lied to Judge Green about "conversations with the Disciplinary Board" that never occurred and misrepresented to the Court that Formal Ethics Opinion 2015-F-160 was no longer "valid." Such conduct is directly antithetical to a lawyer's duties to practice the "learned art" of law "in the spirit of public service" and "to promote justice and the public good." Tenn. S. Ct. R. 8, Preamble at ,r 1. Accordingly, this conduct was carried out for Respondent's own interest and had the potential to cause serious injury to his client. It therefore justifies the presumptive penalty of disbarment.

4. RPCs 4.4(a)(1) (Respect for the Rights of Third Persons) and 8.4(d) (Conduct Prejudicial to the Administration of Justice).

a. *Hirschhorn*.

With respect to the *Hirschhorn* complaint, Respondent's October 22, 2019, conversation with

S.W.3d 18, 44-45 (Tenn. 2015) (finding harm to the client who was "forced" to sue the attorney to obtain evidence relevant to a wrongful death action, which was not provided until the "Knox County Chancery Court ordered her to do so").

Bennett Hirschhorn speaks for itself.³⁰ Respondent's threats against the licenses and livelihoods of Mary Jane Douglas and Ann Richards were unconscionable and violated "the principles underlying the rules [of] basic fairness, respect for others, human dignity, and upholding the quality of justice." *The Florida Bar v. Buckle*, 771 So.2d 1131, 1134 (Fla. 2000). His attempt to extort a resolution to his detainer action (to benefit himself), by way of threats directed at his client and a third party, severely injures and undermines the public's confidence in the legal profession. Respondent's explicit attempt to extract a "*quid pro quo*" (his words) is incredibly destructive to the legal profession and is the precise type of behavior that feeds conspiracy theory misconceptions about how the legal system operates. The Panel concludes that disbarment is the appropriate presumptive sanction for these violations under ABA Standard 7.1.

b. King.

The Panel addressed the matters giving rise to the violation of RPC 8.4(c) (engaging in conduct involving dishonesty, deceit, fraud or misrepresentation) and (d) in the *King* complaint in its Summary Judgment Order at 9-10. The Panel finds that this conduct similarly warrants disbarment as the presumptive sanction under ABA Standard 7.1. Moreover, the Panel also finds that disbarment is the appropriate presumptive sanction under ABA Standard 6.11 for Respondent's violation RPC 3.3(a)(1).

³⁰ The Panel notes that, while the transcript supplied by the Board and quoted extensively herein is powerful, it does not do justice to just how appalling the audio is.

c. *Dunn*.

The Panel addressed the matters giving rise to the violation of RPC 8.4(c) and (d) in the *Dunn* complaint in the Panel's Sanctions Order at 9. As with the *King* matter, the Panel finds that this conduct warrants disbarment as the presumptive sanction under ABA Standard 7.1. Similarly, the Panel also finds that disbarment is the appropriate presumptive sanction under ABA Standard 6.11 for Respondent's violation RPC 8.1(a), and 8.2(a)(2)(making false statements concerning the integrity of an adjudicatory or public legal officer).

B. Aggravating / Mitigating Factors.

ABA Standard 9.22 identifies eleven (11) aggravating factors for consideration, while ABA Standard 9.32 identifies thirteen (13) mitigating factors. *See* Trial Ex. 40. Based upon the record, the Panel finds multiple aggravating factors to be applicable in this matter, some with multiple applications, and only one mitigating factor. Accordingly, even if the presumptive sanction is found to be suspension rather than disbarment, the aggravating and mitigating factors-on balance-justify an upward departure to a sanction of disbarment.

1. Aggravating Factors.

a. Prior Disciplinary Offenses.

In his Pretrial Brief, Respondent contends that he had "an unblemished record in the practice of law" for 24 years until 2017, when he received a two-year suspension from the Eastern District of Tennessee. *See* Resp. Pretrial Br. at 59 (emphasis in original). *See also* Trial Ex. 2. He thereafter argues that his 2017 federal

court suspension should be discounted because of its "remoteness" and because Chief U.S. District Judge Pamela Reeves (who entered the suspension order) "did not have material information" relating to the facts underlying the suspension. *See* Resp. Pretrial Br. at 63-64.

Neither argument is compelling. First, Judge Reeves' disciplinary suspension was issued in December of 2019-*i.e.*, roughly the same time period at issue in each of the four complaints here and only one and one-half years prior to the initiation of this disciplinary matter. Secondly, this Panel does not sit as a court of review, and the Eastern District of Tennessee suspension order is a final order. Third, the Panel cannot ignore the similarities in the conduct described by Judge Reeves and (1) the conduct at issue in the present petitions and (2) the conduct this Panel has witnessed itself in the proceedings before it.

Moreover, as a consequence of the suspension entered by the Eastern District of Tennessee, Respondent also was disciplined four additional times-twice by the U.S. District Court for the Western District of Pennsylvania, once by the U.S. District Court for the Middle District of Tennessee, and once by the Pennsylvania Supreme Court. *See* Trial Exs. 11-14.

Accordingly, this disciplinary history constitutes an aggravating factor.

b. Dishonest or Selfish Motive.

Respondent contends that he "had no dishonest or selfish motive in connection with" any of the cases for which complaints were filed, and that he "was seeking to help everyone that he dealt with, on a generous basis." Resp. Pretrial Br. at 59.

The evidence is to the contrary, and the Panel has found as much in the presumptive sanctions findings above. For example, and as stated above, Respondent put his selfish financial motives (i.e., collecting a fee) ahead of the interests of both Jamie McBryar and Aaron King. While attorneys may seek to collect legitimate fees that have been earned, Respondent deliberately and unjustifiably held his client files hostage from Ms. McBryar (and her counsel, Abby Rubenfeld) and Mr. King (and his counsel, Robert Kurtz). In both instances, Respondent caused serious injury and/or serious potential injury to his clients. Respondent also put his own interests before those of his clients in threatening to testify against Mr. King, see S.J. Order at 10, and threatening to report Mary Jane Douglas to her licensing authority, *id.* at 8, for the sole purpose of gaining personal advantage in his own cases-conduct which the Panel previously described as "egregious." *Id.* at 9.

**c. Pattern of Misconduct /
Multiple Offenses.**

A "pattern of misconduct" may include consideration of prior conduct for which a lawyer previously was found guilty and punished. See *Board of Professional Responsibility v. Allison*, 284 S.W.3d 316, 327 (Tenn. 2009). Further, it should involve same or similar offenses. See *Board of Professional Responsibility v. Daniel*, 549 S.W.3d 90, 103 (Tenn. 2018) (suggesting that a "pattern" of misconduct involves same or similar offenses); see also *id.* at 103 n.11.

Here, Respondent has committed a multitude of ethical violations spread across four separate

complaints. Thus, the multiplicity factor is well-established.

Further, within these offenses, patterns are readily observable. For example, Respondent violated multiple Local Rules in his representation of both Jamie McBryar and Cherie Dunn. In addition, Respondent further violated the Local Rules of the Middle District of Tennessee and (on *two* occasions) the Local Rules of the Western District of Pennsylvania. See Trial Ex. 11, 12, and 14. He repeatedly improperly withheld his client files, became adverse to existing clients on multiple occasions, has abused the legal system, and often lacks candor or otherwise fails to comport himself with the appropriate professionalism. The Panel finds both multiple offenses and a pattern of misconduct.

d. Bad Faith Obstruction of Disciplinary Proceeding and Submission of False Evidence During Disciplinary Process.

For the reasons below, overlapping evidence before the Panel supports both of these factors.

In its Sanctions Order (entered 9/13/22), which only pertained to facts alleged in the Supplemental Petition (the *Dunn* complaint), this Panel concluded that Respondent "poses a present threat of *substantial* harm to the public by virtue of his lack of candor and his abuse of process." Sanctions Order at 10 (emphasis added). The Panel based its conclusion on the following findings:

- that Respondent made multiple "misrepresentations to the Panel" (*id.* at 6 (¶ 6); see also *id.* at 1-2 (¶ 1), *id.* at 3 (¶ 2), *id.* at 6 (¶ 7));

- that he "claimed" to the Board that "Dustin Welsh (an autistic minor) was present and testified at the conservatorship hearing," which is the subject of the Supplemental Petition, (*id.* at 1-2 (I 1)), and that he possessed "material information" establishing this fact (*id.* at 3 (I 2); emphasis in original), when such information consisted *only* of his own unsubstantiated testimony (*id.* (quoting Supp. Pet., Ex: Q; emphasis in original));
- that-after confronted with documentary evidence (i.e., a school attendance record) establishing Dustin Welsh's attendance in school on the day in question and supporting the prior deposition testimony of his father and step-mother (*id.* at 4-5 (I 5))-he admitted in writing to attorney Adam Priest and Disciplinary Counsel Campbell that "I was apparently mistaken" (*id.* at 5 (I 5));
- that-a few days after this admission-he nevertheless contacted the attorney for the Anderson County High School, Chris McCarty, and "grossly misrepresent[ed]" to Mr. McCarty the terms and meaning of the Protective Order previously entered by this Panel (*id.* at 5 (if 6));
- that-after being advised by the Panel of his "gross[] misrepresent[ation]" [of] the letter and spirit of this Panel's prior Order," (*id.*)-he advised by emails to the Panel and Disciplinary Counsel that he would take no further action to enforce his subpoenas for the depositions of Dustin Welsh and Anderson County school personnel;

- that - on the following day - he "reversed course again" and advised the Panel, as well as the presiding judge in his Knox County Circuit Court action (*see id.* at 3 (r 3)) that he intended to continue to challenge the jurisdiction of the Panel to manage discovery in this proceeding and would continue his attempts to enforce his subpoenas (*id.* at 6 (if 7));
- that - through "enflamed rhetoric and accusations that have been a staple of Respondent's arguments before this Panel" - he "made false statements [to the Knox County Circuit Court] about the Panel's decision [i.e., its Protective Order]" (*id.* at 7 (¶8));
- that he "repeatedly [has] asserted fantastic and wholly unsupported claims of hiding evidence, bias, prejudice, criminal conduct, and conspiracy theories directed at . . . witnesses, other members of the bar, disciplinary counsel, and the Board itself" (*id.* at 8);
- that "Respondent's initial representation to the Board that Dustin Welsh was present and testified at the subject hearing, Respondent's subsequent representations that he had information to prove the witness was present, Respondent's sworn testimony that the witness was present, and his assertions that everyone else is lying and/or hiding the truth are all false" (*id.* at 9);
- that his "statements and conduct in connection with this issue have been reckless, if not intentional" (*id.*);

- that he demonstrated a complete incapacity "to restrain himself in the face of . . . overwhelming evidence, [including] his own admission that he was mistaken" (*id.* at 10); and
- that he engaged in "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules of this proceeding or orders of this panel," by the "submission of false statements or other deceptive practices during these disciplinary proceedings," and by a "refusal to acknowledge the wrongful nature of his conduct." (*Id.* at 11.)

Since issuing that Order, Respondent's statements and conduct have reinforced the Panel's prior decision. Indeed, in this Panel's experience, it appears Respondent says and does whatever he believes to be expedient under any given set of circumstances.

The following four examples, among many others, evidence the applicability of this aggravating factor.

i. Respondent's Incomplete and Misleading/Deceitful Notices of Filing.

Knowing that Disciplinary Counsel would introduce evidence relating to his two-year suspension issued by the U.S. District Court for the Eastern District of Tennessee as an aggravating factor (discussed *supra*), Respondent-prior to the hearing-submitted documents to this Panel under numerous "Notices of Filing." One such Notice (filed 3/29/23) was entitled "Notice of Filing Documents for Identification - Reeves Order." See Trial Ex. 4. Among the documents included in that Notice was a Motion for Relief from

Judgment filed by Respondent with the federal court pursuant to Rule 60(b)(6), Fed. R. Civ. P., which sought the dissolution of Judge Reeves' suspension order. *Id.* In addition, the Notice also contained a formal complaint, initiated by Respondent, to the Sixth Circuit Judicial Counsel against Bankruptcy Judge Suzanne Bauknight-who had referred Respondent's conduct to the Chief Judge of the ;Eastern District for investigation and (if appropriate) sanction. *Id.*

At the Hearing, in response to questions from Disciplinary Counsel, Respondent testified that he submitted these papers to the Panel so that the Panel would know that he was in the process of challenging that suspension" and so that the Panel would have a clear picture of the procedural status of that federal court suspension. Hearing (Vol. I) at 44. Yet, notwithstanding this professed intent, Respondent failed to include in this Notice his "Notice of Withdrawal" of his Rule 60 motion (Trial Ex. 5) and his letter to the Sixth Circuit withdrawing his complaint against Judge Bauknight (Trial Ex. 10). In response to questioning from Disciplinary Counsel to the effect that he was "trying to bamboozle this Panel, and any future appellate tribunal into believing that [his] Rule 60 motion [was] still viable" and that his challenge to his suspension was still pending, Respondent testified "No, not at all I have nothing to hide here." Hearing (Vol. I) at 46.

When asked by the Chair of the Panel, "Why did you include the Rule 60 motion and not include the notice of withdrawal of the Rule 60 motion in the pleadings that you submitted," Respondent incredulously responded: "I was trying to save the cost on copies." *Id.* Ex. The only reasonable and logical conclusion to be drawn is that Respondent deliberately

and intentionally sought to mislead this Panel into believing that his challenge to the federal court suspension was still pending, when-in fact-it was not.

ii. Reneging on an "Apology."

As a second example, which also is related to his federal court suspension, Respondent submitted a Petition to the Tennessee Supreme Court approximately five weeks before the disciplinary hearing, requesting the imposition of a "reciprocal" two-year suspension. *See* Trial Ex. 7. In that Petition, Respondent averred to the Supreme Court that he had "sent Bankruptcy Judge Bauknight an apology letter with respect to [his federal court suspension]" and further stated that he did not "wish to take any adversarial position against Bankruptcy Judge Bauknight. "

Id.

However, less than a week after the Supreme Court denied his Petition, *see* Trial Ex. 8, Respondent filed a complaint against Judge Bauknight with Senator Richard Durbin, Chairman of the Senate Judiciary Committee. *See* Trial Ex. 4 (letter to Senator Durbin dated 3/15/23). *See also* Hearing (Vol. I) at 60-62. Thereafter, on March 30, 2023, Respondent issued his own, self-drafted press release against Judge Bauknight. *See* Trial Ex. 9. *See also* Hearing (Vol. I) at 62-66.

In his complaint to Senator Durbin, Respondent asserted that Judge Bauknight engaged in a pattern of retaliation against him through the issuance of certain orders that were adverse to him and his law firm. *See* Hearing (Vol. I) at 60-61. He further claimed to Senator Durbin that Judge Bauknight's orders were "politically-motivated and improper" and that Judge

Bauknight "used these orders for her own purposes." *Id.* at 61.

Similarly, in his press release, bearing the title "*Tennessee Bankruptcy Judge Targeted African American Attorney for Benefit of Court Insider*," Respondent asserted (among other things) that Judge Bauknight "used her orders to require [Respondent's law firm] to pay a court insider-Gwendolyn Kerney-\$200,000" and described Judge Bauknight's conduct as a "judicial scandal in Tennessee." Trial Ex. 9. In addition, Respondent accused Judge Bauknight of "us[ing] her federal bench to *target* an African American female attorney," *id.* (emphasis added), and strongly implied racial bigotry on the part of Judge Bauknight. *But see id.* at 64 ("I've had to deal with a thousand cuts coming from Bankruptcy Judge Bauknight."); *id.* at 68 ("I don't have anything to apologize for.").

Notwithstanding any professed "apology" to Judge Bauknight or expressed desire to not "take *any* adversarial position against Bankruptcy Judge Bauknight," *see* Trial Ex. 7 (emphasis added), Respondent engaged in conduct before the federal courts very similar to the conduct previously described by the Panel in its Sanctions Order. *See, e.g.,* Sanctions Order at 3 n.2.

**iii. Accusations of Misconduct by Others
involved in the Disciplinary Proceedings.**

This Panel previously found that Respondent "repeatedly asserted fantastic and *wholly unsupported* claims of hiding evidence, bias, prejudice, criminal conduct, and conspiracy theories directed at [third party] witnesses, other members of the bar,

disciplinary counsel, and the Board itself" Sanctions Order at 8 (emphasis added).

Undeterred, Respondent has continued to do so. Two weeks after this Panel issued its Sanctions Order, Respondent took his accusations of misconduct by the Board to the U.S. District Court for the Middle District of Tennessee. On September 28, 2022, Respondent filed civil action case no. 3:22-cv-00762 against the Board, Chief Disciplinary Counsel Sandra Garrett, and Disciplinary Counsel Campbell. *See* Trial Ex. 27.

In a fashion similar to his assertions against Judge Bauknight, Respondent alleges - among other things - that Ms. Garrett and Mr. Campbell have "retaliate[d] against Schuchardt" by pursuing ethics charges which he contends are "baseless and frivolous." *See, e.g., id.* at ¶¶ 10-11. Respondent claims that Ms. Garrett and Mr. Campbell have "fabricated evidence" to support their claims, *id.* at ,r41, have "unlawful[ly] harass[ed]" him, *id.* at ¶ 57, have "unlawfully damage[d his] reputation," *id.* at ¶ 58, and have "fabricated 'violations' of the rules of ethics." *Id.* at ,r 59. *See also id.* at ¶ 63.

At the disciplinary hearing, Respondent elaborated on these assertions, claiming that Disciplinary Counsel Campbell "procured a false affidavit from [attorney] Adam Priest in connection with the Dustin Welsh matter,"³¹ and that "either [Mr. Campbell] or Bennett Hirschhorn... altered the audiotape of the conversation between me and Bennett Hirschhorn." Hearing (Vol. II) at 145-46.³² *See also* Hearing (Vol. IV) at 401-02.

