

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

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**IN RE: DAVID STEELE EWING,  
BPR No. 016673, Respondent,  
As Attorney Licensed to Practice  
Law in Tennessee  
(Davidson County)**

**DOCKET NO 2022-3258-5-JM**

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**JUDGMENT OF THE HEARING PANEL**

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This cause came to be heard before this Hearing Panel of the Board of Professional Responsibility (hereinafter “the Board”), on September 17-19, 2025. This Final Hearing was conducted pursuant to Rule 9, Rules of the Tennessee Supreme Court, The Hearing Panel, Michael J. Sandler, Sr., Esq. (Chair), Matthew T. Harris, Esq., and Daniel H. Puryear, Esq., after considering the entire case file in this matter, testimony of the witnesses, exhibits and arguments presented, and after through deliberations makes the following Findings of Fact, Conclusions of Law, and renders its Judgment.

**INTRODUCTION**

The disciplinary action consists of two separate but related disciplinary actions arising out of complaints filed by the Board alleging theft, misappropriation and conversion of trust funds through a transfer of \$270,000.00 from trust to various personal accounts owned and controlled by Mr. Ewing, and significant cash withdrawals from the trust by Mr. Ewing without documentation reflecting the cash was distributed to the beneficiary or for her benefit.

In addition to the theft, misappropriation, and conversion of trust funds for his personal benefit, the Board alleges Mr. Ewing breached fiduciary duties owed to his client; made material

misrepresentations to his client related to the execution of the Margaret Victoria Fort Irrevocable Trust document; engaged in conduct involving fraud, deceit, misrepresentations, and dishonesty regarding his fee; engaged in conduct involving fraud, deceit, misrepresentations, and dishonesty in the surrender of his license; and knowingly engaged in misconduct when he tendered a settlement check on a personal account that did not contain sufficient funds to honor the check delivered to his client.

The Board asserts that all the professional misconduct by Mr. Ewing occurred during his representation of Margaret Fort and/or in his capacity as Trustee of the Margaret Victoria Fort Irrevocable Trust.

#### **PROCEDURAL HISTORY**

1. A petition for Discipline containing one (1) complaint from the Board (File No. 62710-5-ES) was filed June 30, 2022, and served upon Mr. Ewing.

2. Mr. Ewing filed a motion for partial dismissal of the Petition on September 12, 2022, based on his position that the Petition for Discipline included allegations related to conduct occurring after Mr. Ewing filed a petition to surrender his law license, conduct which was not subject to the Board's oversight.

3. Mr. Ewing's motion was denied on November 23, 2022, without prejudice to refile because the Hearing Panel found that "further factual development of the issues surrounding the Respondent's surrender of his law license are warranted in order ... to fully evaluate the merits of whether the Hearing Panel has jurisdiction over the alleged misconduct after August 30, 2019."

4. Mr. Ewing filed an answer to the Petition for Discipline on December 2, 2022.

5. Thereafter, Mr. Ewing revisited his objection to the Board's attempt to prosecute post-surrender conduct, in a Motion for Judgment on the Pleadings. That motion was filed on January 11, 2023.

6. Mr. Ewing filed a motion for partial dismissal of the Petition on September 12, 2022, based on his position that the Petition for Discipline included allegations related to conduct occurring after Mr. Ewing filed a petition to surrender his law license, conduct which was not subject to the Board's oversight.

7. Mr. Ewing's motion was denied on November 23, 2022, without prejudice to refile because the Hearing Panel found that "further factual development of the issues surrounding the Respondent's surrender of his law license are warranted in order ... to fully evaluate the merits of whether the Hearing Panel has jurisdiction over the alleged misconduct after August 30, 2019."

8. Mr. Ewing filed an answer to the Petition for Discipline on December 2, 2022.

9. Thereafter, Mr. Ewing revisited his objection to the Board's attempt to prosecute post-surrender conduct, in a Motion for Judgment on the Pleadings. That motion was filed on January 11, 2023.

10. On May 17, 2023, the Hearing Panel entered a Memorandum and Order denying that motion, reserving again its ruling on the question of post-surrender jurisdiction until the final hearing of this matter.

11. The Board filed a Supplemental Petition for Discipline (File No. 74252-5-ES), against Mr. Ewing on June 21, 2024, alleging violations by Mr. Ewing of the following rules: RPC 1.1, RPC 1.4, RPC 5.7, and RPC 8.4.

12. Mr. Ewing filed his answer to the Supplemental Petition for Discipline on July 3, 2024.

13. The final hearing in matter before the Hearing Panel was held on September 17-19, 2025.

14. At the final hearing, the Board was represented by A. Russell Wilis, Esq. Mr. Ewing was represented by Brian S. Faughnan, Esq. The Board presented testimony from seven (7)

witnesses: David Ewing, Perry Craft, Esq., Holcomb Burke, Rob Milam, Margo Fort, Elizabeth Hickman, Esq., and Sandy Garrett, Esq. Mr. Ewing presented testimony from two-character witnesses, Aubrey Harwell, Esq. and Alma Sanford. He also testified again as a witness in the presentation of his own defense.

### **FINDINGS OF FACT**

15. Margaret Fort and Mr. Ewing had a longstanding and close personal friendship that began in approximately 1999-2000. (Tr. of Proceedings, pp. 309-310).

16. Ms. Fort stated she spoke with Mr. Ewing weekly, and sometimes daily on a variety of matters including their common interest of history and antiques as well as personal matters. (Tr. of Proceedings, pp. 310-11).

17. Mr. Ewing obtained his law license in 1994 but did not start practicing law until 2010. (Tr. of Proceedings, pp. 305-310) During the 3 ½ to 4 years he practiced law beginning in 2010, Mr. Ewing focused on real estate and zoning work as a sole practitioner. Mr. Ewing had no experience with trust law, nor had he ever served as a trustee, or even maintained a trust account, in his capacity as a lawyer, or otherwise.

18. Beginning in 2017, Mr. Ewing started a walking tour company in Nashville. A number of items were admitted into evidence at the final hearing of this matter reflecting certain actions Mr. Ewing had undertaken in 2017 to establish his walking tour company, including hiring an artist to design a company logo and entering into a lease agreement for a portion of 217B Sixth Avenue North that was only permitted to be used for the operating of a walking tour company and related history consulting business. (Trial Exhibits 34-39).

19. In early March 2017, Mr. Ewing and Ms. Fort discussed establishing a trust for her assets. Ms. Fort was selling her house and wished to protect the proceeds for herself and her children. (Tr. of Proceedings, p. 312)

20. Subsequently, Mr. Ewing offered to prepare the trust documents and serve as trustee for free. (Tr. of Proceedings, pp. 312–313). Mr. Ewing repeatedly assured Ms. Fort he would serve as trustee "for free" and would not charge her any fees. (Tr. of Proceedings, pp. 313-314). Mr. Ewing made this representation to Ms. Fort "multiple times" and "constantly" throughout the time he served as trustee. (Tr. of Proceedings, p. 317)

21. On May 25, 2017, Ms. Fort and Mr. Ewing executed a document titled the "2017 Margaret Fort Irrevocable Trust Agreement." The document executed on that date by Mr. Ewing and Ms. Fort is in the record as Trial Exhibit 1.<sup>1</sup>

22. As a result, Mr. Ewing became sole trustee of the "2017 Margaret Victoria Fort Irrevocable Trust" on May 25, 2017, with Margaret ("Margo") Fort as both sole grantor and sole beneficiary. (Tr. of Proceedings, pp. 52–54).

23. As the sole trustee in this matter, Mr. Ewing was the only person with the authority to set up a trust account for the Fort trust money and the only authority to transfer Fort Trust funds. (Tr. of Proceedings, p. 9, 59-60)

24. Mr. Ewing knew he had a duty to ensure that Fort Trust funds were held in trust for the benefit of Margaret Fort. (Tr. of Proceedings, p. 59).

25. Mr. Ewing knew it was his duty to specify the account to which trust funds would be deposited, and his duty to provide correct information to any financial institution to which Fort Trust funds were to be transferred. (Tr. of Proceedings, p. 60).

26. Mr. Ewing knew he was the only person who could determine the correct amount of Fort Trust funds to transfer. Mr. Ewing further knew when transferring trust money intended to

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<sup>1</sup> Although Ms. Fort disputed that she signed this document and testified that the document she signed was a two-page revocable trust, the Panel finds that Exhibit 1 was the operative trust agreement. First, the Board's position in this matter was that Exhibit 1 was the agreement in effect and that, in addition to the duties imposed by the Rules of Professional Conduct, Ewing's obligations were governed by the terms of Exhibit 1. (Tr. of Proceedings, p. 27.) Moreover, no two-page revocable trust was ever introduced into evidence.

remain in trust, the funds were required to be transferred to another trust account (Tr. of Proceedings, p. 60)

27. Mr. Ewing knew that his authority to act for Margaret Fort and the trust arose solely from the written trust agreement entered as Exhibit 1. He owed fiduciary duties of good faith, honest judgment, acting in the best interest of Margaret Fort and the trust, and a duty not to use trust property for his or his family's benefit or personal obligations. (Tr. of Proceedings, pp. 54–55)

28. The 2017 Margaret Fort Irrevocable Trust Agreement provided that Mr. Ewing was required to provide an accounting to Ms. Fort upon request. (Trial Exhibit 1).

29. Mr. Ewing knew he had a duty to provide a full and complete accounting of every dollar passing through the trust when requested, and acknowledged he was ordered by the Chancery Court to provide a complete accounting of all trust fund transactions. (Tr. of Proceedings, pp. 55–57) (Trial Exhibit 2)

30. Mr. Ewing opened a FirstBank trust checking account titled “Margaret Victoria Fort Trust, David S. Ewing, Trustee” for the Fort trust shortly after execution of the trust (Exhibit 1), obtained checks, and used that account as the initial trust repository. (Tr. of Proceedings, pp. 61, 86) (Trial Exhibit 2)

31. Mr. Ewing set up the FirstBank trust account as a checking account to pay bills for the trust. (Tr. of Proceedings, p. 85)

32. On May 30, 2017, the Margaret Victoria Fort Trust (Fort Trust) received \$366,775.75 from the sale of Ms. Fort's Jackson Boulevard home, which was deposited into a FirstBank trust account ending in 3423. (Tr. of Proceedings, pp. 64-65)

33. On May 31, 2017 - the very next day - Mr. Ewing wired \$270,000 out of the FirstBank trust account (Account No. #####3423), with instructions to U.S. Community Credit Union to set up a trust account. (Tr. of Proceedings, pp. 65-66)

34. Mr. Ewing, in his accounting<sup>2</sup>, described the transfer as "wire money for CD, 270,000," and he testified the wire transfer was intended to purchase a trust CD at U.S. Community Credit Union. (Tr. of Proceedings, pp. 65-66) (Trial Exhibit 3)

35. Mr. Ewing knew it was his job as trustee to set up any account at U.S. Community Credit Union as a trust account. (Tr. of Proceedings, p. 63)

36. Despite U.S. Community Credit Union informing Mr. Ewing it could not set up a trust account; Mr. Ewing proceeded with the wire transfer of \$270,000.00. (Tr. of Proceedings, p. 63)

37. There was never a trust account at U.S. Community Credit Union, and the \$270,000.00 trust funds were actually deposited into Mr. Ewing's personal account titled in his name (Account No. #####9002). (Tr. of Proceedings, pp. 61-64, 287-89, 292-93)

38. In fact, the U.S. Community Credit Union account (ending in #####9002) was Mr. Ewing's personal account and, he never provided any court-ordered accounting for it, even though trust money clearly passed through it. (Tr. of Proceedings, pp. 292-293, 287-289)

39. On May 31, 2017, a \$270,000.00 deposit posted to his regular savings/checking account in his personal name and member number. (Tr. of Proceedings, pp. 287) (Trial Exhibit 25)

40. From the \$270,000.00 deposited into his personal account, beginning the next day, Mr. Ewing made the following withdrawals on the following days:

June 1, 2017: \$6,000.00 cash withdrawal

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<sup>2</sup> The accounting was not provided to Ms. Fort but rather to the Chancery Court in the later filed lawsuit by Ms. Fort, discussed below.

