Lawyers Handling Other People's Money

Written Materials Prepared By:

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Applicable Model Rules of Professional Conduct

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; and

(8) whether the fee is fixed or contingent.

(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 upon the amount of alimony or support, or property settlement in lieu thereof; 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, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

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Rule 1.15: Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account 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.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(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 property.

(e) When in the course of representation a lawyer is in possession of property 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 as to which the interests are not in dispute.

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Rule 1.16: Declining or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

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Rule 8.4: Misconduct

It is professional misconduct for a lawyer to:

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

Applicable Virginia Rules of Professional Conduct and Legal Ethics Opinions

Virginia Rule of Professional Conduct 1.5 sets forth the requirements for attorney's fees and fee agreements. It is very similar to the Model Rule.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. 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; and

(8) whether the fee is fixed or contingent.

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(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 state in writing 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. 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 a contingent fee:

(1) in a domestic relations matter, except in rare instances; or

(2) 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 client is advised of and consents to the participation of all the lawyers involved;

(2) the terms of the division of the fee are disclosed to the client and the client consents thereto;

(3) the total fee is reasonable; and

(4) the division of fees and the client's consent is obtained in advance of the rendering of legal services, preferably in writing.

(f) Paragraph (e) does not prohibit or regulate the division of fees between attorneys who were previously associated in a law firm or between any successive attorneys in the same matter. In any such instance, the total fee must be reasonable.

Significant Legal Ethics Opinions regarding attorneys' fees are Legal Ethics Opinion 1606, which is a compendium opinion regarding fees; Legal Ethics Opinion 1812, which addresses the premature termination of a contingency fee agreement; and Legal Ethics Opinion 1899, which addresses the premature termination of flat fee agreements. All three opinions are attached.

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Rule 1.15 lays out the requirements for trust accounting, including the types of funds that must be kept in a trust account, recordkeeping, and reconciliation. Virginia's Rule 1.15 is much more detailed than the Model Rule, especially with regard to recordkeeping requirements.

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an

accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

(b) Specific Duties. A lawyer shall:

(1) promptly notify a client of the receipt of the client's funds, securities, or other properties;

(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be

used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

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Rule 1.16(d) requires attorneys to refund unearned fees upon termination of representation.

RULE 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

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When an attorney's misuse of trust funds involves criminal, deliberately wrongful, or dishonest conduct that reflects adversely on the attorney's fitness to practice law, Rule 8.4(b) and (c) apply:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

. . .

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law[.]

Virginia Trust Accounting Resources

- Trust Accounting Frequently Asked Questions, available at https://vsb.org/Site/Site/lawyers/ethics.aspx?hkey=bc8a99e2-7578-4e60-900f-45991d5c432b
- Lawyers and Other People's Money, available at https://vsb.org/common/Uploaded%20files/docs/pub-te-trusts.pdf. Keep in mind that Rule 1.15 has been amended since this publication was written.
- Virginia State Bar Legal Ethics Opinion Library, available at https://www.vsb.org/Site/about/rules-regulations/leo-opinions.aspx.
- Virginia State Bar Disciplinary Actions, available at https://www.vsb.org/Site/news/disciplinary-actions.aspx.

Applicable Tennessee Rules of Professional Conduct

TN Supreme Court Rule 8

RPC 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.

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RPC 1.15. Safekeeping Property and Funds

(a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds.

(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.

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RPC 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in a violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or imprudent;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unanticipated and substantial financial burden on the lawyer or has been rendered unreasonably difficult by the client;

(7) other good cause for withdrawal exists; or

(8) the client gives informed consent confirmed in writing to the withdrawal of the lawyer.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) A lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client's interests. Depending on the circumstances, protecting the client's interests may include: (1) giving reasonable notice to the client; (2) allowing time for the employment of other counsel; (3) cooperating with any successor counsel engaged by the client; (4) promptly surrendering papers and property to which the client is entitled and any work product prepared by the lawyer for the client and for

which the lawyer has been compensated; (5) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse affect on the client with respect to the subject matter of the representation; and (6) promptly refunding any advance payment of fees that have not been earned or expenses that have not been incurred.

Additional Tennessee Resources

- Tennessee Attorney's Trust Account Handbook, available at tn-attorneys-trust-account-handbook-2023.pdf (tbpr.org)

- Board of Professional Responsibility Trust Accounting and Ethics Workshop Video, available at https://youtu.be/8LY5mOT0z-Y?si=PYN1T4e2xQD1BHrw

- Tennessee's Proactive Management-Based Regulation (Voluntary Self-Assessment), available at https://www.tbpr.org/tennessees-pmbr

- Board of Professional Responsibility's Formal Ethics Opinions, available at https://www.tbpr.org/for-legal-professionals/formal-ethics-opinions

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DAVID GARY HOFFMAN

VSB DOCKET NO: 20-051-115298
20-051-116229

MEMORANDUM ORDER

THIS MATTER came on to be heard on December 17, 2021, by video conference,[1] before a panel of the Virginia State Bar Disciplinary Board ("the Board") consisting of Thomas R. Scott, First Vice Chair; Sandra L. Havrilak; Bretta M. Z. Lewis; Jennifer D. Royer; and Reba H. Davis, Lay Member. The Virginia State Bar (the "VSB") was represented by Senior Assistant Bar Counsel Elizabeth K. Shoenfeld ("Senior Assistant Bar Counsel"). David Gary Hoffman (the "Respondent") did not appear.

The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Jennifer L. Hairfield, court reporter, Chandler and Halasz, Inc., PO Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System ("Clerk") in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18 of the Rules of the Supreme Court of Virginia.

[1] The Board held the hearing electronically, using the Microsoft (MS) Teams platform, pursuant to Virginia Code § 2.2-3708.2.A.3, as amended effective July 1, 2021, by Chapter 490 of the 2021 Acts of Assembly of Virginia, during the COVID-19 pandemic, and the City of Richmond's emergency declaration, pursuant to Resolution No. 2020-R025, adopted March 16, 2020, to provide for the continuity of operations of the Board and to discharge its lawful purposes, duties, and responsibilities. The hearing was recorded and otherwise complied with the Virginia Freedom of Information Act regarding electronic meetings.

The matter came before the Board on the District Committee Determination for Certification by the Fifth District, Section I pursuant to Part 6, Section IV, Paragraph 13-18 of the Rules of the Supreme Court of Virginia involving misconduct charges against the Respondent.

At the beginning of the proceedings, the First Vice Chair reported that he had received the following documents from the Respondent after the final Pretrial Conference: Addendum to Answer to Charges, an Affidavit from Jessica Presley, and an Affidavit from Tara McCabe. The First Vice Chair marked the documents as Respondent's Exhibit 1, 1A, and 1B, respectively.

The First Vice Chair also introduced a statement received from the Respondent via email dated December 16, 2021, in which the Respondent advised the Clerk that he would not attend the hearing and requested a two-month delay in the effective date of any sanction imposed by the Board. The Vice Chair marked the email communication as Respondent's Exhibit 2, which was received without objection, and admitted into evidence. Finally, the First Vice Chair introduced his email response to the Respondent dated December 16, 2021, as Board's Exhibit 1, which was admitted without objection.

The Board heard testimony from the following witnesses, who were sworn under oath: Bar Investigator David Jackson and complainant David Gawrylowicz. VSB Exhibits 1-53 were marked and received into evidence, without objection. All of the factual findings made by the Board were found to have been proven by clear and convincing evidence.

MISCONDUCT

Respondent was licensed to practice law in the Commonwealth of Virginia on September 29, 1983, and he was an attorney licensed to practice law in the Commonwealth of Virginia at all

times relevant to the conduct set forth herein.[2] Based upon the evidence presented and for the reasons set forth more particularly herein below, the Board finds, by clear and convincing evidence, that Respondent's conduct constitutes misconduct in violation of *Rules* 1.5, 1.15, and 8.4.

I. VSB Docket No. 20-051-116229 (Complainant Alison Lambeth)

Since 2010, Respondent has practiced law under the firm names Hoffman Law or Hoffman & Mathey, P.C.[3] Respondent practices primarily estate planning and administration, and his practice includes preparing wills, trusts, and power of attorney documents.[4] For most work performed, Respondent accepts an advanced, flat fee.[5] In or about 2019, Respondent created Fiduciary Services, Inc., which he owns and operates.[6] Respondent is the only attorney associated with Fiduciary Services, Inc., and at all relevant times, Respondent retained exclusive control over the recordkeeping and bank accounts for Hoffman Law, Hoffman & Mathey, P.C., and Fiduciary Services, Inc.[7] Since at least 2013, Respondent has not maintained a trust account for Hoffman Law, Hoffman & Mathey, P.C., or Fiduciary Services, Inc.; rather, all advanced legal fees were deposited into one of several checking accounts.[8]

In or about 2013, Respondent began accepting advanced legal fees from clients to administer the clients' estates upon the clients' death.[9] In a communication to clients, written on letterhead reading "Hoffman & Mathey, P.C. Attorneys and Counselors at Law," Respondent described his estate settlement services as including:

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[2] VSB Ex. 4.
[3] VSB Ex. 9.
[4] VBS Ex. 5.
[5] *Id.*
[6] VSB Ex. 9.
[7] VSB Ex. 5.
[8] VSB Ex. 21.
[9] VSB Ex. 10 and 14.

> Probate Will; Qualify Executor; Prepare List of Heirs; Obtain EIN for Estate; Prepare Probate Information Form; Prepare Probate Notifications; Prepare Probate Affidavit; Prepare Probate Inventory; Prepare Probate Account; Prepare 2nd Probate Account; Prepare Form 706; Prepare Form I 04 l (Estate); Prepare Form l 041 (Trust); Prepare Form 770 (Estate); Prepare Form 770 (Trust); Prepare 2nd Form I 04 l (Estate); Prepare 2nd Form I 041 (Trust); Prepare 2nd Form 770 (Estate); Prepare 2nd Form 770 (Trust); Prepare Letters of Declination; Prepare Beneficiary Agreements Form 706 Audit Defense; Form I 041 Audit Defense; Form 770 Audit Defense; Debts and Demands Hearing; Show Cause Order; Obtain DOD Valuations; Prepare Claims for Life Insurance Proceeds; Prepare Claims for Benefits; Prepare Ownership change(s); Negotiate Final Debts AND Assist with liquidation/distribution of assets.[10]

The amount of Respondent's fee for estate settlement services varied because Respondent calculated the fee based on the client's net worth at the time of the contract.[11] Regardless of the type of services they were requesting, all of Respondent's clients signed a document entitled a "Legal Services Agreement."[12] On its face the "Legal Services Agreement" is a contract between the client and either "Hoffman & Mathey, P.C. (Firm)" or "David G. Hoffman (Attorney)."[13] The Legal Services Agreements identified a flat, advanced fee as the "Firm's Compensation" or the "Attorney's Compensation" and stated that "[a]ny payment that is due, upon the signing of this contract or thereafter, is deemed earned at that time."[14] Respondent asserted that for his estate planning clients, he prepared the estate planning documents the same day he accepted payment.[15] However, Respondent acknowledged that the work was not completed until the documents were finalized and executed by the clients.[16]

Between January 2015 and September 2020, Respondent's Legal Services Agreements reflected that Respondent accepted hundreds of thousands of dollars in advanced fees for estate-

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[10] *Id.*
[11] VSB Ex. 5.
[12] VSB Ex. 18.
[13] *Id.*
[14] *Id.*
[15] VSB Ex. 5.
[16] *Id.*

related work, including both estate planning and estate settlement work.[17] In total, the amount of fees collected by Respondent and not deposited into a trust account totaled at least $1,946,226.75.[18] When the VSB investigator asked Respondent about his financial records, he said that all client fees paid by credit card are deposited into the Fiduciary Services business operating account, regardless of whether the payment relates to estate planning or estate settlement.[19] Checks are deposited into either the Fiduciary Services operating account or Respondent's personal account, depending on how the check is written.[20] Funds in the Fiduciary Services account are then transferred to Respondent's personal account, although Respondent occasionally moved funds from his personal account into the Fiduciary Services operating account.[21] Respondent also paid filing fees, payroll and other personal expenses from his personal account, which was payable on death to his wife.[22]

Between September 2019 and April 2020, Respondent over drafted the Fiduciary Services operating account seven times.[23] Respondent then moved money from his personal account to cover the shortfalls.[24] Because Respondent was using personal accounts, rather than trust accounts, the banks were under no obligation to report any overdrafts to the Bar; thus, Respondent was able to skirt the *Rules* and engage in these nefarious financial transactions without detection. Respondent has also failed to maintain client ledgers for any clients.[25]

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[17] VSB Ex. 20.
[18] *Id.*
[19] VSB Ex. 21.
[20] *Id.*
[21] *Id.*
[22] *See* VSB Ex. 16.
[23] VSB Ex. 5 and 21.
[24] *Id.*
[25] VSB Ex. 5.

The Board finds by clear and convincing evidence that Respondent's conduct, as set forth herein, constitutes misconduct in violation of *Rules* 1.5(a), 1.15(a)(1), 1.15(b)(5), 1.15(c)(2), 1.15(c)(4), 1.15(d)(3)(i), 1.15(d)(3)(iii), and 8.4(b).

Rule 1.5(a) requires a lawyers fee to be reasonable, taking into account a number of factors, including but not limited to the lawyer's experience, ability, and reputation; the nature of the employment; the responsibility and effort involved; and the results obtained.[26] In Legal Ethics Opinion 1606, the Legal Ethics Committee noted that "the concept of a non-refundable or minimum fee paid in advance for specific legal services is violative of the Disciplinary Rules" because "[a] non-refundable fee compromises the client's unqualified right to terminate the attorney client relationship, ...[and] the retention of a non-refundable fee would violate the attorney's responsibility to refund to a client any advanced fee that had not been earned."[27] The Committee went on to explain that "[a] fee that is not earned is per se an unreasonable fee. Thus the retention of an unearned non-refundable fee would result in the lawyer collecting an unreasonable fee."[28] Respondent's representation to his clients that his fee was earned before the work was completed was unreasonable and a violation of *Rule* 1.5(a) in that it was, essentially, a non-refundable fee. Moreover, by charging for services that could only be performed after his clients' deaths, and only if their executors chose to retain him to perform such services, the Respondent violated *Rule* 1.5(a) because he essentially eliminated the client's right to terminate the attorney-client relationship and receive a refund of the fees advanced. Additionally, by charging such clients fees based upon the then-current value of their estates, which could be

[26] *Va. Rules of Prof'l Conduct Rule* 1.5(a).
[27] Virginia State Bar Standing Comm. on Legal Ethics, Legal Ethics Op. 1606 (1994) (Compendium Opinion, Va. Sup. Ct. Approved (2016)).
[28] *Id.*

depleted before their deaths, the Board finds that Respondent's fees were unreasonable and another violation of *Rule* 1.5(a).

Pursuant to *Rule* 1.15(a)(1), "[a]ll funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts."[29] By accepting hundreds of thousands of dollars in advanced legal fees from clients and failing to deposit them into a trust account, Respondent violated *Rule* 1.15(a)(1).

Rule 1.15(b)(5) prohibits a lawyer from disbursing funds of a client without their consent or converting funds of a client.[30] When the Respondent advanced legal fees to himself before they were earned, he converted the funds of his clients in violation of *Rule* 1.15(b)(5).

Rules 1.15(c)(2) requires a lawyer to maintain "[a] client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance;"[31] and, *Rule* 1.15(c)(4) requires said ledger to be preserved for at least five years following the representation.[32] The Respondent never maintained client ledgers for his clients and, thus, violated *Rules* 1.15(c)(2) and 1.15(c)(4).

Furthermore, because Respondent did not maintain client ledgers, he could not reconcile the ledger balances for his clients or reconcile the trust account balance with the client ledger balance. Such actions are in violation of *Rules* 1.15(d)(3)(i) and (iii), which require monthly

[29] *Va. Rules of Prof'l Conduct Rule* 1.15(a)(1).
[30] *Va. Rules of Prof'l Conduct Rule* 1.15(b)(5).
[31] *Va. Rules of Prof'l Conduct Rule* 1.15(c)(2).
[32] *Va. Rules of Prof'l Conduct Rule* 1.15(c)(4).

reconciliations of the client ledger balance for each client and reconciliations of the trust account balance of each client with the client's ledger balance.[33]

Finally, the Respondent acted in violation of *Rule* 8.4(b) when he failed to maintain hundreds of thousands of dollars of client funds in a trust account and instead disbursed these funds to Respondent's business and personal accounts. Such actions reflect adversely on the lawyer's honesty, trustworthiness or fitness to practice law and, therefore, constitute a violation of *Rule* 8.4(b).[34]

For the foregoing reasons, the Board finds by clear and convincing evidence that the Respondent engaged in conduct in violation of *Rules* 1.5(a), 1.15(a)(1), 1.15(b)(5), 1.15(c)(2), 1.15(c)(4), 1.15(d)(3)(i), 1.15(d)(3)(iii), and 8.4(b).

II. VSB Docket No. 20-051-115298 (Complainant David Gawrylowicz)

On February 12, 2019, Henry Gawrylowicz visited Respondent's office. Mr. Gawrylowicz was 90 years old, suffering from dementia, and residing in an assisted living center.[35] An aide accompanied Mr. Gawrylowicz. During the meeting, Respondent presented and Mr. Gawrylowicz signed a "Legal Services Agreement" ("the first Agreement").[36] The first Agreement stated that it was between Mr. Gawrylowicz and "David G. Hoffman (Attorney)."[37] Mr. Gawrylowicz agreed to pay $2,182 for Respondent to complete his "Living Trust Plan - Standard."[38] This plan included Respondent's completion of estate documents including a living

[33] *Va. Rules of Prof'l Conduct Rule* 1.15(d)(3)(i), (iii).
[34] *See Va. Rules of Prof'l Conduct Rule* 8.4(b).
[35] VSB Ex. 24.
[36] VSB Ex. 25.
[37] *Id.*
[38] *Id.*

revocable trust, pour over will, power of attorney, and advanced medical directive.[39] The first Agreement stated that payment was deemed earned upon receipt.[40]

On or about February 19, 2019, Mr. Gawrylowicz provided a cashier's check made out to "Hoffman Law" for $2,182.[41] The same day, the cashier's check was deposited into Respondent's business checking account.[42] On February 20, 2019, Mr. Gawrylowicz's payment was transferred into Respondent's personal account.[43] On February 21, 2019, Respondent mailed draft documents to Mr. Gawrylowicz at his former home address, where Mr. Gawrylowicz no longer lived.[44] Respondent's cover letter indicated that "these are draft documents and are not intended for signature."[45]

On March 21, 2019, Respondent visited Mr. Gawrylowicz at the assisted living center, where Mr. Gawrylowicz had been moved to the memory care unit.[46] Respondent spoke with an administrator for the center, who told Respondent that Mr. Gawrylowicz's son, David Gawrylowicz, held the power of attorney for his father.[47] Respondent told the administrator that they could not keep Mr. Gawrylowicz in the memory care unit and that he was being held prisoner. Respondent became argumentative and threatened to call Adult Protective Services.[48] During his March 21, 2019, visit to Mr. Gawrylowicz, Respondent presented, and Mr. Gawrylowicz signed, a second Legal Services Agreement ("the second Agreement"), which also stated that it was between Mr. Gawrylowicz and "David G. Hoffman (Attorney)."[49] The second

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[39] *Id.*
[40] *Id.*
[41] VSB Ex. 26.
[42] *Id.*
[43] *Id.*
[44] VSB Ex. 30.
[45] *Id.*
[46] VSB Ex. 24 and 38.
[47] *Id.*
[48] VSB Ex. 38.
[49] VSB Ex. 32.

