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

In the Matter of:	)	
	)	
Tyree B. Harris IV (BPR 2367),	)	Docket No. 2017-2714-5-WM
	)	
Respondent	)	

FINAL ORDER OF DISCIPLINARY HEARING PANEL

I. Findings of Fact

A. Nature of the Case

1. This is a petition for disciplinary action filed by Disciplinary Counsel on May 8, 2017, alleging violations of the Tennessee Rules of Professional Conduct 8.4(a)-(c) (2006) in connection with alleged conversion of a fee and alleged perjury in a Davidson County Juvenile Court proceeding. Following an evidentiary hearing on February 6, 2019, and submission of post-trial proposed findings and conclusions, the Panel makes the following findings of fact and conclusions of law under Rule 9, section 15.3(a), of the Tennessee Supreme Court.

B. The Parties

2. Petitioner is Disciplinary Counsel for the Board of Professional Responsibility of the Tennessee Supreme Court. Rule 9, section 7. Disciplinary Counsel William C. Moody represented the Petitioner at the hearing.

3. Respondent Tyree Harris IV is an attorney licensed in Tennessee since 1970. From 1999 through May 31, 2011, Mr. Harris was a partner or member in the law firm of Willis & Knight, PLC. Along with attorney Katherine Brown, he represented himself at the section 15 disciplinary hearing.

C. The RSSI Fee

4. Petitioner's first alleged violation of RPC 8.4 arises out of the disposition of a fee earned while a member at Willis & Knight, PLC. As discussed in more detail below, Disciplinary Counsel contends that all facts relevant to this alleged violation are established via non-mutual offensive collateral estoppel from the Court of Appeals decision in *Knight v. Harris*, No. M2016-00909-COA-R3-CV, 2018 WL 372211 (Tenn. Ct. App. Jan. 11, 2018), perm. app. denied (Tenn. May 17, 2018), relying on the Tennessee Supreme Court's decision in *Bowen ex rel. Doe v. Arnold*, 502 S.W.3d 102 (Tenn. 2016). Our findings of fact are based on the evidence presented at the February 2019 disciplinary hearing and those facts expressly found by the Court of Appeals, which we find to be generally consistent with one another.

5. Each individual member's ownership interests in Willis & Knight, PLC, was generally decided at a firm meeting, when then-managing member Russ Willis presented a budget for the upcoming year. Overhead was attributed to members on a pro rata basis. The members (who were referred to as "partners") projected their collections for the year and those collections, less apportioned overhead set by Russ Willis, determined their ownership percentage for the year.

6. For the last several years prior to his departure in 2011, Mr. Harris felt that name partners Al Knight and William Willis contributed nothing to overhead expenses, placing a

disproportionate burden on the more productive partners, including himself and Mary Arline Evans. Ms. Evans left Willis & Knight, PLC, in September 2010. One of the largest overhead expenses was rent, paid to W&K Properties, a separate general partnership formed by Al Knight and William Willis (father of Russell Willis) to own and operate an office building.

7. The Willis & Knight, PLC, fee giving rise to the first alleged violation of RPC 8.4(c) is known as the Restaurant Supply Solutions, Inc. ("RSSI") fee. This was a $336,857.57 "enhanced contingency" fee owed to the Willis & Knight, PLC, firm by its client RSSI for work performed primarily by Mr. Harris in long-running and complex litigation in the U.S. District Court for the Middle District of Tennessee. After the fee was received by Willis & Knight in May 2010, a dispute with the client arose over expenses for a forensic accounting expert witness, which resulted in the RSSI check being held in the firm's escrow account[1] for several months.

8. At the time of receipt of the RSSI fee in May 2010, Mr. Harris was a member in Willis & Knight, PLC, along with Russ Willis and Mary Arline Evans. Relations between the members were not good and Mr. Harris believed that he and Ms. Evans were bearing a disproportionate share of the firm's overhead, including rent. That burden had grown as other members left the firm and its collections declined accordingly.