June 1, 2017: \$259,500.00 wire transfer to Renasant Bank

June 5, 2017: \$4,480.00 transferred to Mr. Ewing's personal checking account at U.S. Community Credit Union. (Tr. of Proceedings, pp. 287–289) (Exhibit 26)

41. When questioned at the hearing in this matter about the \$6,000.00 cash withdrawal on June 1, 2017, and the later \$4,480.00 transfer from savings to his personal checking account, Mr. Ewing was unable to recall how the funds were used. (Tr. of Proceedings, pp. 289, 291–292)

42. Mr. Ewing testified he believed the \$259,500.00 was being transferred into a Renasant Bank trust CD and asserted he did not receive monthly statements. Mr. Ewing acknowledged that sometime later he went to Renasant Bank and saw on its internal computer screen that the CD was titled solely in his name. (Tr. of Proceedings, pp. 122–123, 150–152)

43. Mr. Ewing contended he instructed Renasant to take the entire wire and create a trust CD earning the highest possible rate and insisted that if the Renasant Bank records show \$259,000.00 rather than \$259,500.00, the difference reflected bank error or unexplained handling. (Tr. of Proceedings, pp. 122–123, 130–132)

44. Contrary to Mr. Ewing's testimony, though, the Renasant Bank records reflect Mr. Ewing transferred the \$259,500.00 of Fort Trust funds into his personal checking account (Account No. #####5736) titled "David Ewing" on June 1, 2017. (Tr. of Proceedings, p. 115) (Trial Exhibit 9)

45. On June 2, 2017, Mr. Ewing transferred \$259,000.00 from his personal checking account (Account No. #####5736) to a new Certificate of Deposit Account (Account No. #####2987) also titled "David Ewing" at Renasant Bank. (Trial Exhibits 8 & 9)

46. Rob Milam, Senior Vice President and commercial lender at Renasant Bank was Mr. Ewing's primary contact at Renasant Bank for loans and deposits. Mr. Milam handled Mr.

Ewing's home equity line of credit (HELOC) on his Blair Boulevard residence. (Tr. of Proceedings, pp. 227-30)

47. Mr. Milam also handled a personal loan for Mr. Ewing that was secured by a Certificate of Deposit (CD). In May of 2017, Mr. Ewing spoke to Mr. Milam about obtaining a \$259,000.00 personal loan secured by a CD in order to pay off the balance of the HELOC on his personal residence. During those discussions, Mr. Ewing never mentioned any trust funds or entity would be involved. Mr. Milam prepared a loan package consisting of a Promissory Note dated June 5, 2017, in the amount of \$259,000.00; an Assignment of Deposit Account dated June 5, 2017, and a Disbursement Request and Authorization. (Tr. of Proceedings, pp. 230-37) (Trial Exhibit 12, 13, 14)

48. Mr. Milam testified the structure of the loan was simple and did not require a credit decision because the loan was cash secured with the funds on deposit with Renasant Bank. However, Mr. Milam made clear that the \$259,000.00 personal loan (Loan No. #####6639-1) would not have been made to Mr. Ewing without collateral. (Tr. of Proceedings, pp. 236-37)

49. Mr. Milam testified he was instructed by Mr. Ewing to use the proceeds of the \$259,000.00 personal loan to pay off the HELOC (Loan No. #####6972) on Mr. Ewing's personal residence that had been initially opened in 2012. The proceeds of Loan No. #####6639-1 were applied to the balance of the HELOC and the HELOC loan was paid off, and the collateral was released by Renasant Bank. (Tr. of Proceedings, pp. 237-39)

50. Mr. Milam testified Mr. Ewing signed as David Ewing and never indicated to Mr. Milam that he needed to sign the loan documents as Trustee. If Mr. Ewing had indicated to Mr. Milam he needed to sign as Trustee, it would have required the loan to be structured in a manner other than a personal loan to David Ewing. (Tr. of Proceedings, pp. 239-40)

51. In preparing the \$259,000.00 loan package, Mr. Milam reviewed the Certificate of Deposit documentation to ensure the funds being used as collateral were on deposit with Renasant Bank, the proper hold was on the account, and name matches up with everything on file. One of the documents he reviewed in preparing the \$259,000.00 loan package was the CD deposit signature card (Trial Exhibit 10). (Tr. of Proceedings, pp. 240-42)

52. Mr. Milam testified the CD deposit signature card reflected Mr. Ewing was the sole, individual owner of the \$259,000.00 CD. If the CD were owned by a trust, the box referencing “business” or “other” would have been checked. (Tr. of Proceedings, pp. 241-42)

53. Mr. Milam first learned that the CD used as collateral for the \$259,000.00 loan was not owned by Mr. Ewing sometime in 2019 after Ms. Fort filed her lawsuit, and he received a subpoena for records. Upon receiving the subpoena, Mr. Milam researched Renasant Bank’s system files and discovered the CD account was titled “David Ewing, Trustee.” Mr. Milam was shocked by this information as Mr. Ewing never discussed with Mr. Milam setting up any trust, never informed Mr. Milam of any change in the ownership of the CD, and never provided him with a copy of the Margaret Victoria Fort Irrevocable Trust Agreement. Mr. Milam testified the new information caused a pit in his stomach and caused him to question what was going on and whether he had done something wrong. (Tr. of Proceedings, pp. 242-43, 247-48)

54. Mr. Milam immediately inquired of Holcomb Burke, then a Branch Manager for Renasant Bank, if the CD account information in the bank’s system had been recently changed. Mr. Burke informed Mr. Milam that a couple of months previously Mr. Ewing had requested Mr. Burke add “Trustee” to the CD account. On August 16, 2017, Mr. Burke provided Mr. Ewing with the paperwork necessary to add trustee to the account title on the CD Account; however, Mr. Ewing never returned an executed document to Mr. Burke or Mr. Milam. (Tr. of Proceedings, pp. 243, 254-55) (Trial Exhibit 21)

55. Holcomb Burke, Treasury Sales Officer and Bank Officer for Renasant Bank, testified that he was familiar with Mr. Ewing, having known him since 2010. Mr. Ewing came to Mr. Burke's office on August 16, 2019, inquiring about the CD account (####2987) and asked if "Trustee" was in the title of the account. Mr. Burke informed Mr. Ewing that trustee was not in the title of the account. Mr. Ewing asked Mr. Burke if trustee could be added to the account title for the CD. Mr. Burke explained that trustee could be added to the title, but that would not alter the ownership of the account, which would remain under Mr. Ewing's name and Social Security number. At Mr. Ewing's request, Mr. Burke added Trustee to the titling of the account and emailed Mr. Ewing the documentation he needed to formally sign. Mr. Burke never received an executed signature card from Mr. Ewing. In Mr. Burke's view, Mr. Ewing was always the owner of the CD, and he did not learn otherwise until after receiving a subpoena. (Tr. of Proceedings, pp. 209-11, 213-14)

56. Mr. Burke testified that he was handling several different banking matters when Mr. Ewing appeared at his office to inquire about the titling of the CD account, and their meeting lasted less than five (5) minutes. During their meeting and thereafter, Mr. Ewing never discussed opening a trust account. Mr. Burke testified that opening a trust account at Renasant Bank would require the trust documentation be provided to Mr. Burke and then forward to the legal department for review. Upon approval of the legal department, a certificate of trust would be executed by the client along with the signature card of the trust. Mr. Ewing never provided Mr. Burke with the Margaret Victoria Fort Irrevocable Trust Agreement. (Tr. of Proceedings, pp. 211-12)

57. Mr. Burke testified that the request of Mr. Ewing to add trustee to the title of the CD account did not raise any real concerns. In Mr. Burke's experience, it was not uncommon for bank clients to request additional or secondary items be added to accounts for identification purposes. Mr. Burke had known Mr. Ewing for a long time, knew he was an attorney, and had

always had pleasant dealings with Mr. Ewing. In hindsight, Mr. Burke acknowledged he should have asked more questions of Mr. Ewing during their meeting. (Tr. of Proceedings, pp. 214-16)

58. Mr. Ewing executed an "Ownership of Account – Personal" to purchase the Certificate of Deposit (Account No. #####2987) on June 5, 2017. (Trial Exhibit 10)

59. The Ownership of Account – Personal document executed by Mr. Ewing reflects it is a personal Certificate of Deposit purchased by Mr. Ewing under his social security number and that he is the "Sole Owner" of the account titled "David Ewing." (Trial Exhibit 10)

60. Trial Exhibit 10 contains a certification statement wherein Mr. Ewing certified the accuracy of the information he provided and acknowledged receipt of a completed copy of the document.

61. Mr. Ewing signed the account document in his individual name and not as Trustee.

62. On June 5, 2017, Mr. Ewing executed a promissory note (Loan No. #####6639-1) with Renasant Bank in the amount of \$259,000.00. (Tr. of Proceedings, pp. 133–136) (Trial Exhibit 12)

63. Mr. Ewing secured his promissory note with the Certificate of Deposit ("CD") in the amount of \$259,000.00, which Mr. Ewing had directed Renasant Bank to create using the Fort Trust funds. (Trial Exhibit 12).

64. The CD (Account No. 2987) was titled in Mr. Ewing's name only, not as trustee, despite the funds being trust property.

65. Mr. Ewing executed the "Assignment of Deposit Account" dated June 5, 2017, pledging the trust-funded CD as collateral for his personal loan. (Tr. of Proceedings, pp. 137–140) (Trial Exhibit 13)

66. In the Assignment of Deposit Account, Mr. Ewing represented and warranted that he was "the lawful owner of the collateral, free and clear of all loans, liens, encumbrances and claims." (Trial Exhibit 13)

67. Mr. Ewing signed the Assignment of Deposit Account document in his individual name and not as Trustee. (Tr. of Proceedings, pp. 137) (Trial Exhibit 13)

68. Mr. Ewing executed a "Disbursement Request and Authorization" dated June 5, 2017, instructing Renasant Bank to apply the \$259,000.00 loan proceeds to pay off his personal home equity line of credit (Loan No. #####6972-1). (Trial Exhibit 14)

69. The stated "specific purpose" of the loan was "debt consolidation" for "personal, family or household purposes or personal investment." (Tr. of Proceedings, pp. 141) (Trial Exhibit 14)

70. Renasant Bank disbursed the \$259,000.00 loan proceeds directly to pay off Mr. Ewing's personal home equity line of credit on his residence at 2126 Blair Boulevard. (Tr. of Proceedings, pp. 237-39)

71. On June 16, 2017, Mr. Ewing executed a quitclaim deed transferring his interest in the marital home at 2126 Blair Boulevard to his wife, free and clear of any mortgage. (Tr. of Proceedings, pp. 147-148) (Trial Exhibit 16)

72. Mr. Ewing used \$259,000.00 of Fort Trust funds to pay off his personal debt and facilitate the transfer of unencumbered real property to his spouse. (Tr. of Proceedings, pp. 237-39)

73. In January 2018, Mr. Ewing contacted Mr. Milam to request \$15,000.00 be released from the \$259,000.00 CD to purchase a 2015 Ford Fusion and pledge the automobile as collateral. Mr. Milam prepared an Agreement to Release And/Substitute Collateral, and Mr. Ewing executed the same on January 31, 2018. Mr. Ewing signed the document "David Ewing." Mr. Ewing did not

indicate to Mr. Milam that the CD was mistakenly titled or that Mr. Ewing was not the owner of the CD. Had Mr. Ewing disclosed the true ownership of the CD, Mr. Milam would have paused the release of the \$15,000.00 and requested the trust documents be provided to the Bank for review. (Tr. of Proceedings, pp. 244-46)

74. On January 31, 2018, Mr. Ewing executed an "Agreement to Release and Substitute Collateral" requesting release of \$15,000.00 from the CD in exchange for pledging his personal vehicle (Ford Fusion) as additional collateral. (Tr. of Proceedings, pp. 244-245) (Trial Exhibit 11)

75. Mr. Ewing never informed Ms. Fort that the CD was titled in Mr. Ewing's name, not the Fort Trust. (Tr. of Proceedings, pp. 148-149)

76. Mr. Ewing never informed Ms. Fort that the CD was pledged as collateral for his personal loan. (Tr. of Proceedings, pp. 325-28)

77. Mr. Ewing never informed Ms. Fort that the Trust funds were used to pay his personal mortgage debt. (Tr. of Proceedings, pp. 325-28)

78. Mr. Ewing never informed Ms. Fort that the Mr. Ewing was removing funds from the CD for his personal use. (Tr. of Proceedings, pp. 325-28)

79. Mr. Ewing never shared any Fort Trust financial information or documentation with Ms. Fort. (Tr. of Proceedings, p. 321)

80. Mr. Ewing never shared any Fort Trust financial information regarding funds transferred to U.S. Community Credit Union until she filed a lawsuit. (Tr. of Proceedings, p. 325)

81. Mr. Ewing never shared any Fort Trust financial information regarding funds transferred to Renasant Bank until she filed a lawsuit. (Tr. of Proceedings, p. 325)

82. Margaret Fort never authorized any transfers of trust funds for Mr. Ewing's personal use, nor did she know of large sums of Trust funds being used to pay off Mr. Ewing's personal debts or as collateral for loans. (Tr. of Proceedings, pp. 319-321, 325-28)

83. In addition to transferring \$270,000.00 in Fort Trust funds to his personal accounts at U.S. Community Credit Union and Renasant Bank, Mr. Ewing withdrew large sums of cash from the Fort Trust account at FirstBank. (Trial Exhibits 3, 4, and 16).