Agreement stated that "Attorney's Compensation" was $12,818 for "ongoing representation" and "estate settlement."[50] Like the first Agreement, the second Agreement stated that any payment is deemed earned when received.[51]

During his meeting with Respondent, Mr. Gawrylowicz possessed a credit card; however, out of concern for his father's health condition and judgment, David Gawrylowicz had removed the chip and scratched the magnetic strip so that it could not be used.[52] Although the credit card was visibly damaged, the numbers remained visible.[53] On March 21, 2019, Respondent billed this credit card in the amount of $12,818.[54]

After Respondent visited Mr. Gawrylowicz at the memory care unit, Respondent spoke with David Gawrylowicz, who told Respondent about his father's condition.[55] The next day, Respondent went back to the memory care unit and presented Mr. Gawrylowicz with a document revoking all prior general durable powers of attorney and naming Respondent as his power of attorney.[56] Mr. Gawrylowicz signed the document but did not date it, and no notary was present.[57]

When David Gawrylowicz learned that Respondent had taken money from his father, David Gawrylowicz filed a complaint with the Fairfax County Police Department.[58] On March 24, 2019, David Gawrylowicz emailed Respondent and notified him that he had filed a complaint.[59] The next day, Respondent called Adult Protective Services.[60] On April 29, 2019, a

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[50] *Id.*
[51] *Id.*
[52] VSB Ex. 24 and 33.
[53] *Id.*
[54] *Id.*
[55] VSB Ex. 44.
[56] VSB Ex. 37.
[57] *Id.*
[58] VSB Ex. 40.
[59] *Id.*
[60] VBS Ex. 45.

representative of Adult Protective Services wrote a letter confirming that Mr. Gawrylowicz was not in need of protective services.[61] On May 14, 2019, David Gawrylowicz sent a copy of the letter from Adult Protective Services to Respondent and demanded the return of the $15,000 that Respondent had taken from his father.[62] Respondent replied, "I will return your father's payments even though I have completed one of the projects for which he hired me and I have expended time on a second project. I do this to reduce the issues I need to address on his behalf. The payments will be credited back to the credit card he used."[63]

During the VSB's investigation of this matter, Respondent said that he would give Mr. Gawrylowicz's money back because it was "just the right thing to do."[64] As of the date of these proceedings, Respondent has not returned any of Mr. Gawrylowicz's money.

The Board finds by clear and convincing evidence that Respondent's conduct, as set forth herein, constitutes misconduct in violation of *Rules* 1.5(a), 1.15(a)(1), 1.15(b)(5), and 8.4(b) and (c).

As set forth herein above with regard to VSB Docket No. 20-051-116229, Respondent violated *Rule* 1.5(a) with regard to Mr. Gawrylowicz's case when he represented to his client that his fee was earned before the work was completed. The Respondent likewise violated *Rule* 1.15(a)(1) when he failed to deposit Mr. Gawrylowicz's advanced legal fees into a trust account; and, he violated *Rule* 1.15(b)(5) when he disbursed Mr. Gawrylowicz's funds to himself before they were earned.

Rule 8.4(b) provides that it is professional misconduct for a lawyer to "commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or

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[61] VSB Ex. 45.
[62] *Id.*
[63] VSB Ex. 46.
[64] VSB Ex. 24.

fitness to practice law;"[65] and, *Rule* 8.4(c) provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law."[66] Respondent's actions of converting Mr. Gawrylowicz's funds for his own personal use by billing Mr. Gawrylowicz's credit card in the amount of $12,818.00, although the card was visibly altered to make it unreadable by a scanner, while Mr. Gawrylowicz was in a memory care unit and with the knowledge that Mr. Gawrylowicz's son held his power of attorney violated *Rules* 8.4(b) and (c). Additionally, Respondent's failure to return Mr. Gawrylowicz's funds despite saying he would do so and despite performing no estate settlement services for Mr. Gawrylowicz's estate after Mr. Gawrylowicz's death violated Rule 8.4 (c).

SANCTIONS PHASE OF HEARING

After the Board announced its findings by clear and convincing evidence that Respondent had committed the *Rule* violations charged in the Certification, it received further evidence regarding aggravating and mitigating factors applicable to the appropriate sanction to be imposed, including Respondent 's prior disciplinary record, which was received as VSB Exhibit 54, without objection.

The Board considered the Respondent's lack of prior disciplinary actions as a mitigating factor.

With respect to aggravating factors, the Board heard evidence of the Respondent having engaged in his pattern of misconduct and of multiple offenses engaging in the same misconduct over two hundred times. The Respondent also refused to acknowledge the wrongful nature of his conduct and, instead, attempted to attack the complainants. The Board heard evidence of

[65] *Va. Rules of Prof'l Conduct Rule* 8.4(b).
[66] *Va. Rules of Prof'l Conduct Rule* 8.4(c).

Respondent's act of informing the complainant, Mr. Gawrylowicz, that his father did not like him and wanted to disinherit him and Respondent's attempt to portray the complainant, Ms. Lambeth, as lacking credibility by making scurrilous attacks on her personal life.

DISPOSITION

At the conclusion of the evidence in the sanctions phase of the proceeding, the Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation and review of the foregoing findings of fact, upon review of exhibits presented by Senior Assistant Bar Counsel on behalf of the VSB, upon the testimony from the witnesses presented on behalf of the VSB, and upon argument of Senior Assistant Bar Counsel, the Board reconvened and stated its finding that, when considered together, Respondent's pattern of misconduct demonstrates a serious failure to uphold his duties to the profession.

During its deliberation and in determining the appropriate sanction to impose, the Board considered the mitigating and aggravating factors set forth in the American Bar Association's Standards for Imposing Lawyer Sanctions, including but not limited to patterns of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, vulnerability of victim, and indifference to making restitution.[67] In this case, the Board found the aggravating factors to be significant. Not only did the Respondent's pattern of misconduct demonstrate a dishonest or selfish motive, but the Respondent refused to acknowledge the wrongful nature of his conduct. Respondent also preyed on elderly victims who were particularly vulnerable and unable to take action to protect their own interests. Respondent also refused to make restitution, despite previously stating that it was the right thing to do.

[67] ABA ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS, at 418 (2015).

According to the ABA Standards, "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 potentially serious injury to a client"[68] and "when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system."[69] As stated above, the Board was particularly troubled by the Respondent's repeated acts of misconduct as well as the vulnerability of his chosen victims. He engaged in a pattern of conduct whereby he knowingly deceived his elderly clients for his own benefit. He knowingly charged fees that he had not earned (and, in many cases, may never have the opportunity to earn), and he failed to maintain client ledgers or hold such fees in trust accounts, intentionally skirting the oversight of the Bar. Respondent's actions demonstrate his lack of a moral compass and lack of fitness to practice law. Accordingly, any sanction other than revocation would be a disservice to the Virginia legal community and the public at large.

Accordingly, upon consideration of the evidence and the nature of the misconduct committed by Respondent, it is ORDERED that the Respondent, David Gary Hoffman's, license to practice law in the Commonwealth of Virginia be revoked, effective December 17, 2021.

It is further ORDERED that, as directed in the Board's December 17, 2021, Summary Order in this matter, Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, of the revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent is currently handling matters, including all of Respondent's estate settlement clients, and to all opposing Attorneys and

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[68] ABA ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS, at 199 (2015).
[69] ABA ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS, at 341 (2015).

presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice immediately and in no event later than fourteen (14) days of the effective date of this sanction, and make such arrangements as are required herein as soon as is practicable and in no event later than forty-five (45) days of the effective date of this sanction. The Respondent shall also furnish proof to the Clerk of the Disciplinary System of the Virginia State Bar within sixty (60) days of the effective date of the Revocation that such notices have been timely given and such arrangements have been made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of his Revocation, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within sixty (60) days of the effective day of the Revocation. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein. The burden of proof shall be on the Respondent to show compliance. If the Respondent fails to show compliance, the Board may impose additional sanctions for failure to comply with the requirements of Paragraph 13-29.

It is further ORDERED that pursuant to Part 6, Section IV, Paragraph 13-9.E of the *Rules of the Supreme Court* of *Virginia*, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent by certified mail, return receipt requested, and by regular first-class mail and to his address of record with the Virginia State Bar, being Hoffman Law, P.C., 12011 Lee Jackson Memorial Highway, Suite 225, Fairfax, Virginia 22033, and a copy

shall be hand-delivered to Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED this 7th day of February, 2022.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Thomas R. Scott, First Vice Chair

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

VIRGINIA STATE BAR EX REL
EIGHTH DISTRICT COMMITTEE

Complainant,

v. **Case No. CL23-342**

DALE REESE JENSEN

Respondent. **VSB DOCKET NOS. 22-080-124753; 22-080-125016; 22-080-125134; 22-080-125221; 22-080-125485; 22-080-125529; 22-080-125496; and 23-080-126976**

FINAL MEMORANDUM ORDER

THIS MATTER was heard on October 23-26, 2023 before a Three-Judge Circuit Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia (1950) as amended, consisting of the Hon. Cheryl V. Higgins of the Sixteenth Judicial Circuit as Chief Judge Designate ("Chief Judge"), the Hon. Daryl L. Funk of the Twenty-Sixth Judicial Circuit as Judge, and the Hon. F. Patrick Yeatts of the Twenty-Fourth Judicial Circuit as Judge (collectively, "the Court").

Assistant Bar Counsel Paulo E. Franco, Jr. and Seth T. Shelley represented the Virginia State Bar ("VSB"). Respondent, having received proper notice, appeared in person at all times throughout the proceedings and acted *pro se*.

The Chief Judge swore the court reporter, and each member of the Court verified that he or she had no personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in this matter.

WHEREUPON a hearing was conducted upon the Rule to Show Cause issued on July 7, 2023 against Respondent. The Rule directed Respondent to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked, or otherwise sanctioned by reason of the allegations of ethical misconduct set forth in the Certification issued on May 22, 2023 ("the Certification") by a subcommittee of the Eighth District Committee of the VSB. The Certification addressed eight matters as follows:

VSB Docket No. 22-080-125529, Complainant Philip James Ostrander;

VSB Docket No. 23-080-126976, Complainant Flora Skipwith;

VSB Docket No. 22-080-125134, Complainant Charnette Jones;

VSB Docket No. 22-080-125016, Complainants Antonio Townsend and Maria Lankford;

VSB Docket No. 22-080-125485, Complainant Eugene A. Fredo;

VSB Docket No. 22-080-125221, Complainant Thomas Purcell;

VSB Docket No. 22-080-124753, Complainant Monique Nichols; and

VSB Docket No. 22-080-125496, Complainant Virginia State Bar.

The Respondent requested, and the Court granted, a rule on witnesses, except for Complainants Flora Skipwith, Charnette Jones, and Thomas Purcell, who remained in the courtroom throughout most of the proceedings pursuant to Part 6, Section IV, Paragraph 13-18.K of the Rules of the Supreme Court of Virginia.

MISCONDUCT PHASE

On respective motions of the parties, the Court admitted the VSB's Exhibits A1-A22, B1-B5, C1-C17, D1-D18, E1-E39, F1-F25, G1-G16, H1-H18, and I1-I11, and Respondent's Exhibits 1-31 prior to opening statements. Thereafter, the parties presented opening arguments. During the Misconduct phase, the VSB called the following witnesses:

1. VSB Investigator Robert Baker;
2. Jessica N. Sherman-Stoltz, Esquire;
3. Nicholas Ostrander;
4. Flora Skipwith;
5. Charnette L. Jones;
6. The Hon. Robert E. Tyler, Commonwealth's Attorney for Charles City County;
7. Velnita Harmon;
8. John Fredo (by Polycom); and
9. Thomas Purcell.

During the VSB's case in chief, the Court admitted into evidence VSB Exhibits B6, C18-C19, D19-D21, E40, G17-G18, and J1-J7 (Affidavits of Phillip Ostrander, Michael Robinson, Christopher Albert, Antonio Townsend, Maria Lankford, Eugene Fredo, and Nahfis Nichols). Respondent testified in each of the eight cases. Respondent called no other witnesses in the Misconduct phase. The Court admitted into evidence Respondent's Exhibits 32-40 during his case presentation. The VSB thereafter called VSB Investigator Robert Baker ("Investigator Baker") to testify in rebuttal in the Fredo case (VSB Docket No. 22-080-125485).

On October 25, 2023, at the conclusion of all the evidence in the Misconduct phase, counsel presented closing arguments to the Court, and the Court thereafter recessed for the evening. On October 26, 2023, the Court reconvened at 10:00 a.m. to announce its findings regarding the Misconduct phase of the trial.

Upon due deliberation and consideration of the parties' exhibits, witness testimony, and the arguments of counsel, the Court made the following findings of fact by clear and convincing

evidence and then made the following conclusions of law with respect to the allegations in the Certification.

1. Respondent was admitted to the VSB on October 13, 2005. At all relevant times, Respondent was a member of the VSB. (VSB Ex. A3)

2. Respondent's address of record is in Staunton, Virginia. He also maintains an office in Charlottesville, Virginia where he sees clients by appointment. (VSB Ex. A3)

3. Case law in Virginia prior to 2016 recognized that defective indictments were procedural in nature and could, therefore, be waived. (VSB Ex. A7)

4. Respondent developed a legal theory sometime in 2016 that the Indictment Clause of the Fifth Amendment to the United States Constitution applied to the states via the Fourteenth Amendment to the United States Constitution, thereby creating a constitutional right to a proper indictment, rendering any conviction based on a defective indictment void *ab initio* ("Defective Indictment Argument"). (VSB Ex. A1 at p. A-10, ¶¶14-16 and p. A-380, ¶¶7-9)

5. Respondent developed this theory in connection with his representation of Phillip Ostrander ("Mr. Ostrander"), one of the Complainants identified in the Certification. *Id.*

6. Respondent filed a Motion to Vacate Mr. Ostrander's criminal convictions in the Circuit Court for the City of Chesapeake on April 21, 2016 in which Respondent alleged that Mr. Ostrander's indictments were defective because they were not properly returned in open court, nor were they recorded in the records of the Clerk's Office. By letter opinion dated May 17, 2016, the Circuit Court for the City of Chesapeake rejected the Defective Indictment Argument. (VSB Ex. A4)

7. On May 31, 2016, the Court of Appeals of Virginia handed down its opinion in *Epps v. Commonwealth,* 66 Va. App. 393, 785 S.E.2d 792 (2016), holding that defects in an indictment are procedural in nature and can be waived. (VSB Ex. A5)

8. On June 16, 2016, the Circuit Court for the City of Chesapeake denied the Motion for Rehearing that Respondent filed on Mr. Ostrander's behalf, citing the Court of Appeals of Virginia's decision in *Epps v. Commonwealth.* (VSB Ex. A6)

9. Respondent subsequently filed a Petition for Appeal on Mr. Ostrander's behalf with the Supreme Court of Virginia. (VSB Ex. A13)

10. At or about the same time, Respondent filed an appeal with the Supreme Court of Virginia on behalf of a client named Ronald Cooke ("Mr. Cooke"), raising the Defective Indictment Argument on his behalf. (VSB Ex. A8)

11. On June 1, 2017, the Supreme Court of Virginia affirmed the Court of Appeals' decision in *Epps v. Commonwealth,* 293 Va. 403, 799 S.E.2d 516 (2017), via published opinion. (VSB Ex. A7)

12. On June 5, 2017, Respondent downloaded a copy of the Supreme Court of Virginia's opinion in *Epps v. Commonwealth.* (VSB Ex. A7)

13. On August 23, 2017, the Supreme Court of Virginia refused the petition for appeal that Respondent filed on behalf of Mr. Cooke, citing its decision in *Epps v. Commonwealth.* (VSB Ex. A8)

14. On September 8, 2017, Respondent filed a petition for appeal in the Court of Appeals of Virginia on behalf of a client named Qiuxiang Liu ("Ms. Liu") from a criminal conviction in the Circuit Court of Arlington County, alleging that her conviction was void *ab initio* based on the Defective Indictment Argument. (VSB Ex. A18)

15. On October 5, 2017, the Supreme Court of Virginia refused the petition for appeal that Respondent filed on behalf of Mr. Ostrander. (VSB Ex. A13)

16. Respondent appealed the decisions of the Supreme Court of Virginia in the Cooke and Ostrander matters to the United States Supreme Court. (VSB Exs. A9 and A14)

17. On December 15, 2017, the Court of Appeals of Virginia dismissed Ms. Liu's petition for appeal, citing, among other cases, the Supreme Court of Virginia's decision in *Epps v. Commonwealth.* (VSB Ex. A20)

18. On January 8, 2018, the United States Supreme Court denied the petition for a writ of certiorari that Respondent filed on behalf of Mr. Cooke. (VSB Ex. A10) Respondent thereafter filed a petition for rehearing. (VSB Ex. A11)

19. On January 23, 2018, the Court of Appeals of Virginia denied the Petition for Rehearing that Respondent filed on Ms. Liu's behalf. (VSB Ex. A22)

20. On March 5, 2018, the United States Supreme Court denied the petition for a writ of certiorari that Respondent filed on behalf of Mr. Ostrander. (VSB Ex. A15). Respondent thereafter filed a petition for rehearing. (VSB Ex. A16)

21. On March 19, 2018, the United States Supreme Court denied the petition for rehearing that Respondent filed on behalf of Mr. Cooke. (VSB Ex. A12)

22. On April 16, 2018, the United States Supreme Court denied the petition for rehearing that Respondent filed on behalf of Mr. Ostrander. (VSB Ex. A17)

23. Flora Skipwith, Charnette Jones, Velnita Harmon, John Fredo, and Thomas Purcell testified in person; and Michael Robinson (VSB Ex. J2), Christopher Albert (VSB Ex. J3), Antonio Townsend (VSB Ex. J4), and Eugene Fredo (VSB Ex. J6) each testified by Affidavit, that at no time did Respondent advise any of them that the legal challenges Respondent prepared were similar to the one he prepared for Mr. Ostrander, or that the Defective Indictment Argument had been rejected by at least one Virginia circuit court, the Court of

Appeals of Virginia, and twice by both the Supreme Court of Virginia and the United States Supreme Court.