9. The Willis & Knight firm's custom was that all fees would be deposited to the firm's operating account, from which rent and other firm expenses would be paid prior to any distribution to partners. Thus, deposit of the RSSI fee check into the Willis & Knight operating account from the escrow account would have allowed for deduction of rent and other expenses

[1] Mr. Harris referred to this as the firm's escrow account, while the Court of Appeals' opinion uses "trust account." The difference is not material for purposes of this order, as both are used to refer to accounts used to hold funds in which someone other than the firm itself holds an interest and is distinct from the firm's operating account.

on a pro rata basis, which Mr. Harris believed was unfair to him and Ms. Evans. After deduction of expenses, the remaining net fee would be credited to individual member's capital accounts in accordance with their ownership interests. The members could then draw cash from the operating account, which would reduce their individual capital account accordingly.

10. Once the dispute with RSSI over the expert witness fee was resolved in late 2010 or early 2011, the three Willis & Knight members agreed that the RSSI check would be divided into unequal shares, with Mr. Harris to receive $225,000 due to his primary responsibility for the work generating the fee. Although Ms. Evans left the firm in September 2010, she was entitled to a share of the fee and inquired regularly with Mr. Harris when it would be distributed.

11. Following agreement on the division of the RSSI fee and resolution of the expert witness fee dispute, Mr. Harris directed the firm's bookkeeper on January 31, 2011, to prepare three checks on the firm's escrow account, one each for himself, Ms. Evans (who had left the firm in September 2010), and Russell Willis, based on the agreed distribution. This had the effect of distributing the fee to the three partners *prior* to its passing through the operating account, where it could be charged with overhead expenses. The evidence showed that this was not the normal procedure for distribution of fees at Willis & Knight. While Mr. Harris contends that this procedure was approved by a 2-1 vote of the members, the Chancery Court and Court of Appeals found otherwise. 2018 WL 372211, *5. No evidence other than Mr. Harris's testimony was offered on this point at the disciplinary hearing.

12. The RSSI fee check for Russell Willis was returned by Mr. Harris to the office of Angie Haynie, the firm's office manager, since he was afraid to leave it in Mr. Willis's

office, which was in disarray. Mr. Harris signed his own check and that of Ms. Evans, leaving Mr. Willis to sign his check for his share of the RSSI fee. Mr. Harris testified that he assumed Mr. Willis would learn of the checks promptly, since he was personally close to Ms. Haynie, was to receive his own check, and regularly reviewed firm bank statements. Mr. Harris testified that he took no steps to hide the process of issuing the three checks from Russ Willis. Mr. Harris's understanding was that the firm was current as of January 31, 2011, on all its expenses other than the disputed rent, which was owed to W&K Partners--a partnership owned by the two named partners--and was a source of friction between the members.

13. Mr. Harris received his check for $225,000 of the RSSI fee on January 31, 2011. He testified that he deposited it into a separate personal bank account to await a determination of any expenses owed to the firm. That account was a savings account, separate from Mr. Harris's personal checking account, which had been set up to pay large expenses. He testified that the balance in that account never fell below $225,000 for the year 2011.

14. After name partner William Willis left Willis & Knight PLC as of December 31, 2009, the firm continued to pay full rent for the first six months of 2010, while seeking a reduction in rent owed to W&K Properties based on the reduced size of the firm. According to Mr. Harris, Russ Willis agreed to speak to his father William Willis about a reduction in rent. The three remaining members sought a 50% reduction, while W&K offered a 25% reduction. Russ Willis agreed to continue to negotiate with his father to seek a further reduction in rent, although those negotiations did not result in an agreement. In anticipation of a negotiated reduction covering all of 2010, the firm did not pay rent for the second half of 2010.

15. In April 2011, there was a meeting between Russ Willis, Mr. Harris, and Mary A. Evans, at which Russ Willis demanded the return of the full RSSI fee to pay past-due rent in full. Mr. Harris refused to return any portion of his share of the RSSI fee. Mr. Harris testified that he offered to pay his one-third share of the outstanding rent but that Russ Willis insisted that he owed all of the outstanding rent from July 2010 through April 2011. (Neither Russ Willis nor Mary Arline Evans was called as a witness at the disciplinary hearing.)