84. Mr. Ewing never disclosed to Ms. Fort that he was making large cash withdrawals from the Fort Trust account. Had Ms. Fort known Mr. Ewing was withdrawing cash from the Fort Trust account, she would have fired Mr. Ewing. (Tr. of Proceedings, p. 326)

85. Margaret Fort testified repeatedly that, with very few exceptions (such as a \$200 payment at Starbucks for funeral-related travel), she never received cash directly from Mr. Ewing. When Mr. Ewing transferred Fort Trust funds to Ms. Fort, he did so by depositing a check directly into Ms. Fort's personal Pinnacle Bank account. (Tr. of Proceedings, pp. 321, 324-25, 404, 412-13)

86. In late 2018, Ms. Fort requested Mr. Ewing provide her with a copy of the Margaret Victoria Fort Trust Agreement she had signed. (Tr. of Proceedings, pp. 317-19, 331-32)

87. After receiving the Margaret Victoria Fort Irrevocable Trust Agreement, Ms. Fort wrote a letter to Mr. Ewing requesting a full accounting of the Fort Trust funds. Mr. Ewing never provided the accounting she had requested. Thereafter, Ms. Fort texted and emailed Mr. Ewing with additional requests for a full accounting. Specifically, Ms. Fort texted Mr. Ewing on May 7, 2019, asking Mr. Ewing, "Why did you not send me a statement of accounting when I asked?" and again on May 8, 2019, stating "You've not sent me a statement of accounting." Mr. Ewing ignored some of the requests and other times indicated he was working on the accounting. (Tr. of Proceedings, pp. 328-30, 333-35, 440-42) (Trial Exhibit 6 - Verified Complaint, Exhibits 9 & 13)

88. Mr. Ewing did not provide an accounting despite repeated request from Ms. Fort. She became increasingly worried because Mr. Ewing was not promptly paying her monthly bills

and would not provide the accounting she had requested in writing. As a result of Mr. Ewing's inaction Ms. Fort sued Mr. Ewing. (Tr. of Proceedings, p. 335)

89. Ms. Fort retained Perry Craft, an experienced attorney, who drafted and filed a verified complaint with supporting exhibits against David Ewing on August 7, 2019, in Davidson County Probate Court alleging breaches of trust, fiduciary duties, loyalty/care, self-dealing, negligence, gross negligence, misrepresentation, conversion, and Tennessee Consumer Protection Act violations. (Tr. of Proceedings, pp. 172-73) (Trial Exhibit 6)

90. Mr. Craft also filed a Motion for Temporary Restraining Order on August 8, 2019. (Tr. of Proceedings, pp. 173-74) (Trial Exhibit 7)

91. After filing the Verified Complaint but prior to filing the Motion for Temporary Restraining Order (TRO) on August 8, 2019, Mr. Craft spoke to Mr. Ewing on the telephone for approximately 10-14 minutes. During the phone call, Mr. Craft informed Mr. Ewing of the lawsuit and that a TRO was being requested due to money missing from the Fort Trust and his failure to account to Ms. Fort despite her requests. Mr. Craft was certain of the details of his discussion with Mr. Ewing on August 8, 2019, based upon the fact he was filing suit against a prominent Nashville attorney for misappropriation and conversion of trust funds, the Local Rules of Court required that he contact the opposing party prior to seeking a TRO, and his certificate of services was attached to the Verified Complaint and the Motion for Temporary Restraining Order. (Tr. of Proceedings, pp. 174-82, 197-98)

92. On August 12, 2019, the Chancery Court ordered Mr. Ewing to provide a complete accounting of the Fort Trust fund transactions. (Trial Exhibit 2)

93. The accounting produced by Mr. Ewing was incomplete. There was no accounting from U.S. Community Credit Union and the \$270,000.00 transaction. Mr. Ewing did not produce any receipts or supporting documentation for the Fort Trust cash transactions. Mr. Ewing did not

provide a list of all current and former accounts that hold or held Fort Trust funds. Mr. Ewing never supplemented the initial accounting with receipts or supporting documentation for the Fort Trust transactions prior to Mr. Craft's withdrawal in February or March of 2020. (Tr. of Proceedings, pp. 188-90)

94. Upon receiving and reviewing Mr. Ewing's accountings, which were introduced as Trial Exhibits 3 and 4, Ms. Fort was shocked to learn Mr. Ewing had transferred \$270,000.00 from the Fort Trust, that he had withdrawn large sums of cash from the Fort Trust, that numerous transactions appeared to be false, that the accounting was incomplete and difficult to balance; and that no receipts or documentation was produced to substantiate the hand-written accounting of Mr. Ewing. Ms. Fort compared the accounting transactions listed by Mr. Ewing to her bank statements and found discrepancies. (Tr. of Proceedings, pp. 336-39, 403)

95. Ms. Fort personally identified numerous specific cash withdrawal transactions in Mr. Ewing's accounting that she did not personally receive and did not go to her benefit. Specifically, Ms. Fort listed the following cash transactions she did not receive and were not used for her benefit:

Date	Amount	Stated Purpose	Fort's Testimony	Transcript
5/31/2017	\$7,000	Payoff debt	Did Not Owe Debt	p. 339
6/2/2017	\$5,200	Moving expenses	She Paid	p. 341-42
6/15/2017	\$600	Moving expenses	She Paid	p. 342
6/22/2017	\$600	Moving expenses	She Paid	p. 342
6/23/2017	\$500	Moving expenses	She Paid	p. 342
6/26/2017	\$1,500	Moving expenses	She Paid	pp. 342-43

6/28/2017	\$500	Moving expenses	She Paid	p. 343
7/5/2017	\$2,100	Moving expenses	She Paid	p. 343
7/7/2017	\$250	Moving expenses	She Paid	pp. 343-44
7/18/2017	\$600	Moving expenses	She Paid	p. 344

Date	Amount	Stated Purpose	Fort's Testimony	Transcript
7/27/2017	\$600	Moving expenses	She Paid	pp. 344-47
8/8/2017	\$400	Cleaning fee	Did Not Owe Debt	p. 347-48
8/9/2017	\$1,000	Cash holdings	Did Not Receive	p. 348
8/9/2017	\$1,000	Cleaning & Hauling Expense	Did Not Owe Debt	p. 348
8/16/2017	\$1,000	Cash holdings	Not received	p. 348
10/6/2017	\$500	Cash holdings	Not received	pp. 348-49
11/20/2017	\$5,000	Cash holdings	Not received	p. 349
11/21/2017	\$45,000	Fees to trustee	Not received	p. 349
11/30/2017	\$7,000	Cash holding	Not received	p. 349
12/15/2017	\$2,000	Cash holding	Not received	p. 349
3/23/2018	\$20	Cash withdrawal	Not received	p. 350
4/13/2018	\$500	Storage/gas/food (Alabama)	Not received	p. 350
4/20/2018	\$3,000	Trustee fees	Not received	p. 350
4/20/2018	\$20,005	Trustee fees	Not received	p. 350
5/11/2018	\$10,000	Given to Chris Money	Not received or authorized	p. 350-52

6/26/2018	\$1,000	Cash holding	Not received	p. 352
6/27/2018	\$1,800	Cash holding	Not received	p. 352
10/1/2018	\$2,500	Cash holding	Not received	p. 352
11/9/2018	\$8,000	Cash holding	Not received	pp. 352-53
11/27/2018	\$2,000	Cash holding	Not received	p. 353

Date	Amount	Stated Purpose	Fort's Testimony	Transcript
12/10/2018	\$2,000	Cash holding	Not received	p. 353
12/17/2018	\$1,000	Cash holding	Not received	p. 353
12/19/2018	\$3,000	Cash holding	Not received	p. 353
12/21/2018	\$2,000	Cash holding	Not received	p. 353
12/26/2018	\$700	Cash holding	Not received	p. 353
1/25/2019	\$1,000	Cash holding	Not received	p. 354
1/30/2019	\$300	Cash holding	Not received	p. 354
1/31/2019	\$1,500	Cash holding	Not received	p. 354]
2/7/2019	\$1,000	Cash holding	Not received	p. 354
2/19/2019	\$1,000	Cash holding	Not received	p. 354
2/22/2019	\$2,000	Cash holding	Not received	p. 354
3/7/2019	\$1,000	Cash holding	Not received	p. 355
3/21/2019	\$750	Cash holding	Not received	p. 355
3/26/2019	\$500	Cash holding	Not received	p. 355
6/26/2019	\$1,000	Cash holding	Not received	p. 355

<b>TOTAL</b>	<b>\$149,925.00</b>			
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96. Ms. Fort testified she paid the specific moving expenses out of her personal Pinnacle Bank account prior to the date Mr. Ewing withdrew the funds detailed in his accounting. (Tr. of Proceedings, pp. 356)

97. Ms. Fort testified Mr. Ewing never provided her with any receipts or supporting documentation reflecting the cash withdrawals by Mr. Ewing detailed above were used for her benefit, and the lack of receipts or supporting documentation from Mr. Ewing made it impossible for her to determine where the cash went. Mr. Ewing never explained to Ms. Fort what he did with the cash money he withdrew from the Fort Trust account. (Tr. of Proceedings, pp. 355-56, 338)

98. Ms. Fort further testified that she did not authorize any "cash holding" withdrawals or cash payments for the listed purposes. She noted there were no receipts, supporting documentation, or backup ever provided to her for any of these transactions, and the incomplete accounting for these withdrawals provided by Mr. Ewing did not match up with her records, bank statements, or the actual checks she received. (Tr. of Proceedings, pp. 340-355, 412-414)

99. Mr. Ewing admitted that while he served as Trustee, he might have used Cashier's Checks or money orders only to pay child support owed by Ms. Fort to her ex-husband. Mr. Ewing acknowledged Trial Exhibit 40 as an example of a money order he purchased to pay Ms. Fort's child support in the amount of \$467.00.

100. The cash withdrawals made by Mr. Ewing, which Ms. Fort testified were not paid to her or for her benefit totaled \$149,925.00.

101. Ms. Fort also reviewed the handwritten time ledger Mr. Ewing created but never provided to Ms. Fort until after she filed suit against Mr. Ewing. Ms. Fort was shocked to learn Mr. Ewing was charging a fee of \$350.00 per hour because he had previously agreed and repeatedly

assured her, he was serving as Trustee without charge. Ms. Fort testified she never agreed to pay Mr. Ewing \$350.00 an hour. Ms. Fort testified that 214 phone call and 5 meeting time entries by Mr. Ewing did not occur and were fictitious. (Tr. of Proceedings, pp. 356-57, 363)

102. Ms. Fort provided specific examples of time entries by Mr. Ewing that were fictitious:

a. Ms. Fort testified she was in Alabama on June 15, 2017, when Mr. Ewing claimed he met with Ms. Fort in Nashville for 1.2 hours. (Tr. of Proceedings, pp. 357-58).

b. Ms. Fort testified she was in Alabama on March 30, 2017, when Mr. Ewing claimed he met with Ms. Fort in Nashville for 2 hours. (Tr. of Proceedings, pp. 358-59).

c. Ms. Fort testified she reviewed her phone logs and confirmed she did not speak with Mr. Ewing on April 6, 2017, for 48 minutes as Mr. Ewing claimed in his time ledger. (Tr. of Proceedings, pp. 359-60).

d. Ms. Fort testified she did not speak with Mr. Ewing on April 17, 2017, for 1 hour and 24 minutes as Mr. Ewing claimed in his time ledger. (Tr. of Proceedings, p. 360).

e. Ms. Fort testified she was in Alabama on June 15, 2017, when Mr. Ewing claimed he met with Ms. Fort in Nashville for 1 hour and 12 minutes. (Tr. of Proceedings, pp. 357-58, 360).

f. Ms. Fort testified she was in Alabama on June 20, 2017, when Mr. Ewing claimed he met with Ms. Fort in Nashville for 1 hour. (Tr. of Proceedings, p. 360).

g. Ms. Fort testified she did not speak with Mr. Ewing on August 12, 2017, for 1 hour and 24 minutes as Mr. Ewing claimed in his time ledger. (Tr. of Proceedings, p. 361).

h. Ms. Fort testified she did not speak with Mr. Ewing on August 14, 2017, for 1 hour as Mr. Ewing claimed in his time ledger. (Tr. of Proceedings, p. 361).

i. Ms. Fort testified she did not speak with Mr. Ewing on September 15, 2017, for 1 hour as Mr. Ewing claimed in his time ledger. (Tr. of Proceedings, p. 361).

j. Ms. Fort testified she did not speak with Mr. Ewing on October 10, 2017, for 1 hour as Mr. Ewing claimed in his time ledger. (Tr. of Proceedings, pp. 361-62).

k. Ms. Fort testified she did not speak with Mr. Ewing on October 26, 2017, for 1 hour as Mr. Ewing claimed in his time ledger. (Tr. of Proceedings, p. 362).

l. Ms. Fort testified she did not speak with Mr. Ewing on December 23, 2017, for 36 minutes as Mr. Ewing claimed in his time ledger. (Tr. of Proceedings, pp. 362-63)