24. Respondent also did not advise these subsequent clients and their families of the Supreme Court of Virginia's opinion in *Epps v. Commonwealth*, 293 Va. 403, 799 S.E.2d 576 (2017). *Id.*

25. Sometime in January of 2021, VSB Investigator David Jackson provided Respondent a copy of Legal Ethics Opinion 1606 ("LEO 1606"), which was adopted by the Supreme Court of Virginia in 2016. (VSB Ex. A1, p. A-88 at ¶381 and p. A-417 at ¶86)

26. In all of these cases, Investigator Baker testified that Respondent admitted in interviews that he did not properly handle clients' advance legal fees in accordance with Rule 1.15 of the Virginia Rules of Professional Conduct. Throughout his Answer to the Certification and in his witness testimony, Respondent admitted that he did not handle clients' advance legal fees properly, due to him having a different interpretation of the requirements set forth in LEO 1606, adopted by the Supreme Court of Virginia in November of 2016.

27. Despite having been provided a copy of LEO 1606 in January 2021, from at least that time through June 2021, Respondent deposited only one advance legal fee in his trust account – for a case review in the Albert matter – and even in that instance, he subsequently failed to withdraw all of those funds after they had been earned. As a result, Respondent comingled earned fees with other client advance fees held in trust. (VSB Exs. D7 and I2)

VSB DOCKET NO. 22-080-125529
Complainant: Philip James Ostrander

FINDINGS OF FACT

28. Phillip Ostrander ("Mr. Ostrander") was convicted of several felonies by a jury in the Circuit Court for the City of Chesapeake on May 22, 2006 and was given a custodial sentence in the Virginia Department of Corrections. (VSB Ex. J1 at ¶3)

29. Sometime in 2015, Mr. Ostrander saw Respondent's advertisement in a prison newspaper. (VSB Ex. J1 at ¶4)

30. Mr. Ostrander retained Respondent sometime in 2015 to represent his interests in seeking post-conviction relief. (VSB Exs. B3 at p. B-137 and J1 at ¶5)

31. Mr. Ostrander, by way of his family members, paid Respondent an advance fee of $15,000 to retain Respondent's services to file a motion to vacate based on the Defective Indictment Argument. (VSB Ex. J1 at ¶4 and ¶7, testimony of Investigator Baker).

32. Investigator Baker testified that Respondent stated to him during the investigation that Respondent did not deposit those advance legal fees into his trust account as required by Rule 1.15 of the Virginia Rules of Professional Conduct.

33. Investigator Baker testified that Respondent failed to keep the proper records of the manner in which Mr. Ostrander's advance legal fee was earned, that he did not keep proper cash receipts and disbursement journals, and that he did not properly reconcile his trust account in accordance with the requirements of Rule 1.15 of the Virginia Rules of Professional Conduct.

34. In his Answer to the Certification and in his witness testimony, Respondent admitted that he did not handle clients' advance legal fees properly, due to him having a different interpretation of the requirements set forth in LEO 1606, adopted by the Supreme Court of Virginia in November of 2016.

35. In 2020, after the United States Supreme Court's refusal to grant a writ of certiorari in Mr. Ostrander's case involving the Defective Indictment Argument, Mr. Ostrander subsequently retained Respondent to file a federal civil action against the Virginia Department of Corrections alleging various torts and other claims. (VSB Ex. J1 at ¶12)

36. Mr. Ostrander expressed frustration in JPay emails that he sent Respondent that during this representation, Respondent effectively ceased communicating with him. (VSB Ex. B5, testimony of Nicholas Ostrander, Mr. Ostrander's son)

37. Respondent did not advise Mr. Ostrander that he filed a lawsuit on his behalf in the United States District Court for the Eastern District of Virginia, Norfolk Division, on January 22, 2021, alleging violations of his civil rights (the "Federal Civil Action"). (VSB Exs. B1 at pp. B-6 – B-17 and J1 at ¶13)

38. On July 8, 2021, the defendants in the Federal Civil Action moved to dismiss the lawsuit for failure to state a claim. (VSB Ex. B1 at pp. B-24 – B-58)

39. The United States District Court for the Eastern District of Virginia, Norfolk Division, granted defendants' motion to dismiss Respondent's complaint, but allowed Respondent leave to file an amended complaint. (VSB Ex. B1 at pp. B-84 – B-88)

40. Respondent did not notify Mr. Ostrander of the dismissal of the Federal Civil Action. (VSB Ex. J1 at ¶¶13-15)

41. Frustrated by the lack of communication with Respondent, Mr. Ostrander retained new counsel to represent his interests in the Federal Civil Action, Jessica N. Sherman-Stoltz ("Ms. Sherman-Stoltz"). (VSB Ex. J1 at ¶14)

42. It was Ms. Sherman-Stoltz who finally informed Mr. Ostrander that the Federal Civil Action had been dismissed. (VSB Ex. J1 at ¶15)

43. Ms. Sherman-Stoltz and Mr. Ostrander tried, on numerous occasions and without success, to contact Respondent about obtaining Mr. Ostrander's client file. (VSB Ex. B6, testimony of Ms. Sherman-Stoltz)

44. During the time that Ms. Sherman-Stoltz and Mr. Ostrander were trying to obtain the file, and without his client's authorization or knowledge, Respondent filed an entirely new

federal lawsuit (the "Second Federal Civil Action"), rather than filing an amended complaint as allowed by the federal court. In the Second Federal Civil Action, Respondent did not correct the deficiencies that resulted in the dismissal of the prior Federal Civil Action. (VSB Ex. B2 at pp. B-93 – B-114)

45. The judge in the first Federal Civil Action required Respondent to file a pleading stating his intent to abandon the first lawsuit and file a new complaint rather than an amended one. (VSB Ex. B1 at p. B-89)

46. The Second Federal Civil Action, which Respondent filed without Mr. Ostrander's knowledge or authorization, was dismissed by the court on January 28, 2022. (VSB Ex. B2 at pp. B-131 – B-134).

47. Ms. Sherman-Stoltz, Mr. Ostrander (by Affidavit), and Nicholas Ostrander testified that Respondent failed to turn over his client's files. (VSB Ex. J1 at ¶17)

48. In March of 2023, Mr. Ostrander emailed Respondent via JPay, an email application used by the Virginia Department of Corrections, requesting that Respondent return all of his client files. (VSB Ex. B5).

49. Respondent replied by asking for Nicholas Ostrander's mailing address. (VSB Ex. B5) Nicholas Ostrander testified that he had not received any correspondence or communication from Respondent concerning the return of his father's files.

50. The Court finds that the Virginia State Bar proved by clear and convincing evidence the following violations of the Virginia Rules of Professional Conduct in the Ostrander matter and makes the following Findings of Misconduct.[1]

FINDINGS OF MISCODUCT

By failing to properly file an amended complaint in the Federal Civil Action, as stated in the dismissal order, thereby allowing for the statute of limitations to expire, Respondent violated Rule 1.1.

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.

* * * *

By failing to respond to Mr. Ostrander's emails, by failing to inform him of the filings regarding the Federal Civil Action, by failing to advise Mr. Ostrander of the initial dismissal of

[1] During closing argument on Misconduct, the VSB advised the Court that it was withdrawing the Charge of Rule 1.3(a) (Diligence) in the Ostrander matter.

the Federal Civil Action, by failing to communicate his decision to file a new lawsuit instead of an amended complaint, and by failing to respond to requests for Mr. Ostrander's file from both Mr. Ostrander and Ms. Sherman-Stoltz, Respondent violated Rule 1.4(a) and (b).

Rule 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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

* * * *

By failing to deposit the advance legal fees from Mr. Ostrander into his trust account and depositing them into his operating account before they were earned, by failing to keep a proper accounting of how the funds were earned, by not keeping the required cash receipts and disbursement journals, and by not performing the required reconciliation of his trust account, Respondent violated Rule 1.15 as follows.

Rule 1.15 Safekeeping Property (*Effective 2013)*

(a)Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

* * * *

(b) Specific Duties. A lawyer shall:

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from the account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust. The ledger should clearly identify:

(i) the client matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpected balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

* * *

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

* * * *

By failing to provide Respondent's client file to his successor counsel, by failing to take adequate steps such as filing an amended complaint per the court's dismissal order in the Federal Civil Action, and by taking action in the Federal Civil Action and the Second Federal Civil Action during such time that Mr. Ostrander had dismissed Respondent and sought to replace him with Ms. Sherman-Stoltz, Respondent violated Rule 1.16(d) and (e).

Rule 1.16 Declining Or Terminating Representation

* * *

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by

furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

* * * *

VSB DOCKET NO. 23-080-126976
Complainant: Flora Skipwith

FINDINGS OF FACT

51. Flora Skipwith testified that she is the mother of Michael Robinson.

52. Mr. Robinson was convicted of various felonies by the Circuit Court for the City of Richmond in October of 2012 and given a custodial sentence in the Virginia Department of Corrections. (VSB Ex. J2 at ¶3)

53. On May 19, 2019, Ms. Skipwith contacted Respondent's office about possible representation of her son. (VSB Ex. J2 at ¶5, testimony of Ms. Skipwith)

54. On June 2, 2019, Mr. Robinson received a letter from Respondent's office quoting a flat fee of $3,000 for an initial review of his case. (VSB Exs. C1 and J2 at ¶6)

55. On April 6, 2020, Ms. Skipwith received an email from Samantha George stating that the case review had been completed. (VSB Ex. C4)

56. That same information was written in a letter dated April 3, 2020, purportedly sent to Mr. Robinson in prison. (VSB Ex. C3)

57. The April 6, 2020, email also stated that for a flat fee of $25,000, Respondent's office would file a motion to vacate Mr. Robinson's order of conviction based on violations of Mr. Robinson's Due Process rights and Eighth Amendment rights through the various levels of the Virginia court system. (VSB Ex. C4)

58. On April 9, 2020, Ms. George emailed Ms. Skipwith answers to questions that Mr. Robinson had about the next phase of the representation. (VSB Ex. C5)

59. In pertinent part, Mr. Robinson had previously emailed questions such as, "I know you can't guarantee me anything and it's your job to make money, I know how all this works, but do we have a chance to win this motion? How strong of case do we have? Because for my family 25k is a substantial amount[.]" (VSB Ex. C5)

60. Ms. George answered in an email by stating, "We would not suggest filing a motion that did not have a chance of going somewhere, and we do not want people to waste their money[.]" (VSB Ex. C5)

61. Ms. Skipwith testified at trial and Mr. Robinson testified by affidavit (VSB Ex. J2 at ¶12) that they both relied upon those representations in paying the $25,000 advance legal fee to Respondent.

62. Ms. Skipwith testified at trial and Mr. Robinson testified by affidavit (VSB Ex. J2 at ¶14) that at no time did Respondent or anyone else on his staff advise either Ms. Skipwith or Mr. Robinson of Respondent's prior unsuccessful attempts at advancing the Defective Indictment Argument, nor did Respondent or anyone else on his staff advise either Ms. Skipwith or Mr. Robinson of the Supreme Court of Virginia's holding in *Epps v. Commonwealth.* (*See also* testimony of Investigator Baker)

63. Ms. Skipwith testified that she paid Respondent the entire quoted fee of $25,000 sometime in April of 2020, after getting part of the money from friends and family and putting the rest on her personal credit card.

64. On July 6, 2020, Respondent filed a motion to vacate sentence and memorandum in support thereof on behalf of Mr. Robinson with the Circuit Court for the City of Richmond based on the Defective Indictment Argument. Respondent argued that Mr. Robinson's indictments were not properly recorded in the record books of the clerk's office and that there was no transcript filed of the multijurisdictional grand jury proceeding. (VSB Ex. C7)

65. The Commonwealth filed a memorandum in opposition citing, among other cases, the Supreme Court of Virginia's decision in *Epps*. (VSB Ex. C8)

66. On December 9, 2020, the Circuit Court for the City of Richmond issued a written order denying the motion to vacate on the grounds that the issues raised in the motion to vacate were not jurisdictional. (VSB Ex. C9)

67. Respondent failed to file a timely notice of appeal of the court's December 9, 2020 ruling. (VSB Ex. A1 at p. A-20, ¶87 and p. A-386, ¶15)

68. On February 4, 2021, Respondent filed a motion for a delayed appeal on behalf of Mr. Robinson with the Court of Appeals of Virginia. (VSB Ex. A1 at p. A-20, ¶88 and p. A-386, ¶15)

69. Ms. Skipwith testified that she and Mr. Robinson attempted unsuccessfully on numerous occasions to contact Respondent about the status of the case.

70. On April 20, 2021, the Court of Appeals of Virginia issued an order denying the motion for delayed appeal without prejudice to seek a delayed appeal by means of a petition for a writ of *habeas corpus*. (VSB Ex. C10)

71. On April 27, 2021, Respondent filed a civil complaint in the Circuit Court for the City of Richmond, rather than a petition for a writ of *habeas corpus*, seeking a declaration that

Mr. Robinson's conviction order was void *ab initio* on the same grounds as that set forth in the motion to vacate that had been previously denied ("Civil Complaint"). (VSB Ex. C11)

72. Respondent testified that he sought and was granted leave to withdraw from the Civil Complaint.

73. Both the Commonwealth's Attorney's Office and the Office of the Attorney General filed responsive pleadings in the case, and at least one of them was mailed to Respondent. (VSB Exs. C18 and C19)

74. Investigator Baker testified that no other action has been taken in connection with the Civil Complaint. (VSB Ex. C12)

75. Mr. Robinson filed a bar complaint against Respondent on April 27, 2021, which was ultimately Certified to the Disciplinary Board. Respondent chose to have the matter heard by a three-judge panel pursuant to Va. Code. § 54.1-3935. (Respondent's testimony and Respondent Exhibit 12)

76. The disciplinary hearing against Respondent was initially set for two days in March of 2022, but continued for cause.

77. Shortly before the continued disciplinary hearing date, Respondent transferred $6,210 from his operating account ending in 6634 into his trust account ending in 6626 with the notation "Michael Robinson Retainer Residual." (VSB Ex. C13)

78. Ms. Skipwith testified she was unaware that Respondent had made the transfer of the residual retainer.

79. On October 25, 2022, Ms. Skipwith wrote to Respondent requesting a return of the funds that had been paid to Respondent on behalf of Mr. Robinson. (VSB Ex. C15)

80. At the time that Ms. Skipwith wrote requesting the return of the funds, Respondent was still holding the funds in his trust account. (Respondent's testimony)

81. Respondent testified that despite having set aside those funds in his trust account, he has, to date, refused to refund the $6,120 to Ms. Skipwith.

82. Respondent testified that he would not return the funds he had set aside in trust and marked Michael Robinson Retainer Residual because Michael Robinson and Ms. Skipwith were demanding a full refund, and Respondent believed that he had earned most, if not all, of the fee based on a quantum meruit analysis.

83. In support of that analysis, Respondent submitted an Activities Export report at the hearing in this matter that reported time that Respondent stated he and his staff had performed work on Mr. Robinson's case. The hourly rate that Respondent charged was twice that set forth in other Activities Export reports and/or draft invoices that Respondent had

submitted in response to VSB subpoena requests in 2022 throughout the investigation of the cases set forth in the Certification. (Respondent Ex. 16, *See, e.g.,* VSB Ex. D16)

84. Ms. Skipwith testified that Respondent did not respond to her efforts to communicate with him regarding a reasonable settlement of the attorneys' fees.

85. The Court finds that the Virginia State Bar failed to prove by clear and convincing evidence, the following violations of the Virginia Rules of Professional Conduct alleged in the Certification in the Skipwith matter and dismisses the same: Rule 3.1 (Meritorious Claims and Contentions), Rule 8.1(a) and (b) (Bar Admission and Disciplinary Matters, and Rule 8.4(a) (Misconduct).

86. The Court finds that the Virginia State Bar proved by clear and convincing evidence violations of the Virginia Rules of Professional Conduct in the Skipwith matter and makes the following Findings of Misconduct.

FINDINGS OF MISCODUCT

By not returning funds that he placed in trust as a residual retainer when requested to do so by Mr. Robinson and Ms. Skipwith and instead converting those fees to himself, Respondent violated Rule 1.15(b) as follows.

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

* * *

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

* * * *

By placing $6,120.00 into trust as a residual of the initial retainer and then refusing to refund unearned fees when requested to do so by the client, Respondent violated Rule 1.16(d).

Rule 1.16 Declining Or Terminating Representation

* * *

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing

time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

* * * *

By not returning fees he himself acknowledged had not been earned, Respondent violated Rules 8.4(b) and (c).

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

* * * *

VSB DOCKET NO. 22-080-125134
Complainant: Charnette Jones

FINDINGS OF FACT

87. Complainant Charnette Jones testified that she is the fiancée of Christopher Albert.

88. Mr. Albert was convicted of various felonies in 2006 by the Circuit Court for Charles City County and received a custodial sentence in the Virginia Department of Corrections. (VSB Ex. J3 at ¶3)

89. Mr. Albert reached out to Ms. Jones to contact Respondent's office for possible post-conviction representation. (VSB Ex. J3 at ¶5)

90. Ms. Jones testified that she called Respondent's office sometime in late November/early December 2020 and left a message.

91. Ms. Jones testified that Matthew George, a paralegal working for Respondent, returned her call.

92. Mr. George advised Ms. Jones that they would need to do a preliminary review of his case to determine what options were available, and the cost for such a review would be $3,500. (VSB Ex. D2)

93. According to Ms. Jones's testimony, Mr. George advised her that a pardon request would take time, but if they chose a motion to vacate, Mr. Albert would be released in short order after the case made its way through the court system.