16. Al Knight, W&K Properties, and Willis & Knight, PLC, filed suit against Mr. Harris in the Davidson County Chancery Court in 2011, which eventually resulted in a judgment against Mr. Harris for conversion of an unspecified portion of the RSSI fee, as well as an award of other, unrelated firm expenses and punitive damages. Hearing Ex. 1 (copy of opinion in *Knight v. Harris*, 2018 WL 372211 (Tenn. Ct. App. Jan 11, 2018)). The compensatory damages award was subsequently reduced by the Court of Appeals, which also reversed the punitive damages award. *Id.* at *10-11. Mr. Harris has paid the judgment as affirmed by the Court of Appeals (consisting of rent, firm accounting fees, and the unrelated "Carter fee").

D. The Davidson County Juvenile Court Proceeding

17. Mr. Harris was the father of a child from a prior marriage, who was born June 13, 1996. Since Mr. Harris's divorce from his prior wife, there were four or five child support modification hearings held before Special Judge Max Fagan of the Davidson County Juvenile Court. Mr. Harris sought a further modification to reduce his support obligations in September 2010. As set out above, the RSSI fee remained in the Willis & Knight PLC escrow account at this time, awaiting resolution of the disputed expert witness fee.

18. There were two issues raised by the child support proceeding initiated in September 2010: removal of the child from the custodial parent and reduction of Mr. Harris's support obligations due to a decrease in his income. A hearing was held on these issues on April 1, 2011--two months *after* receipt of his $225,000 share of the RSSI fee and its deposit into a savings account by Mr. Harris.

19. In a deposition in the Juvenile Court proceeding on March 25, 2011, Mr. Harris testified as follows:

Q. All right. In 2007, what was the value of your capital account?

A. I have no idea.

Q. All right. What would be your best guestimate of that?

A. I don't have one.

Q. Okay. Is that something that really matters, or does it not matter?

A. Well, you mean as to what it was then?

Q. Is that something that you as a partner at a law firm would be concerned about, the value of your capital account?

A. It allows me to draw.

Q. Okay. And so that means you get to get money out of the law firm?

A. Yes.

Q. Okay. And when it's zero, like it is now--or below zero like it is now, what does that--what effect does that have on you?

A. I have not drawn anything from the firm with the single exception of my child support. I have not drawn a penny from Willis & Knight, PLC, in the last five months.

Q. Okay. And--

A. I'm sorry; four months.

Q. All right.

A. Four months.

Deposition of Tyree B. Harris IV, 14-15 (Ex. G to Petition for Discipline (admitted in answer)). As noted, Mr. Harris had received a check for $225,000 from Willis & Knight, PLC, on January 31, 2011, and had deposited that check into a personal savings account.

20. At the hearing in Juvenile Court on the modification petition on April 1, 2011, Mr. Harris was also asked about his income and testified as follows:

> **Q.** Mr. Harris, have you taken a draw since the first of the year?
>
> **A.** No. (Pause.) Technically I have. The court ordered me to continue to pay the full amount of the child support except for the month of March, and because the firm writes a check and charges it against my capital account, that check has continued to [his former wife], so technically, I have taken a draw to the extent that I have paid the capital account, but in no other way have I.
>
> **Judge:** Just so I make sure I understand, you are saying that the only draw that you have taken has been child support.
>
> **A.** Yes Your Honor. And that is a check that is written by the firm to [his ex-wife], the mother.

Transcript of Juvenile Court Hearing 17 (April 1, 2011) (Hearing Ex. 3).

21. Mr. Harris was also questioned about the value of his accounts receivable with the firm at the Juvenile Court hearing, to which he testified that valuing his accounts receivable would be speculative due to uncertainty as to the accounts' collectability. *Id.* at 22. Of course, he had deposited a Willis & Knight, PLC check for $225,000 into his personal

checking account some two months earlier--which he apparently believed constituted neither a "draw" nor an "account receivable" subject to reliable valuation.