³² The Panel notes that on May 13, 2022, Respondent

At the disciplinary hearing, Respondent was asked to present evidence in support of these claims. *See* Hearing (Vol. II) at 146 ("What proof do you have that I doctored the audiotape? What proof do you have that I somehow managed to convince Adam Priest, a licensed attorney, to execute a false affidavit and commit perjury?"). *See also id.* at 147-48 and 172-74. In response, Respondent admitted that he had no evidence apart from his own personal belief and testimony as follows:

A: I contend that either you or Bennett Hirschhorn have altered the audiotape of the conversation between me and Bennett Hirschhorn.

Q: Okay.

A: I *think* it was your office, *but I can't prove which one of the two of you it was.*

Id. at 145-46 (emphasis added).

Q: What you're contending is that I contacted Adam Priest and got him somehow to change his story and execute a false affidavit, right?

A: That's right.

Q: Where is your proof to support that contention?

A: Where is my proof? I was in that [Anderson County Chancery Court] hearing that was the subject matter of that [i.e., Mr. Priest's] affidavit, and it is my testimony that Dustin Welsh was in that hearing.

Id. at 146-47.

issued a Notice of Deposition for Mr. Hirschhorn, which is contained in the file. However, there is nothing in the file – nor any evidence presented at the disciplinary hearing – to indicate that Respondent ever deposed Mr. Hirschhorn.

A: This issue is: Mr. Priest changed his story after your phone call [to him], Mr. Campbell.

Q: And you don't have any evidence, apart from your own testimony, that he did change his story.

A: That's right. ...

Id. at 149.

A: I contend that Sandy Garrett is filing intentionally false claims for political purposes, and I also contend that your office is filing intentionally false and / or frivolous claims in order to boost the revenues going to your office because Tennessee is virtually the only state that allows fee shifting of enormous amounts.

Q: But you don't have proof to support those delusions, do you?

A: I have proof that Tennessee is an outlier in terms of fee shifting, and that the money-you're trying to get money out of my pocket by making us go round and round on all these fluff issues involving typographical errors.

Q: You also tell the Supreme Court that Ms. Garrett and I have, quote, "fabricated 'violations' and fabricated 'evidence' in their disciplinary case against Schuchardt." Correct?

A: Yes, that's right.

Q: What specific evidence do you have that we fabricated anything?

A: We've already talked about that.

Q: So it's just your word?

A: No, it's my testimony.

Q: It's your testimony?

A: It's about the Dustin Welsh matter. It's also about this tampered-with audiotape that Mr. Hirschhorn provided to your office.

Q: It's your unsubstantiated sworn testimony that we fabricated evidence, right?

A: It's my substantiated testimony.

Q: Substantiated with what? ...

A: Substantiated with me, a material witness with knowledge of the facts.

...

PANEL CHAIR: Mr. Schuchardt, answer the question, please. The question is: What evidence or proof do you have, other than your own testimony, that supports any of these claims of misconduct by members of the BPR?

MR. SCHUCHARDT: It is my testimony at this point, sir.

Id. at 171-73.

In addition, Respondent repeatedly contended that he "would like discovery" on his allegations of misconduct. *Id.* at 148. The record reflects that Respondent *did* conduct discovery on the issue of Mr. Priest's allegedly false affidavit: he deposed Mr. Priest. *See* Notice of Correction and Filing (filed 4/28/23). Further, the record reflects that Respondent at least had an *opportunity* to depose Bennett Hirschhorn with respect to the allegedly altered audio recording of his conversation with Respondent. *See* Notice of Dep. of Bennett Hirschhorn (filed 5/13/22). Thus, Respondent was not deprived of discovery to support his claims of misconduct.³³

Further, at the disciplinary hearing, Respondent cross-examined Mr. Hirschhorn, who

³³ The Panel further notes that Respondent affirmatively declined the opportunity to pursue deposition testimony after the Notice of Deposition of Mr. Hirschhorn. *See* S.J. Order at 2-3.

previously authenticated the audio recording under oath.³⁴ Hearing (Vol. III) at 311-13.. At that time, Mr. Hirschhorn denied deleting anything from the recording. *Id.* at 312.

Finally, with respect to the audio recording of his telephone call with Bennett Hirschhorn, Respondent bases his accusation that the recording had been altered upon the following:

the most important part, though, and this is the part that clearly has been deleted, is *at the very end of that call*, Bennett is asking me, What do you want? What do you want?

And I told him, I don't want anything. I want her, meaning Ann, to stop lying.

That has been deleted from the audiotape, and I submit those words are on the e-mail copy that was sent from Mr. Hirschhorn over to Mr. Campbell. That's been deleted, and it's an extremely important piece of information because it showed at the end of our conversation concerning Rule 4.4, I was not asking for a *quid pro quo*....

Hearing (Vol. IV) at 402-03 (emphasis added).

Respondent's testimony on that point is demonstrably false. A review of the audio recording previously authenticated by Mr. Hirschhorn *ends with the parties hanging up*, followed by a series of three "beeps" indicating the termination of the call. Thus, Respondent's testimony that he recanted his prior

³⁴ See Petitioner's Second R56.03 Statement, Ex. C-2 (Hirschhorn (audio file)) at ,r 6 (describing it as a "*true and complete* audio recording of a telephone conversation between me and Mr. Schuchardt on October 22, 2019, [which] was made by my law clerk ... at my request when Mr. Schuchardt started making threats"; (emphasis added)).

demand for a "*quid pro quo*" at "the very end of that call" is belied by the recording itself.

The last words spoken by Respondent on the call-before the three "beeps" indicating its termination-were these:

ES: OK. All right. Thank you very much. I appreciate that. *I'll be writing to the Judge on Ann's case.*

<Beep. Beep. Beep.>

10/22/19 Audio Recording (at time index 25:00).

The Panel finds that Respondent did *not* disclaim his demand for a *quid pro quo* at the end of the call and that the audio recording had *not* been tampered with.

Based on the forgoing, the Panel concludes that Respondent had ample opportunity to conduct discovery relating to his allegations of misconduct by the Board, Ms. Garrett, and Mr. Campbell. Notwithstanding this opportunity, Respondent-by his own admission-has no evidence to support any of these accusations. The Panel concludes that no such evidence exists and that Respondent's claims against the Board and Disciplinary Counsel are unsubstantiated. Regardless, Respondent's claim that he did not "want anything" from Ms. Richards other than to "stop lying" demonstrates that he was indeed asking for her to engage in specific conduct. In other words, even if Respondent's version of the situation is correct, he nevertheless clearly demanded a *quid pro quo*.

iv. Challenging the Impartiality and Integrity of the Panel.

Respondent during the course of this case has also impugned the impartiality of this Panel and the

integrity of its members in numerous public documents.

In his 2022 Knox County Circuit Court action, *Schuchardt v. Tennessee Board of Professional Responsibility* (case no. 2-157-22), Respondent in his Brief in Opposition to the Board's Motion to Dismiss misrepresented the substance of the Panel's June 14, 2022, Protective Order as "*deny[ing] Schuchardt any discovery whatsoever in connection with the whereabouts of Dustin Welsh*"³⁵ and described this Panel's discovery order as both "astonishing and patently illegal." Schuchardt Cir. Ct. Opp. Br. at 7 (emphasis in original).³⁶ One page later, Respondent accused this Panel of "play[ing] word games" in its discovery ruling and acting "without authority." *Id.* at 8.

Thereafter, in his federal complaint against the Board, Ms. Garrett, and Mr. Campbell, *see* Trial Ex. 27, Respondent again challenged the impartiality of this Panel—contending that its members are "conflicted," *id.* at 134, and

have an economic incentive to seek [Chief Disciplinary Counsel] Garrett's approval, to avoid regulatory scrutiny and possible attacks on their licenses in the future[, and specifically] have an economic incentive to approve Garrett's requests for action against the respondent attorney [Schuchardt].

³⁵ *See also* Sanctions Order at 7, ¶ 8 (holding that Respondent "made false statements [to the Circuit Court] about the Panel's decision").

³⁶ A copy of Respondent's legal brief was submitted to the Panel on July 18, 2022, under a Notice of Filing by the Board, and was cited in the Sanctions Order. *See* Sanctions Order at 7.

Id. at ¶ 36. Respondent further contended that this Panel-with its members motivated by their own economic self-interest-"denied Schuchardt the opportunity to take discovery regarding the alleged fabricated evidence [of Garret and Campbell]" and have "prevent[ed] Schuchardt from contradicting Garrett and Campbell's evidence, by means of his own testimony, documents, or independent witnesses." *Id.* at ¶¶ 41-42. According to Respondent, the members of this Panel

have approved these orders to protect their own licenses to practice law, by ruling in favor of Defendants Garrett and Campbell.

Id. at ¶ 44. *See also id.* at ¶¶ 74-77. Respondent repeats many of these contentions in a sworn affidavit filed with the federal district court. *See* Trial Ex. I at ¶¶ 85-86 and 96-97. In addition, in an October 2022 letter to adversary counsel in an unrelated civil matter, Respondent stated that "the members of th[is] panel[] have an economic incentive to approve Ms. Garrett's political vendettas, in order to protect their own licenses to practice law." Trial Ex. 29 (letter dated 10/10/22 to attorney Scott Hall). This accusation was repeated to three other members of the Tennessee bar as well as several lay people. *Id.*

When asked to explain these contentions at the disciplinary hearing, *see* Hearing (Vol. II) at 156-62, Respondent asserted:

I'm not contending that there are any improprieties on the part of the Hearing Panel. I'm simply saying there is a structural problem with the way the system is set up in Tennessee. I have the utmost of [sic] respect for all three of you [*i.e.*, the Panel members]. I think you have done an excellent job in hearing these issues.

Id. at 161. This is a stark contrast from Respondent's accusations that the Panel has "play[ed] word games" in its orders and is motivated by "economic incentives." *See also* Hearing (Vol. I) at 56 (professing "the utmost respect for ... Bankruptcy Judge Bauknight"); *id.* at 46-47, 52; *but see id.* at 63-64.

Like his "fantastic and wholly unsupported claims" against Disciplinary Counsel, the Board, and various witnesses, *see* Sanctions Order at 8, Respondent's charges of bias and economic self-interest against the members of this Panel are outside the boundaries of acceptable advocacy.

**e. Refusal to Acknowledge
Wrongful Nature of Conduct.**

Throughout this proceeding, Respondent has steadfastly refused to acknowledge the wrongful nature of his conduct, or express any remorse. Instead, he has asserted in this proceeding that the Board itself has "willfully violated RPC 4.4, by cobbling together complaints from five persons^[37] who were adverse to Schuchardt, in various ways, [and who] all had something to gain by attacking Schuchardt's integrity, reputation and license to practice law." *See* Mem. in Supp. of Resp.'s Mot. for S.J. (filed 10/21/22) at 1 (all emphasis in original). Indeed, in an effort to deflect attention from his own conduct, Respondent embarked on a campaign of character assassination with respect to each of these individuals. According to Respondent,

- Jamie McBryar is a perjurer (*see* Schuchardt S.J. Aff. (filed 10/21/22) at ¶ 48);

³⁷ This proceeding pertains to four complainants, not five.

- Ann Richards "has a long history of making false reports to the police, the courts, and to the business community" (*id.* at ¶ 108) and has "victimized at least two other persons" by such alleged conduct (*see* Schuchardt Supp. Aff. (filed 12/7/22) at ¶ 18);
- Mary Jane Douglas is "an alcoholic" (*see* Schuchardt Aff. (filed 10/21/22) at ¶ 126);
- "Aaron King is a convicted rapist" (*id.* at ¶ 151); and
- Cherie Dunn "has a history of alcohol and drug abuse" (*id.* at ¶ 195).

As discussed above, Respondent filed two lawsuits against the Board and against Disciplinary Counsel in both state and federal court, alleging that the Board and Disciplinary Counsel Campbell have "refuse[d] to produce material evidence" relating to this case³⁸; that the Board "does not want the truth to come out in this case"³⁹; that Chief Disciplinary Counsel Sandra Garrett "is using her position with the [Board] to retaliate against Schuchardt:"⁴⁰; that as part of their "harassment campaign" against Respondent⁴¹ - Chief Disciplinary Counsel Garrett and Disciplinary Counsel Campbell have "fabricated evidence,"

³⁸ See Knox Cnty Cir. Ct. Compl. at ¶ 14 (previously submitted to the Panel as "Exhibit 1" to the Board's May 31, 2022, Mot. for Protective Order).

³⁹ See Knox Cnty Cir. Ct. Compl. at ¶ 20.

⁴⁰ See Trial Ex. 27 at ¶ 10. See also *id.* at ¶¶ 11-18.

⁴¹ See Trial Ex. 27 at ¶ 63.

"conceal[ed] the fabrication of evidence,"⁴² and suborned perjury.⁴³

In his Petition for Leave to Surrender Law License (Trial Ex. 35), which was filed only a month and a half before the April 5, 2023, disciplinary hearing, Respondent informed the Tennessee Supreme Court that all of the ethics charges brought against him were based on complaints from "'informants' [who] were all seeking to gain an advantage in pending or threatened litigation, at the expense of my reputation." *Id.* at ¶ 7. Respondent further advised the Supreme Court: "I cannot conduct [my] business [as an attorney] if the Board intends to file a case against me, whenever I assume an adversarial position within the Tennessee courts." *Id.* at ¶ 8. These are not expressions of contrition. The Panel finds this aggravating factor applies.

f. Vulnerability of Victim.

The evidence demonstrates that Complainant Jamie McBryar is "not sophisticated at all on how the legal system works." Hearing (Vol. III) at 281. As a client who "doesn't have a college degree," she "would have gone by [Respondent's] advice" without questioning it. *Id.* As such, the evidence shows that she

⁴² See Trial Ex. 27 at ¶¶ 39-40.

⁴³ See Trial Ex. 1 at ¶¶ 51, and 74-79. See also *id.* at ¶¶ 65-68. Respondent did not confine these allegations just to Chief Disciplinary Counsel Garrett and Disciplinary Counsel Campbell. Respondent seemingly filed complaints with the Board against every disciplinary attorney assigned to this case. *Id.* at ¶¶ 46-50 (citing "four different ethical complaints against disciplinary counsel," including complaints against Alan Johnson and Diane Nisbet).

placed her trust in Respondent. *See, e.g.*, Trial Exs. 63 and 66. At the time that Respondent filed his Motion to Withdraw, while his Motion for Custody was set to be heard in approximately two weeks, Jamie McBryar was "desperate for help!" *See* Trial Ex. 41. Despite her position and the posture of the Chancery Court case at that time, Respondent did nothing to ease the transition of the case from him to Ms. Rubenfeld.

Similarly, the evidence indicates Respondent's client Mary Jane Douglas was particularly vulnerable. Mr. Hirschhorn described Ms. Douglas as "on the rocks," testifying:

She was a realtor, she was sick, having a hard time, and . . . Mr. Schuchardt . . . extended an invitation for her to move to his house, to take her belongings, pack them in her car, and move to his house, and she had nowhere else to go.

. . . [S]he was dependent on him. [S]he was vulnerable, and I observed that Mr.

Schuchardt was taking advantage of her vulnerability, and then, when he decided he was finished, he wanted to evict her.

Also, . . . [Respondent] was representing her in a [malpractice] case, and all of this-all of this together indicated to me that there was a relationship that spanned many different aspects, including personal, domestic, legal in a confusingly-you know, in a confusing swirl.

Hearing (Vol. III) at 303.

In some ways the most vulnerable victim is Respondent's former client, Aaron King. In that matter, Respondent failed to cooperate and turn over his file, which contained information regarding the credibility of the State's key witness in a criminal case against Mr. King. That refusal potentially severely

hampered Mr. King and his counsel in the defense of a criminal matter. It is hard to imagine being in a more vulnerable position.

**g. Substantial Experience
in the Practice of Law.**

Respondent submitted ample evidence of his extensive experience in the practice of law. *See* Trial Exs. I and 74; Hearing (Vol. I) at 32-39.

2. Mitigating Factor.

The ABA Standards define "mitigating circumstances" as "*any* considerations or factors that may justify a reduction in the degree of discipline to be imposed." ABA Standard 9.31 (emphasis added). To this end, Respondent proffered the testimony of Rock Ferrone, Douglas Savage, and Robert Sparks-all former clients of Respondent-who would testify regarding his high level of competence as a lawyer and his personal integrity.⁴⁴ *See* Hearing (Vol. I) at 18. In doing so, Respondent conceded that none of these witnesses had any knowledge of the facts of this case. *Id.* at 19.

In turn, the Board stipulated that each of these witnesses would testify, based on their personal experience with Respondent, their belief that he is a man of the highest level of competence and integrity

⁴⁴ Respondent described Mr. Ferrone as "an entrepreneur in Pennsylvania who was an owner of an airport" and whom Respondent represented in "a highly complex Chapter 11 case." Hearing (Vol. I) at 21. Respondent identified Mr. Sparks as a member of the Roane County, Tennessee, Sheriffs Department, with whom Respondent had "interactions ... over a many-year period." *Id.* The Board did not dispute these descriptions.

with regard to Respondent's engagements in those unrelated matters. *Id.* at 20-21. Accordingly, the Panel accepts Respondent's proffered evidence as establishing the mitigating factor of Respondent's "character" and "reputation." See ABA Standard 9.32(g).

While the Panel credits this evidence and finds the existence of this mitigating factor, the weight afforded to this factor is a matter of discretion for the Panel based upon the entire record. See *Meehan*, 584 S.W.3d at 415-16; *Maddux*, 409 S.W.3d at 628. The value of this evidence is limited because Messrs. Ferrone, Savage, and Sparks have no first-hand knowledge of the substantive facts in *these* cases.