94. After discussing the matter with Mr. Albert, Ms. Jones paid Respondent the agreed fee of $3,500 for the case review by a credit card transaction on February 4, 2021. Respondent's office issued a receipt of payment. (VSB Ex. D6)

95. Respondent's trust account records show that on February 8, 2021, he transferred $3,500 into his trust account with the notation "retainer for Christopher Albert." (VSB Ex. D7)

96. Respondent's office completed the initial case review on February 19, 2021 and forwarded its findings to Ms. Jones and Mr. Albert by letter dated the same. (VSB Ex. D4)

97. Despite having completed the initial case review for the agreed price of $3,500 in February 2021, Respondent allowed the earned fee to remain in his trust account until September 14, 2021, when he transferred $2,000 back into his operating account. There was no notation pertaining to the reason for the transfer. (VSB Ex. I2 at p. I-31)

98. Ms. Jones testified that she and Mr. Albert participated in a telephone conversation with Respondent concerning the various options outlined in the case review. Ms. Jones preferred to go via the pardon route since it was the least expensive.

99. Ms. Jones testified that Respondent and his staff assured them that a motion to vacate was the best chance of success in Mr. Albert's case. Ms. Jones testified that Mr. George stated that Mr. Albert would be home in 48-72 hours, and that Respondent told her that once they got to the Supreme Court of Virginia, Mr. Albert would be released. Respondent denied making such a statement during his testimony in the Albert case.

100. Ms. Jones testified at trial and Mr. Albert by Affidavit (VSB Ex. J3 at ¶¶13-14) that they relied on those assurances and Respondent's expertise and agreed to a motion to vacate based on the Defective Indictment Argument.

101. The undated case review letter provided to Mr. Albert and Ms. Jones states in pertinent part:

> Albert qualifies for a motion to void his sentence as the Circuit Court of Charles City did not properly indict him, and therefore lacks jurisdiction. The Fifth Amendment to the United States Constitution provides in pertinent part: No person shall be held to answer for a capital, or otherwise infamous crime, *unless on a presentment or indictment of a Grand Jury.* The right to a grand jury indictment conferred by the Fifth Amendment to the United States Constitution applies to state indictments via the Fourteenth Amendment. Changes in constitutional law that have occurred since *Hurtado v. California*, 110 U.S. 516, 519 (1884) require this result. *Due to Albert's defective indictments, we recommend that Albert file a*

motion to void his sentence, and immediately be released from incarceration. (VSB Ex. D5).

102. Ms. Jones testified at trial and Mr. Albert by Affidavit (VSB Ex. J3 at ¶11) that at no time did Respondent or anyone in his office ever advise or disclose to either Mr. Albert or Ms. Jones that both the Supreme Court of Virginia and the United States Supreme Court had previously rejected the Defective Indictment Argument.

103. Respondent and his staff made the recommendation to file the motion to void the sentence of Mr. Albert without advising either Ms. Jones or Mr. Albert that the Circuit Court for the City of Richmond had also rejected the Defective Indictment Argument in the Robinson case on December 9, 2020. (VSB Ex. D1)

104. Ms. Jones testified that Respondent failed to disclose to either Ms. Jones or Mr. Albert the Supreme Court of Virginia's decision in *Epps v. Commonwealth.*

105. Ms. Jones testified that Respondent advised Ms. Jones that if they followed the recommendation in the case review, Mr. Albert would be home soon.

106. Respondent's case review stated that the basis for attacking Mr. Albert's conviction was that his indictments were not properly recorded in the Circuit Court for Charles City County. (VSB Ex. D5)

107. Mr. Albert's indictments were, in fact, properly recorded in the Circuit Court for Charles City County. (VSB Ex. D11)

108. On March 7, 2006, a grand jury for Charles City County returned seven indictments against Mr. Albert with the grand jury foreperson signing the true bill. (VSB Ex. D11)

109. On March 7, 2006, the Hon. Thomas B. Hoover entered an order indicating that a grand jury had returned true bills and ordered the issuance of a capias for Mr. Albert's arrest. (VSB Ex. D11)

110. Judge Hoover's March 7, 2006 order was recorded in the records of the Circuit Court of Charles City County on March 14, 2006 at 8:21 a.m. as Instrument 168, Book 3, Page 221. (VSB Ex. D11)

111. Respondent sent Mr. Albert a letter dated March 11, 2021 stating that the cost for preparing and filing a motion to vacate would be $25,000, which included representation through "three levels of the Virginia Court System." (VSB Ex. D8)

112. Ms. Jones made an initial payment to Respondent in the amount of $10,500 on March 12, 2021. (VSB Ex. A1 at p. A-27, ¶127 and p. A-391, ¶22)

113. Respondent failed to deposit those funds into his trust account as required by Rule 1.15 of the Virginia Rules of Professional Conduct. (VSB Ex. A1 at p. A-27, ¶128 and p. A-391, ¶26)

114. Over the next two weeks, Ms. Jones made additional payments to Respondent's office of $11,000 for a total of $21,500. (VSB Ex. I4)

115. Investigator Baker testified that Respondent told him he did not deposit any of the $21,500 into his trust account as required by Rule 1.15 of the Virginia Rules of Professional Conduct. The deposit of Ms. Jones's March payments came after Respondent had been made aware of LEO 1606.

116. Investigator Baker testified that in response to a VSB subpoena *duces tecum*, Respondent failed to produce any client subsidiary ledgers or other documents required to be kept by Rule 1.15(c) of the Virginia Rules of Professional Conduct. Respondent further admitted to Investigator Baker that he did not perform the proper reconciliations required by Rule 1.15(d) of the Virginia Rules of Professional Conduct.

117. On March 19, 2021, notwithstanding that Mr. Albert's indictments were, in fact, properly recorded in the Circuit Court for Charles City County (VSB Ex. D11), Respondent filed a motion and memorandum to vacate Mr. Albert's sentence on the grounds that he was not properly indicted by the Circuit Court for Charles City County. (VSB Ex. D9)

118. Respondent submitted timekeeping records known as an Activities Export in response to a VSB subpoena that reflect entries he made recording 18.7 hours of time at $300 per hour reviewing case law and preparing the motion to vacate between February 24, 2021 and March 12, 2021 (VSB Ex. D16). Investigator Baker testified Respondent told him that the document was prepared in response to the VSB's subpoena, and not based on records kept contemporaneously. Investigator Baker further testified that he believed that Respondent provided the Activities Export in an attempt to justify that he had earned the fees that Ms. Jones had paid.

119. At trial, Respondent presented an Activities Report with the same entries that was prepared the weekend before trial (Respondent Ex. 19); however, the hourly rates were double those presented in the document previously provided to the VSB (VSB Ex. D16). Respondent testified that after due consideration, the fair value of his work required that he double the hourly rates that were reflected in the document that he provided in response to the VSB's subpoena.

120. Investigator Baker testified that Respondent did not once mention during his interview that his hourly rate should have been $600 per hour when he asked Respondent about the Activities Export reflected in VSB Ex. D16.

121. Although Respondent's Activities Export recorded significant time spent performing legal research and drafting pleadings, the text of the memorandum in support of the motion to vacate that Respondent filed on behalf of Mr. Albert (VSB Ex. D10) is identical in almost all respects to that of the memorandum filed on behalf of Mr. Robinson (VSB Ex. C7),[2]

[2] Mr. Robinson's memorandum contains another argument unrelated to the Defective Indictment Argument, which is not included in Mr. Albert's memorandum; however, with the exception of background facts specific to each case, the Court finds that the memoranda are otherwise virtually identical.

which memorandum was, in turn, almost entirely copied from petitions expressly rejected by the United States Supreme Court, which Respondent had previously filed on behalf of Mr. Ostrander and Mr. Cooke.

122. During this disciplinary proceeding, in response to the Court's questions, Respondent could not and did not identify any substantive new legal research or arguments to amend the Defective Indictment Argument section of the memorandum filed on behalf of Mr. Albert that were not already included in the argument section of the Michael Robinson memorandum.

123. Charles City County Commonwealth's Attorney Robert Tyler testified that in the Commonwealth's opposition to Respondent's motion to vacate, the Commonwealth pointed out the inaccuracy of Respondent's statements about Mr. Albert's indictments, and further noted that Respondent failed to make any mention of the adverse case law set forth by the Supreme Court of Virginia in *Epps v. Commonwealth*, 293 Va. 403, 799 S.E.2d 516 (2017).

124. The Commonwealth also cited *Commonwealth v. Ostrander,* 1 Cir. CR053536, 93 Va. Cir. 384* (2016)[3], a circuit court opinion addressing the same issue, and apparently, the very same motion, as the language quoted in that case is exactly the same as found in defendant's motion. (VSB Ex. D10) The Court in *Ostrander* came to the same conclusion in 2016 as the Virginia Supreme Court did in 2017, a fact of which Respondent was undoubtedly aware, as he was counsel of record in the *Ostrander* opinion cited by the Commonwealth.

125. Once Respondent filed the motion to vacate on behalf of Mr. Albert, Ms. Jones testified that communications between Respondent and his staff, and Mr. Albert and Ms. Jones all but ceased. (VSB Ex. J3 at ¶¶15-16)

126. Ms. Jones testified that she made repeated attempts to contact Respondent's office that eventually led to her number being blocked by Respondent's phone number.

127. From March 2021 through the end of 2021, Respondent did not place the motion to vacate on the Circuit Court for Charles City County's calendar. (Testimony of Investigator Baker, Respondent, and Commonwealth's Attorney Robert Tyler)

128. Ms. Jones testified that in January of 2022, she contacted the clerk's office of the Circuit Court for Charles City County and spoke with a person employed there named Ms. Cox.

129. According to Ms. Jones's testimony, Ms. Cox informed Ms. Jones that the clerk had received the motion to vacate but that Respondent had not taken any steps to place the matter before the court.

130. Ms. Jones testified that Ms. Cox later advised Ms. Jones that she had contacted the Commonwealth Attorney's office and confirmed that no one from Respondent's office had contacted that office about scheduling a hearing on Mr. Albert's motion to vacate.

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[3] The published opinion in *Ostrander* is a compendium of the two opinion letters identified as VSB Exhibits A4 and A6. Respondent was counsel of record in that matter.

131. Ms. Jones tried unsuccessfully to contact Respondent's office on her own phone after speaking with Ms. Cox.

132. Ms. Jones was later able to speak to Respondent using her daughter-in-law's phone.

133. Respondent told Ms. Jones that he was waiting on the Commonwealth's Attorney to set the matter for a hearing. However, Ms. Jones told Respondent that the Commonwealth Attorney's office was actually waiting on him to act and gave him Ms. Cox's phone number.

134. Ms. Jones testified that was the last time that Mr. Albert or Ms. Jones spoke to Respondent or anyone at his office.

135. Ms. Jones testified that she again thereafter spoke with Ms. Cox, who advised that she had spoken with Respondent.

136. Ms. Jones testified she called Ms. Cox again about a week later, and Ms. Cox advised that Respondent still had not taken any action to place the motion to vacate before the court for argument.

137. Ms. Jones testified that on January 19, 2022, she drove to an office that Respondent maintained in Charlottesville, Virginia and slid a letter under his door outlining her concerns about Respondent's representation. Ms. Jones took photographs of the delivery, as well as the content of the letter. (VSB Ex. D12)

138. Ms. Jones testified that she did not receive any response to her January 19, 2022 letter.

139. On January 26, 2022, Mr. Albert sent Respondent a letter terminating his services and demanding a refund within 30 days. (VSB Ex. D13)

140. Respondent testified that he never received either of these letters.

141. Ms. Jones testified that she contacted Ms. Cox yet again in early February of 2022 and was advised that Respondent still had not submitted the necessary filings to place the matter before the court.

142. On March 1, 2022, Ms. Jones filed the instant bar complaint. (VSB Ex. D19)

143. On March 28, 2022, a subpoena *duces tecum* issued by the VSB was delivered to Respondent's address of record with the VSB by certified mail. (VSB Exs. D20 and D21)

144. Despite having been previously terminated, Respondent's billing records indicate that on March 28, 2022, he set the matter for hearing in the Charles City County Circuit Court. (VSB Ex. D16)

145. On April 8, 2022, Ms. Jones called Investigator Baker and advised that Mr. Albert had called her the day before. (VSB Ex. D17 at p. D-137)

146. Mr. Albert told Ms. Jones that the warden of his facility advised Mr. Albert on April 7, 2022 to get ready to go to court. (VSB Ex. D17 at p. D-137)

147. Mr. Albert was confused because no one had communicated to him why he would be going to court. (VSB Exs. D17 at p. D-137 and J3 at ¶20)

148. Respondent testified that he did not write a letter to Mr. Albert because it would not have arrived in time. He conceded on cross-examination that he did not call Mr. Albert or Ms. Jones to inform them that the hearing would take place.

149. Respondent testified that he received another letter from Mr. Albert once again terminating the representation and requesting a refund.

150. Ms. Jones testified that despite not performing the work for which he was contracted, and despite demands by both her and Mr. Albert, Respondent has, to date, refused to refund any unearned fee.

151. The Court finds that the Virginia State Bar failed to prove by clear and convincing evidence, the following violations of the Virginia Rules of Professional Conduct alleged in the Certification in the Jones/Albert matter and dismisses the same: Rule 3.1 (Meritorious Claims and Contentions), Rules 3.3(a)(1) and (3) (Candor Toward the Tribunal), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(b) (Misconduct).

152. The Court finds that the Virginia State Bar did prove by clear and convincing evidence violations of the Virginia Rules of Professional Conduct in the Jones/Albert matter and makes the following Findings of Misconduct.

FINDINGS OF MISCODUCT

By scheduling a hearing against Mr. Albert's wishes after Mr. Albert and Ms. Jones both fired him, and for not providing Mr. Albert with notice of his intention to argue the motion to vacate, Respondent violated Rule 1.2(a).

Rule 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

* * * *

By failing to properly notice and schedule a hearing on the motion to vacate in a timely fashion, Respondent violated Rule 1.3(a).

Rule 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

* * * *

By failing to respond to calls, emails, and letters, by failing to inform Mr. Albert of the hearing in a reasonable manner, and by failing to explain to or advise both Mr. Albert and Ms. Jones that the Defective Indictment Argument had been previously rejected by the Virginia Supreme Court, the United States Supreme Court, and, as recently as a few months earlier, in the Richmond Circuit Court in the Robinson case, and that case law was not in their favor, Respondent violated Rule 1.4(a) and (b).

Rule 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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

* * * *

By charging an excessive fee for work product that was copied almost verbatim from documents filed on behalf of previous clients, and by not properly explaining to Mr. Albert and Ms. Jones that the Defective Indictment Argument had been previously rejected by the Virginia Supreme Court, the United States Supreme Court, and as recently as a few months earlier, in the Richmond Circuit Court in the Robinson case, and that case law was not in their favor, Respondent's fee was excessive and violated Rule 1.5(a) and (b).

Rule 1.5 Fees

(a) A lawyer's fee shall be reasonable. 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; and

(8) whether the fee is fixed or contingent.

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

* * * *

By failing to deposit the advance legal fees he received prior to March 15, 2020 into his trust account and instead placing them into his operating account, and by failing to keep the required records and perform the proper reconciliations of his trust account, Respondent violated Rule 1.15 in effect prior to March 15, 2020 as follows.

Rule 1.15 Safekeeping Property (*Effective 2013)*

(a)Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. A lawyer shall:

* * *

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

* * *

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records

* * * *

By failing to properly deposit the advance legal fees paid after March 15, 2020 into his trust account, by not returning unearned fees when requested to do so, and instead converting those fees to himself, by failing to keep the records required, and by failing to perform the required reconciliation of his trust account as required after March 15, 2020, Respondent violated Rule 1.15 as follows.

RULE 1.15 Safekeeping Property (*Effective 3.15.20)*

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

* * *

(b) Specific Duties. A lawyer shall:

* * *

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

* * * *

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

* * * *

By refusing to return unearned fees to Ms. Jones and Mr. Albert after having been requested to do so, Respondent violated Rule 1.16(d).

Rule 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

* * * *

By allowing his staff to make false statements that Respondent's arguments would be successful and have Mr. Albert home soon, and by ratifying such statements by making the same to both Ms. Jones and Mr. Albert, Respondent violated Rule 5.3 by not having adequate guidelines in place and by ratifying the misconduct.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

* * * *

By providing timekeeping records in response to the VSB's subpoena that contain false statements of the amount of time that was spent on Mr. Albert's pleadings, when a comparison to past pleadings filed on behalf of other clients show that work product was duplicated and no new legal research was performed, Respondent violated Rule 8.1(a).

Rule 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;

* * * *

By charging exorbitant fees for a motion that Respondent had previously lost in Virginia circuit courts, the Supreme Court of Virginia, and the United States Supreme Court, by making false statements as to why it took so long to get the motion to vacate heard, by failing to disclose controlling legal authority and his prior attempts at presenting the Defective Indictment Argument, and by making false statements to both Mr. Albert and Ms. Jones as an inducement to choose the more expensive option, and by keeping fees he clearly has not earned, and by submitting fraudulent timekeeping records, Respondent violated Rule 8.4(a) and (c).

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;

* * *

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

VSB DOCKET NO. 22-080-125016
Complainant: Antonio Townsend/Maria Lankford

FINDINGS OF FACT

153. Antonio Townsend was convicted of certain felonies in 1998 in the Circuit Court for Accomack County. In 1999, he received a custodial sentence in the Virginia Department of Corrections. (VSB Ex. J4 at ¶3)

154. He is engaged to co-complainant Maria Lankford, a German national. (VSB Exs. J4 at ¶5 and J5 at ¶3)

155. Mr. Townsend's sister is Velnita Harmon. (VSB Ex. J4 at ¶5)

156. Mr. Townsend first learned about Respondent's services after seeing Respondent's advertisement in prison newspapers. (VSB Ex. J4 at ¶4).

157. Sometime in early 2020, Mr. Townsend asked Ms. Lankford and Ms. Harmon to contact Respondent's office about possibly representing his interests. (VSB Ex. J4 at ¶5)

158. On February 27, 2020, Samantha George, a paralegal working for Respondent, wrote to Mr. Townsend stating that Respondent's office would be interested in reviewing Mr. Townsend's case for a fee of $3,000 and that any subsequent work would include fees ranging from $5,000 to $15,000. (VSB Ex. E3)

159. On March 10, 2020, Ms. Lankford and Ms. Harmon paid Respondent $3,000 to perform the initial case review in Mr. Townsend's case. (VSB Ex. E4)

160. Investigator Baker testified that Respondent acknowledged receipt of the $3,000 advance legal fee but failed to deposit the funds into his trust account as required by Rule 1.15 of the Virginia Rules of Professional Conduct. (VSB Ex. E5)

161. In a letter to Mr. Townsend dated March 25, 2020, Samantha George stated that the firm had identified a possible post-conviction remedy, and Respondent's firm could pursue a motion to vacate judgment based on Mr. Townsend's defective indictment.