22. In an order entered on April 14, 2011, the Juvenile Court Judge found that Mr. Harris's income from Willis & Knight for the prior six months had been just over $24,000 (based on 50% of the firm's reported income during that period). Petition for Discipline Ex. A. Based on its findings, the Juvenile Court reduced monthly child support from $1,897.58 per month to $890 per month. The $225,000 share of the RSSI fee deposited to Mr. Harris's personal savings account after January 31 but before March 31, 2011, was not taken into account in this calculation. Order Modifying Child Support (Davidson County Juvenile Court No. 9619-27807, Petition No. 130712).

E. Disciplinary Proceedings

23. Following receipt of a complaint,[2] Disciplinary Counsel filed this Petition for Discipline on May 8, 2017, alleging a violation of RPC 8.4(c) in connection with conversion and concealment of the RSSI fee from Willis & Knight, PLC, by directing that a check be made to him from the escrow account on January 31, 2011, and of RPC 8.4(a)-(c) by testifying falsely at his deposition on March 25, 2011, and in the Juvenile Court hearing on April 1, 2011. Petition for Discipline ¶¶ 32-33.

24. A hearing was held on February 6, 2019, at which Mr. Harris was the only witness called by either side. The parties submitted proposed findings and conclusions following

[2] Respondent argues that the source of the complaint--his former partners, former firm, and opposing counsel from the child support case--casts doubt on its validity and the complainants' motives. This order is based on the evidence presented to the Panel at the hearing and the source or potential motives of the original complainants have little or no bearing on our findings.

the hearing. Although cited to in those documents, no transcript of the hearing has been made available to the Panel.

II. Conclusions of Law

A. Rules of Professional Conduct

1. Rule 8.4 of the Rules of Professional Conduct provide as follows:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

. . . .

Tenn. R. Sup. Ct. R. 8.4. Disciplinary counsel bears the burden of proving these alleged violations of Rule 8.4 by a preponderance of the evidence. Tenn. Sup. Ct. R. 9, § 15.2(h).

B. Violation of RPC 8.4 (c) by Conversion of RSSI Fee

2. Disciplinary counsel contends that a violation of RPC 8.4(c) is established via non-mutual offensive collateral estoppel from the Court of Appeals decision in *Knight v. Harris*, 2018 WL 372211 (Tenn. Ct. App. Jan. 11, 2018). In *Bowen ex rel. Doe v. Arnold*, 502 S.W.3d 102 (Tenn. 2016), the Tennessee Supreme Court adopted that doctrine as described in section 29 of the Restatement (Second) of Judgments:

> As already explained, section 29 generally precludes relitigation of issues decided in prior lawsuits unless the party against whom collateral estoppel is asserted lacked a full and fair opportunity to litigate the issue in the first action or some other circumstance justifies affording that party an opportunity to relitigate the issue. Section 29 enumerates some of the circumstances courts should consider when determining if an opportunity for relitigation should be afforded, and it also incorporates by reference section 28, which lists additional circumstances that courts should consider when making this determination. The circumstances

> enumerated in sections 28 and 29, like the analysis the Supreme Court articulated in *Parklane Hosiery Co.*, afford considerable discretion to courts determining whether nonmutual collateral estoppel should apply in a particular case.

Id. at 116. We need not undertake an exhaustive review of the Restatement (Second) of Judgment's sections 28 and 29 factors here, as we conclude that, even if it applies, non-mutual offensive collateral estoppel does not establish a violation of RPC 8.4(c) in this case.

3. The Chancery Court found in the *Knight v. Harris* case that Mr. Harris had committed the intentional tort of conversion in connection with the distribution of the RSSI fee directly from the Willis & Knight escrow (trust) account. The Court of Appeals affirmed that finding. 2018 WL 372211, *4-5. As the Court of Appeals explained, the intent required for the tort of conversion is the intent to exercise dominion over property in defiance of the true owner's rights. *Id.* at 4. As the Court of Appeals also made clear, however, "'A wrongful intent on the part of the defendant is not an element of conversion and, therefore, need not be proved.'" *Id.* (quoting *PNC Multifamily Capital Institutional Fund XXVI Ltd. Partnership v. Bluff City Cmty. Dev. Corp.*, No. W2011-00325-COA-R3-CV, 2012 WL 1572130, * 22 (Tenn. Ct. App. May 4, 2012)). In fact, in reversing the trial court's award of punitive damages, the Court of Appeals found that the record did not show intentional, reckless, fraudulent, or malicious conduct by clear and convincing evidence. 2018 WL 372211, * 10-11. The Court of Appeals noted that there was no evidence of concealment and insufficient evidence of "ill intent" to support an award of punitive damages against Mr. Harris for his handling of the RSSI fee. *Id.* at *11. Thus, even if collateral estoppel establishes conversion of the RSSI fee, it does not necessarily establish conduct that is intentional, fraudulent, malicious, reckless, or done with "ill intent." American Law Institute, Restatement (Second) of Torts §§ 223 and Comment *b*, 244 (1965).