103. After reviewing the handwritten time ledger, Ms. Fort concluded that Mr. Ewing made up a lot of the time entries. (Tr. of Proceedings, pp. 356-57)

104. Mr. Ewing served as Trustee from May 25, 2017, until he was suspended as trustee by the Chancery Court on August 12, 2019. (Trial Exhibits 1 and 2)

105. Mr. Ewing conceded he had no agreement with Ms. Fort prior to May 25, 2017, to perform any legal or trustee work for Ms. Fort and no fee agreement with Ms. Fort regarding real estate work or charging \$350.00 per hour. (Tr. of Proceedings, pp. 294-95, 299)

106. Mr. Ewing's handwritten time ledger reflects 73.6 hours of work prior to execution of the Trust Agreement at a rate of \$350.00 per hour. The total fee for this work was \$25,760.00. (Trial Exhibit 27)

107. Despite Mr. Ewing titling his handwritten time ledger "Legal & Trustee Work on Fort Trust @ 350 hour" Mr. Ewing denied he charged any fee for legal work. Mr. Ewing was adamant that his fee was for serving as Trustee. (Tr. of Proceedings, pp. 285-86, 298)

108. Mr. Ewing described his work as Trustee as basically paying Ms. Fort's bills, communicating with debtors, and advising Ms. Fort on things she should and should not be doing. (Tr. of Proceedings, pp. 286)

109. Mr. Ewing testified he charged and received a total fee of \$194,916.61 as Trustee (Tr. of Proceedings, pp. 362-63)

110. Mr. Ewing never provided Ms. Fort with a billing statement reflecting his time and charges for which he received \$194,916.61 prior to Ms. Fort filing suit. (Tr. of Proceedings, p. 287)

111. On September 27, 2024, Mr. Ewing, through his attorney, served Respondent's Answers to the Board of Professional Responsibility's Request for Admissions. (Trial Exhibit 16)

112. Among the Requests for Admissions served on Mr. Ewing were certain requests specific to the cash withdrawals by Mr. Ewing from the Fort Trust account at First Bank ending in -3423. For each of those requests, Mr. Ewing was asked to admit that he made the specific cash withdrawal. Mr. Ewing was also asked to admit that he kept the cash he withdrew to be applied toward trustee or attorney fees he was owed by Ms. Fort. (Trial Exhibit 16)

113. In Request for Admission No. 86, Mr. Ewing "Admitted" that "On November 21, 2017, Respondent David Ewing made a cash withdrawal of \$45,000.00 from the Fort Trust account at First Bank ending in -3423." (Trial Exhibit 16)

114. In Request for Admission No. 87, Mr. Ewing stated that he "would have used such funds" [\$45,000.00] "to pay debts incurred by Ms. Fort or to fund purchases Ms. Fort was making."

115. In Request for Admission No. 88, Mr. Ewing "Denied" that "Respondent kept the funds described in Paragraph 86 to be applied toward Trustee's or attorney's fees he was owed by Ms. Fort or the Fort Trust, and for no other purpose." (Trial Exhibit 16)

116. At the September 17, 2025, hearing before this Panel, Mr. Ewing testified completely contrary to the above responses he served on the Board on September 27, 2024. Mr. Ewing testified that the \$45,000.00 was not a cash withdrawal but in fact was a check he had written to himself for his fee as trustee. (Tr. of Proceedings, pp. 154-57)

117. Mr. Ewing insisted he had written a trust check for the \$45,000.00 and the "Checking Withdrawal" image attached to the First Bank account statement dated November 30,

2017, was an example of the bank not having the best records. (Tr. of Proceedings, pp. 154-56) (Trial Exhibit 3, Bates Stamp 20-21)

118. When confronted with his responses to Request for Admissions No. 86-88, Mr. Ewing suggested he misunderstood the request to admit. Mr. Ewing then suggested that the \$45,000.00 was used to purchase two (2) vehicles for Ms. Fort's children. (Tr. of Proceedings, pp. 157-59, 161)

119. Similarly, Mr. Ewing was questioned about a \$20,005.00 withdrawal reflected on his handwritten accounting statement for April 20, 2018, as "Fees to Trustee." (Trial Exhibit 3, Bates Stamp 34)

120. Mr. Ewing's responses to Request For Admissions No. 114-116 reflect he "Admitted" he made a cash withdrawal of \$20,005.00 from the Fort Trust account on April 20, 2018, stated he "would have used such funds" [\$20,005.00] "to pay debts incurred by Ms. Fort or to fund purchases Ms. Fort was making" and "Denied" that "Respondent kept the funds described in Paragraph 114 to be applied toward Trustee's or attorney's fees he was owed by Ms. Fort or the Fort Trust, and for no other purpose. (Trial Exhibit 16)

121. When confronted with his responses to Request for Admissions No. 114-116, Mr. Ewing again suggested he misunderstood the request to admit. Mr. Ewing then suggested that the \$20,005.00 was used to purchase a vehicle for Ms. Fort but also conceded he did not really remember the transaction. (Tr. of Proceedings, p. 161)

122. In regard to the \$45,000.00 and \$20,005.00 cash withdrawals, Mr. Ewing did not have any receipts or supporting documentation reflecting where the money went other than the bank records. (Tr. of Proceedings, pp. 154-55, 158, 161-62)

123. In fact, the only receipts and supporting documentation Mr. Ewing produced to Ms. Fort came from the financial institutions. Mr. Ewing had access to every financial institution where

Fort Trust funds were deposited into or out of by Mr. Ewing, but Mr. Ewing did not request those records be provided other than First Bank. Mr. Ewing had online access to his Renasant Bank records but did not have physical statements for the CD account because he asserted Renasant Bank does not send statements for that account. (Tr. of Proceedings, pp. 162-64)

124. Mr. Ewing's testimony was contradicted by the testimony of Mr. Milam as well as Mr. Ewing's own testimony regarding the Renasant Bank accounting he produced in response to the order entered by the Chancery Court. Year-end CD statements were mailed to Mr. Ewing in 2017 and 2018, and Mr. Ewing attached the 2018 year-end statement to his court ordered accounting. (Tr. of Proceedings, pp. 152-53, 240-41, 246-47) (Trial Exhibit 4)

125. As reflected in the previously cited testimony of Perry Craft, attorney for Ms. Fort, stated he had a 10–14-minute telephone conversation with Mr. Ewing on August 8, 2019, in which Mr. Craft informed Mr. Ewing a verified complaint had been filed and apprised him of the gist of the allegations set forth in the suit. Also, during their conversation, Mr. Craft advised Mr. Ewing that a motion for a temporary restraining order against Mr. Ewing would be filed shortly.

126. Ms. Fort, acting through Perry Craft as her attorney, filed a lawsuit against Mr. Ewing on August 7, 2019. (Trial Exhibit 6). Mr. Craft also filed a motion for a TRO for Ms. Fort on August 8, 2019. (Trial Exhibit 7.) The certificate of service in that document reflected Mr. Craft certifying that a copy of the motion was being served that day by mail and hand-delivery on Mr. Ewing. It also indicated that Mr. Craft had spoken on the telephone with Mr. Ewing on August 9, 2019.

127. In that same lawsuit, Ms. Fort also sued each of Renasant Bank and First Bank for their actions in connection with Mr. Ewing's banking transactions. In her lawsuit, Ms. Fort and her counsel alleged that Renasant was responsible for arranging transactions to put it in a better position with respect to Mr. Ewing as a "problem borrower."

128. The very next day after the phone call with Mr. Craft, Mr. Ewing executed a Petition to Surrender Tennessee Law License, which was sworn to and subscribed before a notary on August 9, 2019, and filed the same with the Supreme Court of Tennessee. Mr. Ewing served his Petition to Surrender Tennessee Law License on the Continuing Legal Education Commission and the Board of Professional Responsibility as required by Rule 7 of the Supreme Court. (Tr. of Proceedings, pp. 165-67) (Trial Exhibit 17)

129. The Petition to Surrender Tennessee Law License (Petition to Surrender) set forth five (5) numbered questions to which Mr. Ewing responded. Regarding “Whether disbarment, suspension, disciplinary, or other administrative action of any nature is in effect or pending as to Petitioner:” Mr. Ewing checked “No” in paragraph 2. (Trial Exhibit 17)

130. Regarding “Whether there is a potential grievance, complaint, disciplinary, or other administrative action of any nature in any jurisdiction which may likely be filed against Petitioner:” Mr. Ewing checked “No” in paragraph 3. (Tr. of Proceedings, pp. 166) (Trial Exhibit 17)

131. Mr. Ewing asserted that, at the time he signed the petition, he was not aware a verified complaint alleging conversion had already been filed against him in the probate court, and that he first learned of that filing approximately a week after submitting the petition. (Tr. of Proceedings, pp. 166-67)

132. Mr. Ewing acknowledged he received the Response of Tennessee Commission on Continuing Legal Education filed August 13, 2019, stating, in part, “the Commission does not know of any reason to oppose his surrender.” (Tr. of Proceedings, pp. 168-69) (Trial Exhibit 19)

133. Mr. Ewing acknowledged he received the Response of the Board of Professional Responsibility to the Petition to Surrender Law License filed August 16, 2019, stating, in part, “the current records of the Board reflect no facts or basis to refute the allegations of the Petition, and

therefore Respondent knows of no reason why the Petition to Surrender should be denied.” (Tr. of Proceedings, pp. 167-69) (Trial Exhibit 18)

134. Despite knowing he had been sued for conversion of trust funds, Mr. Ewing did not amend or modify his petition pending before the Supreme Court, and he did not notify either the Board of Professional Responsibility or the CLE Commission of the existence of the Probate/Chancery complaint at any time. (Tr. of Proceedings, pp. 166-67, 169-70)

135. In addition to the foregoing, the Panel notes that the Temporary Restraining Order was filed at 9:29 a.m. on August 12, 2019, by Chancellor Martin and forwarded to Mr. Ewing at his home address. (Trial Exhibit 2)

136. Ms. Fort did not, at the time of her lawsuit against Mr. Ewing, or any time thereafter file any disciplinary complaint against Mr. Ewing. None of the lawyers involved in that lawsuit filed any disciplinary complaint against Mr. Ewing. Rather, the Board itself, through its Chief Disciplinary Counsel Sandy Garrett, caused these proceedings to occur when she opened a disciplinary investigative file in response to reading a news article in November 2019 about the lawsuit Ms. Fort had filed against Mr. Ewing and being worried that the contents of the news article painted the Board of Professional Responsibility in a bad light.

137. Sandy Garrett, Chief Disciplinary Counsel for the Board of Professional Responsibility, testified about her role and actions surrounding attorney surrender petitions and the specific matter concerning the Petition to Surrender filed by Mr. Ewing.

138. Ms. Garrett has been employed by the Board since October 1992 and served as Chief Disciplinary Counsel since December 2012. One of her duties is to review petitions to surrender law licenses, which the Board regularly receives monthly. (Tr. of Proceedings, pp. 470-71)

139. Ms. Garrett testified that the Supreme Court rule requires petitions to surrender be served on the Board. Upon receipt, the Board staff contacts the CLE Commission and the Department of Revenue to determine if those agencies have been paid. The staff checks the Board's records to determine if the attorney has any pending disciplinary complaint(s). The information gathered by the staff is used to prepare a draft response which she reviews in conjunction with the petition to surrender and the statements of the attorney therein to determine if the Board should or should not object to the surrender petition. (Tr. of Proceedings, pp. 471-72)

140. Ms. Garrett testified that she has filed Board responses objecting to certain Petitions to Surrender, and based upon her experience, the Supreme Court does not grant the surrender petition unless the petitioning attorney remedies the objection of the Board. (Tr. of Proceedings, pp. 472-73)

141. Ms. Garrett testified that Mr. Ewing's Petition to Surrender was received by the Board on August 15, 2019, after which the staff performed its review and prepared a draft response for her consideration that reflected no objection based on the facts and information known to the Board. (Tr. of Proceedings, pp. 473-74)

142. In addressing the representations made by the Petitioner in Paragraph 2 of the Petition for Surrender, the Board searches only its disciplinary records and not those of other jurisdictions. (Tr. of Proceedings, pp. 474-76)

143. In addressing the representations made by the Petitioner in Paragraph 3 of the Petition for Surrender, the Board does not investigate all 50 jurisdictions. The Board relies upon the sworn statement of the attorney. (Tr. of Proceedings, p. 476)

144. Ms. Garrett identified Trial Exhibit 18 as the Board response she signed and filed August 16, 2019, and served on Mr. Ewing and the CLE Commission. The Board response

reflected no objection because, at that point in time, Ms. Garrett had no reason to object to the Petition to Surrender. (Tr. of Proceedings, pp. 476-77)