162. The letter went on to quote a fee of $25,000 for representation through the Virginia court system and stated that the quoted fee represented a savings from the firm's regular fee of $45,000 to perform the work. (VSB Ex. E7)

163. Ms. Harmon testified at trial and Mr. Townsend testified by Affidavit (VSB Ex. J4 at ¶¶11 and 12) that they relied on Mr. Jensen's expertise and that at no time did Respondent or anyone in his office ever advise or disclose to either of them that both the Supreme Court of

Virginia and the United States Supreme Court had previously rejected the Defective Indictment Argument.

164. Ms. Lankford forwarded to Ms. Harmon $25,000, and Ms. Harmon, in turn, paid Respondent the $25,000 advance legal fee. (VSB Ex. J5 at ¶5)

165. By letter dated April 10, 2020, Respondent acknowledged receipt of the funds. (VSB Ex. E8)

166. Investigator Baker testified that Respondent admitted that he did not deposit the $25,000 into his trust account. Respondent's trust account records similarly reflect that he did not deposit the $25,000 payment into his trust account. (VSB Ex. E5)

167. Investigator Baker also testified that in response to a subpoena *duces tecum*, Respondent failed to produce any client subsidiary ledgers or other documents required to be kept by Rule 1.15(c) of the Virginia Rules of Professional Conduct. Respondent further admitted to Investigator Baker that he did not perform the proper reconciliations required by Rule 1.15(d) of the Virginia Rules of Professional Conduct and that he failed to keep the proper records of the manner in which Mr. Townsend's advance legal fee was earned.

168. On April 17, 2020, Ms. Harmon received an email from an account in the name of James Dennis, identifying a "Mr. Dennis" as Respondent's Chief Law Clerk assigned to Mr. Townsend's case. (VSB Ex. E9)

169. Mr. Dennis advised Ms. Harmon that they would require "100-150 man hours" to put together the motion to vacate and that he would be working on the case through its completion. (VSB Ex. E9)

170. Mr. Townsend told Investigator Baker that Matthew George advised him that Mr. Dennis had prepared the motion to vacate that was ultimately filed with the court. (VSB Ex. E38 at p. E-215)

171. From April through September of 2020, Mr. Townsend, Ms. Lankford, and Ms. Harmon wrote Respondent and his staff either through letters or emails requesting an update and were advised that the motion to vacate was still being prepared. (VSB Exs. E10-E13)

172. On August 19, 2020, Ms. Lankford wrote to Respondent asking for a status update and inquiring when her fiancé would be coming home. (VSB Ex. E12)

173. On August 19, 2020, Taylor Biggs, a paralegal working in Respondent's office, replied to Ms. Lankford stating that while she could not give any guarantees, the Jensen firm did not take on cases that it did not believe had a chance of winning. (VSB Ex. E11)

174. Samantha George mailed a motion to vacate and supporting memorandum to the Accomack County Circuit Court near the end of October 2020. (VSB Ex. E14)

175. A file-stamped copy of the motion and memorandum shows that it was filed with the court on November 2, 2020 (VSB Ex. E14).

176. Investigator Baker testified that he reviewed the court case information online, and that there was no other activity listed other than the filing of the motion to vacate. There is no indication that Respondent filed a praecipe or took other steps to get the motion before the court for consideration. In preparation for trial, VSB staff accessed the most recent online case information in September 2023 (VSB Ex. 37). There were no changes or updates to the case since Investigator Baker first reviewed it in February 2022 (VSB Ex.36).

177. A comparison of the memorandum in support of the motion to vacate filed on behalf of Mr. Townsend in November 2020 and the memorandum in support of the motion to vacate filed on behalf of Michael Robinson in July 2020 in the City of Richmond Circuit Court reveals that the parts of the Townsend memorandum advancing the Defective Indictment Argument were copied directly from the Robinson memorandum (VSB Ex. C7) and contain identical typographical errors. (VSB Ex. E14).

178. The Motion to Vacate that Respondent filed on behalf of Mr. Townsend makes reference to defects regarding statutory requirements for multi-jurisdictional grand juries. (VSB Ex. E14 at p. E-47) However, Mr. Townsend was indicted by a regular grand jury, not a multi-jurisdictional grand jury. (VSB Ex. E36) The language in the Townsend Motion is identical to the Motion filed on behalf of Michael Robinson, whom Investigator Baker testified was, in fact, indicted by a multi-jurisdictional grand jury. (VSB Ex. C7 at p. C-9), demonstrating that Respondent failed to adequately review the documents for even basic factual accuracy, across multiple iterations of the same pleading filed for different clients.

179. Throughout 2021, Mr. Townsend and his family wrote to Respondent's firm requesting updates on the case. (VSB Exs. E19-E25)

180. Each time, they were told by either Respondent or someone on his staff that they were still trying to get the court to act on the motion to vacate without success. (VSB Exs. E19-E25)

181. However, unbeknownst to Mr. Townsend and his family, neither Respondent nor anyone at his firm had scheduled the matter for a hearing before the court (VSB Exs. E36 and E37)

182. In December 2021 and January 2022, Respondent failed to keep phone conferences that he had scheduled to speak with Mr. Townsend. Mr. Townsend and his family wrote to Respondent and his firm expressing their frustration that they were unable to get Respondent on the phone to speak with Mr. Townsend. (VSB Exs. E26-E28 and J5)

183. Becoming frustrated with the lack of communication and progress on the case, Mr. Townsend terminated Respondent's services and demanded a refund in late March 2022. (VSB Exs. E30 and E31)

184. Receiving no reply nor refund from Respondent, Mr. Townsend sent additional emails demanding a refund in April and July 2022. (VSB Exs. E32 and E33)

185. Respondent did not take Mr. Townsend's case through the "three levels of representation" as he agreed to do. (VSB Ex. J4 at ¶¶9, 20, and 21)

186. To date, Respondent has refused to return any of the fee he has not earned to Mr. Townsend or his family. (VSB Exs. J4 at ¶19 and J5 at ¶11)

187. Further, Respondent took steps to withdraw from representing Mr. Townsend without returning to him any of his client file and without returning any unearned fee. (VSB Ex. J4 at ¶21)

188. Respondent testified that he would not return any of the unearned fees until there was a judicial determination of the value of the services that he alleged to have provided Mr. Townsend.

189. In March 2022, Respondent provided a record of time entries in response to a VSB subpoena that showed entries for legal research performed even though legal arguments contained in the memorandum were identical to arguments filed in previous memoranda for other clients of the firm. Investigator Baker testified that Respondent admitted that the time records he submitted were not made contemporaneously with the work performed but were, instead, generated in response to the VSB's subpoena. (VSB Ex. 35)

190. Investigator Baker testified that his impression was that Respondent prepared the Activities Report to justify the fee he claimed he had earned in connection with his representation of Mr. Townsend.

191. The repeated and copied arguments that Respondent used on behalf of clients prior to filing Mr. Townsend's motion indicates that he did not perform the legal research he noted on the timekeeping records he submitted in response to the VSB's subpoena *duces tecum.* (*See* e.g., Exs. A14, A16, and C7)

192. Further, even if all of Respondent's timekeeping records as produced to the VSB in March 2022 were accepted as accurate, by his own accounting, Respondent only performed, at best, work that would have generated fees totaling $16,665. (VSB Ex. E35)

193. During trial, Respondent produced a different version of the Activities Export report (Respondent Ex. 22) that reflected billing rates double those contained in the document Respondent previously produced to the VSB (VSB Ex. E35).

194. Investigator Baker testified that Respondent never discussed a billing rate of $600 per hour during the investigation.

195. The Court finds that the Virginia State Bar failed to prove by clear and convincing evidence the following violations of the Virginia Rules of Professional Conduct alleged in the Certification in the Townsend matter and dismisses the same: Rule 3.1 (Meritorious Claims and

Contentions), Rule 3.3(a)(1) and (3) (Candor To The Tribunal), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(b) (Misconduct).

196. The Court finds that the Virginia State Bar proved by clear and convincing evidence violations of the Virginia Rules of Professional Conduct in the Townsend matter and makes the following Findings of Misconduct.

FINDINGS OF MISCODUCT

By failing to properly notice and schedule a hearing on the motion to vacate in a timely fashion, Respondent violated Rule 1.3(a).

Rule 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

* * * *

By failing to respond to Mr. Townsend and his family's calls, emails, and letters later in the representation, and by failing to explain or advise to both Mr. Townsend and his family that the Defective Indictment Argument had been previously rejected by the Virginia Supreme Court, the United States Supreme Court, and that case law was not in his client's favor, Respondent violated Rule 1.4(a) and (b).

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

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By charging an excessive fee for work product that was copied from documents filed on behalf of previous clients, and by not properly explaining to Mr. Townsend and his family that the Defective Indictment Argument had been previously rejected by the Virginia Supreme Court, the United States Supreme Court, and circuit courts in Virginia and that case law was not in their favor, Respondent's fee was excessive and violated Rule 1.5(a) and (b).

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

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(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; and

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(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

* * * *

By failing to deposit the advance legal fees he received prior to March 15, 2020 into his trust account and instead placing them into his operating account, and by failing to keep the required records and perform the proper reconciliations of his trust account, Respondent violated Rule 1.15 in effect prior to March 15, 2020 as follows.

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(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

* * *

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records

* * * *

By failing to properly deposit the advance legal fees paid after March 15, 2020 into his trust account, by not returning unearned fees when requested to do so and instead converting those fees to himself, by failing to keep the records required, and by failing to perform the required reconciliation of his trust account after March 15, 2020, Respondent violated Rule 1.15 as follows.

RULE 1.15 Safekeeping Property (*Effective 3.15.20)*

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

* * *

(b) Specific Duties. A lawyer shall:

* * *

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

* * *

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall

be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

* * * *

By refusing to return unearned fees to Mr. Townsend after having been requested to do so, Respondent violated Rule 1.16(d).

Rule 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

* * * *

By allowing his staff to make false statements that Respondent would not file the motion to vacate unless it had merit when Respondent had already lost the argument, repeatedly, and by ratifying such statements, Respondent violated Rule 5.3 by not having adequate guidelines in place and by ratifying the misconduct.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in

effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

* * * *

By providing timekeeping records in response to the VSB's subpoena that contain false statements of the amount of work that was performed on Mr. Townsend's pleadings, when a comparison to past pleadings filed on behalf of other clients shows that work product was duplicated and no new legal research was performed, Respondent violated Rule 8.1(a).

Rule 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;

* * * *

By charging exorbitant fees for a motion that had been previously rejected by Virginia circuit courts, the Supreme Court of Virginia, and the United States Supreme Court in cases where Respondent was counsel, by making false statements as to why the motion had not been argued before the circuit court, by failing to disclose contrary legal authority to the client that reflects adversely on his fitness to practice law, by making false statements to both Mr. Townsend and his family as an inducement to proceed with a motion to vacate based on the Defective Indictment Argument, by keeping fees that he clearly has not earned, and by submitting fraudulent timekeeping records, Respondent violated Rule 8.4(a) and (c).

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;

* * *

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

VSB DOCKET NO. 22-080-125485
Complainant: Eugene A. Fredo

FINDINGS OF FACT

197. Eugene Fredo ("E. Fredo") was convicted of various felonies by the Circuit Court for the City of Chesapeake in 2011 and given a custodial sentence in the Virginia Department of Corrections in 2012. (VSB Ex. J6 at ¶3)

198. While incarcerated and serving his custodial sentence, E. Fredo learned about the post-conviction services that Respondent offered through an advertisement in a prison newspaper. (VSB Ex. J6 at ¶4)

199. E. Fredo wrote Respondent a letter in August 2019 asking Respondent to review his case. (VSB Ex. F1)

200. On November 7, 2019, Respondent wrote back that he would perform a review of E. Fredo's case for a fee of $3,000. Respondent further stated that depending on what options might be available after the case review, the fees would range between $5,000 and $15,000. (VSB Ex. F2)

201. On December 20, 2019, Respondent sent E. Fredo an engagement letter to perform the case review. E. Fredo signed the same on December 26, 2019. (VSB F7)

202. E. Fredo's brother, John Fredo ("J. Fredo"), wrote a check payable to Respondent on December 9, 2019 in the amount of $3,000. (VSB Ex. F4)

203. Investigator Baker testified that Respondent told him during an interview that he received the $3,000 payment for the case review but did not deposit the fee into his trust account.

204. On January 14, 2020, Respondent wrote to E. Fredo identifying grounds for attacking his conviction based on violations of the Eight Amendment to the United States Constitution because the court failed to consider the sexual, emotional, and psychological abuse that E. Fredo suffered in his youth. (VSB Ex. F8)

205. Respondent's January 14, 2020 letter stated that for a payment of $30,000, Respondent would file a motion to void or correct an unlawful sentence through three levels of the Virginia Court system. (VSB Ex. F8)

206. Respondent's January 14, 2020 letter also stated that Respondent required an additional fee of $5,000 for an expert witness to conduct a psychological evaluation. (VSB Ex. F8)

207. In a subsequent letter dated January 15, 2020, Respondent advised E. Fredo that Respondent had identified another theory on which to challenge E. Fredo's convictions; namely, that E. Fredo's counsel during trial waived E. Fredo's right to withdraw his guilty plea without E. Fredo's consent. (VSB Ex. F9)

208. E. Fredo signed an affidavit prepared by Respondent's office to that effect on February 24, 2020. (VSB Ex. F11 at p. F-20)

209. Nowhere in either the January 14 or January 15, 2020 correspondence summarizing his case review does Respondent advise E. Fredo that E. Fredo's convictions could be challenged on the grounds that there were defects in his indictments or, in fact, make any reference to indictments at all. (VSB Exs. F8 and F9)

210. E. Fredo testified by Affidavit that Respondent did not discuss with him at any time that his convictions could be challenged based on defects in his indictments. (VSB Ex. J6 at ¶21)

211. J. Fredo testified at trial and E. Fredo testified by Affidavit (VSB Ex. J6 at ¶22) that at no time did Respondent or anyone in his office ever advise or disclose to either of them that both the Supreme Court of Virginia and the United States Supreme Court had previously rejected the Defective Indictment Argument.

212. In September 2020, J. Fredo sent Respondent a payment in the amount of $35,000, which Respondent deposited into his operating account on September 15, 2020. (VSB Exs. F12 and F13)

213. Investigator Baker testified that Respondent did not deposit the $35,000 payment into his trust account, but instead had it deposited into his operating account. (See also VSB Ex. F13)

214. Investigator Baker further testified that Respondent failed to produce any client subsidiary ledgers or other documents required to be kept by Rule 1.15(c) of the Virginia Rules of Professional Conduct, and that Respondent admitted during the investigative interview that he did not perform the proper reconciliations required by Rule 1.15(d) of the Virginia Rules of Professional Conduct, and that Respondent failed to keep the proper records of the manner in which Mr. E. Fredo's advance legal fee was earned.

215. On February 26, 2021, Respondent filed a motion to vacate and supporting memorandum on behalf of E. Fredo with the Circuit Court for the City of Chesapeake. (VSB Ex. F14)

216. In the motion, Respondent represented to the Circuit Court for the City of Chesapeake that E. Fredo's convictions were void *ab initio* because a review of the records of the Chesapeake Circuit Court showed no indication that Mr. E. Fredo's grand jury indictment was ever properly recorded, despite never discussing a possible defective indictment argument in any communications with E. Fredo or J. Fredo. (VSB Ex. F14)

217. The Motion to Vacate that Respondent filed on behalf of E. Fredo makes reference to defects regarding statutory requirements for multi-jurisdictional grand juries. (VSB Ex. F14 at pp. F-30 – F-31) However, E. Fredo was indicted by a regular grand jury, not a multi-jurisdictional grand jury. (VSB Ex. F15) The language in the E. Fredo Motion is identical to the Motion filed on behalf of Michael Robinson, who was, in fact, indicted by a multi-jurisdictional grand jury. (VSB Ex. C7 at p. C-9) The same error appears in the Motion filed on behalf of Antonio Townsend (VSB Ex. E14 at p. E-47), demonstrating that Respondent failed to adequately review the documents for even basic factual accuracy, across multiple iterations of the same pleading filed for different clients.

218. Respondent advanced the Defective Indictment Argument in the filed pleadings without informing E. Fredo of his intention to do so and despite there being no basis to challenge E. Fredo's indictments (VSB Ex. J6 at ¶21).

219. The Defective Indictment Argument, which is not pertinent to E. Fredo's case and of which Respondent never informed E. Fredo, comprises 27 out of 34 pages of Respondent's memorandum in support of motion to vacate filed on behalf of E. Fredo. (VSB Ex. F14)

220. The text of the Defective Indictment Argument portion of the memorandum filed on E. Fredo's behalf is almost entirely copied verbatim, including typographical errors, from the same argument advanced in pleadings on behalf of his previous clients. (VSB Exs. C7, E14, and F14)

221. The remainder of the Fredo Memorandum consists of an Eighth Amendment argument claiming diminished capacity because of post-traumatic stress disorder ("PTSD") related to E. Fredo's military service. There is no reference to his "emotional and psychological abuse as a child," which was the only grounds for an Eight Amendment argument proposed in Respondent's January 14, 2020 case review letter. (VSB Ex. F14)

222. No substantive arguments pertaining specifically to PTSD are raised in the Fredo Memorandum. Rather, the text of that argument is almost entirely identical to portions of a similar argument that Respondent advanced on behalf of Mr. Townsend. (VSB Exs. E14 and F14)

223. The corresponding argument in the memorandum filed on behalf of Mr. Townsend (VSB Ex. E14) relies on claims regarding Mr. Townsend's youth at the time of his convicted offenses, as well as his alleged intellectual disability.

224. The bulk of the argument relating to juvenile offenders and to intellectually disabled offenders from the Townsend Memorandum is not included in the Fredo Memorandum;

however, multiple references to these aspects of the argument, which are wholly irrelevant to E. Fredo's case,[4] remain in the text.

225. Further, the conclusion of the argument in the Fredo Memorandum references a case (*Graham v. Florida*, 130 S.Ct. 2011, 2028 (2010)) without providing the case citation in that memorandum.[5] That citation relates to incarceration of juvenile offenders and was included in the section of the argument from the Townsend Memorandum that was removed.[6] *Graham v. Florida* has no bearing on E. Fredo's case.