4. As noted, the Petition for Discipline alleges a violation of RPC 8.4(c) in connection with conversion and concealment of the RSSI fee distribution. Petition for Discipline ¶¶ 32-33. That Rule prohibits an attorney from engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation." As noted, non-mutual offensive collateral estoppel may establish the tort of conversion here but that does not automatically equate to "conduct involving dishonesty, fraud, deceit, or misrepresentation," as any act of dominion over the property of another is sufficient. As noted by the Court of Appeals, there was no effort to conceal the distribution of the fee in accordance with an agreed-upon division. Likewise, the evidence presented at the disciplinary hearing demonstrated a strong disagreement between Mr. Harris and Russ Willis over rent, overhead expenses, and the procedure for effecting the division of the RSSI fee, but again no direct evidence of dishonesty, fraud, deceit, or misrepresentation.[3] In light of the Court of Appeals' explanation of the intent required for conversion, its reversal of the punitive damages award, and the absence of any additional evidence at the disciplinary hearing, the Panel finds that Disciplinary Counsel has failed to prove this first alleged violation by a preponderance of the evidence.

C. Violation of RPC 8.4(a)-(c) by False Testimony in Connection with Juvenile Court Proceeding

5. The second alleged violation presents a different picture. Here, Disciplinary Counsel alleges that Mr. Harris falsely testified in his deposition and the Juvenile Court hearing in response to questions about his income from the firm--the core issue in such a proceeding. Tenn. Code Ann. § 36-5-101. While Disciplinary Counsel sometimes refers to these allegations as "perjury," we find it more helpful to focus on the specific language of RPC 8.4(c): "conduct

[3] As noted above, neither Russ Willis nor Mary Arline Evans was called to testify at the disciplinary hearing.

involving dishonesty, fraud, deceit, or misrepresentation." That standard has been shown here by a preponderance of evidence.

6. As noted above, Mr. Harris had checks written for himself, Ms. Evans, and Russ Willis on January 31, 2011. His was for $225,000 and was signed by him on behalf of the firm and deposited into his personal savings account. While Mr. Harris's testimony is that he was holding the money in anticipation of a final settling up of firm expenses later in the year, including the disputed W&K Properties' rent, it is clear that he exercised control over those funds from January 31, 2011, and had the power to spend or save as he chose.

7. In his deposition, Mr. Harris was asked about his capital account for 2007, which led to a discussion of the capital account as a source for a "draw." When asked if a "draw" meant "you get to get money out of the law firm," Mr. Harris agreed: "Yes." He then testified that, "I have not drawn anything from the firm with the single exception of my child support. I have not drawn a penny from Willis & Knight, PLC, in the last five months""--later corrected to four months. Those adjacent answers, read together, would suggest to an objective observer that Mr. Harris had no opportunity "to get money out of the law firm" in the prior four months, that is, since November 25, 2010. His testimony was that, during that period, "I have not drawn a penny from Willis & Knight, PLC."

8. Mr. Harris's explanation was that the $225,000 check of January 31, 2011, was not a "draw" from Willis & Knight because he was holding it subject to resolution of disputed overhead expenses later in the year, after payment of which the remaining money would presumably then constitute a "draw" to him. This type of hair-splitting falls well short of "the truth, the whole truth, and nothing but the truth" required of witnesses under oath. Few rational

observers hearing that testimony would expect that he had received $225,000 a few weeks earlier, which resided in his personal bank account. Testimony that "I have not drawn a penny from Willis & Knight" simply cannot be reconciled with the receipt of $225,000 by check and its deposit into an unrestricted personal account. B. Garner, ed., Black's Law Dictionary : "draw" (10th ed. 2014) ("To create and sign (a draft) <draw a check to purchase goods>;" "To take out (money) from a bank, treasury, or depository <she drew $6,000 from her account>.")