145. On November 5, 2019, or shortly thereafter, Ms. Garrett received a media report regarding allegations made against Mr. Ewing of self-dealing, misrepresentations and misuse of trust money. This was the first notice to Ms. Garret and the Board of potential misconduct by Mr. Ewing. Although aware Mr. Ewing had surrendered his law license on August 29, 2019, Ms. Garrett testified she immediately opened an investigative file on Mr. Ewing based, in part, upon the serious nature of the allegations against Mr. Ewing which reflected poorly on the profession, and the need to comply with the mission directive of the Supreme Court to protect the public. (Tr. of Proceedings, pp. 477-78, 480) (Trial Exhibit 34)

146. Ms. Garrett testified that she reviewed the Verified Complaint filed against Mr. Ewing shortly after it was received by investigative Disciplinary Counsel in February 2020. Ms. Garrett testified that Mr. Ewing never amended his petition to surrender or served her with any notice of such, and had she been aware of the media report and/or the Verified Complaint prior to August 29, 2019, she would have filed an amended response with the Supreme Court objecting to the Petition to Surrender filed by Mr. Ewing. Ms. Garrett testified that she believed Mr. Ewing's response in Paragraph 3 of his Petition to Surrender was inaccurate. In Ms. Garrett's view, the Verified Complaint filed against Mr. Ewing constituted the type of complaint or grievance requiring disclosure by Mr. Ewing in Paragraph 3 of the Petition to Surrender. (Tr. of Proceedings, pp. 479-80,485-88, 493-96)

147. Ms. Garrett testified that the purpose of attorney discipline is to (i) offer guidance to attorneys on how to ethically and properly represent clients and protect third parties, (ii) ensure the integrity of the profession, (iii) protect the public, (iv) hold the attorney accountable for his

misconduct, and (v) ensure that self-regulation of the profession continues. (Tr. of Proceedings, pp. 480-81, 483-84)

148. Ms. Garrett cited statements in the media report she received as further reason the institution of the disciplinary process against Mr. Ewing was necessary to protect the public and the bar. Specifically, Ms. Garrett believed the statement “State records show Ewing surrendered his law license Aug. 30, while the legal fight against him was raging in Davidson County Chancery Court. Ewing’s attorney Tom White said the surrender had nothing to do with the complaint and was instead an indication that Ewing was focused on his work as a historian and tour guide” created a public perception that the Board and the Court were aware of the conduct and did nothing. In Ms. Garrett’s view, the media article made it appear the Board was turning a blind eye or looking the other way and condoning the conduct of Mr. Ewing. Such public perceptions erode the public’s confidence in the integrity of the profession. (Tr. of Proceedings, pp. 481-84)

149. Ms. Garrett also testified that a public search of the Board’s records would reflect only that Mr. Ewing surrendered his license and no professional discipline had been imposed. In addition, pursuant to Tenn. Sup. Ct. R. 9, §15.03, Mr. Ewing is eligible to apply for a law license in Tennessee and any other jurisdiction. (Tr. of Proceedings, pp. 482-83, 492-93)

150. Near the conclusion of the three (3) day hearing before this Panel, Disciplinary Counsel asked Mr. Ewing if he would admit he misappropriated funds from the Margaret Victoria Trust for his personal use. Mr. Ewing responded “No.” (Tr. of Proceedings, pp. 612-13)

151. Mr. Ewing was asked to admit he had been dishonest with Renasant Bank regarding the ownership of the CD (####2987). Mr. Ewing responded “No.” (Tr. of Proceedings, p. 612)

152. Mr. Ewing was asked to admit he deceived Renasant Bank when he obtained the \$259,000.00 promissory loan ending in 6639-1. Mr. Ewing responded “No.” (Tr. of Proceedings, p. 612)

153. Mr. Ewing was asked if he obtain the \$259,000.00 loan through any misrepresentations to Renasant Bank, and Mr. Ewing responded “No.” (Tr. of Proceedings, p. 612)

154. Mr. Ewing was asked if he would admit he used funds of the Margaret Victoria Trust for his personal benefit. Mr. Ewing responded that he received fees for his time but otherwise “No.” (Tr. of Proceedings, p. 613)

155. Mr. Ewing was asked to admit he deposited trust funds in his personal account. Mr. Ewing “I didn’t. But the banks incorrectly did.” (Tr. of Proceedings, p. 613)

156. Mr. Ewing was asked if he would admit to misappropriating any trust funds from the Margaret Victoria Trust. Mr. Ewing responded that “As Trustee, at the time, I thought I was acting in the - under the rules of the trust. So, I made mistakes, yes. But misappropriations, no. (Tr. of Proceedings, p. 613)

157. When asked what mistakes he made, Mr. Ewing conceded he should have made sure the money was put in trust accounts, which he thought were created. (Tr. of Proceedings, p. 613-14)

158. When asked if he would admit to misleading Ms. Fort regarding serving as trustee without compensation, Mr. Ewing answered “No, I do not.” (Tr. of Proceedings, p. 615)

159. When asked if he would admit to deceiving Ms. Fort in the execution of the trust agreement, Mr. Ewing answered “No.” (Tr. of Proceedings, p. 615)

160. When asked if he would admit to breaching his fiduciary duty to Ms. Fort and the trust, Mr. Ewing answered “No.” (Tr. of Proceedings, p. 615)

161. When asked if he would admit to breaching his fiduciary duty to Ms. Fort to act in her best interest, Mr. Ewing answered “No.” (Tr. of Proceedings, p. 615)

162. When asked if he would admit to violating any rules of professional conduct, Mr. Ewing answered he made mistakes, but he did not think he violated any rules. (Tr. of Proceedings, p. 615)

163. When asked on redirect examination if his admitted mistakes were determined by the Panel to violate the rules then he would agree he violated the rule, he answered he would then agree. (Tr. of Proceedings, p. 616-17)

164. On recross examination Mr. Ewing admitted he absolutely knew the CD was a trust asset. Mr. Ewing admitted he knew he could not use trust assets for his personal benefit (Tr. of Proceedings, pp. 618-19)

165. When challenged that he took the trust asset and used it to obtain a personal loan, Mr. Ewing blamed Renasant Bank for structuring the loan that way and pointed to the lawsuit Ms. Fort filed against Renasant Bank, alleging it conspired with Mr. Ewing to commit tortious acts against Ms. Fort. (Tr. of Proceedings, pp. 618-19) (Trial Exhibit 32)

166. Mr. Ewing resolved the lawsuit with Ms. Fort by agreeing to pay \$60,000.00, and he wrote a check on his personal checking account at US Community Credit Union on March 16, 2020. (Tr. of Proceedings, pp.275- 76) (Trial Exhibits 23 and 24)

167. At the time Mr. Ewing wrote the \$60,000.00 settlement check and delivered it to Ms. Fort, the account balance in Mr. Ewing's account was negative. (Tr. of Proceedings, pp.277-79)

168. Mr. Ewing knew his account did not have sufficient funds on hand to honor the settlement check he wrote. (Tr. of Proceedings, pp.278-79)

169. Mr. Ewing also knew he would not be able to secure funding sufficient to make his check good but failed to disclose that fact to his attorney or Ms. Fort. (Tr. of Proceedings, p.284

170. Mr. Ewing testified, both at his deposition in 2023 and during the final hearing in 2025, that he suffers from long COVID and that this condition has some impact upon his memory, however, no medical records or physician's testimony was offered in support of Mr. Ewing's testimony.

## **CONCLUSIONS OF LAW**

### **Introduction**

The jurisdiction and authority of this Panel is derived from Tenn. Sup. Ct. R. 9, and the specific provisions prescribed therein. Attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts. (Tenn. Sup. Ct. R. 9, § 8 (2014)).

The license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself, or herself, at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. (Tenn. Sup. Ct. R. 9, § 1 (2014)). Acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. (Tenn. Sup. Ct. R. 9, § 11 (2014)).

In reaching our conclusions in this matter, the Panel must necessarily address a number of issues including the credibility of the witnesses and the testimony provided, the applicable ABA Standards for Imposing Lawyer Sanctions, and applicable aggravating and mitigating factors.

### **Jurisdiction**

As a threshold matter, the Hearing Panel finds it is necessary to rule on a lingering jurisdictional issue that has been raised by Mr. Ewing, but not yet formally ruled on by the Panel.

Specifically, on January 11, 2023, Mr. Ewing filed a Motion and Memorandum for Judgment on the Pleadings, asking the Panel, *inter alia*, to grant judgment in his favor with regard to the jurisdiction of the Board to impose discipline for any action alleged to have taken place after the date on which Mr. Ewing surrendered his law license, August 29, 2019.

In that motion, Mr. Ewing argued that there is simply no reasonable construction of RPC 8.4(c) that would extend the application of its prohibition to someone whose law license has been made null and void by having surrendered it and who later engages in activity not involving the unauthorized practice of law of some sort, or violation of some other ethics provision than RPC 8.4 itself.

Applying the standard of review for motions for judgment on the pleadings, the Panel specifically reserved its ruling on the question of jurisdiction for acts that occurred after August 29, 2019, until final hearing of this matter.

Because the Panel has not previously ruled on the specific issue of its jurisdiction for acts alleged to have been committed after the date that the Supreme Court accepted surrender of the law license, and because the outcome of that determination must be made before addressing the substance of those allegations, it does so here.

The Rules defining jurisdiction and grounds for enforcement can be found at Tenn. Sup. Ct. R. 9.

Rule 9, §8.1 address the *jurisdiction* of this Panel and states, in the first sentence:

Any attorney admitted to practice law in this State, including any formerly admitted attorney with respect to acts committed prior to surrender of a law license, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of this Rule or of the Rules of Professional Conduct, and any attorney specially

admitted by a court of this State for a particular proceeding and any lawyer not admitted in this jurisdiction who practices law or renders or offers to render any legal services in this jurisdiction, is subject to the disciplinary jurisdiction of the Court, the Board, panels, the district committees and hearing panels herein established, and the circuit and chancery courts of this State. (*Emphasis added*)

Rule 9 §11.1 addresses grounds for Discipline and states in pertinent part:

Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct of the State of Tennessee, including acts prior to surrender of a law license, suspension, disbarment, or transfer to inactive status on other grounds, and acts subsequent to resignation, suspension, disbarment, or transfer to inactive status which acts amount to the practice of law, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. (*Emphasis added*)

Arguably, at least on first review, there exists a tension between these two sections. On the one hand, §8.1 makes it quite clear that any formerly admitted attorney remains subject to the jurisdiction of the disciplinary process “for any acts that constitute a violation of the Rules of Professional Conduct.” And yet, §11.1 could be argued to limit the grounds for discipline, in the case of attorneys who have surrendered their law license, “to only acts which amount to the practice of law.” To the extent that §11.1 were read this way, this would raise the question of what it means to say that a former attorney remains subject to the disciplinary jurisdiction for any violation of the ethics rules, while limiting grounds for actual discipline to only those acts that constitute the unauthorized practice of law.

However, a closer reading of §11.1 reveals that this tension is illusory, as evidenced by the use of the all-important word “including”, which demonstrates that the examples that follow are not exclusionary, but rather illustrative. The important language is the phrase that precedes the word “including”: “violate the Rules of Professional Conduct of the State of Tennessee”. As the Supreme Court held in *Gragg g. Gragg*, 12 S.W. 3d 412, 415 (Tenn. 2000), use of a broad statutory

definition followed by language that the definition “includes” specific items “indicates that the enumerated items are illustrative, not exclusive”.

Moreover, to the extent that there is any tension between these two sections, the Panel, following the Supreme Court’s guidance in *Dotson v. State*, 673 S.W.3d 204, 210 (Tenn. 2023) (noting that Supreme Court rules are interpreted using the same rules of construction that apply to statutes), believes that the doctrine of *in pari materia* should be applied. Applying that rule, the Panel believes that the Supreme Court did not intend to vest disciplinary jurisdiction over violations of the Rules of Professional conduct for which there are no disciplinary remedies.

As such, the Panel believes that both parties have mis-framed the issue regarding the Panel’s jurisdiction to rule on facts found to have been committed after August 29, 2019. The issue is not, as the Board contends, whether or not those acts are related to acts that occurred prior to the surrender of the law license. Nor does the issue hinge, as Respondent appears to suggest, on whether Mr. Ewing had an affirmative duty to report the existence of the lawsuit at the time that he surrendered his law license, or at any time before the Supreme Court accepted that surrender. Rather, the answer is found in the two provisions discussed above.

In short, the Panel finds that, by adoption of these rules, the Supreme Court vested the Panel, the Board and the Courts with jurisdiction over any offense of the Rules of Professional conduct, even if an attorney validly surrendered his or her law license, prior to committing the acts in question, and regardless of whether those post-surrender acts are related to conduct that began pre-surrender.

Having determined the Panel has jurisdiction over the issues in controversy in this matter, the Panel turns its attention to Mr. Ewing’s Motion for Judgment on the Pleadings. Upon careful consideration of the Mr. Ewing’s motion, the evidence presented, the testimony of the parties and witnesses, and the entire record, Mr. Ewing’s Motion for Judgment on the Pleadings is DENIED.