As an additional mitigating factor, Respondent repeatedly argued at the disciplinary hearing that Jamie McBryar was not "standing behind the allegations of her complaint," because she did not appear as a witness to testify in this matter. See Hearing (Vol. III) at 205. See also *id.* at 206, 236, and 247. However, neither the "withdrawal of [a] complaint," nor the "failure of [an] injured client to complain," may be considered mitigating factors by the Panel. ABA Standard 9.4(c) and (f). Thus, the fact that Ms. McBryar did not testify at the disciplinary hearing is of no consequence.⁴⁵

Irrespective of the stipulated testimony of Respondent's proffered witnesses regarding his competence and integrity, Respondent's statements and conduct before this Panel and the state and federal

⁴⁵ Respondent also contended that Ms. Douglas was "not standing behind her complaint either." *Id.* at 302. However, Ms. Douglas never filed complaint. Nonetheless, the fact that she did not do so is irrelevant. See ABA Standard 9.4(f).

courts with reference to these matters paint the picture of an attorney unmoored to our ethical boundaries and willing to recklessly manipulate our system at just about any cost.

V. CONCLUSION.

Contrary to Respondent's contention, the matters pending before this Panel are not "fluff issues involving typographical errors." Hearing (Vol. II) at 172. The Panel finds that Respondent's testimony that these actions are merely "trying to take a little, tiny typo and ... blow up that typo into a 30-year transgression," Hearing (Vol. I) at 17, is demonstrative of his callous disregard of the seriousness of his ethical responsibilities and these proceedings.

This disciplinary proceeding has dealt with fundamental duties of competence, diligence, trust, honesty, and professionalism that every attorney owes to his or her clients, to members of the bar, and to the judicial system. The overwhelming evidence presented in this case reinforces the conclusion reached by the Panel in its Sanctions Order: Respondent "poses a present threat of substantial harm to the public by virtue of his lack of candor, and his abuse of process." Sanctions Order at 11. Considering the entire record in this cause, in particular the sworn testimony of Respondent, the Panel's continues to find that Respondent demonstrated:

[a] pattern of misconduct; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules of this proceeding or orders of this panel; submission of false statements or other deceptive practices during these disciplinary proceedings; [and] refusal to

acknowledge the wrongful nature of his conduct.

...
Id. Respondent has engaged-and has continued undeterred throughout these proceedings to engage-in a pattern of threats; intimidation; and unfounded accusations against clients, third-party witnesses, adversary counsel and disciplinary counsel alike. Respondent has made multiple material misrepresentations of fact to judges, the Board, counsel for the Board, and this Panel. This conduct should not-and under our Rules of Professional Conduct, cannot-be tolerated by a member of the legal profession in the State of Tennessee.

Accordingly, the Panel finds that Respondent should be disbarred.

The Board may submit an appropriate Application for Assessment of Costs pursuant to Tenn. Sup. Ct. R. 9, § 31.3(a).

It is SO ORDERED.

FOR THE HEARING PANEL.

/s/ John Butler

John Butler, Chair

**THIS JUDGMENT MAY BE APPEALED
PURSUANT TO, AND IN ACCORDANCE WITH,
TENNESSEE SUPREME COURT RULE 9,
SECTION 33, BY FILING A PETITION FOR
REVIEW IN THE CIRCUIT OR CHANCERY
COURT WITHIN SIXTY (60) DAYS OF THE DATE
OF ENTRY THIS JUDGMENT.**

Appendix E

**[Board of Professional Responsibility]
[Order Filed on February 7, 2023]**

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

**IN RE: ELLIOTT JAMES
DOCKET NO.
SCHUCHARDT, 2021-3195-2-AJ**

**BPR No. 027016, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Knox County)**

**ORDER ON CROSS MOTIONS FOR SUMMARY
JUDGMENT AND OBJECTIONS**

Pending before the Hearing Panel are the following Motions/Objections filed by Petitioner and Respondent:

- Petitioner's (First) Motion for Partial Summary Judgment (filed 9/16/22), regarding the remaining claims asserted in the Supplemental Petition for Discipline (Dunn, Complainant);
- Petitioner's Second Motion for Partial Summary Judgment (filed 10/19/22), regarding claims

asserted in the original Petition for Discipline (McBryar/Hirschhorn/King, Complainants);

- Respondent Schuchardt's Motion for Summary Judgment (filed 10/21/22), as to all claims asserted in the original Petition for Discipline and the Supplemental Petition for Discipline¹;

- Respondent Schuchardt's Motion to Dismiss for Violation of *Brady v. Maryland* (filed 10/21/22), as to all claims asserted in the original Petition for Discipline and the Supplemental Petition for Discipline;

- Respondent's Objection (filed 11/28/22) to the use of the Tennessee Rules of Disciplinary Enforcement in this proceeding; and

- Petitioner's Objection (filed 12/6/22) to the untimely submission of the supplemental affidavits of Elliott Schuchardt and affidavit of Bruce Klassen.

Both parties have submitted papers in support of their positions on all motions/objections, and the Hearing Panel has reviewed each filing. The Panel also conducted a two-hour hearing on the Motions for Summary Judgment on January 24, 2023. Based on the Panel's review of the filings and briefs submitted by the parties, and the arguments of counsel at the January 24th hearing, the Panel finds and orders as follows.

¹The Petition for Discipline and the Supplemental Petition for Discipline were filed on August 27, 2021, and April 7, 2022, respectively.

**I. Respondent's Notice of Filing and
Objection to Tennessee Rules
of Disciplinary Enforcement.**

Respondent's objections to the use of the Tennessee Rules of Disciplinary Enforcement in this proceeding are **OVERRULED**. Rule 8 of the Tennessee Supreme Court Rules, Rules of Professional Conduct ("RPC"), sets forth the professional responsibilities of lawyers admitted to practice law in Tennessee by the Tennessee Supreme Court. Tennessee Supreme Court Rule 9, Disciplinary Enforcement ("Rule"), sets forth the rules for the process of disciplinary actions brought against lawyers who are alleged to have violated the RPC. Section 34.3 of Rule 9 applies the Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence to Disciplinary Enforcement proceedings. This Panel is not persuaded by Respondent's arguments in his Objection; nor does the Panel have authority to sustain the Objection even if it was so inclined.

Further, Respondent asserts that this Panel is an unfair forum because its members are attorneys subject to enforcement of the RPC by the Board. Respondent cites no evidence of bias, and the Panel specifically rejects Respondent's assertion. Each of the Panel members believes he or she is able to bring his/her unfettered, independent judgment to this matter. The Panel perceives no pressure to find for the Board by virtue of the fact that its members themselves are bound by the Rules of Professional Conduct and are likewise subject to the Board's enforcement authority.

**II. Petitioner's Objection to the
Untimely Submission of the Supplemental
Affidavit of Elliott Schuchardt and
Affidavit of Bruce Klassen.**

Petitioner's objections to the untimely filed affidavits of Mr. Schuchardt and Mr. Klassen are **OVERRULED**. Although untimely filed, to the extent that the information contained within the objectionable affidavits is material and relevant, the information was equally applicable to Petitioner's Second Motion for Summary Judgment.

**III. Respondent's Motion to Dismiss
for Violation of *Brady v. Maryland*.**

Respondent's Motion to Dismiss is **DENIED**. The U.S. Supreme Court's ruling in *Brady v. Maryland*, 373 U.S. 83 (1963), is not applicable to these proceedings for disciplinary action. "[T]he *Brady* disclosure rule is 'a rule of criminal law,'" which does not apply in civil cases. See *Stultz v. Virginia, Department of Motor Vehicles*, 203 F. Supp. 3d 711, 733 (W.D. Va. 2016) (citations omitted). See also *Brodie v. Department of Health and Human Services*, 951 F. Supp. 2d 108, 118 (D.C.D.C. 2013) (affirming holding of debarring official and finding that "*Brady* does not apply in civil cases except in rare situations, such as when a person's [physical] liberty is at stake"); *id.* at 112 (quoting administrative holding that *Brady* does not apply in administrative debarment procedures where "merely money or damage to reputation is at stake").

Even if *Brady* were applicable, the Panel gave Respondent ample opportunity to seek discovery.

See Protective Order (entered 6/14/22) at 5. Respondent affirmatively declined the opportunity to pursue deposition testimony. See Respondent's List of Proposed Depositions (filed 6/17/22) (stating that Respondent "does not propose to depose any further witnesses in the proceedings before the Panel"). See also Order Denying Respondent's Motion to Modify Protective Order (entered 9/8/22) at 1-2 (noting the Panel's "explicit[] warn[ing]" to Respondent about forgoing depositions). The only depositions the Panel prevented Respondent from taking were those the Panel deemed to be (a) irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence and (b) unduly burdensome under Tenn. R. Civ. P. 26. See Protective Order (entered 6/14/22). But even in so limiting the depositions, the Panel allowed Respondent to seek documentary evidence relevant to the same issue-i.e., whether Dustin Welsh testified at the conservatorship hearing on November 9, 2020-and advised the parties it would be open to reconsidering its decision if the documentary evidence supported Respondent's position. *Id.* The resulting documentary evidence not only did not support Respondent's position, it flatly contradicted Respondent's claim. See Order on Petitioner's Expedited Motion for Sanctions (entered 9/13/22) at 4-5 and 10.

IV. Motions for Summary Judgment.
A. Applicable Standard
from Summary Judgment.

The standard applicable for granting summary judgment is met when the "pleadings, depositions, answers to interrogatories, admissions on file,

together with the affidavits ... show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. *See also Staples v. CBL & Assoc., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000) (holding that "[c]ourts should grant a summary judgment only when both the facts and the inferences to be drawn from the facts permit a reasonable person to reach only one conclusion").

Important here, not all factual disputes require the denial of summary judgment. Summary judgment only requires proof that "there is no *genuine* issue as to any *material* fact." Tenn. R. Civ. P. 56.04 (emphasis added). A fact is "material" if it "*must* be decided in order to resolve the substantive claim or defense at which the motion is directed." *Tatham v. Bridgestone Americas Holding, Inc.*, 473 S.W.3d 734, 748 (Tenn. 2015) (quoting *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993)) (emphasis added).

We will now address the Motions for Summary Judgment. Throughout this Order, the Panel has attempted to recite the issues using, to the extent possible, the same language used by the Board in its briefing supporting its motions for summary judgment. In making its rulings, the Panel will first address the issue where the Panel finds that there remain genuine issues of material fact precluding summary judgment. The Panel will then address the issues where the Panel finds there are no genuine issues of material fact and summary judgment will be granted.

**B. Petitioner's Second Motion for
Partial Summary Judgment (McBryar
Complaint No. 61602-2-KB).**

The Petitioner's Motion related to the McBryar complaint is GRANTED-IN-PART and DENIED-IN-PART. The Panel first addresses the issues surrounding the Fourth Circuit case (*Jamie McBryar v. Janine McBryar*, Case No. 145179), then addresses the Chancery Court case (*Janine McBryar v. Jamie McBryar*, Case No. 197369-1), and finally addresses the issues concerning Respondent's overall representation in the McBryar matters.

**1. *Jamie McBryar v. Janine McBryar*, Case
No. 145179 (Knox Cty. Fourth Cir. Ct.).**

As to the Fourth Circuit Court case, the Panel finds the existence of genuine issues of material fact with respect to the following.

a. Whether Respondent filed a complaint on behalf of Jamie McBryar, seeking "shared custody" of a minor child and "spousal support" without affirmatively stating a cause of action for divorce even though Respondent knew Ms. McBryar wanted a divorce and even though he invoked the Tennessee divorce statute, Tenn. Code Ann. § 36-4-101.

The parties have presented conflicting opinions on whether a cause of action for divorce had to be pleaded to obtain the relief sought of shared custody and spousal support. But the Panel has not been presented with any definitive law by either party, and so the conflicting affidavits on this issue create a question of fact, and summary judgment must be denied.

b. Whether Respondent failed to submit a proposed temporary parenting plan with the

complaint, required by Fourth Circuit Court Local Rule 15(A).

c. Whether Respondent failed to include, on the Summons for Defendant Janine McBryar, her best-known address, even though Respondent explicitly stated her Oregon address in the body of the complaint. We find a question of fact only because the Summons technically complied with Tenn. R. Civ. P. 4.02.

d. Whether, after Janine McBryar's Tennessee address became known (through her competing Chancery Court complaint), Respondent failed to effectuate service of process upon Defendant McBryar. We find a question of fact on the issue of whether Respondent's failure was based on a strategic decision to deal with the matter in Chancery Court.

e. Whether Respondent improperly concluded that the second-filed Chancery Court action filed by Janine McBryar "mooted" his first-filed action in the Fourth Circuit Court.

f. Whether Respondent (in consultation with Ms. McBryar) determined that the Chancery Court forum was acceptable and improperly failed to expeditiously dismiss the Circuit Court case. In the absence of testimony from the client, we are constrained to find a question of fact on this issue.

The Hearing Panel further finds that, with respect to the Fourth Circuit case, there are *no* genuine issues of material fact as to whether Respondent failed to seek an order restraining Janine McBryar from taking the minor child out of the jurisdiction or, alternatively, failed to seek an

order commanding the return of the child to the jurisdiction.

**2. *Janine McBryar v. Jamie McBryar*,
Case No. 197369-1 (Knox Coty. Chncy. Ct.).**

As to the Chancery Court case, the Panel finds that there are genuine issues of material fact with respect to the following:

- a. whether Respondent failed to provide a recitation of all information required by the Uniform Child Custody Jurisdiction and Enforcement Act; and
- b. whether Respondent's Motion for Custody Order, in seeking "spousal support" in the first sentence, violated the RPC.

As to the Chancery Court case, the Panel further finds that there are *no* genuine issues of material fact with respect to the following:

- a. whether Respondent took no action to effectuate the clear goals of his client, Jamie McBryar;
- b. whether Respondent failed to dispute, in his Answer to Janine McBryar's Chancery Court complaint, the number of children in the "Statistical Data" section of the Complaint, claiming it was a mere scrivener's error;
- c. whether Respondent failed to submit a proposed temporary parenting plan with the Answer in violation of Local Rule 13(F)(ii) of the Knox County Chancery Court;
- d. whether Respondent's Motion for Spousal Support and Interim Counsel Fees did not include an affidavit listing the assets, debts, gross monthly income, and monthly living expenses of each party to the extent known by the filing party as required

by Local Rule 13(E) of the Knox County Chancery Court;

e. whether Respondent, in his Motion for Custody Order, failed to seek custody in the prayer for relief, but rather only sought an order determining that Jamie McBryar is the "lawful parent" of the minor;

f. whether Respondent failed to provide the statutory notice to the Tennessee Attorney General, as required by Tenn. Code Ann. § 29-14-107(b), because the Motion for Custody Order challenges the constitutionality of Tenn. Code Ann. § 36-2-304; and

g. whether Respondent failed to conduct any discovery on behalf of his client as to the substantive issues in the Chancery Court case while the case was pending for over six (6) months.

3. Overall Representation of Jamie McBryar.

As to Respondent's overall representation of Jamie McBryar in the Knox County Circuit Court and Knox County Chancery Court matters, the Hearing Panel finds that genuine issues of material fact exist with respect to:

a. whether Respondent provided reasonable notice to Ms. McBryar regarding his withdrawal from the representation; and

b. whether Respondent allowed sufficient time for the employment of other counsel.

In addition, as to Respondent's overall representation of Jamie McBryar in the Knox County Circuit Court and Knox County Chancery Court matters, the Hearing Panel finds that *no* genuine issues of material fact exist with respect to:

a. whether Respondent failed to explain adequately or communicate fully the fee arrangement with his client;

b. whether Respondent failed to keep his client informed as to the status of any fees that had been incurred;

c. whether Respondent appropriately cooperated with successor counsel-Abby Rubinfeld-engaged by Ms. McBryar;

d. whether Respondent improperly withheld Ms. McBryar's client file from Ms. McBryar and Ms. Rubinfeld; and

e. whether Respondent's conduct in the matter was prejudicial to the administration of justice.

To summarize, and based upon the undisputed facts as found above, the Hearing Panel GRANTS summary judgment in favor of the Board and against Mr. Schuchardt as follows.

a. Respondent Schuchardt failed-in the Knox County Circuit Court case-to seek an order restraining Janine McBryar from taking the minor child out of the jurisdiction or, alternatively, failed to seek an order commanding the return of the child to the jurisdiction.

b. Respondent Schuchardt-in the Knox County Chancery Court case-took no action to effectuate the clear goals of his client, Jamie McBryar.

c. Respondent Schuchardt failed to dispute, in his Answer to the Chancery Court complaint, the number of children in the "Statistical Data" section of Janine McBryar's Complaint. In particular, the parties agree that custody was a reason, if not the primary reason, for the litigation. It was incumbent upon Respondent to ensure that the issue was

preserved at every turn. While Respondent is correct that the RPC does not require perfection from every pleading and that amendments are often freely allowed, Respondent never sought to amend the pleading.

d. Respondent Schuchardt failed to submit a proposed temporary parenting plan with the Answer in violation of Local Rule 13(F)(ii) of the Knox County Chancery Court.

e. Respondent Schuchardt failed in his Motion for Spousal Support and Interim Counsel Fees to include an affidavit listing the assets, debts, gross monthly income, and monthly living expenses of each party to the extent known by the filing party as required by Local Rule 13(E) of the Knox County Chancery Court.

f. Respondent Schuchardt failed, in his Motion for Custody Order, to seek custody in the prayer for relief, but rather only sought an order determining that Jamie McBryar is the "lawful parent" of the minor.

g. Respondent Schuchardt failed to provide the statutory notice to the Tennessee Attorney General, as required by Tenn. Code Ann. § 29-14-107(b), because his Chancery Court Motion for Custody Order challenges the constitutionality of Tenn. Code Ann. § 36-2-304.

h. Respondent Schuchardt failed to conduct any discovery on behalf of his client as to the substantive issues in the Chancery Court case while the case was pending for over six (6) months.

i. Respondent Schuchardt failed to explain adequately or communicate fully the fee arrangement with his client.

j. Respondent Schuchardt failed to keep his client informed as to the status of any fees that had been incurred.

k. Respondent Schuchardt failed to cooperate with Ms. McBryar's successor counsel, Abby Rubenfeld.

l. Respondent improperly withheld Ms. McBryar's client file from Ms. McBryar and Ms. Rubenfeld.

m. Respondent's overall conduct was prejudicial to the administration of justice.