9. Likewise, the testimony at the Juvenile Court hearing fell short of the obligation of the oath. When questioned by the Special Judge about any draw he had taken, Mr. Harris testified that it was limited to the child support checks sent directly to his former wife. Again, it strains credulity that an experienced and accomplished lawyer could understand that question to apply to a "draw" only in the most narrow and idiosyncratic sense and to exclude any inquiry about the $225,000 residing in his bank account. Certainly, few sincere laypersons would apply such an interpretation. Again, the appearance is of an answer carefully crafted to aim for literal truth in only the narrowest sense, while omitting key information highly relevant to the issues before the Court. While such conduct may or may not constitute the crime of perjury, intentional omissions designed to conceal relevant information fairly called for in the questions is "conduct involving dishonesty, fraud, deceit, or misrepresentation." RPC 8.4, Comment [9] ("In both their professional and personal activities, lawyers have special obligations to demonstrate respect for the law and legal institutions.")

10. The Panel finds that Disciplinary Counsel has met its burden of proof to establish a violation of RPC 8.4(c) in connection with Mr. Harris's testimony in the child support modification proceeding.

D. ABA Standards for Imposing Lawyer Sanctions

11. Under Tennessee Supreme Court Rule 9, section 15.4(a), three types of attorney sanction are available: disbarment, suspension, or public censure. In selecting among these sanctions, the Panel is to consider the ABA Standards for Imposing Lawyer Sanctions. *Bd. of Professional Responsibility v. Barry*, 545 S.W.3d 408 (Tenn. 2018). Those ABA Standards provide as follows:

3.0 Generally

> In 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.

American Bar Association, Annotated Standards for Imposing Lawyer Sanctions 113 (2015) (hereafter, "ABA Standards").

12. Under ABA Standards 6.1, "Absent aggravating or mitigating circumstances,. . . [d]isbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding." ABA Standard 6.1 & 6.11. The parties proposed various aggravating and mitigating factors at the February 2019 hearing and in their post-hearing filings. These factors and their weight on the selection of final discipline are discussed below.

13. Under Standard 3.0, the duty violated in this case is the duty to testify fully and truthfully under oath in connection with court proceedings. This duty also implicates the lawyer's duty of candor toward the tribunal, RPC 3.3; fairness to opposing party and counsel, RPC 3.4; truthfulness in statements to others, RPC 4.1; and maintaining the integrity of the profession, RPC 8.4. This is a duty owed to the public, the legal system, and the profession. ABA Standards at 117.

14. The mental state of the Respondent can be either intentional, knowing, or negligent under ABA Standard 3.0. *Id.* at 120. As discussed above, the mental state of the Respondent here seems to have been to apply an overly narrow or personal definition of "draw" in an effort to avoid disclosure of his receipt of $225,000 on January 31, 2011—a fact clearly relevant to his pending petition to decrease his child support obligations. This attempt to walk a tightrope between technical accuracy and fair disclosure suggests a knowing act, though not necessarily one with a specific intent to testify falsely.

15. Injury from a violation may be either actual or potential. *Id.* at 126. The actual injury from the violation here includes deprivation of the Juvenile Court and opposing counsel of information relevant to the issue of lowering Mr. Harris's child support obligations. This in turn threatens potential injury to the opposing party (Mr. Harris's ex-wife) and to his minor child. Finally, such testimony by a member of the bar tends to bring discredit to the profession and to promote cynicism regarding the courts and legal system.