226. The inclusion of the reference to *Graham*, without citation, is an indication that Respondent did not adequately review the Fredo Memorandum before filing it with the court. (VSB Exs. E14 and F14)

227. A review of the documents filed on E. Fredo's behalf (VSB Ex. F14) reveals the following:

a. less than one (1) page of the 38 total pages filed pertains to E. Fredo's case specifically;

b. the remaining 37 pages are directly copied from pleadings that Respondent previously filed for other clients[7];

c. the copied sections contain many errors, including typographical errors carried over from previous pleadings and details not relevant to E. Fredo's case that were not changed or removed;

d. only one (1) case is cited that was not part of the copied arguments and, thus, could be considered new legal research, and the analysis of that case is one sentence long;[8] and

e. the arguments raised are not those discussed in the case review or other communications with the client. (VSB Exs. F8, F9, and J6 at ¶¶21 and 22)

228. Timekeeping records that Respondent produced in response to a VSB subpoena *duces tecum* in May 2022 show that Respondent purportedly spent 55.3 hour performing legal research, reviewing the facts of the case, and drafting and revising the motion to vacate and supporting memorandum, and reflect an hourly rate for Respondent of $300 per hour. (VSB Ex. F23)

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[4] E. Fredo was 60 years old at the time of his arrest, nor is he alleged to have an intellectual disability.
[5] *See* VSB Ex. F14 at pages F-64 to F-65.
[6] *See* VSB Ex. E14 at pages E-82 to E-86.
[7] *See* VSB Exs. A14, A16, C7, and E14
[8] *See* VSB Ex. F14 at page F-63.

229. During trial, Respondent produced a different version of the Activities Export report for E. Fredo (Respondent Ex. 24), which listed identical time entries to the report previously submitted to the VSB but reflected an hourly rate of $600 per hour, double the rate shown in that document (VSB Ex. F23).

230. The Fredo Memorandum is also devoid of any reference to expert testimony, although Respondent was paid $5,000 to retain an expert witness as recommended in his case review. (VSB Ex. F14)

231. Investigator Baker testified that when asked during his interview why the Fredo Memorandum did not contain any references to expert testimony, Respondent replied that he did not have an expert who could provide an opinion.

232. Investigator Baker testified that Respondent told him later on in that same interview that he had, in fact, retained an expert witness and paid for the services per the engagement letter that he had sent E. Fredo.

233. Investigator Baker was unable to locate any documentation relating to an expert witness retained on behalf of E. Fredo nor any financial transactions in Respondent's trust or operating account records showing a payment for expert opinions relating to E. Fredo.

234. During that interview, Investigator Baker asked Respondent to provide the name of the expert he had retained, how much he paid that person, when he paid that person, and by what means he paid that person, but Respondent was unable to produce that information.

235. Investigator Baker testified that he asked Respondent to provide the information when he could find it, but Respondent never did so.

236. When Respondent testified during the Misconduct phase of the trial about the Fredo matter, he stated that he had retained Dr. Anita Boss for another client, but that Dr. Boss had been turned away from the prison for that client, and that Dr. Boss had advised Respondent of that fact.

237. During the presentation of the Fredo case, Respondent moved into evidence the curriculum vitae of Dr. Boss. (Respondent Ex. 34)

238. Respondent further testified that due to Dr. Boss being turned away on behalf of that other client, he did not pursue an expert opinion from Dr. Boss on behalf of E. Fredo.

239. In rebuttal, Investigator Baker testified that he had not previously seen Dr. Boss's curriculum vitae prior to Respondent introducing it at trial on October 25, 2023 and that he had subsequently contacted Dr. Boss by phone on that same date. Investigator Baker testified that Dr. Boss did have another client on behalf of Respondent; however, she stated that she had not been turned away from the prison in connection with that case, that she had never been turned away from a prison, and that she never advised either Respondent or anyone at his office that she had been turned away from a prison. She further stated to Investigator Baker that she did not

recall ever hearing the name Eugene Fredo prior to Investigator Baker's phone call on October 25, 2023.

240. After the motion and memorandum were filed, E. Fredo unsuccessfully attempted to contact Respondent for an update, calling Respondent's office once every two weeks from February through December 2021. (VSB Ex. J6 at ¶17)

241. On October 25, 2021, the Circuit Court for the City of Chesapeake issued an order denying the motion to vacate *sua sponte*. The court noted that E. Fredo had not been indicted by a multi-jurisdictional grand jury and cited the circuit court opinion of *Commonwealth v. Ostrander*, 93 Va. Cir. 384 (Chesapeake City 2016) and *Epps v. Commonwealth*, 293 Va. 403, 409 (2017) as authority for dismissing the motion to vacate. (VSB Ex. F18)

242. In December of 2021, E. Fredo did manage to speak to Matthew George about the status of his case. (VSB Ex. J6 at ¶18)

243. At that time, Mr. George falsely stated that the motion to vacate was still pending with the court. (VSB Ex. J6 at ¶18) Investigator Baker also testified that E. Fredo told him that Mr. George had stated that the motion was still pending before the court, even though it had already been dismissed.

244. E. Fredo and J. Fredo were both under the impression that the motion to vacate was still pending before the court in the early months of 2022. (VSB Exs. F19 and F20)

245. Investigator Baker also testified that E. Fredo did not learn of the dismissal of the motion to vacate until Investigator Baker told him about it in his interview in 2022. (*See also* VSB Ex. J6 at ¶19)

246. Respondent did not file an appeal on E. Fredo's behalf or otherwise take steps to protect his interests. (VSB Ex. F17)

247. Despite not taking the representation through the "three levels" of the Virginia Court system as he agreed to do, Respondent has so far refused or failed to refund E. Fredo the portion of the fee payment that was not earned, despite the client demanding its return. (VSB Ex. J6 at ¶20)

248. Respondent acknowledged at trial that he has not provided E. Fredo any refund to date, including that he had not refunded the $5,000 for the expert witness that was never retained.

249. The Court finds that the Virginia State Bar failed to prove by clear and convincing evidence, the following violations of the Virginia Rules of Professional Conduct alleged in the Certification in the Fredo matter and dismisses the same: Rule 3.1 (Meritorious Claims and Contentions), Rules 3.3(a)(1) and (3) (Candor Toward The Tribunal), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(b) (Misconduct).

250. The Court finds that the Virginia State Bar proved by clear and convincing evidence violations of the Virginia Rules of Professional Conduct in the Fredo matter and makes the following Findings of Misconduct.

FINDINGS OF MISCODUCT

By failing to adequately review the pleadings he filed on behalf of E. Fredo and failing to realize that the arguments he raised in the motion to vacate were not related to arguments Respondent advised advancing in the case review, and by failing to file a notice of appeal, Respondent violated Rule 1.1.

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.

* * * *

By failing to file a notice of appeal after the motion to vacate was denied, Respondent violated Rule 1.3(a) and (b).

Rule 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services but may withdraw as permitted under Rule 1.16.

* * * *

By failing to respond to E. Fredo and his family's communications for updates on the status of his case and by failing to advise or explain to E. Fredo and his family that the United States Supreme Court, the Supreme Court of Virginia, and Virginia circuit courts had previously rejected the Defective Indictment Argument, and that case law was not in his client's favor, Respondent violated Rule 1.4(a) and (b).

Rule 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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

* * * *

By charging E. Fredo a $35,000 fee for work product that was copied almost verbatim from documents filed on behalf of previous clients, and by not properly explaining to E. Fredo and his family that the United States Supreme Court, the Supreme Court of Virginia, and Virginia circuit courts had previously rejected the Defective Indictment Argument, and that case law was not in his client's favor, and by charging $5,000 to pay an expert when Respondent never paid or retained any such expert, Respondent's fee was excessive and violated Rule 1.5(a) and (b).

Rule 1.5 Fees

(a) A lawyer's fee shall be reasonable. 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; and

(8) whether the fee is fixed or contingent.

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

* * * *

By failing to deposit the advance legal fees he received prior to March 15, 2020 into his trust account and instead placing them into his operating account, and by failing to keep the required records and perform the proper reconciliations of his trust account, Respondent violated Rule 1.15 in effect prior to March 15, 2020 as follows.

Rule 1.15 Safekeeping Property *(Effective 2013)*

(a)Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. A lawyer shall:

* * *

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

* * *

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and

changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

* * * *

By failing to properly deposit the advance legal fees paid after March 15, 2020 into his trust account, by not returning unearned fees when requested to do so and instead converting those fees to himself, by failing to keep the records required, and by failing to perform the required reconciliation of his trust account after March 15, 2020, Respondent violated Rule 1.15 as follows.

RULE 1.15 Safekeeping Property (*Effective 3.15.20)*

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

* * *

(b) Specific Duties. A lawyer shall:

* * *

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court

supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

* * * *

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

* * * *

By failing to return unearned fees as requested by E. Fredo, Respondent violated Rule 1.16(d).

Rule 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

* * * *

By allowing his staff to make false statements to E. Fredo that a decision had not yet been reached by the court when, in fact, the matter had already been dismissed, by ratifying such statements, and by not having adequate guidelines in place to prevent such false statements being made, Respondent violated Rule 5.3.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

* * * *

By telling Investigator Baker that he had contacted an expert witness on behalf of E. Fredo despite having no documentation of such contact or documentation of any related payments, by failing to produce such documentation despite a request to do so from Investigator Baker, and by submitting fraudulent timekeeping records to the VSB to create the impression that he had earned all of E. Fredo's fee, Respondent violated Rule 8.1(a) and (c).

Rule 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;

* * *

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or

* * * *

By charging E. Fredo $35,000 for work product that was copied from documents submitted on behalf of other clients and that did not contain the arguments that Respondent found to be viable in his case review, by keeping unearned fees, by charging E. Fredo fees for expert witnesses that Respondent never consulted or retained and refusing to return said fees, for making false statements to the court, for his staff making false statements to E. Fredo about the status of the case, by failing to disclose to the court that the United States Supreme Court, the Supreme Court of Virginia, and the Circuit Court for the City of Chesapeake had previously rejected the Defective Indictment Argument, and by submitting fraudulent timekeeping records, Respondent violated or attempted to violate Rule 8.4(a-c) and attempted to violate other Rules of Professional Conduct.

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 or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law

VSB DOCKET NO. 22-080-125221
Complainant: Thomas Purcell

FINDINGS OF FACT

251. Thomas Purcell was convicted of felonies in October 2016 in the Prince William Circuit Court and given a custodial sentence in the Virginia Department of Corrections. (VSB Ex. A1 at p. A-66)

252. Mr. Purcell completed his custodial sentence and was released from prison; he appeared in person to testify at trial.

253. Mr. Purcell testified that he came upon Respondent's advertisement in a prison newspaper while he was incarcerated.

254. Mr. Purcell testified that he first contacted Respondent sometime in late November of 2019.

255. Mr. Purcell was told that a case review needed to be performed and that the fee to do so would be $3,000. (VSB Ex. G1)

256. Respondent also agreed to prepare a pardon request with the Governor's office for a fee of $2,500. (VSB Ex. G3)

257. Mr. Purcell's mother, Nancy Follette, paid Respondent $3,000 on December 2, 2019 for the case review. (VSB Ex. G5 at p. G-10)

258. Investigator Baker testified that Respondent deposited all of that advance legal fee into his operating account.

259. On December 3, 2019, Respondent wrote to Mr. Purcell stating that once the review was completed, they would seek to identify avenues to provide post-conviction relief, and that the fees would range from $5,000 to $15,000. (VSB Ex. G1)

260. The December 3, 2019 correspondence also stated that the fees for performing further work were flat fees that were nonrefundable, in violation of LEO 1606, which was adopted by the Supreme Court of Virginia in November of 2016. (VSB Ex. G1)

261. Mr. Purcell signed the December 3, 2019 letter Accepted and Agreed on December 10, 2019. (VSB Ex. G1)

262. On December 5, 2019, Ms. Follette paid $1,500 towards the pardon request. (VSB Ex. G5 at p. G-9)

263. Investigator Baker testified that Respondent deposited that advance legal fee payment into his operating account.

264. Investigator Baker testified that Respondent did not subsequently transfer the December 3 or 5, 2019 payments into his trust account as required by Rule 1.15(a) of the Virginia Rules of Professional Conduct.

265. Throughout December, Ms. Follette made other payments to pay for Respondent's services, none of which Respondent deposited into his trust account. (VSB Ex. G5)

266. On December 20, 2019, Respondent wrote to Mr. Purcell confirming receipt of the $2,500 for work on the pardon application. (VSB Ex. G3)

267. Mr. Purcell testified that he discussed with Respondent the legal avenues available, and that he made it clear to Respondent that he wanted to go all the way to the United States Supreme Court, if necessary.

268. On January 3, 2020, Respondent wrote to Mr. Purcell memorializing the three-part strategy they discussed. For a fee of $45,000, Respondent would file a motion to vacate in the Price William County Circuit Court citing one or more constitutional violations, a writ of actual innocence with Virginia Court of Appeals, and a writ of habeas corpus in federal court. (VSB Ex. G4)

269. Mr. Purcell testified that at no time did Respondent or anyone on his staff ever communicate to him that Respondent had previously filed motions to vacate on the same grounds on behalf of other clients and that both the Supreme Court of Virginia and the United States Supreme Court refused to hear the appeals on those matters.

270. Similarly, Mr. Purcell testified that Respondent never advised him that *Epps v. Commonwealth* was adverse to the position Respondent wished to advance on his behalf.

271. The January 3, 2020 letter further stated that once work began on the documents, there were no partial refunds. (VSB Ex. G4)

272. Ms. Follette paid Respondent the agreed fee of $45,000 through periodic, incremental payments beginning in January 2020 through at least April 2020. (VSB Ex. G6)

273. Investigator Baker testified that Respondent admitted to him that none of those periodic advance legal fee payments were deposited into Respondent's trust account but were instead deposited directly into his operating account without a subsequent transfer.

274. Investigator Baker also testified that Respondent admitted to him that he failed to produce any client subsidiary ledgers or other documents required to be kept by Rule 1.15(c) of the Virginia Rules of Professional Conduct. Respondent further admitted to Investigator Baker that he did not perform the proper reconciliations required by Rule 1.15(d) of the Virginia Rules of Professional Conduct.

275. Investigator Baker testified that Respondent failed to keep the proper records of the manner in which Mr. Purcell's advance legal fees were earned.

276. Investigator Baker testified that, when interviewed during the investigation of this matter, Respondent was unaware of who actually paid for services on behalf of Mr. Purcell. (VSB Ex. G16 at p. G-126)

277. Investigator Baker testified that Respondent was of the belief that someone named Mr. Anderson had made a payment of $30,000 on behalf of Mr. Purcell for the work Respondent agreed to perform. Respondent produced a redacted copy of his operating account statement showing only the deposit from Mr. Anderson on January 13, 2020. (VSB Ex. G8)

278. Investigator Baker testified that further investigation revealed that, in fact, Mr. Anderson's $30,000 payment to Respondent on January 13, 2020 was for work on an unrelated matter that had nothing to do with Mr. Purcell. (VSB Ex. G16 at pp. G-132 – G-133)

279. Investigator Baker was then shown an unredacted copy of Respondent's operating account for January of 2020 which showed a payment of $30,000 from Mr. Purcell's mother made on January 24, 2020. (VSB Ex. G17). Investigator Baker confirmed that the payment for Mr. Purcell's work came from his mother, not Mr. Anderson.

280. Additionally, Investigator Baker testified that Respondent admitted to him that during the time in which he was representing Mr. Purcell, he did not perform the reconciliations on his trust account required by Rule 1.15(d) of the Virginia Rules of Professional Conduct.

281. Respondent filed a motion to vacate and supporting memorandum on behalf of Mr. Purcell with the Prince William County Circuit Court on September 27, 2021. (VSB Ex. G10)

282. The motion to vacate and memorandum in support filed on behalf of Mr. Purcell (VSB Ex. G10) are identical in nearly every respect to the motions and memoranda that Respondent filed on behalf of Mr. Robinson and other clients, advancing the same Defective Indictment Argument, almost entirely verbatim.[9]

283. Investigator Baker testified that the Virginia Court of Appeals has no record of a writ of actual innocence ever being filed on Mr. Purcell's behalf.

284. Respondent testified that he was waiting for documents related to the writ of actual innocence, while Mr. Purcell testified that he had sent the documents in question to Respondent.

285. Mr. Purcell testified that after he was released from prison in 2021, he made repeated requests to Respondent for an update on the status of the motion to vacate.

286. His last communication with Respondent's office was on March 28, 2022. (VSB Ex. G12 at pp. G-86 – G-89)

287. On June 1, 2022, the Circuit Court of Prince William County entered an order denying the motion to vacate on jurisdictional grounds. (VSB Ex. G11)

288. Respondent filed a notice of appeal with the trial court on June 21, 2022. (VSB Ex. G13)

289. However, the Court of Appeals of Virginia dismissed the appeal on December 7, 2022 because Respondent failed to file an opening brief within the required timeframe. (VSB Ex. G18)

290. Mr. Purcell testified that he was not aware that Respondent had filed an appeal of the denial of the motion to vacate. Mr. Purcell stated that Respondent did not inform him of the appeal and that Mr. Purcell learned about the appeal and the dismissal of the appeal from the VSB.

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[9] *See* VSB Exs. A14, A16, C7, D9, E14, and F14.

291. Respondent and Investigator Baker testified that Respondent did not file a writ of habeas corpus on behalf of Mr. Purcell as he was contracted to do.

292. Mr. Purcell testified that he requested a refund from Respondent but did not receive a response. Mr. Purcell further testified that he has filed a civil suit against Respondent for the return of unearned fees and that such litigation is still pending.

293. The Court finds that the Virginia State Bar failed to prove, by clear and convincing evidence, the following violations of the Virginia Rules of Professional Conduct alleged in the Certification in the Purcell matter and dismisses the same: Rule 1.16(d) (Declining Or Terminating Representation), Rule 3.1 (Meritorious Claims and Contentions), Rule 8.1(a) and (b) (Bar Admission and Disciplinary Matters), and Rule 8.4(b) (Misconduct).

294. The Court finds that the Virginia State Bar proved by clear and convincing evidence violations of the Virginia Rules of Professional Conduct in the Purcell matter and makes the following Findings of Misconduct:

FINDINGS OF MISCODUCT

By failing to properly notice and schedule a hearing on the motion to vacate in a timely fashion, and by failing to file a Writ of Habeas Corpus despite having been paid to do so, Respondent violated Rule 1.3(a) and (b).