In particular, the undisputed facts demonstrate that Respondent contemporaneously (a) advised Ms. McBryar that he was *not* going to work with her any further, (b) had a motion to withdraw pending before the Chancery Court, and (c) advised Mr. McBryar's new counsel-Ms. Rubenfeld-that he would represent her competently and effectively at an upcoming hearing on the Motion for Custody Order. See Petitioner's Second Rule 56.03 Statement of Undisputed Facts (filed 10/19/22) at ,i 52-53. Similarly, we find that there is no genuine issue of material fact with respect to Respondent's hostile, non-cooperative statements to Ms. Rubenfeld. *Id.*

Accordingly, with respect to the McBryar complaint, the Hearing Panel finds that Respondent Schuchardt has violated RPCs 1.1 (competence), 1.3 (diligence), 1.4(a)-(b) (communication), 1.5(b) (fees), 1.16(d) (declining or terminating representation), 3.2 (expediting litigation), and 8.4(d) (misconduct-administration of justice).

**C. Petitioner's Second Motion for
Partial Summary Judgment (Hirschhorn
Complaint No. 63230-2-KB).**

The Petitioner's Motion related to the Hirschhorn complaint is GRANTED-IN-PART and DENIED-IN-PART.

The Hearing Panel finds that there are genuine issues of material fact as to whether Respondent Schuchardt violated RPC 4.2 on September 26, 2019, when Mr. Schuchardt communicated by text message directly with Ms. Richards, regarding her civil action against Mr. Bruce Klassen, and suggested to her that he could intervene in some fashion to "tum that off." See Petitioner's Second Rule 56.03 Statement of Undisputed Facts (filed 10/19/22) at ¶ 79; Respondent's Statement of Contested Facts (filed 11/21/22) at ¶ 79. Accordingly, Petitioner's request for summary judgment on that issue is DENIED.

The Hearing Panel further finds that *no* other genuine issues of material fact exist with respect to the matters raised by the Hirschhorn complaint, and GRANTS summary judgment in favor of the Board and against Mr. Schuchardt as follows.

a. Respondent Schuchardt created a concurrent conflict of interest between himself and his client, Mary Jane Douglas, by filing a detainer action against Ms. Douglas while simultaneously having an attorney-client relationship with her with respect to her medical malpractice claim.

b. During a 10/22/19 telephone call with Complainant Hirschhorn,² Respondent Schuchardt refused to refrain from communicating directly with Mary Jane Douglas regarding the detainer action.

c. Respondent Schuchardt communicated to Complainant Hirschhorn his threats (i) to file a complaint against Ms. Richards with the Tennessee Real Estate Commission and (ii) to correspond with the presiding judge of Ms. Richards' case against Bruce Klassen to persuade the judge that Ms. Richards is dishonest, unless a "quid pro quo" could be reached with respect to Respondent's detainer action against Ms. Douglas.

d. Respondent Schuchardt told Complainant Hirschhorn of his intention to "threaten" Ms. Douglas with adverse action against her real estate license unless a "quid pro quo" could be reached with respect to Respondent's detainer action against Ms. Douglas.

e. Respondent Schuchardt threatened the licenses and livelihoods of Ms. Richards and Ms. Douglas as leverage to settle his detainer action against Ms. Douglas.

Accordingly, with respect to the Hirschhorn complaint, the Hearing Panel finds that Respondent Schuchardt has violated RPCs 1.7(a)(1) (conflict of interest), 4.2 (communication with a person represented by counsel),³ 4.4(a)(1) (respect for the

² The substance of this recorded telephone call is set forth in Appendix A to this Order. *See also* Petitioner's Second Rule 56.03 Statement of Undisputed Facts (filed 10/19/22) at ¶¶ 87-103.

³ The Board alleged two violations of RPC 4.2 on the part of

rights of third persons), and 8.4(d) (misconduct-administration of justice).

With respect to the violation of RPC 4.2 as pertaining to Ms. Douglas, the Hearing Panel recognizes that there is conflicting case law in other jurisdictions concerning whether an attorney representing himself qualifies as a lawyer or a client for purposes of the prohibition against speaking to another person represented by counsel. The Panel further recognizes that Tennessee does not have definitive case law on the topic. Nevertheless, the Panel finds RPC 4.2 to be clear: Respondent is a lawyer; he spoke directly about the subject matter of his self-representation with a person he knew to be represented regarding the matter; and he did so without the other lawyer's consent. Indeed, when Mr. Hirschhorn instructed him not to communicate with Ms. Douglas, Respondent responded "Oh, fuck that." When Mr. Hirschhorn specifically cited Rule 4.2, Respondent stated that "I am a party. Rule 4.2 doesn't apply" and later said "Go ahead and report me, because I'm going to speak with her. I mean, I will probably threaten her."

Our conclusion that RPC 4.2 applies in this case is further bolstered by the purpose of the Rule as described in comment (1) as well as the instruction in comment (6) that attorneys are to seek a court order before engaging in communication. These

Mr. Schuchardt: (a) his 9/26/19 text message to Ann Richards and (b) his 10/22/19 refusal to Mr. Hirschhorn to not communicate directly with Mary Jane Douglas. As stated above, summary judgment as to the 9/26/19 communication with Ms. Richards is denied, and that alleged violation remains an open issue. The Hearing Panel, however, finds a violation of RPC 4.2 with respect to Mary Jane Douglas.

additional considerations make the violation clear in this case.

With respect to the violation of RPC 4.4(a)(1), the Hearing Panel finds that Respondent's conduct on October 22, 2019-as reflected in the recorded conversation with Mr. Hirschhorn-to be egregious. Contrary to Respondent's assertion, we find no requirement that an additional act in furtherance of a threat must take place before a violation of RPC 4.4(a)(1) can occur. The threat itself is the violative act that had no substantial purpose other than to embarrass or burden Mr. Hirschhorn's clients.

**D. Petitioner's Second Motion for Partial
Summary Judgment (King
Complaint No. 64765-2-KB).**

Based on the undisputed facts, Petitioner's Motion related to the King complaint is GRANTED in its entirety as follows.

a. Respondent Schuchardt created a concurrent conflict of interest between himself and his client, Aaron King, by filing a civil action against Mr. King while still formally representing him in the juvenile court child support case.

b. Respondent Schuchardt improperly withheld Mr. King's client file from Mr. King and his attorney, Robert Kurtz.⁴

⁴ Respondent Schuchardt contends that he was not required to produce his client's file to Mr. King or to his attorney, Mr. Kurtz, because the file pertained to a divorce action between Mr. King and his wife, while Mr. King sought the file for use as part of his defense in his criminal case. Thus, Respondent contends that RPC 1.16(d) does not apply because the divorce case did not constitute the same "subject matter" as

c. Respondent Schuchardt knowingly and intentionally made false statements of fact to Judge Scott Green regarding "conversations" with the Disciplinary Board that never occurred and regarding the validity of Formal Ethics Opinion 2015-F-160.⁵

d. Respondent Schuchardt threatened to testify against Mr. King as to Mr. King's reputation for dishonesty in an effort to gain an advantage in Respondent's case.⁶

Accordingly, with respect to the King complaint, the Hearing Panel finds that Respondent Schuchardt has violated RPCs 1.7(a)(1) (conflict of interest), 1.16(d) (declining or terminating representation), 3.3(a)(1) (candor toward the tribunal), 8.4(c) (misconduct-dishonesty/ fraud/ deceit/ misrepresentation), and 8.4(d) (misconduct-administration of justice).

the criminal case. *See, e.g.*, Respondent's Response in Opposition to Petitioner's Second Motion for Partial Summary Judgment (filed 11/21/22) at 55.

The Panel rejects this argument. The Panel notes that the subject matter within the file at issue—Le., the credibility of Mr. King's wife—was the same in both the divorce and criminal cases, which created Respondent's obligation to turn over the client file to the client or his attorney. This panel concludes this fact was confirmed when Judge Green ordered Respondent to turn over the client's file to Mr. Kurtz, and Judge Green would not have so ruled unless the information involved the same subject matter as, as was therefore material and relevant to, Mr. King's criminal case.

⁵ *See* Petitioner's Second Rule 56.03 Statement of Undisputed Facts (filed 10/19/22) at ¶¶ 129-146.

⁶ *See* Kurtz Aff. at ¶ 10.

**E. Petitioner's (First) Motion for Partial
Summary Judgment (Dunn
Complaint No. 67074-2-KB).**

Pursuant to its Order entered September 13, 2022, the Hearing Panel found that paragraphs 35-46 of the Supplemental Petition for Discipline (filed 4/7/22) were deemed admitted, and-based on those admitted allegations-found that Respondent had violated RPCs 8.1(a), 8.2(a)(2), and 8.4(c)-(d). See Order on Petitioner's Expedited Motion for Sanctions (entered 9/13/22) at 9. Accordingly, Petitioner's instant Motion and this Order only address the remaining allegations, and the alleged violations of RPCs 1.1, 1.3, 1.4(a), 3.4(c), and 8.4(a).

Based on the undisputed facts, Petitioner's Motion related to the remaining issues presented in the Dunn complaint is GRANTED in its entirety as follows.

a. Respondent Schuchardt knowingly disobeyed Local Rule 117.02 of the Anderson County Chancery Court concerning the timely filing of an Answer to the Petition for Appointment of Conservator, by failing to file his Answer on behalf of his client, Cherie Dunn, no later than 48 hours prior to the scheduled court hearing.

b. Respondent Schuchardt knowingly filed the Answer in draft form, without consideration of Ms. Dunn's comments and edits concerning the content of the Answer.

Accordingly, with respect to the Dunn complaint, the Hearing Panel finds that Respondent Schuchardt has violated RPCs 1.1 (competence), 1.3 (diligence), 1.4(a) (communication), and 3.4(c) (fairness to opposing party and counsel).

In addition, all of the violations of the RPCs noted above for each of the four complaints constitute a violation of RPC 8.4(a) (misconduct-violation of RPCs).

**F. Respondent's Motion for Partial
Summary Judgment (All Complaints
and All Issues).**

Based upon the Hearing Panel's rulings above, and for the reasons stated herein, Respondent's Motion for Summary Judgment is DENIED in its entirety.

A final disciplinary hearing will be set by the Hearing Panel by separate Order. It is SO ORDERED this 9th day of February, 2023.

FOR THE HEARING PANEL

/s/ John Butler
John Butler, Chair

Submitted for entry:

/s/ Andrew B. Campbell
Andrew B. Campbell, #014258 Disciplinary
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APPENDIX A

Petitioner filed a snap drive containing an audio recording of the 10/22/19 telephonic exchange between Respondent Schuchardt and Complainant Hirschhorn. The substance of the conversation is set forth at paragraphs 87-103 of Petitioner's Second Rule 56.03 Statement of Undisputed Facts (filed 10/19/22) and is summarized here.

1. On October 22, 2019, Mr. Schuchardt contacted Informant Hirschhorn by telephone, and a lengthy discussion occurred. Petition for Discipline at ,r 85; Answer to Petition at ,r 85. *See also* Hirschhorn Aff. at ¶ 6.

2. The telephone call was recorded by Mr. Hirschhorn's law clerk. *See* Hirschhorn Aff. at ¶ 6.

3. In response to Informant Hirschhorn's question "Why are you calling me?" Mr. Schuchardt stated (at time index 00:20):

Because-You need to get the fuck out of my living room with your- with your-your- client, or- or I'm gonna destroy your- your other client's real estate license.

I have- I have evidence that I will take to the real estate commission about Ann [Richards] lying- falsely making false accusations about her customers at the, uh, real estate customers.

Hirschhorn Aff. at ¶ 8.

4. When Informant Hirschhorn asked Mr. Schuchardt to clarify what he was saying, Mr. Schuchardt responded (at time index 00:59):

I want to hear what you're planning to do regarding Mary Jane. She needs to get the fuck out

of my house. So, tell me your position on Mary Jane and I'll tell you my position on Ann. Hirschhorn Aff. at ¶ 9.

5. When Informant Hirschhorn told Mr. Schuchardt that "one has nothing to do with the other," he responded: "Fuck that." Hirschhorn Aff. at ¶10.

6. Thereafter (at time index 1:40), Mr. Schuchardt asserted "that Ann paid you to fuck up my life." Hirschhorn Aff. at ¶ 11.

7. At time index 2:06, Mr. Schuchardt asked again "What is your position on Mary Jane?" the following exchange took place:

BH: That you should speak [to her] through me, and do not contact my client. ES: Oh, fuck that. OK, I understand.

BH: Did you get my letter?

ES: Uhhh, I received a letter. I haven't read it yet.

BH: OK, well take- give it a quick read. Rule 4.2 of the Code of Professional Conduct says that you cannot contact a represented party in a lawsuit, if you're a lawyer. So, if you want to talk to her, talk to me.

ES: I don't- I am a party. Rule 4.2 doesn't apply.

BH: Actually, it does, because you're a lawyer and it does actually apply. I attached the whole copy of the Rule, so you should read it. Also, there's-

<crosstalk>

... in Rule 1.7, it talks about the conflict of interest

...

ES: ... because I'm not going to comply with that. You can report me to the Board. I'm not going to comply with that. I am not represented in this case.

BH: Right, but, what I'm saying is Rule I. 7 also points out that you cannot have an adverse claim against a current client, and my understanding is that you also got to represent her in another matter, and you're living with her, and you filed a lawsuit against her. So, I'm saying you can't talk to her because I'm representing her and you've gotta talk to me. So-

ES: That's- that's not going to happen, and I don't represent her in anything.

BH: You don't represent her in a medic - a <unintelligible> lawsuit?

ES: No, I don't.

BH: OK-

ES: And I have a text to her, confirming that.

BH: Well, I have no idea about that. But, in any event, it certainly is against the Code of Ethics for you to speak with a party who is represented. So, please do not speak with her.

ES: OK, Ben. Go ahead and report me, because I'm going to speak with her. I mean, I will probably threaten her.

BH: What will you threaten her with? I don't understand.

ES: She needs to get the hell out of my house. I'm not gonna play your games or Ann Richards' games, and definitely not Mary Jane's games. Now, as I said, we're gonna blow Ann Richards up, and she's

gonna have to watch out for her license, because we've got a lot of stuff on her. On her.

Hirschhorn Aff. at ,r 12.

8. At time index 5:12, Mr. Schuchardt referenced the pending litigation between Informant Hirschhorn's client, Ms. Richards, and Bruce Klassen, saying "And Bruce is going to win this, because Bruce did not cheat Ann. And I can prove it." Hirschhorn Aff. at ¶ 13.

9. At time index 5:50, Mr. Schuchardt opined that "the law" allowed him to "throw" Ms. Douglas out of his house "with 14 days notice." Hirschhorn Aff. at ¶ 14.

10. In turn, Informant Hirschhorn explained to him that-by invoking the Uniform Residential Landlord and Tenant Act-Ms. Douglas had a number of statutory rights available to her, which would preclude immediate eviction.

Hirschhorn Aff. at ¶ 14.

11. Rather than address the statutory rights available to Ms. Douglas, Mr. Schuchardt (at time index 7:08) again threatened the license and livelihood of Ms. Richards, saying: "None of that is going to happen, and you need- you need to pay attention to what I'm saying, because Ann's license is in jeopardy. I know a lot of information about Ann."

Hirschhorn Aff. at ¶ 15.

12. At time index 7:18, the following exchange took place:

BH: OK, so you're threatening me with the Mary Jane case, if I don't do something- Are you

threatening me with Ann's case if I don't do something in the Mary Jane case?

ES: Yes.

BH: Do you see any problem with that?

ES: No. Nothing at all. If you got a problem, you can fucking report me.

BH: OK.

ES: They know me very well at the Disciplinary Board. Believe me, you will get zero out of the Disciplinary Board.

Hirschhorn Aff. at ¶ 16.

13. After discussing scheduling and settlement issues regarding Mr. Schuchardt's eviction case against Ms. Douglas, Mr. Schuchardt stated (at time index 13:13): "I'm reporting this entire matter to the real estate commission as well. So, Mary Jane's real estate license is in jeopardy, as well as Ann's. And, believe me, you don't know the shit that I know about Ann. I'm going to be saying some really bad stuff." Hirschhorn Aff. at ¶ 17.

14. Thereafter, Mr. Schuchardt and Informant Hirschhorn had further discussions about the facts of the eviction case and the rights that the applicable statute provides for a tenant. After Informant Hirschhorn explained the statute to Mr. Schuchardt and the rights that Ms. *Douglas* was entitled to, he again pivoted to Ms. *Richards*, and again threatened her real estate license stating (at time index 17:32):

But, Ann has got herself into a great deal of trouble by fucking with me. Ann introduced and encouraged you to fuck with my life-number I-Ann probably paid you, number 2. Ann has got herself in

a great deal of trouble because she's falsely accused one of her customers of ah- of ah, of sexually assaulting her. It was a false accusation. She- she falsely accused her assistant of sexually abusing her children. She's falsely accused me, in texts. Uh, she threatened to falsely accuse me of sexual abuse, in a text. I'm gonna report all of that to the real estate commission, as well as I'm gonna report this to the real estate commission for Mary Jane as well. . . . And- and Mary Jane threatened me with a false sexual abuse allegation as well. I'm gonna report that to the real estate commission as well. By the time I'm done, both of these people are gonna lose their licenses and you're gonna lose the [Bruce] Klassen case, because it's nothing more than a pack of lies. And I will personally testify that, one, Ann is a liar, and I will write to your judge saying that you put a liar on the stand, that Ann Richards lied her ass off last week. And I don't care if evidence is closed, I'm gonna say that Ann Richards is a liar in that letter. So, fuck you and fuck Ann Richards.