16. Disciplinary counsel has suggested the following aggravating factors: dishonest and selfish motive; pattern of dishonesty; refusal to acknowledge wrongful nature of conduct; substantial experience in the practice of law; and illegal conduct. The Panel finds that

Disciplinary Counsel has established a selfish motive and substantial experience in the practice of law as aggravating factors. We do not find a pattern of dishonesty based on our conclusion with respect to the RSSI fee and the closely related nature of the deposition and hearing testimony in the child support proceeding. We do not find refusal to acknowledge wrongful conduct to be an aggravating factor here, as Respondent has simply maintained his innocence of the disciplinary charges and has asserted a reasonable--if unsuccessful--defense to the second charge. ABA Standards 9.2, at 434-35. Finally, as set out above, the potential for a literal truth defense to a charge of perjury, as well as the absence of any criminal charges or convictions, negates illegal conduct as a potential aggravating factor. *See Bronston v. United States*, 409 U.S. 352 (1973); *State v. Forbes*, 918 S.W.2d 431, 444-45 (Tenn. Crim. App. 1995); *Lamden v. State*, 24 Tenn. 83 (Tenn. 1844).

17. Mitigating factors identified by the parties include lack of a prior disciplinary history (upon which both sides agree); lack of harm to a client; cooperation in the disciplinary proceeding; substantial delay in the disciplinary proceeding; and the toll on Respondent. ABA Standards 9.32, at 448. Of these, lack of a prior disciplinary history over a 40-year law practice is a significant mitigating factor. The violation found here occurred in the emotional and highly-charged atmosphere of a child support proceeding, which came at the same time as significant professional and health stresses for the Respondent, which can themselves constitute a mitigating factor. ABA Standards 9.32(c), at 448. That he has had no prior disciplinary proceedings for four decades suggests that this conduct was an aberration and not reflective of a chronic or habitual disregard of ethical standards. The lack of harm to a client is not a mitigating factor when there is harm to others. We do not find cooperation or delay to be mitigating factors

here, as the delay was apparently due to an agreement between the parties to await conclusion of the *Knight v. Harris* civil litigation before proceeding. This and any other cooperation is to be commended but does not rise to the level of a mitigating factor in this case. ABA Standards 9.32(e), at 466-67. Likewise, while the emotional toll on Respondent has no doubt been significant, we do not find that to be a relevant mitigating factor in this case.

18. Based on the foregoing findings of fact, conclusions of law, the factors set out in the ABA Standards, including aggravating and mitigating factors, and the record as a whole, the Hearing Panel finds that the appropriate sanction for violation of RPC 8.4(c) in this case is suspension for a period of one year. This sanction is selected with full consideration of the serious nature of the violation found and the factors to be considered under ABA Standard 3.0. Against these factors and the aggravating circumstances described above, we must weigh the mitigating absence of disciplinary history and the particular circumstances of this case. Respondent cites to *Maddux v. Board of Professional Responsibility*, 409 S.W.3d 613 (Tenn. 2013), as a relevant precedent for sanctions. There, the Supreme Court upheld the hearing panel's nine-month suspension in connection with violations of RPC 1.15(b), 4.1, and 8.4(a) and (c), notwithstanding the respondent's two prior suspensions from other disciplinary complaints. *Id.* at 623-28. While instructive, *Maddux* sheds little light on an appropriate sanction here. Rather, we find the mitigating factor of a 40-year history free of prior infractions to be one sufficient to reduce the presumptive sanction to a one-year suspension. In making this decision, we are also mindful of the fact that Respondent is currently over seventy years old and testified at the hearing that he is legally blind and effectively retired from the active practice of law.

III. Disciplinary Order

For the reasons set out above, the Hearing Panel submits this Order to the Board of Professional Responsibility as its findings and judgment under Tennessee Supreme Court Rule 9, section 15.3(a). Pursuant to section 15.3(a), Respondent is hereby notified that the Hearing Panel's findings and judgment may be appealed pursuant to Rule 9, section 33.

Robb Bigelow, Chair

Robert J. Mendes, Member

Gary C. Shockley, Member

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Tyree B. Harris, IV, 2211 Crestmoor Road, Suite 201, PO Box 158005, Nashville, TN 37215, and to his Counsel, Katherine A. Brown, 2211 Crestmoor Road, Suite 201, PO Box 158005, Nashville, TN 37215, via U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 24th day of May, 2019.

Rita Webb
Executive Secretary

NOTICE

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