## **Credibility**

Questions concerning the credibility of witnesses and the weight and value to be afforded the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). The particular trait of truthfulness is always an issue when a witness testifies. Thus, in contrast to the use of character evidence to show conformity with a trait such as violence or peacefulness, reputation and opinion evidence is always admissible to attack a witness's credibility. *State v. West*, 844 S.W.2d 144, 149 (Tenn. 1992). Courts have long acknowledged the significance of observing and hearing a witness prior to assess his or her credibility. For instance, the United States Court of Appeals for the Second Circuit has recognized that the carriage, behavior, bearing, manner and appearance of a witness – in short, his “demeanor” – is part of the evidence. The words used are by no means all that we rely on in making up our minds as judges about the truth of a question that arises in our ordinary affairs . . . *Dyer v. MacDougall*, 201 F.2d 265, 268-69 (2<sup>nd</sup> Cir 1952); see also, e.g. *Ruggieri*, 291 A 2d at 445 (resolving the question of a witness' credibility would depend largely upon the observations of the witness' testifying at trial).

The Panel had the opportunity to hear and observe each witness as they testified. Based upon careful observation of each witness and considering the substance of their testimony and the documentation introduced in the records, the Panel finds that a significant portion of the testimony of Margaret Fort, Perry Craft, Holcomb Burke, Robert Milam, Elizabeth Hickman and Sandy Garrett to be credible and worthy of trust. Similarly, the Panel also found the testimony of Aubrey Harwell and Alma Sanford, offered as character witnesses for Mr. Ewing, to be credible and worthy of trust.

In contrast, the Panel had the opportunity to hear and observe the testimony of Mr. Ewing, and found it contained a number of inconsistencies and contradictions and was often unbelievable.

For example, Mr. Ewing was court ordered to “provide a detailed account of all Trust activity” and “provide a list of all current and former accounts that held or hold Trust assets” to Ms. Fort. (Trial Exhibit 2). Mr. Ewing testified he made a full accounting as ordered by the Court. However, Mr. Ewing acknowledged that Trial Exhibit 3 omits the very page documenting the \$270,000.00 wire transfer he used as the basis for his ledger entry. In Trial Exhibit 4, the opening balance and the \$11,000.00 fees to trustee entry on Mr. Ewing’s accounting do not match the bank records Mr. Ewing relies upon to create his ledger. Mr. Ewing also failed produce an accounting for US Community Credit Union (Account No.##9002) and Renasant Bank (Account No. 5736) which received \$270,000.00 and \$259,500.00 respectively in trust funds. The documents clearly contradict Mr. Ewing’s testimony of a complete accounting.

When Mr. Ewing was asked if he obtained a personal loan of \$259,000 from Renasant Bank, he testified he would not classify it as personal loan and suggested it was a mortgage. Although Mr. Ewing knew the CD was procured with funds from the Fort Trust and that these funds were never intended to be pledged as collateral for his loan, he immediately pledged the CD as collateral for his personal \$259,000.00 loan and directed the proceeds be applied to pay off the debt secured by his personal residence. Mr. Ewing claimed the information on the disbursement request (Exhibit 14) he signed was false, yet he quitclaimed his interest in the home to his wife, free and clear of any debt. Despite the above, Mr. Ewing suggests he knew little of these transactions and just signed documents placed in front of him. The above transactions occurred between June 5 and June 16, 2017, and his explanation of the events is lacking in credibility and seems disingenuous.

Mr. Ewing’s testimony surrounding his cash withdrawals from the Fort Trust account at First Bank is also lacking in veracity. Mr. Ewing admitted in his response to request for admissions that he withdrew \$45,000.00 and \$20,005.00 in cash from the Fort Trust account. His admission

is conclusively established pursuant to Rule 36.02. Yet he continues to insist the bank documentation reflects he wrote a check for both transactions. Mr. Ewing also testified the money was withdrawn to pay his fee, but then testified the money was used to purchase vehicles for Ms. Fort and her children. Mr. Ewing's response to the Request for Admissions stated the money was not paid to him as a fee. (Trial Exhibit 16)

Based upon careful observation of Mr. Ewing and considering the substance of his testimony, the testimony of other witnesses, and the documentation introduced in the records, the Panel does not find Mr. Ewing to be a credible witness in this matter.

### **Violations of Rules of Professional Responsibility**

Mr. Ewing is charged with violating RPC 1.1, 1.4, 1.5, 1.15, 3.3 and 8.4 (a-d). We address each Rule below:

#### **RULE 1.1: COMPETENCE**

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”

The Board alleges Mr. Ewing violated RPC 1.1 in his performance as Trustee of the Margaret Victoria Fort Irrevocable Trust Agreement and his representation of Margaret Fort. The evidence before the Panel clearly demonstrates Mr. Ewing failed to perform in a competent manner. Mr. Ewing failed to provide Ms. Fort with a full and complete accounting of the Trust Account transactions despite receiving written requests from Ms. Fort and being ordered by the Chancery Court to do so. Mr. Ewing did not maintain or produce receipts or documentation substantiating numerous large cash withdrawals from the Fort Trust Account. Mr. Ewing had a duty to set up appropriate trust accounts for receiving trust funds and ensure that all trust funds remain in trust.

Mr. Ewing failed to set up any trust funds at US Community Credit Union or Renasant Bank. Mr. Ewing removed \$270,000.00 from the Fort Trust and deposited those trust funds into his personal accounts. Mr. Ewing was aware the Fort Trust funds were deposited improperly into on his personal accounts but took no action to return the funds to an appropriate trust account. In fact, Mr. Ewing knowingly and intentionally used Fort Trust funds as collateral to obtain a \$259,000.00 personal loan which he used to pay off a HELOC on his personal residence. Mr. Ewing admitted he had never served as a Trustee and his oversight and recordkeeping was inadequate.

The Panel finds the Board has met its burden of proof that Mr. Ewing's conduct violated RPC 1.1.

#### **RULE 1.4: COMMUNICATION**

- (a) A lawyer shall:
  - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these Rules;
  - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - (3) keep the client reasonably informed about the status of the matter;
  - (4) promptly comply with reasonable requests for information; and
  - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The Board alleges Mr. Ewing violated RPC 1.4 in his performance as Trustee of the Margaret Victoria Fort Irrevocable Trust Agreement and his representation of Margaret Fort. The evidence before the Panel clearly demonstrates Mr. Ewing failed to keep Ms. Fort reasonably

informed about the Trust, failed to promptly inform Ms. Fort of decision or circumstance which required her informed consent, and comply with reasonable requests from Ms. Fort for information regarding her Trust.

The evidence before the Panel clearly demonstrates Mr. Ewing never shared any Fort Trust financial information or documentation with Ms. Fort, never shared any Fort Trust financial information regarding funds transferred to U.S. Community Credit Union until Ms. Fort filed a lawsuit, never shared any Fort Trust financial information regarding funds transferred to Renasant Bank until the lawsuit was filed, never disclosed to Ms. Fort that he was making large cash withdrawals from the Fort Trust account, never informed Ms. Fort that he pledged Fort Trust funds to pay his personal mortgage debt, never obtained Margaret Fort's consent to transfer Fort Trust funds to Mr. Ewing's personal accounts or to use Fort Trust funds as collateral to obtain a \$259,000.00 loan to pay off Mr. Ewing's personal debt, never informed Ms. Fort he was not keeping detailed records and supporting documentation of every Fort Trust transaction, and never informed her he was charging her \$350.00 per hour to serve as Trustee.

The Panel finds the Board has met its burden of proof that Mr. Ewing's conduct violated RPC 1.4.

**RULE 1.5:**  
**FEES**

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

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;

- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent;
- (9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
- (10) whether the fee agreement is in writing.

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

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or the award of custodial rights, or upon the amount of alimony or support, or the value of a property division or settlement, unless the matter relates solely to the collection of arrearages in alimony or child support or the enforcement of an order dividing the marital estate and the fee arrangement is disclosed to the court; or
- (2) a contingent fee for representing a defendant in a criminal case.

- (e) A division of a fee between lawyers who are not in the same firm may be made only if:
  - (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
  - (2) the client agrees to the arrangement, and the agreement is confirmed in writing; and
  - (3) the total fee is reasonable.
- (f) A fee that is nonrefundable in whole or in part shall be agreed to in a writing, signed by the client, that explains the intent of the parties as to the nature and amount of the nonrefundable fee.

The Board alleges Mr. Ewing violated RPC 1.5 by charging or collecting an unreasonable fee. The evidence before the Panel clearly demonstrates Mr. Ewing charged and/or collected an unreasonable fee in the amount of \$194,916.61. Although disputed by Mr. Ewing, the Panel finds credible the testimony of Ms. Fort that Mr. Ewing agreed to serve as trustee without compensation. This finding by the Panel alone supports finding a violation of RPC 1.5. However, there are additional facts that support a violation of RPC 1.5.

Mr. Ewing had no written fee agreement with Ms. Fort that provided for an hourly rate of \$350.00 per hour. Ms. Fort was unaware Mr. Ewing was charging \$350.00 per hour, and Mr. Ewing never prepared or sent Ms. Fort a billing statement reflecting Mr. Ewing's services. Mr. Ewing's handwritten time ledger, titled "Legal & Trustee Work on Fort Trust @ \$350.00," contains fourteen (14) pages of time entries prior to May 27, 2017, the date the Margaret Victoria Fort Irrevocable Trust Agreement was executed, and Mr. Ewing was appointed Trustee. A thorough review of Mr. Ewing's handwritten time ledger reflects work that is best described as ministerial or administrative in nature. For example, there are numerous entries reflecting Mr. Ewing was simple performing banking services for Ms. Fort, such as writing checks for bills or transferring money.

Such administrative work could and should have been performed by someone at a far lower cost to Ms. Fort or the Fort Trust than \$350.00 per hour.

Given the proof before this Panel, charging any fee for banking services appears highly suspect. Even if the banking services were legitimate, charging \$350.00 is excessive. The hourly rate of \$350.00 might be reasonable for legal work necessarily performed by an attorney, but Mr. Ewing denied repeatedly he performed any legal work and asserted the services he provided was as Trustee. Given his admitted lack of knowledge and training to serve as Trustee, his inability to provide anything close to a complete accounting of the Fort Trust Fund transaction, and his misappropriation and improper use of Fort Trust funds for his personal benefit, any fee charged and/or collected by Mr. Ewing is clearly unreasonable.

Mr. Ewing could have detailed the fee he intended to charge in the trust agreement he prepared, but he did not. The fact that the Fort Trust Agreement allows a reasonable fee for services rendered by a trustee does not prohibit the parties from agreeing that no fee be charged. Given the long-term friendship and close relationship between Mr. Ewing and Ms. Fort, it seems quite likely no fee was expected to be paid by Ms. Fort to Mr. Ewing.

The Panel finds the Board has met its burden of proof that Mr. Ewing's conduct violated RPC 1.5.

#### **RULE 1.15 SAFEKEEPING OF PROPERTY**

- (a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds.
- (b) Funds belonging to clients or third persons shall be deposited in a separate account maintained in a financial institution, deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC) and/or National Credit Union Association (NCUA), having a

deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the required overdraft notification program as required by Supreme Court Rule 9, Section 35.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

- (1) Except as provided by subparagraph (b)(2), interest earned on accounts in which the funds of clients or third persons are deposited, less any deduction for financial institution service charges or fees (other than overdraft charges) and intangible taxes collected with respect to the deposited funds, shall belong to the clients or third persons whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.
- (2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or third persons in excess of the costs incurred to secure such income in one or more pooled accounts known as an "Interest on Lawyers' Trust Account" ("IOLTA"), in accordance with the requirements of Supreme Court Rule 43. A lawyer shall not deposit funds in any account for the purpose of complying with this sub-section unless the account participates in the IOLTA program under Rule 43.
- (3) The determination of whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) rests in the sound discretion of the lawyer. No charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in making such a determination.

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

- (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such funds or other property.
- (e) When in the course of representation a lawyer is in possession of property or funds in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property or funds as to which the interests are not in dispute.
- (f) A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts to identify and return the funds to the rightful owner. If after 12 months of the discovery of the unidentified funds the lawyer determines that ascertaining the ownership or securing the return of the funds will not succeed, the lawyer must remit the funds to the Tennessee Lawyers' Fund for Client Protection (TLFCP). No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph (f).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to TLFCP, which after verification of the claim will return the funds to the lawyer.

The Board alleges Mr. Ewing violated RPC 1.15 by failing to hold the property and funds of Ms. Fort and the Fort Trust place in his possession separate from Mr. Ewing's own property and funds, and failing to deposit those trust funds in a separate account and keep complete records of such funds and other property preserved for a period of five years after termination of the representation.