Hirschhorn Aff. at ¶ 18.

15. Mr. Schuchardt further stated (at time index 19:44):

I'm gonna write to the real estate commission and say that you knowingly put a liar on the stand. And I'm gonna write to the judge and say that he made the wrong decision, because I have material evidence and the entire office has material evidence. Bruce [Klassen] didn't take those girls away. Ann did, 'cause Ann's a fucking nut.

Hirschhorn Aff. at ¶ 19.

16. Thereafter, Mr. Schuchardt stated (at time index 20:44)

I am telling you the consequences of your clients' conduct! The consequences are going to be bad! Ann Richards and Mary Jane! There are consequences to this bullshit! And it's- and I will pull the trigger!

Hirschhorn Aff. at ¶ 20.

17. When Informant Hirschhorn told Mr. Schuchardt that he did not understand the threats Schuchardt was making, Mr. Schuchardt responded (at time index 21:45):

OK. Then you're obviously not bright enough to follow quid pro quos here. I'm not gonna explain it a third time. OK- I- You- you go ahead and do whatever you're planning to do. You're aware of the consequences. I'm going to pull the trigger. And I'm not talking about a real gun, but it's gonna be just as devastating.

Hirschhorn Aff. at ¶ 21.

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Appendix F

[Supreme Court of Tennessee]
[Order Filed on January 30, 2023]

FILED

01/30/2023

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: ELLIOTT
JAMES SCHUCHARDT, BPR #027016

No. M2022-01324-SC-BAR-BP

ORDER

Mr. Elliott James Schuchardt was temporarily suspended by a September 21, 2022, order of this Court pursuant to Tenn. Sup. Ct. R. 9, section 12.3(a), upon this Court's determination that he poses a threat of substantial harm to the public. This determination was based upon factual findings of a hearing panel adjudicating a disciplinary matter against Mr. Schuchardt and upon an affidavit of disciplinary counsel representing the Board of Professional Responsibility in that disciplinary matter. In particular, the hearing panel issued an

order recounting in detail Mr. Schuchardt's "blatant, belligerent, haphazard" conduct during the disciplinary proceeding and noting that his conduct had been "contradictory to his own representations to the [hearing panel] and the Circuit Court." The hearing panel then concluded that Mr. Schuchardt's "lack of candor and abuse of the process," "illogical and ill-fated reasoning," "refusal to restrain himself in the face of . . . overwhelming evidence, his own admission that he was mistaken, this [hearing panel's] Order, this [hearing panel's] subsequent email admonishment, and the fact that the depositions [Mr. Schuchardt was seeking to take] were expressly held to be outside the bounds of discovery" ... "called into question [Mr. Schuchardt's] fitness to practice [law]" and demonstrated that he "pose[d] a present threat of substantial harm to the public." Further supporting the petition for temporary suspension, disciplinary counsel's affidavit stated: "Based upon my personal observations during the course of the disciplinary and Circuit Court proceedings, the factual findings of the Hearing Panel are true and accurate in all respects."

On January 17, 2023, Mr. Schuchardt filed a petition for dissolution pursuant to Tennessee Supreme Court Rule 9, section 12.3(d), which states that an attorney temporarily suspended:

may *for good cause* request dissolution or amendment of any such order of temporary suspension by filing in the Nashville office of the Clerk of the Supreme Court and serving

on Disciplinary Counsel a Petition for Dissolution or Amendment. Such petition for dissolution shall be set for immediate hearing before the Board or a panel. The Board or panel shall hear such petition forthwith and file its report and recommendation to the Supreme Court with utmost speed consistent with due process. There shall be no petition for rehearing. Upon receipt of the foregoing report, the Court may modify its order if appropriate or continue such provision of the order as may be appropriate until final disposition of all pending disciplinary charges against said attorney.

(Emphasis added.) As grounds for his petition, Mr. Schuchardt alleges that that he "is not a threat to the general public," "[has] practiced law for nearly thirty years," "has a long [and] distinguished career," and "has spent much of the past ten years doing civil liberties work in the courts." He says that the Board filed the petition for his temporary suspension to "cover up allegations of misconduct" against disciplinary counsel and chief disciplinary counsel. He asserts that the Board and disciplinary counsel and chief disciplinary counsel "are filing frivolous complaints against [him] in retaliation for work that [he] has done in the Tennessee courts" and because he has "present[ed] a vigorous defense to their fabricated 'violations' and fabricated 'evidence' in their disciplinary case against [him]."

On January 24, 2023, the Board filed a response in which it asks this Court to summarily

dismiss the petition because Mr. Schuchardt has failed to establish good cause. The Board asserts that Mr. Schuchardt's petition for dissolution fails to address any of the facts and circumstances from which this Court determined that he poses a present threat of substantial harm to the public. The Board says that Mr. Schuchardt relies primarily on conclusory assertions that he "is not a threat to the general public" and on "a number of unsubstantiated, unsupported and impertinent allegations previously asserted to the [Hearing] Panel and other tribunals which he believes, apparently, support his reinstatement." The Board says the petition on its face plainly demonstrates that Mr. Schuchardt is continuing to engage in the very conduct that prompted the hearing panel and this Court to determine that he poses a threat of substantial harm to the public.

Upon due consideration, we agree with the Board that Mr. Schuchardt has not shown good cause for dissolution of his temporary suspension, as required by Tenn. Sup. Ct. R. 9, section 12.3. "The term 'good cause' means '[a] legally sufficient reason. [It] is often the burden placed on a litigant ... to show why a request should be granted or an action excused." *Estate of Blankenship v. Bradley Healthcare and Rehabilitation Ctr.*, 653 S.W.3d 709, 719 (Tenn. Ct. App. 2022) (quoting *Black's Law Dictionary* (11th ed. 2019)). Mr. Schuchardt's petition includes conclusory assertions that he poses no risk of substantial harm to the public and allegations of misconduct against others, including

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disciplinary counsel and chief disciplinary counsel. Rather than establishing good cause, the allegations of Mr. Schuchardt's petition establish that he is continuing to engage in the same conduct that initially resulted in the hearing panel's findings and this Court's determination that he poses a risk of substantial harm to the public.

Therefore, given the particular circumstances of this case, where the hearing panel made the factual findings underlying this Court's determination that Mr. Schuchardt poses a risk of substantial harm to the public and where Mr. Schuchardt has failed to allege good cause for dissolution of his temporary suspension, the petition for dissolution is hereby summarily dismissed. Mr. Schuchardt's temporary suspension remains in effect.

It is so ORDERED.

PER CURIAM

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Appendix G

[Supreme Court of Tennessee]
[Order Filed on September 21, 2022]

FILED

09/21/2022

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE AT
NASHVILLE

IN RE: ELLIOTT JAMES SCHUCHARDT, BPR
#027016

An Attorney Licensed to Practice Law in Tennessee
(Knox County)

No. M2022-01324-SC-BAR-BP
BOPR No. 2022-3277-2-AW-12.3

ORDER OF TEMPORARY SUSPENSION

This matter is before the Court on a Petition of the Board of Professional Responsibility of the Supreme Court of Tennessee, by and through Disciplinary Counsel, for the temporary suspension of Elliott James Schuchardt from the practice of law pursuant to Tenn. Sup. Ct. R. 9, § 12.3. The Petition was authorized by the Chair of the Board of

Professional Responsibility and is supported by a certified copy of the Order entered by Hearing Panel and the Affidavit of Andrew B. Campbell.

Based upon the Petition, the certified Order on Petitioner's Expedited Motion for Sanctions entered by the Panel on September 13, 2022, and the supporting Affidavit of Disciplinary Counsel, the Court finds Elliott James Schuchardt, Respondent, poses a threat of substantial harm to the public.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED, AND DECREED BY THE COURT THAT:

1. Elliott James Schuchardt is hereby temporarily suspended from the practice of law as provided in Tenn. Sup. Ct. R. 9, § 12.3.
2. Elliott James Schuchardt shall comply with Tenn. Sup. Ct. R. 9 in all respects and particularly as provided in Tenn. Sup. Ct. R. 9, § 28, regarding the responsibilities of suspended attorneys.
3. Elliott James Schuchardt may make application for dissolution or modification of this Order as provided in Tenn. Sup. Ct. R. 9, § 12.3.
4. The Board shall cause notice of this suspension to be published as required by Tenn. Sup. Ct. R. 9, § 28.

PER CURIAM.

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I, James Hivner, Clerk, hereby certify that this is a true and exact copy of the original Order filed in this cause this 21st day of September 2022.

Clerk of Court

By: Kim Meadow, P.C.

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Appendix H

**[Board of Professional Responsibility]
[Order Filed September 13, 2022]**

FILED
September 13, 2022
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE
Executive Secretary

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

IN RE: ELLIOTT JAMES SCHUCHARDT
BPR No. 027016, Respondent
an Attorney Licensed to Practice
Law in Tennessee
(Knox County)

**ORDER ON PETITION'S EXPEDITED
MOTION FOR SANCTIONS**

Pending before the Panel is the Petitioner's Expedited Motion for Sanctions, filed on June 20, 2022. Both parties have submitted papers in support of their positions, and the Panel has reviewed each filing.

As well, since the filing of the Motion, Knox County Circuit Court Judge William Ailor, in

Schuchardt v. TBPR, Case No. 2-157-22, entered an Order on August 15, 2022, doing the following: quashing the subpoenas of six witnesses obtained by Respondent that were the subject of this Panel's prior Order and the Board's Expedited Motion for Sanctions; granting the Board's Motion for Protective Order and Motion to Dismiss; and finally Ordering that Respondent is prohibited from issuing any subpoenas for testimony without permission from this Panel. That Order, as well as the Brief of Elliott J. Schuchardt in Opposition to (A) Motions to Quash Subpoenas and (B) Motion of the State to Dismiss Case, were provided to the Panel via Notices of Filing. Pet.'s Notice of Filing, July 18, 2022 ("Respondent's Circuit Court Brief"); Pet.'s Notice of Filing, Aug. 19, 2022.

1. In his initial response to the Board's inquiry, and prior to the filing of the Supplemental Petition, Respondent claimed that Dustin Welsh (an autistic minor) was present and testified at a conservatorship hearing. Supp. Pet. for Discipline ("Supplemental Petition"), Ex. C. The complainant who is the boy's mother and a former client of Respondent, denied her son was present or testified, and the Board gave Respondent the opportunity to correct his prior statement.

Id. at Exs. E, F, G, I, J, and K. Rather than simply admitting the error, as he later temporarily admitted to attorney Adam Priest, Respondent "doubled down" and repeatedly claimed that he had information showing that the witness was present at the hearing and could prove that he testified. Pet.'s Mem. in Supp. of Expedited Mot. for Sanctions

("Petitioner's Sanctions Memorandum"), Exhibit 3: Supp. Pet., Exs. N, O, P, Q, R, and S.⁸⁹

2. Petitioner subsequently produced affidavit or deposition testimony from five witnesses who were present at the hearing who each testified that Dustin Welsh was not present. *Id.* at Ex. T (Aff. of Adam Priest); Pet.'s Reply in Supp. of Mot. For Protective Order and Discovery Conference, June 6, 2022, Exs. A, B, and C. These witnesses included

⁸⁹ Consistently throughout these proceedings. Petitioner has asserted that whether Dustin Welsh testified at the November 9, 2020. conservatorship hearing was not material. *See, e.g.*, Mem. or Law in Supp. of Mot. to Dismiss Supplemental Pel. for Failure to State a Claim Pursuant to Rule 12.02 of the Tenn. R. Civ. Pro. (May 16, 2022) at 2 ("The identity of the witnesses at the Dunn hearing was DQJ material in any proceeding. Whether Dustin Welsh testified at the hearing is *irrelevant*." (emphasis in original)). Respondent may well have a point with respect to the conservatorship hearing. But materiality in this instance related to Respondent's misrepresentation of this lilt in the *disciplinary proceeding*. From the moment Petitioner asked Respondent to respond to the complainant's assertion that Dustin Welsh did not testify, the issue became material to *this disciplinary proceeding*. Complainant's assertion was not a mere sidenote. She was adamant:

Mr. Schuchardt falsely claims [Dustin Welsh testified]. CLARIFICATION: DUSTIN WELSH WAS NOT PRESENT AT THIS HEARING. Mr. Dunn's son was also not present at this hearing. . . . As Mr. Dustin Welsh's Mother, I WAS in attendance at this hearing, from beginning to end, and my son was NOT in attendance at this hearing on November 9, 2020. Mr. Schuchardt shows disrespect towards the Cout, BPR, to my son, and myself for failing to tell the truth. Supp. Pet., Ex. E (May 21, 2021, Letter from Cherie Mills Dunn at pp. 7-8 (emphasis in original)).

attorney Adam Priest, the ward's Guardian *ad litem*, both of Dustin Welsh's parents, and his stepmother. The Board also submitted the Court's Order that listed everyone who testified at the hearing. Supp. Pet at Ex. C (Ex. 7, Order of Appointment of Conservator, filed November 16, 2020) to Ex. T (Aff of Adam Priest). The list did not include Destin Welsh. In the face of this overwhelming evidence, Respondent submitted his own affidavits wherein he testified that Mr. Welsh was present and testified at the hearing. Aff. of Schuchardt, April 20, 2022; Supp. Aff of Schuchardt May 4, 2022. Although Respondent repeatedly asserted that he has "*material ir1fhr111ation*" to show that Dustin Welsh did testify, *see, e.g.*, Supp. Pct., Ex. Q (emphasis in original), to date Respondent's own affidavits are the only evidence indicating Dustin Welsh testified at the conservatorship hearing.⁹⁰ At the Panel's June 9, 2022, hearing, Respondent acknowledged that the "material information " to which he was referring was the testimony of the individuals noted above who have provided evidence to the contrary, supporting Petitioner's position. Consolidated Resp. to Mot. to Modify Protective Order and Mot. to Compel Discovery (July 6, 2022) ("Consolidated Response"), at Ex. A, pp. 21-22.

3. Respondent then began an odyssey seeking to depose witnesses who were undisputedly not present at the subject hearing, apparently hoping

⁹⁰ In the same correspondence, Respondent also "warned" Petitioner's counsel that the cause "involves a glaring scandal," that "[t]he media is interested in this case," and that he should "[b]e careful signing a pleading [because he] will be joining that scandal, and putting [his] career at risk."

to establish that Dustin Welsh was not in school on the date of the hearing, and therefore could have been at the hearing. He also sought to depose Dustin Welsh, an autistic young man who witnesses had testified could not understand the testimonial oath and would be emotionally harmed from being deposed. On May 27, 2022, Respondent filed a lawsuit in Knox: County Circuit Court styled *Schuchardt. Tennessee Board of Professional Responsibility*, case No. 2-157-22, "to serve as a forum for discovery related issues in a dispute between the State and Schuchardt." Indeed, during the Panel's June 9, 2022, hearing, Respondent acknowledged that the "entire point" of the Circuit Court litigation was "the execution of discovery for this panel." Consolidated Resp. at Ex. A. pp. 38. ,*see also* Resp. Cir. Ct. Id. at 6 ("Schuchardt filed this case for the purpose of obtaining discovery regarding the whereabouts of Dustin Welsh on November 9, 2020. Discovery in this Court is permitted pursuant to Rule 19 of the Tennessee Rules of Disciplinary Enforcement."). In response, on May 31, 2022, Petitioner filed a Motion for Protective Order in this disciplinary proceeding, and two days later, on June 2, 2022, Respondent issued six subpoenas out of Circuit Court for the depositions of the witnesses referenced above who were not present at the subject hearing at issue.

4. In Respondent's June 6, 2022 Response to the Motion for Protective Order, he claimed, again with no factual support and referencing the averments of the Complaint he had filed in Circuit Court, that: the allegations of the Amended Petition for Discipline are "frivolous" and "fabricated:" the Board is attempting to "cover up the facts" and "cover

up the whereabouts of Dustin Welsh on November 9, 2020;" and the only basis for the Petitioner's Motion is to "protect certain state employees from embarrassment and possible job loss for having filed a false and frivolous case."

5. This Panel conducted a lengthy hearing on June 9, 2022, and on June 14, 2022, entered a 5 page Order on the Motion for Protective Order.⁹¹ In the Order, the Panel granted Petitioner's Motion for Protective Order and precluded Respondent from deposing the six witnesses he had subpoenaed. The Panel also expressly stated that "the depositions of the six (6) subpoenaed parties will not be considered by this panel in the hearings in this proceeding." However, the Panel allowed Respondent to obtain the school attendance record for Dustin Welsh on the date of the hearing at issue and agreed to revisit the issue of further depositions if the attendance record showed the boy was not in school on the date of the hearing.⁹²

⁹¹ Notably, during the June 9 hearing, Respondent provided a somewhat detailed description of Dustin Welsh's testimony, including summaries of the questions asked, some of the answers given, Respondent's strategy for the questioning, and Respondent even described Dustin Welsh's voice. Consolidated Resp. at Ex. A, pp. 16-17.

⁹² The Panel allowed Respondent to seek the attendance records in part because it was better targeted to obtaining relevant information and did not involve the same burdens. The Panel also noted that the records would allow Respondent to test his theory that the witnesses had perjured themselves. Consolidated Resp. at Ex. A., p. 60. The Panel noted that if the records showed Dustin Welsh was not in school on the day of the hearing, then it would be open to a motion to reconsider, "[b]ut otherwise, there will be no more discovery on this issue beyond getting the attendance record for that day." *Id.* Indeed.

On the following day, June 15, 2022, the attendance record was produced by attorney Adam Priest and showed the boy was in school as his father and stepmother had previously testified. Sec Pet.'s Sanctions Mem., Ex. 2 (email from Adam Priest dated June 15, 2022). In his reply email to Mr. Priest, copied to Mr. Campbell Respondent stated: **"Thank you, Adam. I was apparently mistaken."** Id. (emphasis added).