Rule 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

* * * *

By failing to respond to Mr. Purcell's calls and correspondence, particularly after having been released from incarceration, by not properly explaining to Mr. Purcell that the United States Supreme Court, the Supreme Court of Virginia, and Virginia circuit courts had previously rejected the Defective Indictment Argument and that case law was not in their favor, and by never advising Mr. Purcell about the dismissal of the Motion to Vacate, the appeal, or the status of his pardon petition, Respondent violated Rule 1.4(a) and (b).

Rule 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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

* * * *

By charging an excessive fee for work product that was copied almost verbatim from documents filed on behalf of previous clients, advancing the Defective Indictment Argument that the United States Supreme Court, the Supreme Court of Virginia, and Virginia circuit courts had previously rejected and for which case law was not in his client's favor, and by failing to prepare a writ of habeas corpus despite having been paid to do so, Respondent's fee was excessive and violated Rule 1.5(a) and (b).

Rule 1.5 Fees

(a) A lawyer's fee shall be reasonable. 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; and

(8) whether the fee is fixed or contingent.

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

* * * *

By failing to deposit the advance legal fees he received prior to March 15, 2020 into his trust account and instead placing them into his operating account, and by failing to keep the required records and perform the proper reconciliations of his trust account, Respondent violated Rule 1.15 in effect prior to March 15, 2020 as follows.

Rule 1.15 Safekeeping Property (*Effective 2013)*

(a)Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. A lawyer shall:

* * *

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

* * *

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and

changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records

* * * *

By failing to properly deposit the advance legal fees paid after March 15, 2020 into his trust account, by not returning unearned fees when requested to do so, and instead converting those fees to himself, by failing to keep the records required, and by failing to perform the required reconciliation of his trust account after March 15, 2020, Respondent violated Rule 1.15 as follows.

RULE 1.15 Safekeeping Property *(Effective 3.15.20)*

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

* * *

(b) Specific Duties. A lawyer shall:

* * *

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court

supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

* * * *

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

* * * *

By charging Mr. Purcell $45,000 for work product that was copied from documents submitted on behalf of other clients, by failing to prepare a writ of habeas corpus and a writ of actual innocence despite having been paid to do so, and by keeping unearned fees, by failing to disclose to the court and Mr. Purcell that the United States Supreme Court, the Supreme Court of Virginia and various circuit courts in the Commonwealth had previously rejected the Defective Indictment Argument, Respondent violated or attempted to violate Rule 8.4(a) and (c) and attempted to violate other Rules of Professional Conduct.

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;

* * *

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

VSB DOCKET NO. 22-080-124753
Complainant: Monique Nichols

FINDINGS OF FACT

295. Complainant Monique Nichols ("Ms. Nichols") is the mother of Nahfis Nichols ("Mr. Nichols").

296. Mr. Nichols was convicted of multiple felonies by the Circuit Court for the City of Newport News in 2011 and received a custodial sentence in the Virginia Department of Corrections in 2012. (VSB Ex. J7 at ¶3)

297. While incarcerated, Mr. Nichols read Respondent's advertisement in a prison newspaper. (VSB J7 at ¶4)

298. On August 23, 2017, Respondent wrote that he would prepare a pardon application for a fee of $1,999 and a writ of actual innocence for a fee of $5,000. The letter was signed and accepted by Mr. Nichols. (VSB Ex. H6)

299. Respondent's August 23, 2017 letter (VSB Ex. H6) also recognizes that in the event of early termination, all unearned fees will be refunded to the client, which is contrary to Respondent's testimony at trial that his interpretation of how advance legal fees are to be handled by Virginia lawyers was different from that of the Supreme Court of Virginia, and that his understanding did not change until, at earliest, sometime in 2021.

300. Ms. Nichols began making payments to Respondent's firm for the pardon application in the fall of 2017. She paid $1,000 on September 13, 2017, $500 on November 9, 2017, and $499 on December 10, 2017. (VSB Ex. H13)

301. Investigator Baker testified that Respondent admitted to him in an interview that Respondent failed to deposit the advance legal fees that Ms. Nichols paid in this trust account as required by Rule 1.15 (a) of the Virginia Rules of Professional Conduct.

302. Ms. Nichols made incremental payments between February 13, 2018 and May 15, 2019 towards the writ of actual innocence. (VSB Ex. H13)

303. Investigator Baker testified that Respondent similarly failed to deposit those advance legal fees into his trust account as required by Rule 1.15(a) of the Virginia Rules of Professional Conduct.

304. Investigator Baker also testified that Respondent failed to produce any client subsidiary ledgers, or other documents required to be kept by Rule 1.15(c) of the Virginia Rules of Professional Conduct, and that he failed to keep the proper records of the manner in which Mr. Nichol's advance legal fee was earned.

305. Investigator Baker further testified that Respondent told him that in addition to failing to deposit the fees into trust, Respondent did not maintain the required ledgers and journals pursuant to the requirements of Rule 1.15(c) and that he did not perform the required reconciliations of his trust account pursuant to Rule 1.15(d).

306. Ms. Nichols completed payment on the writ of actual innocence sometime in fall of 2020. (VSB Ex. H13)

307. Respondent and/or his staff prepared documents in connection with the pardon application. (Respondent Ex. 29)

308. Mr. Nichols only received the documents prepared in connection with the pardon application and not the writ of actual innocence. (VSB Ex. J7 at ¶¶8-9)

309. Investigator Baker testified that Respondent was aware that the Nichols family had made a request for a refund, but that Respondent had not provided one.

310. In response to a subpoena *duces tecum* issued by the VSB, Respondent provided, among other documents, an affidavit dated February 17, 2022, from Matthew George, a paralegal that worked in Respondent's office at all times relevant. (VSB Ex. H15)

311. In the affidavit, Mr. George affirmed that he confirmed with the Secretary of the Commonwealth that Mr. Nichols Pardon was still under review as of November of 2021. (VSB Ex. H15)

312. At the time that Mr. George affirmed that statement, neither Respondent nor anyone at his office had filed a pardon application with the Governor on behalf of Mr. Nichols. (VSB Ex. H16)

313. Investigator Baker contacted the Governor's office and confirmed that no pardon application had even been filed on behalf of Mr. Nichols, either by Respondent or anyone else. (VSB Ex. H16)

314. Investigator Baker testified, that Respondent submitted Mr. George's affidavit (VSB Ex. H15) in response to the complaint during his interview Investigator Baker.

315. Respondent represented that he and/or his staff sent Mr. Nichols a draft of his Writ of Actual Innocence for review on at least two occasions. In response to a VSB subpoena, Respondent produced a letter addressed to Mr. Nichols dated March 18, 2021 (without enclosures), purporting to enclose a copy of the writ (VSB Ex. H14), and Mr. George affirmed in his affidavit that he had most recently sent a copy of the writ to Mr. Nichols in December 2021 (VSB Ex. H15 at ¶2).

316. Investigator Baker testified that he had reviewed the prison legal mail logs for Mr. Nichols and found that, contrary to Respondent's representations, no correspondence to Mr. Nichols from Respondent's office was received in either March 2021 or December 2021.

317. The Court finds that the Virginia State Bar failed to prove by clear and convincing evidence, the following violations of the Virginia Rules of Professional Conduct alleged in the Certification in the Nichols matter and dismisses the same: Rule 1.3(a) (Diligence), Rule 1.5(a) (Fees), Rule 8.1(a) (Bar Admission and Disciplinary Matters), and Rule 8.4(b) (Misconduct).

318. The Court finds that the Virginia State Bar proved by clear and convincing evidence violations of the Virginia Rules of Professional Conduct in the Nichols matter and makes the following Findings of Misconduct:

FINDINGS OF MISCODUCT

By failing to keep Mr. Nichols and his family properly informed of the status of the documents that Respondent was retained to file, Respondent violated Rule 1.4(a).

Rule 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

* * * *

By failing to deposit the advance legal fees he received prior to March 15, 2020 into his trust account and instead placing them into his operating account, and by failing to keep the required records and perform the proper reconciliations of his trust account, Respondent violated Rule 1.15 in effect prior to March 15, 2020 as follows.

Rule 1.15 Safekeeping Property (*Effective 2013)*

(a)Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. A lawyer shall:

* * *

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

* * *

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records

* * * *

By failing to properly deposit the advance legal fees paid after March 15, 2020 into his trust account, by not returning unearned fees when requested to do so, and instead converting those fees to himself, by failing to keep the records required, and by failing to perform the required reconciliation of his trust account as required after March 15, 2020, Respondent violated Rule 1.15 as follows.

RULE 1.15 Safekeeping Property (*Effective 3.15.20)*

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

* * *

(b) Specific Duties. A lawyer shall:

* * *

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

* * * *

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

* * * *

By failing to return all unearned fees when requested to do so, Respondent violated Rule 1.16(d).

Rule 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

* * * *

By allowing his staff to make false statements to the client concerning the status of filings and by allowing his staff to make false affidavits concerning the filing of the Pardon Petition, Respondent did not take adequate steps to ensure compliance with the Virginia Rules of Professional Conduct, and by ratifying the above acts by producing the false affidavit in response to the VSB's subpoena duces tecum, Respondent violated Rule 5.3.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

* * * *

By producing the false affidavit in connection with the VSB's investigation on the Nichols case, Respondent violated Rule 8.1(b).

Rule 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter;

* * * *

By having Matthew George swear out the false affidavit, and by allowing his staff to make false statements to the client and the VSB, Respondent violated Rule 8.4(a) and (c).

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;

* * *

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

* * * *

VSB DOCKET NO. 22-080-125496
Complainant: Virginia State Bar/Trust Account

FINDINGS OF FACT

319. From at least August 1, 2017 through July of 2022, Respondent maintained his trust account at Wells Fargo, an account ending in 6634. (VSB Ex. A1 at pp. A-85, ¶349 and A-417, ¶86)

320. During that same time period, Respondent also maintained several other accounts at Wells Fargo, including an operating account ending in 6626. (VSB Ex. A1 at pp. A-85, ¶350 and A-417, ¶86)

321. From August 1, 2017 through December 1, 2017, the balance in Respondent's trust account remained the same at $51.26. (VSB Ex. A1 at pp. A-85, ¶351 and A-417, ¶86)

322. The trust account statements for that time period show that Respondent made no deposits or withdrawals. (VSB Ex. A1 at pp. A-85, ¶352 and A-417, ¶86)

323. During that same time, Respondent routinely received advance fees and flat fees from clients, either by check or electronic payments, that he failed to deposit into trust, and instead deposited directly into his operating account. (VSB Ex. A1 at pp. A-85, ¶353 and A-417, ¶87)

324. From August 1, 2017 through December 31, 2017, Respondent used his operating account as a *de facto* trust account. During that time period, Respondent paid personal obligations and debts from his operating account while holding client funds in that same account. (VSB Ex. A1 at pp. A-85, ¶354 and A-417, ¶87)

325. From January 1, 2018 through December 31, 2018, the balance in Respondent's trust account remained the same at $51.26. (VSB Ex. A1 at pp. A-86, ¶355 and A-417, ¶86)

326. During that same time period, Respondent routinely received advance fees and flat fees from clients, either by check or electronic payments, that he failed to deposit into trust, and instead deposited directly into his operating account. (VSB Ex. A1 at pp. A-86, ¶356 and A-417, ¶87)

327. During that same time, Respondent paid personal obligations and debts from his operating account while holding client funds in that same account. (VSB Ex. A1 at pp. A-86, ¶357 and A-417, ¶87)

328. From January 1, 2019 through May 21, 2019, the balance in Respondent's trust account was remained the same at $51.26. (VSB Ex. A1 at pp. A-86, ¶358 and A-417, ¶86)

329. On May 21, 2019, Respondent deposited into his trust account a check made payable to him in the amount of $194,135.99 paid by the Johnson Operating Account. (VSB Ex. A1 at pp. A-86, ¶359 and A-417, ¶86)

330. Respondent's trust account statement for May 2019 shows that the check in question was returned unpaid, and Respondent was assessed a fee of $12.00, leaving an ending balance in this trust account of $39.26. (VSB Ex. A1 at pp. A-86, ¶360 and A-417, ¶86)

331. From May 31, 2019 through September 4, 2019, the balance in Respondent's trust account remained the same at $39.26. Respondent made no deposits to or withdrawals from the trust account during that time period. (VSB Ex. A1 at pp. A-86, ¶361 and A-417, ¶86)

332. On September 5, 2019, Respondent deposited into his trust account a check in the amount of $209,698.17 payable to Randall Clark and Margaret Nowlin. (VSB Ex. A1 at pp. A-86, ¶362 and A-417, ¶86)

333. On September 6, 2019, Respondent transferred $3,000.00 from his trust account into his operating account with the notation, "Checking funds to Heather and Bryant Nowlin." (VSB Ex. A1 at pp. A-86, ¶363 and A-417, ¶86)

334. On September 20, Respondent transferred $900.00 from his trust account into his operating account with the notation, "legal fees paid per client letter." (VSB Ex. A1 at pp. A-86, ¶364 and A-417, ¶86)

335. The ending balance in Respondent's trust account on September 20, 2019 was $205,837.43. (VSB Ex. A1 at pp. A-86, ¶365 and A-417, ¶86)

336. Respondent made no deposits to or withdrawals from his trust account during October 2019. (VSB Ex. A1 at pp. A-86, ¶366 and A-417, ¶86)

337. On November 26, 2019, Respondent deposited a check into his trust account in the amount of $4,540.00 paid by the Litt Group, LLC, an entity in which Respondent owns an interest. (VSB Ex. A1 at pp. A-87, ¶367 and A-417, ¶86)

338. On November 26, 2019, Respondent transferred $205,800.00 into his business market rate savings account at Wells Fargo, an account ending in 8631, funds that presumably belonged to Heather and Bryant Nowlin. (VSB Ex. A1 at pp. A-87, ¶368 and A-417, ¶86)

339. On November 27, 2019, Respondent transferred $4,500.00 from his trust account into his Way2Save checking account ending in 9928. (VSB Ex. A1 at pp. A-87, ¶369 and A-417, ¶86)

340. The ending balance in Respondent's trust account on November 30, 2019 was $77.43. (VSB Ex. A1 at pp. A-87, ¶370 and A-417, ¶86)

341. On December 2, 2019, Respondent deposited a check into his trust account in the amount of $7,000.00 paid by Penman Photography, LLC with the notation, "Fortune Settlement." (VSB Ex. A1 at pp. A-87, ¶371 and A-417, ¶86)

342. On December 11, 2019, Respondent transferred $7,000.00 from his trust account into his operating account ending in 6626. (VSB Ex. A1 at pp. A-87, ¶372 and A-417, ¶86)

343. The ending balance in Respondent's trust account on December 31, 2019 was $77.43. (VSB Ex. A1 at pp. A-87, ¶373 and A-417, ¶86)

344. Throughout 2019, Respondent routinely received advance fees and flat fees from clients, either by check or electronic payments, that he failed to deposit into trust, and instead deposited directly into his operating account. (VSB Ex. A1 at pp. A-87, ¶374 and A-417, ¶87)

345. During that same time, Respondent paid personal obligations and debts from his operating account while holding client funds in that same account. (VSB Ex. A1 at pp. A-87, ¶375 and A-417, ¶87)

346. From January 1, 2020 through December 31, 2020, Respondent made no deposits to or withdrawals from his trust account, and the balance of the trust account remained the same at $77.43. (VSB Ex. A1 at pp. A-87, ¶¶376 and 377 and A-417, ¶86)

347. Throughout 2020, Respondent routinely received advance fees and flat fees from clients, either by check or electronic payments, that he failed to deposit into trust, and instead deposited directly into his operating account. (VSB Ex. A1 at pp. A-87, ¶378 and A-417, ¶87)

348. During that same time, Respondent paid personal obligations and debts from his operating account while holding client funds in that same account. (VSB Ex. A1 at pp. A-87, ¶379 and A-417, ¶87)

349. The beginning balance in Respondent's trust account on January 1, 2021, was $77.43. (VSB Ex. A1 at pp. A-88, ¶380 and A-417, ¶86)

350. In January of 2021, VSB Investigator David Jackson provided Respondent a copy of LEO 1606. (VSB Ex. A1 at pp. A-88, ¶381 and A-417, ¶86)

351. Respondent testified that his interpretation of the rules with regard to handling advance fees was different from that of the Supreme Court of Virginia. However, he was demonstrably aware in 2017 that in the event of early termination, his client was entitled to a return of all unearned fees. (VSB Ex. H5)

352. On February 8, 2021, Respondent transferred $3,500.00 from his operating account into his trust account, which represented the electronic payment made by Charnette Jones to pay for a case review for her fiancé, Christopher Albert. (VSB Ex. A1 at pp. A-88, ¶382 and A-417, ¶86)

353. The ending balance in Respondent's trust account on February 28, 2021, was $3,577.43. (VSB Ex. A1 at pp. A-88, ¶383 and A-417, ¶86)

354. From February 28, 2021 to September 13, 2021, Respondent made no deposits or withdrawals in his trust account and maintained a balance of $3,577.43. (VSB Ex. A1 at pp. A-88, ¶384 and A-417, ¶86)

355. Respondent completed his case review for Christopher Albert in February of 2021. (VSB Ex. A1 at pp. A-88, ¶385 and A-417, ¶86)

356. On September 14, 2021, Respondent transferred $2,000.00 from his trust account into his operating account, leaving his trust account with an ending balance on September 30, 2021 of $1,577.43. (VSB Ex. A1 at pp. A-88, ¶386 and A-417, ¶86)

357. On October 1, 2021, Respondent deposited a check into his trust account in the amount of $4,500.00 paid by Rebecca Glass with the notation, "patent idea" in the memo line. (VSB Ex. A1 at pp. A-88, ¶387 and A-417, ¶86)

358. The ending balance in Respondent's trust account was $6,077.43 on October 29, 2021. (VSB Ex. A1 at pp. A-88, ¶388 and A-417, ¶86)

359. By not withdrawing all of the case review funds paid by Ms. Jones on behalf of Mr. Albert, Respondent comingled earned fees with other client fees he was holding in trust. (VSB Exs. D4 and I2).