Through the testimony and bank records provided, the Board has carried its burden of proof of the misappropriation, conversion and misuse of Fort Trust funds by Mr. Ewing. Within days of becoming Trustee, Mr. Ewing transferred \$270,000.00 of Fort Trust funds and used those Fort

Trust funds to secure a \$259,000.00 personal loan to pay off the HELCO on his personal residence. Mr. Ewing had no authority to transfer those Fort Trust funds to his personal accounts or use those funds for his personal benefit. Even more concerning to this Panel is the testimony of Mr. Milam that he was approached by Mr. Ewing in May 2017 about paying off the HELOC releasing the lien on his residence. Although not established definitively, it could be reasonably inferred that Mr. Ewing planned in advance to misappropriate Ms. Fort's funds once he was appointed as Trustee pursuant to the Margaret Victoria Fort Irrevocable Trust Agreement.

The proof is significant that Mr. Ewing failed to maintain complete records of the Fort Trust Transactions. His accounting is clearly incomplete and somewhat misleading. Mr. Ewing did not provide his bank account records from US Community Credit or his personal bank account records from Renasant despite knowing Fort Trust funds had been deposited into those accounts and transferred from those accounts.

Finally, Mr. Ewing withdrew \$149,925.00 in cash from the Fort Trust and has not produced any receipts of supporting documentation that those funds were paid directly to Ms. Fort or to others for her benefit. Ms. Fort testified she did not receive any of those cash withdrawals and they were not used to pay any legitimate debt of hers. Mr. Ewing offered no meaningful accounting for these cash withdrawals and what explanation he did provide was contradictory. In his responses to the Request for Admissions, Mr. Ewing admitted that he withdrew cash from the Fort Trust account at First Bank. Admissions under T.R.C.P. Rule 36 are conclusively established unless the court on motion permits withdrawal or amendment of the admission. See T.R.C.P. Rule 36.02. Mr. Ewing did not seek any such relief and his admissions are conclusive.

The Panel finds the Board has met its burden of proof that Mr. Ewing's conduct violated RPC 1.15.

**RULE 3.3**  
**CANDOR TOWARD THE TRIBUNAL**

- (a) A lawyer shall not knowingly:
  - (1) make a false statement of fact or law to a tribunal; or
  - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  - (3) in an ex parte proceeding, fail to inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.
- (b) A lawyer shall not offer evidence the lawyer knows to be false, except that a lawyer who represents a defendant in a criminal proceeding, and who has been denied permission to withdraw from the defendant's representation after compliance with paragraph (f), may allow the client to testify by way of an undirected narrative or take such other action as is necessary to honor the defendant's constitutional rights in connection with the proceeding.
- (c) A lawyer shall not affirm the validity of, or otherwise use, any evidence the lawyer knows to be false.
- (d) A lawyer may refuse to offer or use evidence, other than the testimony of a client who is a defendant in a criminal matter, that the lawyer reasonably believes is false, misleading, fraudulent or illegally obtained.
- (e) If a lawyer knows that the lawyer's client intends to perpetrate a fraud upon the tribunal or otherwise commit an offense against the administration of justice in connection with the proceeding, including improper conduct toward a juror or a member of the jury pool, or comes to know, prior to the conclusion of the proceeding, that the client has, during the course of the lawyer's representation, perpetrated such a crime or fraud, the lawyer shall advise the client to refrain from, or to disclose or otherwise rectify, the crime or fraud and shall consult with the client about the consequences of the client's failure to do so.
- (f) If a lawyer, after consultation with the client as required by paragraph (e), knows that the client still intends to perpetrate the crime or fraud, or refuses or is unable to disclose or otherwise rectify the crime or fraud, the lawyer shall seek permission of the tribunal to withdraw from the representation of the client and shall inform the tribunal, without further disclosure of information protected by Rule 1.6, that the lawyer's request to withdraw is required by the Rules of Professional Conduct.
- (g) A lawyer who, prior to conclusion of the proceeding, comes to know that the lawyer has offered false tangible or documentary evidence shall

withdraw or disaffirm such evidence without further disclosure of information protected by Rule 1.6.

- (h) A lawyer who, prior to the conclusion of the proceeding, comes to know that a person other than the client has perpetrated a fraud upon the tribunal or otherwise committed an offense against the administration of justice in connection with the proceeding, and in which the lawyer's client was not implicated, shall promptly report the improper conduct to the tribunal, even if so doing requires the disclosure of information otherwise protected by Rule 1.6.
- (i) A lawyer who, prior to conclusion of the proceeding, comes to know of improper conduct by or toward a juror or a member of the jury pool shall report the improper conduct to the tribunal, even if so doing requires the disclosure of information otherwise protected by Rule 1.6.
- (j) If, in response to a lawyer's request to withdraw from the representation of the client or the lawyer's report of a perjury, fraud, or offense against the administration of justice by a person other than the lawyer's client, a tribunal requests additional information that the lawyer can only provide by disclosing information protected by Rule 1.6 or 1.9(c), the lawyer shall comply with the request, but only if finally ordered to do so by the tribunal after the lawyer has asserted on behalf of the client all non-frivolous claims that the information sought by the tribunal is protected by the attorney-client privilege.

The Board alleges Mr. Ewing violated RPC 3.3 by failing to disclose to the Supreme Court and the Board of Professional Responsibility he had been sued in the Chancery Court for Davidson County by Ms. Fort for misappropriation, conversion and misuse of trust funds. The Board asserts Tenn. Sup. Ct. R. 7, §15.01 can be fairly interpreted as requiring Mr. Ewing to disclose in his Petition to Surrender the existence of the Verified Complaint filed by Ms. Fort alleging misappropriation, conversion and misuse of trust funds. Mr. Ewing asserts that Tenn. Sup. Ct. R. 7, §15.01 should read narrowly to require only disclosure of disciplinary grievances and complaints. Ms. Garrett testified that the Board would have objected to the Petition to Surrender had Mr. Ewing disclosed he had been accused of misappropriation, conversion and misuse of trust funds by Ms. Fort. Ms. Garrett also testified that the Verified Complaint filed against is exactly the

type of grievance or complaint that should have been disclosed in the Petition to Surrender pursuant to Tenn. Sup. Ct. R. 7, §15.01.

The Panel has reviewed Tenn. Sup. Ct. R. 7, §15.01, and finds the language therein to clearly require disclosure of the allegations set forth in the Verified Complaint. Mr. Craft's testimony established that on August 8, 2019, he informed Mr. Ewing about the filing of the Verified Complaint, including the nature of its allegations, and that he was filing a motion for the TRO, pursuant to Local Rule. Mr. Craft further testified that service of process for his filings was completed. This testimony shows that Mr. Ewing had actual notice of the complaint and its contents, and the purpose for the TRO. As a result, Mr. Ewing was obligated to disclose the existence of these allegations when he applied to surrender his law license under §15.01. Misappropriation, conversion or misuse of Trust funds for personal benefit clearly violates the Rules of Professional Conduct and is reasonably likely to generate a disciplinary complaint with the Board. In fact, the Board opened a disciplinary complaint the day, or shortly after, it was made aware of the Verified Complaint alleging misappropriations and conversion of trust funds. In light of the allegations set forth in the Verified Complaint, any reasonable attorney should expect to receive a disciplinary complaint arising for engaging in such conduct.

Mr. Ewing's failure to disclose the pending Verified Complaint misled the Supreme Court and the Board of Professional Responsibility. Mr. Ewing's failure to amend his Petition to Surrender pending before the Supreme Court constitutes a fraud upon a tribunal and an offense against the administration of justice. Mr. Ewing's failure to amend his Petition to Surrender pending before the Supreme Court or otherwise notify the Board of the Verified Complaint, prevented the Board from amending its response to assert an objection to the Petition to Surrender and constitutes an offense against the administration of justice.

The Panel finds the Board has met its burden of proof that Mr. Ewing's conduct violated RPC 3.3.

**RULE 5.7**  
**RESPONSIBILITIES REGARDING LAW RELATED SERVICES**

- (a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law related services, as defined in paragraph (b), if the law related services are provided:
  - (1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or
  - (2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that the person obtaining the law related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.
- (b) The term "law related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-lawyer.

The Board alleges Mr. Ewing prepared the Margaret Victoria Fort Irrevocable Trust Agreement for Ms. Fort and thereafter served as Trustee for Ms. Fort and the Fort Trust. The Board alleges Mr. Ewing provided legal services to Ms. Fort when he prepared the Margaret Victoria Fort Irrevocable Trust Agreement and his service thereafter as Trustee constitutes law related services as contemplated by RPC 5.7, thereby subjecting Mr. Ewing to the Rules of Professional Responsibility.

Based upon the evidence presented and the record as a whole, the Panel has determined the misconduct of Mr. Ewing subjects him to the Rules of Professional Conduct in this matter.

Although the Panel believes RPC 5.7 applies in the particular facts and circumstances presented, the Panel does not find it necessary to rely upon RPC 5.7 to invoke the Rules of

Professional Conduct. Mr. Ewing, in his capacity as Trustee, misappropriated trust funds, failed to account to Ms. Fort and the Fort Trust as required and made material misrepresentations, directly and by omission, to Ms. Fort, the Fort Trust, and Renasant Bank Officers to hide his misconduct and self-dealing.

The proof before this Panel is sufficient to subject Mr. Ewing to the Rules of Professional Conduct without relying on RPC 5.7. In the alternative, the Panel would find that the circumstances and proof in the record would support a finding that RPC 5.7 does apply to Mr. Ewing and his misconduct as previously detailed above.

#### **RULE 8.4 MISCONDUCT**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (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;
- (d) engage in conduct that is prejudicial to the administration of justice;

The proof in this matter is sufficient to show that Mr. Ewing engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation; engaged in conduct that is prejudicial to the administration of justice; and committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. Mr. Ewing misappropriated, converted and misused Fort Trust funds for his personal gain and that of his family.

Mr. Ewing transferred Fort Trust funds to his personal checking accounts at US Community Credit Union and Renasant Bank in violation of the duties he admitted he owed to Margaret Fort

and the Fort Trust. Mr. Ewing concealed his misconduct from Margaret Fort and failed to provide her with a full account of his misuse of the funds he was entrusted to manage for Ms. Fort. Mr. Ewing engaged in self-dealing and used \$259,000.00 of Fort Trust funds knowingly and intentionally to obtain a personal loan in the amount of \$259,000.00.

Mr. Ewing made material misrepresentations knowingly and intentionally to Renasant Bank Officers to further his intent to release the recorded lien on his personal residence and quitclaim his interest to his spouse. Mr. Ewing acted dishonestly and fraudulently as Trustee and deceived Ms. Fort and Renasant Bank to misappropriate and misuse over a quarter of a million dollars for his and his family's personal benefit.

Mr. Ewing deceived and defrauded Ms. Fort to induce her to appoint Mr. Ewing as Trustee. Prior to being appointed Trustee, Mr. Ewing approached Rob Milam at Renasant Bank to obtain a personal loan to close out his HELOC on his residence. Mr. Ewing did not disclose to Ms. Fort that he intended to immediately misappropriate Fort Trust funds to fund the payoff of his HELOC on his personal residence.

Mr. Ewing also engaged in dishonesty and deceit and made material misrepresentations to the Supreme Court of Tennessee and the Board of Professional Responsibility in his Petition to Surrender. Mr. Ewing failed to disclose the existence of the Verified Complaint and the issuance of a Temporary Restraining Order against him centering on serious professional misconduct related to the misappropriation, conversion, and misuse of Fort Trust Funds. Had Mr. Ewing disclosed this information to the Court and the Board, the Board would have objected to Mr. Ewing's Petition to Surrender and opened a disciplinary investigation. Upon the filing of an objection by the Board and the opening of a disciplinary investigation, it seems reasonable to conclude that the Petition to Surrender would not have been granted.

Finally, Mr. Ewing issued a \$60,000 settlement check to Ms. Fort, knowing his checking account had a negative balance and insufficient funds to honor the check. The check was dishonored, leading Ms. Fort to file a second action against him. Mr. Ewing wrote a worthless check and failed to disclose this fact to his attorney or Ms. Fort prior to its presentment and dishonor.

The parties have spent a great amount of effort and resources defending their position on whether this post-surrender act has any bearing on the Panel's decision. The Panel finds that the proof before this Panel is sufficient to subject Mr. Ewing to RPC 8.4 without relying upon this evidence. As such, the Panel declines to consider this evidence in making its determination.

Therefore, considering the circumstances and proof in the record, the Panel finds that the Board has met its burden of proof that Mr. Ewing's conduct violated RPC 8.4.