6. Respondent was undeterred by: (a) his own admission that he was "apparently mistaken" that Dustin Welsh was present and testified at the hearing on November 9, 2020; (b) the Panel's Order precluding the depositions of the witnesses; and (c) the Panel's declaration that it would not consider the testimony sought to be elicited by the subpoenas. Instead, Respondent sent an email to the witnesses' counsel. Chris McCarty, grossly misrepresenting what the Panel had ordered with respect to him deposing these witnesses. Sec Notice of Filing, June 21, 2022. When brought to the Panel's attention, Respondent was admonished by the Panel stating:

"The Panel finds the Respondent's email to Mr. McCarty exhibited thereto grossly misrepresents the letter and spirit of this Panel's prior Order. The Panel hereby orders Mr. Schuchardt to provide a copy of the

Respondent's argument at the hearing made this rationale clear. Id. at pp. 24-25 ("I've asked for the attendance records. Now, the attendance records, as Mr. Campbell has indicated, are going to say either Dustin was in school or if he wasn't. Okay. Well, if he was in school, Ah, too - too bad. That makes Schuchardt look really bad.' But if he was not in school, that's a big problem for Mr. Campbell and it's conflicted witnesses because his witnesses testified that Dustin was in school. so they've got a problem.").

Panel's Order of June 14, 2022, to all subpoenaed witnesses and/or their counsel, and advise them that they may challenge the subpoena in the Circuit Court."

Sec Pet.'s Reply in Supp. of Expedited Mot. for Sanctions ("Petitioner's Sanctions Reply"), Ex. A (email from Panel Chair dated June 22, 2022). Respondent replied 15 minutes later in an email to the Panel stating: "In light of the Panel's updated guidance on this issue, I will not take any action to enforce the subpoenas." Id. at Ex. B (email from Respondent June 22, 2022) (emphasis added). This was followed by an email from Respondent later that day filing his Response in Opposition to Motion for Sanctions, and brief, and stating: "The response makes clear that I will not take the depositions referred to in the State's motion." See email from Respondent June 22, 2022. attached hereto as Ex. A (emphasis in original). See also, Resp. in Opp. to State's Mot. for Sanctions ("Respondent's Sanctions Response"), June 22, 2022. (stating: "In any event, Schuchardt is in full compliance with the Panel's order, and will not seek to enforce the subpoenas.") However, his subsequent conduct demonstrated these were yet further misrepresentations to the Panel.

7. The following day, on June 23, 2022. Respondent reversed course again, and advised the Panel: "Respectfully, I will have to challenge the Panel's subject matter jurisdiction to restrict discovery in this case." Pct.'s Sanctions Reply, Ex. D (email from Respondent June 23, 2022). He likewise simultaneously did the same thing in the Circuit Court case. In the face of pending Motions to Quash

and for protective orders in the Circuit Court, Respondent first advised the Court and parties on June 22, 2022, that "the Plaintiff will not seek to enforce the subpoenas while there are proceedings pending before the Hearing Panel. . . . I have no intent to enforce these subpoenas, other than to the limited extent authorized by the Hearing Panel [and] [t]he subpoenas can be considered withdrawn" See Pet.'s Sanctions Reply, Fix. C (emphasis in original). But the following day, and contrary to his admission to Adam Priest a week earlier that he was "apparently mistaken" about Dustin Welsh being present and testifying at the conservatorship hearing, Respondent: advised counsel and the Court that there was no agreement, that "the Hearing Panel did not have subject matter jurisdiction to quash the Court's subpoenas in this case," and he requested more time to brief the issue. Id.

8. Respondent's arguments to the Circuit Court contained both the enflamed rhetoric and accusations that have been a staple of Respondent's arguments before this Panel, *see, e.g.*, Resp. Cir. Ct. Br. at 1 ("[t]he State of Tennessee is engaging in an illegal harassment campaign" and it is "an effort to unlawfully damage Schuchardt's reputation"); 2 ("The State's conduct also violates Tennessee state law, which makes it unlawful to engage in an abuse of civil process."); 6 ("the State is attempting to unlawfully suppress information" and "the State has filed this case solely to engage in illegal harassment"); 7 ("The Panel's decision is both astonishing and patently illegal" and "is a *per se* violation of due process"). Respondent further made false statements about the Panel's decision. Id. ("At

the conclusion of the hearing, the panel denied Schuchardt any discovery whatsoever in connection with the whereabouts of Dustin Welsh on November 9, 2020." (emphasis in original)). Moreover, Respondent's action in the Circuit Court was pointless because this Panel indisputably has the power to establish the parameters of discovery in this proceeding and had expressly held that the depositions of the subpoenaed witnesses would not be considered before the Panel.

9. The Panel is not currently advised of what further events may have transpired in the Circuit Court between June 2022, and a hearing conducted by Judge William T. Ailor on August 2, 2022. By Order entered August 15, 2022, Judge Ailor granted the Defendant's Motion for Protective Order and to Quash and Defendant's separate Motion to Dismiss; granted the Motion to Quash filed by counsel for Dustin Welsh and Liam Welsh; and ordered that Respondent is prohibited from obtaining the issuance of any further subpoenas for deposition testimony without the permission of this Panel. See Notice of Filing, Aug. 19, 2022 (filing Order of Knox County Cir. Ct. Aug. 15, 2022). The Court's legal analysis in its Order mirrors that of this Panel's prior Order, and the Court explicitly finds that it is not vested with the jurisdiction to reject this Panel's prior ruling limiting the scope of discovery in this disciplinary proceeding.

The Panel finds Respondent's averments in the Complaint in Circuit Court lacked a legal foundation, and his argument that "the Tennessee Supreme Court [has] set up a system of dual jurisdiction regarding the administration of attorney

disciplinary proceedings . . . [whereby] [j]urisdiction regarding this matter is divided between the Panel and the Knox County Circuit Court" was frivolous. Sec Respondent's Sanctions Resp. at I. The Panel finds that rather than asserting a legitimate jurisdictional issue, Respondent sought an "end run" around the prior Order of this Panel limiting discovery with which he disagreed. Respondent's conduct, only described in part above, has been blatant, belligerent, haphazard, and contradictory to his own representations to this Panel and the Circuit Court His conduct has caused substantial harm in the form of unnecessary work not only for the Panel and disciplinary counsel, but also the father and stepmother of Dustin Welsh, who were deposed: the Attorney General; the Circuit Court; counsel representing the subpoenaed parties; and the subpoenaed parties themselves. As in *Dockery v. Bd. of Prof'! Re5ponsibilil*'), 937 S.W.2d 863,864 (1996), Respondent has sought to "thwart, stymie, and delay the orderly progress of the cause, and its procedural path is paved with [Respondent's] unkept promises and dilatory ploys." In the interest of justice and to protect the integrity of the disciplinary rules and disciplinary process, this conduct cannot be condoned or tolerated.

Through this proceeding Respondent, in his submissions to the Panel and the Knox County Circuit Court has also repeatedly asserted fantastic and wholly unsupported claims of hiding evidence, bias, prejudice, criminal conduct and conspiracy theories directed at these witnesses, other members of the bar, disciplinary counsel, and the Board itself

See, e.g. Supp. PeL Exs. P, Q, R, and S; *see also* Consolidated Resp. at Ex. A, pp. 19-22.

Taking into consideration all of the above, the Panel finds and Orders as follows:

The Panel finds Respondent's initial representation to the Board that Dustin Welsh was present and testified at the subject hearing. Respondent's subsequent representations that he had information to prove the witness was present, Respondent's sworn affidavit testimony that the witness was present, and his assertions that everyone else is lying and/or hiding the truth are all false.

The Board's Expedited Motion for Sanctions is GRANTED in part and DENIED in part. The Board's request to strike Respondent's Answer to the Supplemental Petition and Order judgment by default is likewise granted in part and denied in part. The Panel finds Respondent in contempt of this Panel's prior Order, and Orders as an appropriate sanction that the averments of paragraphs 35-46 of the Supplemental Petition for Discipline relating to Respondent's initial representations to the Board and his subsequent oral and written statements and conduct in this proceeding in connection with the purported appearance and testimony of Dustin Welsh at the subject hearing on the conservatorship of Dustin Welsh are all deemed admitted. Based on those allegations, the Panel further finds that Respondent violated Tennessee Rules of Professional Conduct 8.1(a), 8.2(a)(2), and 8.4(c)-(d). The Panel makes no findings on the remaining allegations in the Supplemental Petition and defers determination

of the appropriate discipline to be imposed pending a final hearing.

The Panel finds Respondent's statements and conduct in connection with this issue have been reckless, if not intentional. On this basis, the Panel Orders an additional sanction of attorneys' fees and costs incurred by the Petitioner, Attorney General, and private attorneys for subpoenaed witnesses, limited to fees and costs incurred after this Panel's Order on Motion for Protective Order entered June 14, 2022, which the Respondent disregarded. The Panel instructs Disciplinary Counsel to submit appropriate affidavits detailing the time and expense incurred for consideration of this Panel within twenty-one (21) days.

Finally, the Panel finds it necessary to address a separate, but related, issue. Compounding the issues described above, Respondent's illogical and ill-fated reasoning for wanting to take the subject depositions concerning the whereabouts of Dustin Welsh on the date of the conservatorship hearing is equally, if not more, concerning to the Panel. With the exception of Respondent himself: every other witness present at the hearing with personal knowledge, including two members of the Bar, testified that Dustin Welsh was not present and did not testify, and the Court's Order contemporaneously approved by Respondent reflected this. None of the witnesses Respondent sought to depose were present at the hearing. That Dustin Welsh was not at the hearing was firmly established no later than June 15, 2022, when the school attendance record was produced well after his father and stepmother had already testified he was at school. The same date,

Respondent admitted "I was apparently mistaken." Respondent's refusal to restrain himself in the face of this overwhelming evidence, his own admission that he was mistaken, this Panel's Order, this Panel's subsequent email admonishment, and the fact that the depositions were expressly held to be outside the bounds of discovery in this case are baffling. Respondent's subsequent actions to try to depose these witnesses who were not present at the hearing. and which this Panel had previously disallowed, can only be described as a bizarre fishing expedition to an empty pond. There was no chance that the subpoenaed witnesses could provide relevant testimony to support Respondent's position. This conduct calls into question Respondent's fitness to practice.

Based on Respondent's conduct before the Panel during these proceedings, which is only partially outlined above. and without reference to the underlying conduct alleged in the Petitioner's original Petition, upon which this Panel has made no findings to date. the Panel finds that Respondent poses a present threat of substantial harm to the public by virtue of his lack of candor and his abuse of process. The Panel Orders Disciplinary Counsel to request authority from the Board Chair to petition the Supreme Court for a temporary suspension of Respondent's law license pending the final orders from this Panel and the Panel in *IN RE: Elliott James S'chuchardt*, Docket No. 2018-2876-2-AJ. This Order comports with ABA Standards for imposing Lawyer Sanctions, for interim suspension pending the outcome of proceedings based on Respondent's: pattern of misconduct; bad faith

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obstruction of the disciplinary proceeding by intentionally failing to comply with rules of this proceeding or orders of this panel; submission of false statements or other deceptive practices during these disciplinary proceedings; refusal to acknowledge the wrongful nature of his conduct; and his substantial experience in the practice of law. See AHA Standards for Imposing Lawyer Sanctions, §2.4.

Ordered this 13th day of September, 2022.

BY THE HEARING PANEL

PER CURIAM

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EXHIBIT A

Gmail rian Wanamaker <brian. wanama r@gmail.com>

Re: IN RE: Elliott James Schuchardt – 2021-3195-2-AJ - Petitioner's Expedited Motion for Sanctions and Memorandum in Support

Elliott Sctulchardt <elliott016@gmailcom Wed, Jun 22, 2022 at 1:14 PM Reply-To:

elliott016@gmailcom

To: Katherina Jennings <kjennings@tbpr.org>

Cc: John Butler <JButler@bvblaw.com>,"

brian.j.wanamaker@gmail.com"

<brian.j.wanamaker@gmail.com>,"

slwilson@owclaw.com" <slwilson@owclaw.com>,"

Andrew Campbell <acampbell@tbpr.org>, Liz Radford

<lrادford@tbpr.org

To the Panel:

Attached are the Respondent's brief and response in opposition to the State's motion for sanctions.

The response makes clear that I will not take the depositions referred to in the State's motion.

Respectfully,

Elliott Schuchardt

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This message is confidential. If you believe that this e-mail has been sent to you in error, please reply to the sender stating so and then delete it.

On Mon, Jun 20, 2022 at 5:50 PM Katherine Jennings <kjermings@tbpr.org> wrote:

Hello,

Attached is a copy of Petitioner's Expedited Motion for Sanctions and Memorandum in Support, received and filed June 20, 2022, in the referenced matter.

Paper copies to follow by U.S. Mail.

Katherine Jennings

Executive Secretary

Board of Professional Responsibility Of the Supreme Court of Tennessee

10 Cadillac Drive, Suite 220

Brentwood, Tennessee 37027

Phone - 615-361-7501

Fax- 615-360-9371

Please be advised that information relating to the investigation of complaints, is Confidential and privileged as provided in Tennessee Supreme Court Rule 9, Section 32.

2 attachments

Response ,1022-06-22 re motion for sancticms.pdf
27K

Brief 2022-06-22 re motion for sanctions.pdf
421K

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Appendix I

[Knox County Circuit Court]
[Order Filed August 15, 2022]

FILED
CHARLES D. SUSANO III
2022 AUG 15 PM 2:23
KNOX COUNTY CIRCUIT
CIVIL SESSIONS
AND JUVENILE COURTS

IN THE CIRCUIT COURT OF KNOX COUNTY,
TENNESSEE

ELLIOTT J. SCHUCHARDT,
individually and doing business as Case No. 2-157-
22
the Schuchardt Law Firm,

Plaintiff,

v.

TENNESSEE BOARD OF
PROFESSIONAL RESPONSIBILITY,

Defendant.

ORDER

This matter was heard on August 2, 2022, in the Circuit Court of Knox County, Tennessee, Sixth Judicial District, at Knoxville, before the Honorable William T. Ailor, Judge, upon Defendant's Motion for Protective Order and to Quash Subpoenas, an Objection and Motion to Quash filed by counsel for Dustin Welsh and Liam Welsh. and Defendant's

Motion to Dismiss. After consideration of the issues presented, the Court grants each of these motions.

Plaintiff Elliott J. Schuchardt filed the Complaint in this matter on May 27, 2022, stating that it would "serve as a forum for discovery-related issues." Complaint, 17. Plaintiff subsequently obtained the issuance of six subpoenas seeking either depositions or the production of documents from Benjamin Downs, Mandy Davis, Andrew Alberts, Denise Fox, Dustin Welsh, and Liam Welsh. Through his pleadings and at oral argument, Plaintiff Schuchardt claims that these persons have knowledge of the participation of Dustin Welsh (who is autistic) at a hearing in Anderson County Chancery Court regarding the appointment of a conservator for Dustin Welsh.

On June 21, 2022, non-parties Dustin and Liam Welsh, through counsel, filed their Objections and Motion to Quash (hereinafter the "Welsh Motion") as related to the subpoenas issued to them.

On June 22, 2022, Defendant, the Tennessee Board of Professional Responsibility, filed its Motions for Protective Order and to Quash the subpoenas and to Dismiss the case. Defendant cited a protective order entered on June 14, 2022, by the Hearing Panel assigned to hear ethics complaints that have been filed against Plaintiff. Based on its findings that all of the persons subpoenaed except Dustin Welsh "have no personal knowledge of what occurred at the hearing and that Dustin Welsh "has been adjudged incompetent by the Anderson County Chancery Court," the Hearing Panel ordered that Plaintiff "is prohibited----with one exception discussed below-from taking the depositions of the six parties that he has

subpoenaed." Hearing Panel Order on Motion, Defendant's Ex. A, at 4.⁹³ The referenced "exception" in the Hearing Panel's order allowed Plaintiff Schuchardt to obtain attendance records for Dustin Welsh for the date of the conservatorship hearing. *Id.* at 4. Those attendance records have been obtained and produced to Mr. Schuchardt. Def. Ex. C. • *See also* Def. Ex. D (acknowledgment by Mr. Schuchardt). Accordingly, the "exception" has been satisfied.

"The Supreme Court of Tennessee is the source of authority of the Board of Professional Responsibility and all its functions and is vested with the duty to regulate the practice of law and to enforce the rules of the legal profession. *Mabry v. Bd of Prof'l Responsibility*, 458 S.W.3d 900, 903 (Tenn. 2014). In furtherance of that duty, the Supreme Court has "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). Accordingly, the Supreme Court conferred upon the Board and its Disciplinary Counsel the duty to "investigate" and "prosecute" any alleged grounds for disciplinary action before a hearing panel, *see* Tenn. S. Ct Rule 9, §§ 4.S(a) and 7.3(a)-(b), and set forth the procedures by which disciplinary hearings shall proceed.

The only authority this Court possesses in connection with ongoing proceedings under Tenn. S. Ct. Rule 9 derives from Section 19 of that Rule, and this authority is invoked only when a hearing panel

⁹³ The Hearing Panel further held that it would not "consider[]" the testimony of any of the six subpoenaed parties in any future hearing related to the disciplinary proceeding. *Id.* at 5.

member, disciplinary counsel, or a respondent attorney seeks the issuance of subpoenas in furtherance of discovery in such proceedings. *See* Tenn. S. Ct. Rule 9 §§ 19.3 and 19.4. Thus, reading Section 19 "harmoniously" with the other provisions of Rule 9, the Hearing Panel properly held that

while the Circuit Court has the jurisdiction to determine the "enforce[ability]" *of a subpoena* (*see* Rule 9} § 19.3) and to adjudicate the propriety of the "scope of a subpoena" (*see* Rule 9, § 19.4; emphasis added), it is the Hearing Panel-before which this matter will be tried-that has the discretionary authority to define the proper metes-and-bounds of discovery *of the case* for which the subpoenas were issued.

Order on Motion, 4 (emphasis in original). *See also id.* (citing Tenn. R. Civ. P. 26.02(1) as conferring the Hearing Panel with the discretion to limit discovery"). This Court is not vested with the jurisdiction to reject that ruling. *In re Caldwell*, 256 S.W.3d 656, 659 (Tenn. 2008). This Court's only role with respect to subpoenas issued by authority of Section 19 is to resolve disputes between the subjects of such subpoenas and the persons who obtain their issuance.

Further, any "case" or docket created in this Court in relation to subpoenas issued pursuant to Section 19 exists only to the extent necessary to administer the enforcement of such subpoenas. Rule 9, Section 19, does not require the initiation of a separate action for the issuance of subpoenas, and this Court does not sit in review of a hearing panel's decisions, including its decisions as to the scope of permissible discovery in its proceedings-a matter over which the hearing panel has comprehensive control. In the

current posture of this matter, and in light of the Hearing Panel's June 14, 2022, Order, this Court is bound to quash the subpoenas obtained by Plaintiff. Further, in the absence of any subpoenas properly issued in relation to the proceeding before the Hearing Panel, no basis exists for perpetuating this "case."

Based on the law and the record, the Court finds that good cause exists for quashing the subpoenas issued by Plaintiff, and it is **ORDERED** that Defendant's Motion for Protective Order and to Quash, and Defendant's separate Motion to Dismiss, are **GRANTED**. It is further **ORDERED** that the Welsh Motion also is **GRANTED**. Finally, it is **ORDERED** that Plaintiff Schuchardt is **PROHIBITED** from obtaining the issuance of any further subpoenas (a) for the persons named above without permission from the Hearing Panel or (b) for any other persons whose testimony is not permitted by the Hearing Panel. This matter is, therefore, **DISMISSED WITH PREJUDICE**.

Costs are taxed to Plaintiff for which execution may issue if necessary.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Entered this 15th day of August, 2022.

BY THE COURT
/s/ William Ailor
Judge William T. Ailor
Circuit Court Judge

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Approved by:

HERBERT H. SLATERY III
Attorney General and Reporter

/s/ Jonathan N. Wike
Jonathan N. Wike, Esq.
BPR No. 18281

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Counsel for Dustin Welsh and Liam Welsh

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Appendix J

**[Board of Professional Responsibility]
[Order Filed June 14, 2022]**

FILED
June 14, 2022
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE
Executive Secretary

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

**IN RE: ELLIOTT JAMES SCHUCHARDT
BPR No. 027016, Respondent
an Attorney Licensed to Practice
Law in Tennessee
(Knox County)**

**ORDER ON MOTION FOR
PROTECTIVE ORDER**

Pending before the Hearing Panel is the Board's Motion for Protective Order and Discovery Conference- (filed 5/31/22), Respondent's Response and Brief in Opposition thereto (both filed 6/6/22), the Board's Reply

(filed 6/6/22), Respondent's Sur-Reply (filed 6/7/22), and the Board's Notice of Filing (filed 6/8/22).

By Order entered June 2, 2022, hearing on the Board's Motion for Protective Order was held by Zoom videoconference on June 9, 2022, at 2:00 PM (ET). Participating in this hearing were John Butler (Hearing Panel Chair), Shelly Wilson (Hearing Panel Member), Brian Wanamaker (Hearing Panel Member), Respondent, Elliott Schuchardt, and Disciplinary Counsel, Andrew B. Campbell.

Based upon the record, the arguments of counsel, and applicable law, the Hearing Panel rules as follows.

I. Procedural Background and Proceedings.

On May 5, 2022, the Hearing Panel convened to address Respondent's Rule 56.07 Motion to Continue Motion for Summary Judgment (filed 4/20/22) and to establish a Scheduling Order for this matter. At the conclusion of that hearing, the Panel determined that the Board's Motion for Partial Summary Judgment should be denied without prejudice to refile at a later date, and that discovery should proceed. Also at the hearing, the Panel advised it would monitor and control the scope of discovery for this matter. Thereafter, the Hearing Panel set deadlines for discovery, dispositive motions, and other steps in the case, and an appropriate order was entered the following day. *See* Third Amended Scheduling Order (entered 5/6/22).

Since that time, Disciplinary Counsel and Respondent have taken the depositions of four witnesses: attorney Adam Priest, Derek Welsh, Shannon Welsh, and attorney Abby Rubenfeld.

Generally speaking, the testimony of Mr. Priest and Mr. and Mrs. Welsh was directed to the issue of whether Dustin Welsh testified at the conservatorship hearing on November 9, 2020, in the matter *In re Dustin MacKinley Welsh*, #20-CO-86 (Andrsn. Cnty. Chncy. Ct.).⁹⁴ Each of the three witnesses affirmatively testified that Dustin Welsh—who is autistic—did not testify at that hearing.⁹⁵

Subsequent to those depositions, on May 27, 2022, Respondent filed a lawsuit in Knox County Circuit Court: *Elliott J. Schuchardt, individually and doing business as Schuchardt Law Firm v. Tennessee Board of Professional Responsibility*, 2-157-22. Mr. Schuchardt effectuated service of process upon the Board on June 3, 2022, by service via the Office of the Attorney General. Briefly summarized, the Complaint filed by Mr. Schuchardt alleges:

- that the Board is prosecuting a disciplinary action against him with regard to the *Welsh* conservatorship proceeding (Complaint at ¶ 9);
- that the Board's allegations in the disciplinary action are "frivolous, politically-motivated, and materially false" (*id.* at ¶ 12);

⁹⁴ The parties agree that Ms. Rubenfeld's deposition was taken with respect to certain matters asserted in the original Petition for Discipline, and that her testimony does not pertain to the Anderson County Chancery Court proceeding.

⁹⁵ Attorney Priest previously executed a sworn Affidavit to that effect, which is appended to the Supplemental Petition for Discipline at Exhibit T.

- that the Board is "refusing to produce material evidence relating to the whereabouts of Dustin Welsh on the day of the [11/9/20 conservatorship] hearing" (*id.* at 114; *see also id.* at ¶¶ 17 and 19);

- that the Board "does not want the truth to come out in this case" (*id.* at ¶ 20); and

- that he has filed the Circuit Court action "to serve as a forum for discovery-related issues" related to these disciplinary proceedings (*id.* at ¶ 7), that he seeks an adjudication that "Dustin Welsh [should] testify in this [disciplinary] matter" (*id.* at ¶ 27), and that he requests the Court "provide ... a forum for the issuance of subpoenas in this case, and for the resolution of discovery-related questions." (*Id.* at ¶ 35).

On May 31, 2022, the Board filed its instant Motion for Protective Order, asserting this Panel's jurisdiction over discovery issues pursuant to Tenn. S. Ct. R. 9, § 15.2(f) and arguing that Mr. Schuchardt has engaged in impermissible "forum-shopping." *See* Motion for Protective Order at 2.

Thereafter, on June 2, 2022, Mr. Schuchardt caused subpoenas to be issued to the following witnesses in the Knox County Circuit Court case:

- **Mr. Benjamin Downs**, Principal of Anderson County High School, for deposition on June 30, 2022;

- **Ms. Denise Fox**, Special Education Teacher of Anderson County High School, for deposition on June 30, 2022;

- **Ms. Mandy Davis** of "Parent Place," for deposition on June 30, 2022

- **Mr. Andrew Alpers**, Special Education Teacher of Anderson County High School, for deposition on June 30, 2022;
- **Mr. Dustin Welsh**, for deposition on June 29, 2022; and
- **Mr. Liam Welsh**, for deposition on June 29, 2022.⁹⁶

Four days later, on June 6, 2022, Mr. Schuchardt filed his papers in opposition to the Motion for Protective Order, contending-among other things-that the Hearing Panel "does *not* have jurisdiction to rule on the enforceability of subpoenas issued by the Knox County Circuit Court, in connection with this matter" and relying on Sections 19.1 and 19.4 of Rule 9. *See* Brief in Opposition to Motion for Protective Order at 4-5 (emphasis in original).

As described above, the Board thereafter submitted a Reply brief, and Mr. Schuchardt submitted a Sur-Reply. The Hearing Panel has read all of the submissions by the parties.

II. Ruling.

Tennessee Supreme Court Rule 9, Section 15.2(f) states in pertinent part that a Hearing Panel is vested with the authority to "address any ... matter the hearing panel deems appropriate in the management of the proceeding, including but not limited to the resolution

⁹⁶ Mr. Schuchardt caused amended subpoenas to be issued to Mr. Downs and Mr. Alpers on June 8, 2022. It is unclear to the Hearing Panel whether formal service of any of the subpoenas has been made at this time.

of any discovery disputes except as otherwise provided by Section 19."

In turn, Section 19 of Rule 9 provides that "[a] respondent attorney may ... obtain subpoenas [from the circuit or chancery court having jurisdiction] to compel the attendance of witnesses and the production of pertinent books, papers and documents before a hearing panel after formal disciplinary proceedings are instituted." Tenn. S. Ct. R. 9, § 19.1. In addition, when such subpoenas are issued "[t]he circuit or chancery court in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witness and the production of any documents so subpoenaed" and "[a]ny attack on the validity or scope of a subpoena so issued, and any application for a protective order with respect to a subpoena so issued, shall be filed in and heard and determined by the court in which enforcement of the subpoena is being sought." Tenn. S. Ct. R. 9, §§ 19.3 and 19.4.

These provisions must be read harmoniously with each other.

Interpreting these provisions together, the Hearing Panel finds that the court which has issued a subpoena is the only forum that has enforcement power as to a non-party who is the subject of that subpoena. If a subpoenaed individual wants to contest the validity of the subpoena, or if counsel wishes to compel the attendance of a subpoenaed individual, the forum for such relief would be the court that issued the subpoena.

However, the Hearing Panel further finds that it possesses the authority, and obligation, to define the

limits of discovery for action, and therefore finds that it possesses jurisdiction to resolve the discovery issue presented by the Board. It is undisputed by the parties that the testimony sought by the six (6) subpoenas referenced above pertains solely to the substantive issues presented by the Supplemental Petition for Discipline against Mr. Schuchardt and that the testimony is sought solely for the use in these proceedings. It also is undisputed that the Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence apply in disciplinary case proceedings unless specifically supplanted by Tennessee Supreme Court Rule 9. *See* Tenn. S. Ct. R. 9, § 34.3(a). Thus, pursuant to Rule 26.02(1), Tenn. R. Civ. P., the Hearing Panel-acting as the court for adjudication of disciplinary charges-is vested with the discretion to limit discovery if it finds "(i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; or (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive." Rule 26.02(1), Tenn. R. Civ. P.

Therefore, while the Circuit Court has the jurisdiction to determine the "enforce[ability]" of a *subpoena* (*see* Rule 9, § 19.3) and to adjudicate the propriety of the "scope of a subpoena" (*see* Rule 9, § 19.4; emphasis added), it is the Hearing Panel-before which this matter will be tried-that has the discretionary authority to define the proper metes-and-bounds of

discovery of *the case* for which the subpoenas were issued.

Accordingly, pursuant to Rule 9, Section 1 S.2(f) and Rule 26.02, Tenn. R. Civ. P., the Hearing Panel finds that the testimony sought from the witnesses by the subpoenas at issue is overly broad and burdensome as to the question of whether or not Dustin Welsh testified at the November 9, 2020, conservatorship hearing in the Anderson County Chancery Court proceeding; that Respondent has had an ample opportunity to obtain information on the point; and that there are more convenient, less burdensome means to obtain such information. There is evidence on the point from multiple witnesses who were present at the conservatorship hearing. It is undisputed that Mr. Downs, Ms. Fox, Ms. Davis, Mr. Alpers, and Liam Welsh were not themselves present at the conservatorship hearing. Thus, they have no personal knowledge of what occurred at the hearing. Further, while there is dispute between the parties as to whether or not Dustin Welsh attended, Dustin Welsh has been adjudged incompetent by the Anderson County Chancery Court, and the Board has presented the Panel testimonial evidence from Derek Welsh and Shannon Welsh demonstrating that Dustin Welsh would not understand the testimonial oath. For these reasons, Mr. Schuchardt is prohibited – with one exception discussed below – from taking the depositions of the six parties that he has subpoenaed.

The exception is this: the Hearing Panel will allow Mr. Schuchardt to obtain the attendance records for Dustin Welsh from the Anderson County High

School, but *only* with respect to the day in question-i.e., November 9, 2020.⁹⁷ If the records demonstrate that Dustin Welsh attended school on that day, this discovery issue will be resolved and there will be no further discovery on this issue. If, however, the records indicate that Dustin Welsh was absent from school on November 9, 2020, or fail to indicate that he was present at school on that day, the Hearing Panel will entertain a motion to reconsider its ruling that no further depositions on this issue will be taken.

In addition, the Hearing Panel further directs both parties to file, with the Executive Secretary, a list of all witnesses that each side intends to depose in this matter going forward with respect to all substantive issues in this case. These lists should be filed by the close of business on **Friday, June 17, 2022**, and shall specify the subject matter(s) for which these witnesses will be deposed and testimony that the parties anticipate eliciting from the identified witnesses. Thereafter, by the close of business on **Friday, June**

⁹⁷ The Hearing Panel notes that, during the deposition of Derek Welsh, counsel Adam Priest stated that he had "no objection" to having the November 9, 2020, attendance records produced. Whether these records are produced pursuant to one of Mr. Schuchardt's subpoenas, or obtained by Dustin Welsh's father and tendered-through Mr. Priest-to Mr. Schuchardt, is a matter for the parties to resolve. The Hearing Panel suggests, however, that the latter option may be quicker and easier than the former.

24, 2022, each party will file through the Executive Secretary appropriate objections (if any) to the list submitted by their adversary. If no objections are filed, the depositions may proceed on a date or date(s) agreed to between the parties. If objections are filed, the Panel will set a hearing to resolve them.⁹⁸

Finally, the Hearing Panel directs Mr. Schuchardt that-absent further Order from this Panel-the depositions of the six (6) subpoenaed parties will not be considered by this panel in the hearings in this proceeding.

⁹⁸ At the hearing, Mr. Schuchardt advised that the deposition of Mandy Davis at Parent Place pertained to a different area of inquiry--distinct from the question of whether Dustin Welsh testified at the November 9, 2020, conservatorship hearing. He further advised that-if Ms. Davis produced the documents identified in the subpoena-he would not seek testimony from her. Disciplinary Counsel argued that the testimony of Mandy Davis is nevertheless irrelevant, because the subject matter described by Mr. Schuchardt is irrelevant to this disciplinary proceeding.

To the extent that Mr. Schuchardt seeks the production of documents from Ms. Davis/Parent Place, it is the intent of the Hearing Panel to allow document production issues to move forward.

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III. Conclusion

For the reasons set forth above, the Board's Motion for Protective Order is GRANTED-IN-PART and DENIED-IN-PART in accordance with the Ruling above. The Hearing Panel retains jurisdiction over discovery issues in this matter going forward.

It is SO ORDERED this 14th day of June, 2022.

FOR THE HEARING PANEL

/s/ John Butler by Permission BW
John Butler, Chair

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Appendix K

[Supreme Court of Tennessee]
[Court Denying Rehearing]
[Filed April 30, 2026]

FILED

04/30/2026

Clerk of the

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 04, 2025

ELLIOTT J. SCHUCHARDT

v.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE

Chancery Court for Knox County
No. 207706-3

No. E2024-00812-SC-R3-BP

ORDER

On April 24, 2026, the appellant Elliot J. Schuchardt timely filed a petition seeking rehearing of the April 14, 2026 Opinion of this Court. *See Tenn.*

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R. App. P. 39. After careful review, the petition for rehearing is denied.