#### **APPLICATION OF THE ABA STANDARDS**

Pursuant to Tenn. Sup. Ct. R. 9, § 15.4(a), “[i]f the hearing panel finds one or more grounds for discipline of the respondent attorney, the hearing panel's judgment shall specify the type of discipline imposed: disbarment (Section 12.1), suspension (Section 12.2), or public censure (Section 12.4).” In imposing a sanction after a finding of lawyer misconduct, the Panel should consider the following factors: (a) the duty violated; (b) the lawyer's mental state; (c) the actual or potential injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. (ABA Standard 3.0). Under the ABA Standards, intent is defined as “the conscious objective or purpose to accomplish a particular result” and knowledge is defined as “the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.”

ABA Standards for Imposing Lawyer Sanctions are guideposts for determining the appropriate level of discipline for attorney misconduct. *Lockett v. Bd. of Prof'l Responsibility*, 380 S.W.3d 19, 26 (Tenn.2012). The ABA Standards are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct, and a hearing panel may consider the full panoply of sanctions applicable to lawyer misconduct even if a particular ABA Standard does not explicitly describe the fact pattern in question. *Bd. of Prof'l Responsibility v. Daniel*, 549 S.W.3d 90, 100 (Tenn. 2018). In cases where lawyer misconduct seems to fall between presumptive sanctions or within multiple ABA Standards identifying different presumptive sanctions, hearing panels and the Supreme Court are able and authorized to make an ultimate determination on the appropriate sanction. *Id.* at \* 102. Under such circumstances, hearing panels should identify all relevant ABA Standards and then determine a sanction within the range of the presumptive sanctions identified in the relevant ABA Standards. *Id.* The ABA Standards suggest the appropriate baseline sanction, and aggravating and mitigating factors provide a basis for increasing or reducing the sanction imposed. ABA Standard 3.0. See also *Hancock v. Bd. of Prof'l Responsibility*, 447 S.W.3d 844, 857 (Tenn. 2014)(length of an attorney's suspension, however, depends in large part on the aggravating and mitigating circumstances).

Based upon the proof presented, the Panel finds the following ABA Standards for Imposing Lawyer Sanctions are applicable:

#### **FAILURE TO PRESERVE THE CLIENT'S PROPERTY**

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

#### **LACK OF DILIGENCE**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

### **LACK OF COMPETENCE**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to provide competent representation to a client:

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.

### **LACK OF CANDOR**

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

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

### **VIOLATIONS OF DUTIES OWED TO THE PUBLIC**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally

appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

## **VIOLATIONS OF DUTIES OWED TO THE LEGAL SYSTEM**

6.1 False Statements, Fraud, and Misrepresentation

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

6.11 Disbarment 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.

The Board has proven by a preponderance of the evidence that Mr. Ewing, while serving as trustee for Margo Fort, engaged in conduct in violation of Tenn. Sup. Ct. R. 8, RPC 1.1. Prior to serving as Trustee for Ms. Fort, Mr. Ewing had never been a trustee for any individual in the past, had never even operated a trust account, and, as a result of his lack of experience and lack of understanding of what would be required of a trustee, performed the duties of a Trustee in an inadequate manner.

The Board has proven by a preponderance of the evidence that Mr. Ewing, while serving as trustee for Margo Fort, failed to comply with his obligations with respect to communication with Ms. Fort in violation of Tenn. Sup. Ct. R. 8, RPC 1.4. Mr. Ewing did not provide Ms. Fort with all of the information reasonably necessary for her to make decisions about matters.

The Board has proven by a preponderance of the evidence that Mr. Ewing, while serving as trustee for Margo Fort, charged attorney fees to Ms. Fort in a total amount that was unreasonable in violation of Tenn. Sup. Ct. R. 8, RPC 1.5(a).

The Board has proven by a preponderance of evidence that Mr. Ewing, while serving as trustee for Margo Fort, engaged in financial transactions that violated Tenn. Sup. Ct. R. 8, RPC 1.15. Regardless of what Mr. Ewing's intentions were, the Board has proven that money that should have been held in trust was deposited into personal bank accounts of Mr. Ewing, and that funds belonging to the Trust were not always held separate from Mr. Ewing's own property.

The Board has proven by a preponderance of evidence that Mr. Ewing knew or should have known that he had a duty to disclose the allegations set forth in the Verified Complaint in his application to surrender his law license, and his failure to do so in his initial application, or a subsequent amendment, constituted a fraud upon a tribunal and an offense against the admiration of justice in violation of Tenn. Sup. Ct. R. 8, RPC 3.3.

The Board has proven by a preponderance of evidence that Mr. Ewing prepared the Margaret Victoria Fort Irrevocable Trust Agreement for Ms. Fort and thereafter served as Trustee for Ms. Fort and the Fort Trust. His actions in preparing the Margaret Victoria Fort Irrevocable Trust Agreement and his services thereafter as Trustee constitutes law related services as contemplated by RPC 5, and thereby subjecting Mr. Ewing to the Rules of Professional Responsibility under Tenn. Sup. Ct. R. 8, RPC 5.7.

The Board has proven by a preponderance of evidence that Mr. Ewing engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation; engaged in conduct that is prejudicial to the administration of justice; and committed acts that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, in violation of Tenn. Sup. Ct. R. 8, RPC 8.4(c).

The proof and evidence before this Panel establishes that Mr. Ewing violated multiple duties he admitted he owed to Ms. Fort and the Fort Trust as well as duties he owed to the Court, the Board and other third-parties such as Renasant Bank. The proof and evidence before this Panel establishes that Mr. Ewing acted knowingly and intentionally and his misconduct caused actual serious injury. Mr. Ewing engaged in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on his fitness to practice in violation of Tenn. Sup. Ct. R. 8, RPC 8.4(c).

Based upon the foregoing, the Panel finds the appropriate baseline sanction to be disbarment.

### **AGGRAVATING FACTORS**

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanctions to impose. Having determined the baseline sanction, the Panel now considers the existence of any aggravating or mitigating factors and their applicability to this disciplinary matter. Pursuant to ABA Standard 9.22, the following aggravating factors were considered by the Hearing Panel and found to be applicable to determine the appropriate discipline to be imposed against Mr. Ewing:

1. Mr. Ewing's failure to acknowledge the wrongful nature of his conduct is an aggravating circumstance justifying an increase in discipline to be imposed.

2. Mr. Ewing's multiple offenses are an aggravating circumstance justifying an increase in discipline.
3. Mr. Ewing's experience in the practice of law, having been licensed in Tennessee in 1994, is an aggravating circumstance justifying an increase in discipline.
4. The vulnerability of Ms. Fort is an aggravating circumstance justifying an increase in discipline.
5. Mr. Ewing's dishonest and self-serving motive is an aggravating circumstance justifying an increase in discipline.
6. Mr. Ewing's refusal to acknowledge the wrongful nature of his conduct.
7. Mr. Ewing's lack of remorse for his misconduct.
8. Mr. Ewing's indifference to making restitution is an aggravating circumstance justifying an increase in discipline.
9. Mr. Ewing's breach of his fiduciary duty and the trust generated by his close personal relationship with his friend and client is an aggravating circumstance justifying an increase in discipline.

### **MITIGATING FACTORS**

Pursuant to ABA Standard 9.32, the following mitigating factors were considered by the Hearing Panel and found to be applicable to determine the appropriate discipline to be imposed against Mr. Ewing:

1. Absence of a prior disciplinary record. The Panel notes that Mr. Ewing has no prior disciplinary record.
2. Character or Reputation - The Panel considered the character and reputation testimony presented by Mr. Ewing but did not find it sufficiently compelling to constitute mitigation. The testimony at the final hearing reflected that Mr. Ewing has a good reputation in the Nashville community and that he is perceived to be a

person of good character. Aubrey B. Harwell, Jr. a respected Tennessee lawyer who has practiced law since 1967, testified about his familiarity with Mr. Ewing as a historian and someone he has known for 20 to 25 years, along with his opinion that Mr. Ewing is a decent and honest man who made some mistakes and would have benefited from having a mentor. Alma Sanford, a lawyer who had practiced mainly probate law in Kansas in the 1980s and 1990s, and who also testified to having known Mr. Ewing for at least fifteen (15) years. Ms. Sanford served with Mr. Ewing for four years on the Board of Zoning Appeals. Ms. Sanford testified that she had never had any interactions with Mr. Ewing that caused her to doubt his trustworthiness or honesty. Ms. Sanford testified that she had reviewed documents related to this case, that the contents of the materials she reviewed did not sound like the Mr. Ewing she knew, and that she would trust Mr. Ewing with her money. However, Mr. Harwell and Ms. Stanford both acknowledged that Mr. Ewing's conduct would be troubling, disturbing or concerning, if true, and would represent a different David Ewing than the one they knew. (Tr. of Proceedings, pp. 372-735, 593-602-03). The Panel has determined the allegations of misappropriation, conversion, and misuse of trust money are true thereby minimizing the value of the character and reputation testimony offered by Mr. Ewing.

## **JUDGMENT**

The Supreme Court has recognized that “[w]hile the attorney disciplinary process is punitive in some respects, its purpose is to safeguard the administration of justice, protect the public from the misconduct or unfitness of members of the legal profession, and preserve the confidence of the public in the integrity and trustworthiness of lawyers in

general.” *Hornbeck v. Bd. of Prof'l Responsibility*, 545 S.W.3d 386, 396-97, 2018 WL 915027, at \*8 (Tenn. 2018) (citing ABA Standard 1.1). See also, *Bd. of Pro. Resp. v. Barry*, 545 S.W.3d 408 (Tenn. 2018).

Mr. Ewing insists he presents no threat to the public as he no longer possesses a license. He sees the effort to impose professional discipline on him as primarily punitive and a waste of Board resources. Mr. Ewing’s argument ignores the fact that the attorney disciplinary process does more than serve to protect the public. It is also intended to safeguard the administration of justice and preserve the confidence of the public in the integrity and trustworthiness of lawyers in general.

Mr. Ewing has no disciplinary history, and anyone who searches the public records of the Board would not be aware of his egregious misconduct. Thus, there is nothing to prevent Mr. Ewing from using his former status to engage in this conduct in the future. Holding the position of attorney or even former attorney is a matter of pride for most individuals and projects a status of prestige with the general public. The media article “Explore Nashville on Foot” promoting Mr. Ewing’s walking tour business makes note of his status as attorney. (Trial Exhibit 35). As pointed out by the Board, there is a public perception that the Board and the Court allowed Mr. Ewing to surrender his license despite being sued for misappropriation of trust. This suggests the Board was ignoring or turning a blind eye to Mr. Ewing’s misconduct.

One of the requisite qualifications for one who holds the office of an attorney at law is that he or she shall be of good moral character, in so far as it relates to the discharge of the duties and responsibilities of an attorney at law. But where there is lacking honesty, probity, integrity, and fidelity to trusts reposed in him, it matters not whether the lack of such virtues is revealed in transactions with clients, in the conduct of lawsuits, or any other business dealings or relations. These qualities are highly essential on the part of those who are to exercise the privileges and responsibilities of members of the bar. When the lack of them becomes apparent, no matter what

the character of the deal or transaction that may furnish the evidence, it becomes the duty of the court to purge its roster of an unreliable member. *Schoolfield v. Tennessee Bar Ass'n*, 209 Tenn. 304, 310, 353 S.W.2d 401, 403-404 (1961). See *Milligan v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 301 S.W.3d 619, 631 (Tenn. 2009) (Remorse and awareness of prior wrongdoing, among other factors, are regularly cited as marks of good moral character, and various jurisdictions have recognized these as appropriate factors to consider in gauging moral character).

The Panel believes the imposition of discipline on Mr. Ewing will serve to safeguard the administration of justice, preserve the confidence of the public in the integrity and trustworthiness of lawyers in general, and ensure that self-regulation of the profession continues.

Based upon the facts and evidence entered in this action, the application of the Rules of Professional Conduct and considering the ABA Standards, the Hearing Panel finds by a preponderance of the evidence that Mr. Ewing committed disciplinary misconduct and should be disbarred from the practice of law pursuant to Tenn. Sup. Ct. R. 9, § 12.1.

The Hearing Panel further finds that Mr. Ewing should pay restitution for the unreasonable fees he collected for his services and the funds he misappropriated from the Fort Trust, pursuant to Tenn. Sup. Ct. R. 9, § 12.7. These amounts are as follows:

- (a) Collection of unreasonable Fee - \$194,916.61
- (b) Misappropriation via cash withdrawals - \$149,925.00

The Panel orders that Mr. Ewing shall make restitution to Margaret Fort for the amounts listed above minus any settlement amount she has received from Mr. Ewing, Renasant Bank, and First Bank as it pertains to the collection of unreasonable fees and misappropriation of trust funds pursuant to any settlement agreements entered into in resolution of the Chancery Court lawsuit.

ENTERED this the 9<sup>th</sup> day of February 2026.

/s/ Michael J. Sandler, Sr.

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Michael J. Sandler, Panel Chair

/s/ Daniel H. Puryear (by permission MJS)

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Daniel H. Puryear, Panel Member

/s/ Matthew T. Harris (by permission MJS)

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Matthew T. Harris, Panel Member