PER CURIAM

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Appendix L

**[License Actions Against
Political Candidates by the
Board of Professional Responsibility]**

<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
Kenneth Margolis	Candidate, Circuit Court Judge, August 2022.	Public Censure, March 2026
Handel R. Durham, Jr.	Candidate, Shelby County General Sessions Court, August 2022.	Public Censure, March 2026 Public Censure, March 2023
Carol Ann Barron	Candidate, Rhea County General Sessions Court, 2014.	Public Censure, January 2026.
Chad Michael Butler	Candidate, Municipal Judge, 2018.	Public Censure, Nov. 2025.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
Julie Byrd Ashworth	Candidate, Tennessee State Senate, 2020. Candidate, Tennessee House of Representatives, 2017. Former Governing Member, Shelby Co. Democratic Party.	Public Censure, October 2025
Ray Hall Jenkins	Applicant, Court of Criminal Appeals, Feb. 2022. Candidate, General Sessions Judge, Knox County, 2021. Candidate, Circuit Judge, Knox County, 2014.	License Suspended, August 2025. Petition for Discipline, Filed February 2024.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	Former Chair, Knox County Republican Party.	
Luvell Leigh Glanton, Sr.	Candidate, Circuit Judge, Davidson County, 2022.	Public Censure, April 2025.
Joseph Timothy Zanger	Candidate, Municipal Court Judge, Sumner County, 2024.	Public Censure, July 2024
Jimmy Leo Richardson, III	Candidate, Murfreesboro City School Board, 2024. Candidate, Murfreesboro City School Board, 2018.	Public Censure, July 2023 Public Censure, July 2022
Willard Mullins	Candidate, General Sessions Judge of Overton County, 2022.	Petition for Discipline Filed, September 2023.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
		Petition for Discipline Filed, July 2022.
Larry Edward Parish	Candidate, Circuit Court Judge for Shelby County, August 2022. Former United States Attorney.	Petition for Discipline Filed, February 2024.
Crystal Goan Jessee	Candidate, Circuit Court Judge, 3 rd Judicial District, April 2022.	Public Censure, April 2023.
Hugh Reid Poland, III	Candidate, General Sessions Judge of Montgomery County, 2021. Former President, Montgomery County Bar Association.	Public Censure, June 2023. Petition for Discipline Filed, August 2021.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	Assistant Municipal Judge, Pegram, Tennessee.	
Joseph P. Weyant	Candidate, Circuit Court Judge, Montgomery & Robinson Counties, 2021. Candidate, Clarksville City Council, 2018. County Commissioner, Montgomery County, 2016-2018.	Public Censure, October 2025. Public Censure, January 2024.
Sheryl D. Guinn	President, Nashville Branch of the NAACP, 2021. Candidate, Davidson County	Public Censure, July 2024. Public Censure, January 2012.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	General Sessions Judge, 2018. Candidate, Davidson County General Sessions Judge, 2014.	
Terry Renease Clayton	Candidate, TN House of Representatives, Dist. 54, July 2020. Candidate, TN House of Representatives, Dist. 54, August 2018. Candidate, Nashville City Council, Dist. 15, August 2015.	Public Censure, July 2025. Public Censure, July 2021. Public Censure, February 2019. License Suspended, January 2011. Public Censure, July 2007.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
Jason Lee Holly	Candidate, General Sessions Judge, Carter County, 2020. Candidate, General Sessions Judge, Carter County, 2014.	Public Censure, January 2025 Temporary Suspension, October 2024
Newton S. Holiday	Candidate, General Sessions Judge, Davidson County, 2018.	License Suspended, August 2023. Petition for Discipline, May 2021. License Suspended, June 2020.
Connie Reguli	Candidate, Juvenile Court Judge, Williamson County, 2018.	Temporary Suspension, November 2023.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
		Petition for Discipline, April 2022. Petition for Discipline, April 2019.
Monica Timmerman	Candidate, Board of Commissioners of Shelby County, 2018.	Temporary Suspension, September 2023
Charles Scott Justice	Applied for Nomination for Judicial Office, July 2017.	Public Censure, July 2023.
Kirk D. Catron	Candidate, General Sessions Judge of Rutherford County, 2016.	Public Censure, January 2025 Public Censure, April 2017
Thomas Joseph Dancison, Jr.	Applied for Nomination to Judicial Office, April 2016.	Public Censure, December 2021.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
James D.R. Roberts, Jr.	Candidate, Nashville Metro Council, 2015.	Public Censure, January 2020
	Leader of <i>4 Good Government</i> , a coalition to change Nashville Election Laws, May 2021.	Public Censure, July 2018
	Represented Connie Reguli in lawsuit against Board of Professional Responsibility in 2014.	License Suspended, March 2016
		Public Censure, April 2015.
Kenneth Keenan Crites	Candidate, General Sessions Judge, Hickman County, TN, 2014.	Petition for Discipline, December 2016.
		Petition for Discipline, June 2016.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
Ricky A.W. Curtis	Candidate, Criminal Court Judge, Sullivan County, 2014. Past President, Bristol County Bar Association. Assistant District Attorney, Sullivan County.	Public Censure, July 2023. Public Censure, October 2017.
Paul Julius Walwyn	Candidate, General Sessions Judge, Davidson County, 2022. Candidate, General Sessions Judge, Davidson County, 2014.	License Suspended, August 2017. License Suspended, December 2015. Petition for Discipline, September 2015.
Sal William Varsalona	Candidate, Anderson County	Public Censure,

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	General Sessions Court, 2014.	November 2019. Petition for Discipline, July 2018.
Matthew F. Stowe	Candidate, District Attorney, 24 th Judicial District, 2014. Clerk, Justice Sandra Day O'Connor, 1997-1998. Graduate, Harvard Law School.	Public Censure, September 2017. Petition for Discipline, February 2016.
Dennis Dwayne Brooks	Candidate, Criminal Court Judge, 1 st Judicial District, May 2014. Applicant for Criminal Judge,	Public Censure, July 2018.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	1 st Judicial District, November 2012.	
Jefre Scot Goldtrap	Candidate, General Sessions Judge, Davidson County, TN, 2014. Applicant, Circuit Court Judge, Davidson County, 2008. Candidate, Circuit Court Judge, Davidson County, 2006.	Public Censure, January 2018.
Robert Elliott McGuire	Candidate, District Attorney of Davidson County, TN, 2014.	Public Censure, April 2018.
Venita Marie Martin	Candidate, Circuit Court Judge, Shelby County, TN, 2014.	Disbarred, October 2016. Petition for Discipline,

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	Candidate, Criminal Court Judge, 30th District, Tennessee, 2010. Applicant for Judicial Nomination, 30th Judicial District, 2009.	December 2015. Petition for Discipline, September 2015. License Suspended, July 2015. License Suspended, November 2014. Public Censure, October 2011. Petition for Discipline, February 2011.
Jeffrey James Mueller	Candidate, Municipal Court	Public Censure, July 2016.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	Judge, Gibson County, TN, 2014.	
Chadwick Barry Tindell	Candidate, Chairman, Knox County Republican Party.	Public Censure, October 2016. Public Censure, June 2013.
Andrewnetta Melissa Boyd	Candidate, General Sessions Judge, Shelby County, TN, 2014.	License Suspended, December 2015. Petition for Discipline, April 2015.
Arvin H. Reingold	Candidate, Municipal Judge, Hamilton County, Tennessee, 2014.	Public Censure, January 2015.
Jerry Todd Ross	Candidate, General Sessions Judge, Hawkins County, TN, 2012.	Public Censure, January 2012.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
Henry Allen Nohsey	Candidate, Municipal Judge, Union City, TN, 2016.	Public Censure, April 2016.
	Candidate, Municipal Judge, Union City, TN, 2014.	Public Censure, March 2011.
	Candidate, Municipal Judge, Union City, TN, 2012.	
	Candidate, Municipal Judge, Union City, TN, 2010.	
Renfro Blackburn Baird, III	Candidate, Municipal Judge, City of Bulls Gap, TN.	Public Censure, January 2017.
	Campaign Chair, U.S. Senator Lamar Alexander, 2014.	Public Censure, October 2014.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	Campaign Chair, U.S. Senator Fred Thompson.	Petition for Discipline, December 2013.
Edward Turner Kindall	Candidate, Nashville, Metro Council, 2019. Candidate, Nashville, Metro Council, 2015. Candidate, Nashville Metro School Board, 2012. Candidate, Nashville Metro School Board, 2010.	License Suspended, December 2013. Petition for Discipline, November 2009.
John McConnell Wolfe, Jr.	Candidate, U.S. President, Democratic Primary, 2012. (2d place after Obama).	Public Censure, October 2012.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	Democratic Candidate, U.S. Congress, 3 rd Congressional District, 2010. Candidate, Tennessee State Senate, 2007.	Public Censure, April 2012.
Jerry LaVaughn Maynard, II	Candidate, Nashville & Davidson County Council At-Large, September 2007 to September 2015 Tennessee Democratic Party Deputy Chairman, September 2005 to January 2007	License Suspended, June 2011. Petition for Discipline, July 2010. License Suspended, January 2010.
Thomas Harding Potter	Candidate, Alderman, City of Allardt, Tennessee, 2018.	Public Censure, October 2013.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	Candidate, Municipal Court Judge, City of Allardt, Tennessee, 2012. Candidate, Municipal Court Judge, City of Allardt, Tennessee, 2010.	Public Censure, February 2011.
Alicia Anne Howard	Candidate, Criminal Court Judge of Shelby County, 2014. Candidate, Criminal Court Judge of Shelby County, 2006.	License Suspended, June 2011. Petition for Discipline, March 2010.
Mitchell Jeffery Ferguson	Municipal Court Judge, Rutherford County, TN, 2010 to 2025.	Public Censure, April 2025. Public Censure, June 2011.

304-a

<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
		Petition for Discipline, February 2010.
Charles Michael Clifford	Candidate, Circuit Court Judge, 5 th Judicial District, TN, August 2006. Longtime member of the Blount County Democratic Party.	Petition for Discipline, June 2017. License Suspended, March 2017. Petition for Discipline, June 2016. License Suspended, March 2016. License Suspended, November 2014. Public Censure,

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
		January 2011. Public Censure, October 2009. Public Censure, July 2006. Petition for Discipline, February 2006.
John Jay Hooker, Jr.	Democratic Candidate, Governor of Tennessee, 2006. Democratic Candidate, U.S. Senate, 2006. Candidate, Chancery Court Judge, 2004.	License Suspended, January 2010. Petition for Discipline, June 2005.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	Democratic Candidate, U.S. Congress, 2002. Democratic Candidate, Governor of Tennessee, 1998.	
John Harrison Lowe	City Judge, Millersville, TN, 1981 to 2015. Past President, Tennessee Municipal Judges' Conference.	Public Censure, October 2009.
David E. Danner	Published article in the Nashville <i>City Paper</i> critical of the state's method for selecting judges, March 2008.	License Suspended, March 2012. Petition for Discipline Filed, July 2008.
Clarence Waters Phillips	Representative, TN House of Representatives, 1973 to 2003.	License Suspended, November 2010.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	Member of the Democratic Party.	Petition for Discipline, April 2010. Public Censure, September 2008. Petition for Discipline, July 2007. Public Censure, August 2006.
Penny Harrington	Candidate, General Sessions Judge, Davidson County, 1998. General Sessions Judge, Davidson County, 1990. Member, Rules Committee,	Public Censure, May 2007.

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	Democratic National Convention.	
Mary Sullivan Moore	Candidate, General Sessions Judge, Chattanooga, TN, June 2006.	Public Censure, October 2006.
William E. Gibson	Candidate, District Attorney, Putnam County, August 2006. District Attorney, 13 th Judicial District.	License Reinstated, March 2016. Disbarred, March 2009. Petition for Discipline, January 2007. Temporarily Suspension, as a threat to the public, September 2006.

309-a

<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
		Petition for Temporary Suspension, September 2006.
Joseph L. Hornick	Candidate, Judge of New Johnsonville Municipal Court, March 2003.	License Suspended, May 2005. Public Censure, August 2002.
Yarboro Ann Sallee	Candidate, District Attorney, Anderson County, 1998.	Petition for Discipline, July 2015. Suspension Dissolved, June 2015. License Suspended, February 2015. Petition for Discipline,

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<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
		December 2011.
James Michael Ivey	Candidate, Municipal Judge, Parsons, TN.	Public Censure, January 2003.
Hubert David Patty	Candidate, U.S. President, 1996. Candidate, Governor of Tennessee, August 1994. Candidate, Governor of Tennessee, August 1990.	License Suspended, November 2002. Public Censure, February 1995.
Robert Michael Crawford	Candidate, County Commissioner, Robertson County, served until 2010. Candidate, County Judge (position later renamed to	Public Censure, July 2000.

311-a

<u>Attorney</u>	<u>Date of Campaign</u>	<u>Date of Board Action</u>
	County Mayor), Robertson County, served 1974 to 1982.	

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Appendix M

**[License Actions Against
African-American Attorneys by the
Board of Professional Responsibility]**

<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
Handel R. Durham, Jr.	Candidate, Shelby County General Sessions Court, August 2022.	Public Censure, March 2026. Public Censure, March 2023.
Luvell Leigh Glanon, Sr.	Candidate, Circuit Judge for Davidson County, 2022.	Public Censure, April 2025.
Sheryl D. Guinn	President, Nashville Branch of the NAACP, 2021. Candidate, Davidson County General Sessions Judge, 2018.	Public Censure, July 2024. Public Censure, January 2012.

313-a

<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
	Candidate, Davidson County General Sessions Judge, 2014.	
Terry Renease Clayton	Candidate, TN House of Representatives, Dist. 54, July 2020. Candidate, TN House of Representatives, Dist. 54, August 2018. Candidate, Nashville City Council, Dist. 15, August 2015.	Public Censure, July 2021. Public Censure, February 2019. License Suspended, January 2011. Public Censure, July 2007.
Paul Julius Walwyn	Candidate, General Sessions Judge, Davidson County, 2022.	License Suspended, August 2017.

314-a

<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
	Candidate, General Sessions Judge, Davidson County, 2014.	License Suspended, December 2015. Petition for Discipline, September 2015. Petition for Discipline, April 2013. Petition for Discipline, September 2012. Public Censure, June 2006. Petition for Discipline, December 2004.

315-a

<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
Venita Marie Martin	Candidate, Circuit Court Judge, Shelby County, TN, 2014. Candidate, Criminal Court Judge, 30 th District, Tennessee, 2010. Applicant for Judicial Nomination, 30 th Judicial District, 2009.	Disbarred, October 2016. Petition for Discipline, December 2015. Petition for Discipline, September 2015. License Suspended, July 2015. License Suspended, November 2014. Public Censure, October 2011.

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<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
		Petition for Discipline, February 2011.
Andrewnetta Melissa Boyd	Candidate, General Sessions Judge, Shelby County, TN, 2014.	License Suspended, December 2015. Petition for Discipline, April 2015.
Jerry LaVaughn Maynard, II	Candidate, TN State Senate, Dist. 19, August 2022. Candidate, Nashville & Davidson County Council At-Large, September 2007 to September 2015 Tennessee Democratic Party Deputy Chairman,	License Suspended, June 2011. Petition for Discipline, July 2010. License Suspended, January 2010.

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<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
	September 2005 to January 2007.	Public Censure, August 2004.
Alicia Anne Howard	Candidate, Criminal Court Judge of Shelby County, 2014. Candidate, Criminal Court Judge of Shelby County, 2006.	License Suspended, June 2011. Petition for Discipline, March 2010.
Walter Francis Williams	Judge, Chattanooga City Court, 1991 to 2003. Assistant Professor, Marketing and Business Law, University of Tennessee. On faculty for 8 years. Senior Parter, McKoon, Williams,	Petition for Discipline, July 2024. Disability Status Re-imposed, September 2024. Disability Status Imposed,

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<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
	Atchley & Stanley, PLLC, Chattanooga, TN, 2015. Chairman of the Board of Trustees, Hamilton County Governmental Law Library.	August 2015.
Daryl Andre Gray	Partner, Wright, Gray & Harris – one of the most successful African American-owned law firms in Louisiana and Tennessee. Won largest dog-bite verdict in Tennessee history, \$2.5 million. Owner of the weekly podcast, <i>Down by the Law</i> .	License Suspended, March 2025 Petition for Discipline Filed, July 2020.

319-a

<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
Myra A. Hamilton	African American community activist. President, Top Ten Trial Lawyers for Women's Rights, National Trial Lawyers, 2024. Inside Memphis Business, Power Player Employment and Labor Attorney, 2022, 2021, 2020, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011. Inside Memphis Business, Power Players – 2020, 2019. Top 100 National Black Lawyers, 2017.	Petition for Discipline, October 2024

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<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
Carlos Eugene Moore	Municipal Judge Pro Tem, Grenada, Mississippi, 2020 to present.	License Suspended, March 2025.
	Municipal Judge Pro Tem, Clarksdale, Mississippi, July 2017 to present.	Petition for Reciprocal Discipline, February 2025.
	Owner, Carlos E. Moore – African American law firm.	Censured, May 2019
	President, National Bar Association, 2021-22	Petition for Discipline Filed, October 2016.
	Commissioner of the Governing Board of the Mississippi Bar, 2011	

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<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
Bede O. M. Anyanwu	Counsel for Black Lives Matter activist, Pamela Moses. Counsel for Pamela Moses, former Democratic Candidate for Mayor in Memphis.	Public Censure, July 2020. Public Censure, June 2018. Petition for Discipline Filed, May 2017. Public Censure, December 2013. Public Censure, July 2013.
Jahari Mabry Dowdy	Candidate, Criminal Court Judge of Shelby County, 2024.	Public Censure, January 2021.

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<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
		Public Censure, October 2019.
Angela LaShanda Jenkins-Hines	Candidate, Property Assessor of Fayette County, 2024.	Public Censure, April 2020. License Suspended, January 2015. Petition for Discipline Filed, March 2014. Public Censure, October 2011.
Archie Sanders, III	Graduate of Yale University	Petition for Discipline, August 2022.

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<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
	Graduate of UCLA Law School	Petition for Discipline, June 2022. Public Censure, October 2017. Public Censure, February 2010. Petition for Discipline, May 2007.
Samuel Lee Perkins	President, Tennessee Association of Criminal Defense Lawyers, 2014. First African American to hold such position.	Public Censure, July 2017. Public Censure, December 2004.

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<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
		License Suspended, November 2001.
Richard Bryan Fields	Longtime civil rights attorney in Memphis. Practiced law with Ratner, Sugamon, Lucas, Willis, and Caldwell – the first racially-integrated law firm in Memphis. Politically supported the first elected black mayor of Memphis, Willie Herenton.	License Suspended, June 2012. Petition for Discipline, April 2011. Petition for Discipline, March 2010. Public Censure, March 2008.
Stephanie Janet Williams	Judge of 4 th Circuit Court, Nashville, Elected 2022.	License Suspended, February 2010.

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<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
	Special Master, 4 th Circuit Court, Nashville, 2014. Adjunct Professor, Nashville School of Law, 2025.	Petition for Discipline, August 2009.
William Norman Ligon	NBA Basketball Player, Detroit Pistons, 1974-75.	Public Censure, January 2013. License Suspended, March 2007. Petition for Discipline, July 2006. Temporary Suspension, April 2006. Petition for Temporary

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<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
		Suspension, March 2006.
Sheryl Clark Rollins	President, Knoxville Branch of NAACP. Member, Board of Trustees, Knox County Public Library. Member, Personnel Committee, Knox County 9-11. Spouse of civil rights leader, Avon William Rollins, for 45 years.	License Suspended, September 2005. Petition for Discipline, March 2004.
Myron Bernard McClary	One of the first African American attorneys in TN.	License suspended for five years, June 2001.

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<u>Attorney</u>	<u>Background</u>	<u>Date of Board Action</u>
	Graduate of Columbia Law School. First licensed in 1984.	License suspended for two years, 1999. Public censure, April 1995. Public censure, January 1989.