360. On November 12, 2021, Respondent transferred $4,500.00 from his trust account into his operating account, leaving a balance in his trust account of $1,577.43. (VSB Ex. A1 at pp. A-88, ¶390 and A-417, ¶86)

361. On December 1, 2021, Respondent transferred $1,477.33 from his trust account into his operating account. (VSB Ex. A1 at pp. A-88, ¶391 and A-417, ¶86)

362. On December 30, 2021, Respondent transferred $6,000.00 into his trust account from his operating account without any notation or reference as to whom the funds belonged or

for what purpose they were held in trust, as Respondent had previously made with other clients (such as Christopher Albert). (VSB Ex. A1 at pp. A-88, ¶392 and A-417, ¶86)

363. The ending balance in Respondent's trust account on December 31, 2021, was $6,100.10. (VSB Ex. A1 at pp. A-88, ¶393 and A-417, ¶86)

364. Respondent stated to Investigator Baker that from May of 2020 through June of 2021, Respondent made only one deposit into his trust account. (VSB Ex. A1 at pp. A-89, ¶394 and A-417, ¶86)

365. Despite having knowledge of the requirements of LEO 1606 no later than January of 2021, Respondent continued to make deposits of advance fees and flat fees into his operating account before such fees had been earned until at least June of 2021. (VSB Ex. I4).

366. In March of 2021, Respondent deposited the advance fee paid by Ms. Jones for Mr. Albert's motion to vacate into his operating account before such fees had been earned. (VSB Ex. I4)

367. Investigator Baker testified that a review of Respondent's trust account records produced by Respondent for the years 2017 through 2021 showed that the records were not sufficient to meet the requirements of Rule 1.15(c) of the Virginia Rules of Professional Conduct.

368. Investigator Baker testified that Respondent told him that Respondent did not perform the reconciliations required by Rule 1.15(d) of the Virginia Rules of Professional Conduct until sometime in 2022.

369. Respondent testified that represented a client by the name of Phillip Holznecht in an arbitration proceeding, and that an award was issued in the amount of $600,000.

370. Respondent deposited the $600,000 award into his trust account on March 4, 2022 (VSB Ex. I2 at p. I-47)

371. Respondent testified that due to disputes as to how the award funds were to be paid, Respondent maintained the funds in trust until an agreement was reached on how they were to be disbursed.

372. Rather than disperse only his share of the proceeds from the trust account, Respondent transferred the full $600,000 into his operating account on July 12, 2022. (VSB Ex. I3 at p. I-187)

373. Respondent also transferred settlement funds for another client in the amount of $188,452.70 from his trust account into his operating account on July 27, 2022. (VSB Ex. I3 at p. I-188)

374. Respondent paid Mr. Holznecht his share of the award proceeds via a check drawn on his operating account rather than a payment from his trust account. (VSB Ex. I-10 at p. I-321)

375. Respondent testified that he paid the funds from his operating account because he did not have checks available for his trust account.

FINDINGS OF MISCODUCT

By failing to properly deposit client advance fees and retainers into trust and by depositing unearned fees into his operating account before and after March 15, 2020, by failing to withdraw fees earned in the Albert case after they were earned, by failing to keep proper client subsidiary ledgers and required journals before and after March 15, 2020, by failing to reconcile his trust account as required both before and after March 15, 2020, , and by not properly handing settlement and award funds for his clients in July of 2022, Respondent violated Rule 1.15 as follows.

Rule 1.15 Safekeeping Property (*Effective prior to March 15, 2020)*

(a)Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

* * *

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

(b) Specific Duties. A lawyer shall:

(1) promptly notify a client of the receipt of the client's funds, securities, or other properties;

(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

* * *

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

* * * *

RULE 1.15 Safekeeping Property (*Effective March 15, 2020)*

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

* * *

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

(b) Specific Duties. A lawyer shall:

(1) promptly notify a client of the receipt of the client's funds, securities, or other properties;

(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

* * *

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

IMPOSITION OF SANCTIONS

The Court then proceeded to the sanctions phase of the proceeding on the morning of October 26, 2023. The VSB and Respondent presented opening statements.

The VSB incorporated by reference all of the exhibits introduced and the testimony elicited during the Misconduct phase of the hearing and then called Flora Skipwith and Thomas Purcell as witnesses. The VSB provided the Court with Respondent's prior disciplinary history with the VSB which was marked VSB Ex. S1 and received into evidence.

Thereafter, the VSB rested its case in the Sanctions phase of the hearing.

Respondent likewise incorporated all of his exhibits and testimony introduced during the Misconduct phase and called only himself as a witness.

Counsel for the VSB and Respondent presented argument regarding the sanction to be imposed on Respondent for the Misconduct found, and the Court recessed to deliberate.

DETERMINATION

After due consideration of the evidence as to mitigation and aggravation and argument of counsel, the Court reconvened to announce its sanction of **REVOCATION** of Respondent's license to practice law in the Commonwealth of Virginia, effective immediately on October 26, 2023.

Accordingly, it is hereby **ORDERED** that Respondent's license to practice law in the Commonwealth of Virginia be and same is hereby **REVOKED**, effective October 26, 2023.

It is further **ORDERED** that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. Respondent must forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. Respondent must also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent must give such notice immediately and in

no event later than 14 days of the effective date of the suspension, and make such arrangements as are required herein as soon as practicable and in no event later than 45 days of the effective date of the suspension. Respondent must also furnish proof to the VSB within 60 days of the effective date of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further **ORDERED** that if Respondent is not handling any client matters on the effective date of the suspension, he must submit an affidavit to that effect to the Clerk of the Disciplinary System of the VSB. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 must be determined by the VSB Disciplinary Board.

It is further **ORDERED** that the Clerk of the Disciplinary System of the VSB must assess all costs pursuant to Paragraph 13-9.E.

It is further **ORDERED** that the Clerk must send a copy teste of this Memorandum Order to Respondent, Dale Reese Jensen, by certified mail, return receipt requested, to 606 Bull Run, Staunton, Virginia 24401, his address of record with the VSB; to Joanne Fronfelter, Clerk of the Disciplinary System, Virginia State Bar, 1111 E. Main Street, Suite 700, Richmond, VA 23219, and to Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, 1111 E. Main Street, Suite 700, Richmond, VA 23219.

[SECTION INTENTIONALLY LEFT BLANK]

The proceedings were transcribed by Angelique Showalter of Reporting Service, Inc., 57 South Main Street, Suite 202, Harrisonburg, Virginia 22801, phone number (540) 434-3232.

ENTERED this 19 **day of** December **2023**

Cheryl V. Higgins

Cheryl V. Higgins, Chief Judge for the Court

SEEN:

Virginia State Bar
Paulo E. Franco, Jr., Assistant Bar Counsel
Seth T. Shelley, Assistant Bar Counsel
1111 East Main Street, Suite 700
Richmond, Virginia 23219
(804) 775-9419 (O)
(804) 944-1463 (C)
franco@vsb.org

Objected to for all of the reasons stated in the pleadings, hearings, and trial. Further objected to in the written

SEEN AND objections submitted herewith

Dale Reese Jensen, *pro se*
606 Bull Run
Staunton, Virginia 22401
(540) 255-7188
djensen@jensenjustice.com

Respondent's Objections to
FINAL MEMORANDUM ORDER
Filed by Virginia State Bar

Respondent renews his objection to the trial being held between October 23-26, 2023. Respondent moved to continue the trial based upon his inability to be prepared for same. Respondent's proper preparations for trial were not possible due to his wife having been gravely ill with an aggressive cancer during the entirety of 2023. During the entirety of 2023, Respondent's wife has been bedridden and has required Respondent's continual care and attention. Respondent was and is his wife's sole caretaker. Respondent was unable to even prepare the very limited defensive exhibits used at trial until after midnight on October 22, 2023. Respondent was operating on limited sleep during the entirety of the trial, which further impaired his ability to properly present his case. For example, allegations were made that Respondent's fees were unreasonable and that somehow Respondent showing a $600 hourly rate for post-conviction relief purposes was also unreasonable. Respondent avers that during all relevant time periods, the law firm of Dale Jensen, PLC operated at significant annual loss. Dale Jensen, PLC was only able to sustain operation via borrowed funds. It is simply beyond the pale that amount billed to the complainants at issue were unreasonable when such funds, along with funds from other work, were insufficient for Dale Jensen, PLC to operate at a profit. It is axiomatic that a law firm must bill at rates sufficient to cover its costs. Evidence to that effect should have been a part of Respondent's case, but Respondent did not have time to properly prepare. As another example, the Bar impugned Respondent's integrity because he misremembered the identity of a forensic psychiatric professional that was denied access to a client in the Virginia Department of Corrections. Had Respondent had additional time, evidence would have been presented that, although Anita Boss was planned for use to conduct an examination of one of the complainants, Eugene Fredo, it was actually another forensic psychologist that was denied access by the Virginia Department of Corrections. That psychologist, Sahair Monfared was informed that she would not be allowed to examine a client in Greensville Correctional Center. Had Respondent had sufficient time to prepare for trial, the Respondent would have been able to more fully review case notes to refresh his memory. As a related issue, the Respondent should have been allowed time to prepare evidence that the Virginia Department of Corrections would not allow any visitors whatsoever, including forensic psychologists during most of 2020 and 2021 due to COVID-19. The failure to grant Respondent a continuance violated Respondent's due process rights.

Respondent further reiterates his objections to the admission of hearsay testimony at the hearing including, without limitation, the testimony of hearsay evidence by each and every witness of the Virginia State Bar (the "Bar"), specifically including testimony of Robert Baker relating hearsay statements allegedly made to him by third parties, and the affidavits of Phillip Ostrander, Michael Robinson, Christopher Albert, Antonio Townsend, Maria Lankford, Eugene Fredo, and Nahfis Nichols. The admission of hearsay violated the constitutional due process rights of the Respondent. Some of the hearsay even included double hearsay statements about what third parties allegedly said.

The Respondent also specifically objects to the so-called conclusion of law to the extent that they merely state facts rather than pertain to actual law. Specifically, **Respondent objects to the numbered paragraphs as follows**:

1. Paragraph 1 is objected to because it is a statement of fact and not a conclusion of law.
2. Paragraph 2 is objected to because it is a statement of fact and not a conclusion of law.
3. The Respondent also specifically objects to the so-called conclusion of law #3 of the Order of this case that "Case law in Virginia prior to 2016 recognized that defective indictments were procedural in nature and could, therefore, be waived." This so-called conclusion of law is contrary to the plain language of the Fifth Amendment to the United States Constitution, which is superior authority to any and all contrary Virginia "case law". The Bar apparently does not believe that the Courts of Virginia are subject to the United States Constitution and respondent objects accordingly.
4. The Respondent also specifically objects to the so-called conclusion of law #4 that asserts that the plain language of the Fifth Amendment is merely a "theory". The Respondent specifically objects to any and all assertions in the final order of the case that are contrary to the Fifth Amendment rights of those represented by the Respondent. The enumerated civil rights of the Bill or Rights are supreme legal authority and the Virginia State Bar as well as the courts of Virginia should enforce all of those civil rights, including the enumerated right of citizens to not be tried for any infamous crime unless properly indicted by a grand jury. Paragraph 4 is objected to because it is a statement of fact and not a conclusion of law.
5. The Respondent also specifically objects to the so-called conclusion of law #5 that asserts that the plain language of the Fifth Amendment is merely a "theory". The Respondent specifically objects to any and all assertions in the final order of the case that are contrary to the Fifth Amendment rights of those represented by the Respondent. The enumerated civil rights of the Bill or Rights are supreme legal authority and the Virginia State Bar as well as the courts of Virginia should enforce all of those civil rights, including the enumerated right of citizens to not be tried for any infamous crime unless properly indicted by a grand jury. Paragraph 5 is objected to because it is a statement of fact and not a conclusion of law.
6. Paragraph 6 is objected to because it is a statement of fact and not a conclusion of law.
7. Paragraph 7 is objected to because it is a statement of fact and not a conclusion of law. Respondent further avers that the plain language of the Fifth Amendment is superior authority to *Epps* and that basic constitutional rights, such as the right to a grand jury indictment are not "procedural" and that Epps is in error because of that.
8. Paragraph 8 is objected to because it is a statement of fact and not a conclusion of law.
9. Paragraph 9 is objected to because it is a statement of fact and not a conclusion of law.
10. Paragraph 10 is objected to because it is a statement of fact and not a conclusion of law.
11. Paragraph 11 is objected to because it is a statement of fact and not a conclusion of law.
12. Paragraph 12 is objected to because it is a statement of fact and not a conclusion of law.
13. Paragraph 13 is objected to because it is a statement of fact and not a conclusion of law.
14. Paragraph 14 is objected to because it is a statement of fact and not a conclusion of law. Respondent further objects to any finding concerning Ms. Liu as irrelevant to any of the claims in the subject case.

15. Paragraph 15 is objected to because it is a statement of fact and not a conclusion of law.
16. Paragraph 16 is objected to because it is a statement of fact and not a conclusion of law.
17. Paragraph 17 is objected to because it is a statement of fact and not a conclusion of law. Respondent further objects to any finding concerning Ms. Liu as irrelevant to any of the claims in the subject case.
18. Paragraph 18 is objected to because it is a statement of fact and not a conclusion of law.
19. Paragraph 19 is objected to because it is a statement of fact and not a conclusion of law. Respondent further objects to any finding concerning Ms. Liu as irrelevant to any of the claims in the subject case.
20. Paragraph 20 is objected to because it is a statement of fact and not a conclusion of law.
21. Paragraph 21 is objected to because it is a statement of fact and not a conclusion of law.
22. Paragraph 22 is objected to because it is a statement of fact and not a conclusion of law.
23. Paragraph 23 is objected to because it relies upon hearsay statements that violated Respondent's due process rights. Respondent could not cross-examine affidavits. The Respondent also specifically objects to any and all assertions in the final order of the case that are contrary to the Fifth Amendment rights of those represented by the Respondent. The enumerated civil rights of the Bill or Rights are supreme legal authority and the Virginia State Bar as well as the courts of Virginia should enforce all of those civil rights, including the enumerated right of citizens to not be tried for any infamous crime unless properly indicted by a grand jury.
24. Paragraph 24 is objected to because it relies upon hearsay statements that violated Respondent's due process rights. Respondent could not cross-examine affidavits. Paragraph 24 is also objected to as being unduly vague and not properly evidenced as it fails to identify the "subsequent clients". Respondent also specifically objects to any and all assertions in the final order of the case that are contrary to the Fifth Amendment rights of those represented by the Respondent. The enumerated civil rights of the Bill or Rights are supreme legal authority and the Virginia State Bar as well as the courts of Virginia should enforce all of those civil rights, including the enumerated right of citizens to not be tried for any infamous crime unless properly indicted by a grand jury.
25. Paragraph 25 is objected to because it is a statement of fact and not a conclusion of law.
26. Paragraph 26 is objected to because it is overinclusive and was not properly proven as to "all of these cases". For example, all funds paid on behalf of Philip Ostrander ("Ostrander") were not mishandled. No fees were paid in advance of work performed for Ostrander as proved by time records introduced in evidence by the Respondent. All fees paid on behalf of Ostrander were earned prior to deposit. In addition, evidence time records introduced in evidence by the Respondent proved that fees paid by Christopher Albert were earned prior to payment of those fees.
27. Paragraph 27 is objected to because it is a statement of fact and not a conclusion of law. Paragraph 27 is further objected to because evidence at trial fell below the clear and convincing evidence standard as to funds paid in the Albert matter.

Ostrander

Findings of Fact

28. No Objections.

29. Objected to because of reliance on a hearsay declaration that violated Respondent's due process rights to cross-examine Ostrander.
30. Objected to the extent of its reliance on a hearsay declaration that violated Respondent's due process rights.
31. Objected to because of reliance on a hearsay declaration that violated Respondent's due process rights. There was no evidence beyond the hearsay statements of Philip Ostrander ("Ostrander"), a convicted felon with convictions that included crimes of moral turpitude, that any fees paid on his behalf were advance fees. Instead, Ostrander proffered a naked assertion in his affidavit that $15,000 was allegedly paid to Respondent with no receipts or documentation. Respondent provided records and testified that all funds were earned prior to payment and the amount paid on Ostrander's behalf was substantially less than $15,000. The naked assertions of felon Ostrander fall far below the clear and convincing evidence threshold. The motivation for Ostrander's lies has become apparent since the proposal of this Order to this Court. Ostrander has filed a request to be reimbursed by the Virginia State Bar for a full $15,000 notwithstanding that Ostrander never personally paid any funds to Respondent. Further objected to because the statements are false and contradicted by Respondent's Exhibit 1. Respondent testified that Ostrander's mother had paid only a total of $10,500 over a somewhat extended period of time. All funds paid by Ostrander's mother were for work had previously been completed and were not advanced fees. Despite having subpoenaed all of Respondent's bank records during all relevant time periods, the bar presented no evidence of such a payment. Further, Ostrander's motivation to lie has become apparent in that he has personally made a claim against the Victim's recovery fund of the Bar to recover far more money than his family (which family members that actually paid respondent are not parties to the request) paid respondent. This, even though Respondent performed work valued significantly above the actual payments made by Ostrander's family on his behalf. It is apparent that Ostrander lied in hopes of obtaining a windfall from the Bar.
32. Respondent made no admissions to Investigator Baker about having received any advance payments from Ostrander and this statement does not accurately reflect payments made for and on behalf of Ostrander.
33. Respondent made no admissions to Investigator Baker about having received any advance payments from Ostrander and this statement does not accurately reflect payments made for and on behalf of Ostrander.
34. Respondent made no admissions that any advance payments were paid on Ostrander's behalf and this statement does not accurately reflect payments made for and on behalf of Ostrander or Respondent's trial testimony as to Ostrander.
35. No Objections.
36. Objected to because of reliance on a hearsay declaration that violated Respondent's due process rights.
37. Objected to because Respondent's sworn testimony contradicted Ostrander's hearsay affidavit. Respondent presented a letter as evidence in which he advised Ostrander of the files the federal litigation referenced in paragraph 37. Respondent's Exhibit 3. This "fact" was not proved by clear and convincing evidence.

38. No Objections.
39. No Objections.
40. Objected to because Respondent's sworn testimony contradicted Ostrander's hearsay affidavit. This "fact" was not proved by clear and convincing evidence.
41. Objected to because of reliance on a hearsay declaration that violated Respondent's due process rights.
42. Objected to because of reliance on a hearsay declaration that violated Respondent's due process rights. Further objected to because Respondent's sworn testimony contradicted Ostrander's hearsay affidavit. This "fact" was not proved by clear and convincing evidence.
43. Objected to because of reliance on a hearsay declaration that violated Respondent's due process rights. Further objected to because Respondent's sworn testimony contradicted Ostrander's hearsay affidavit and the self-serving and false testimony of Ms. Sherman-Stoltz. Respondent proved that Ms. Sherman-Stoltz lied to the Court in asserting that an e-mail sent by a subordinate requested the file. Respondent produced the actual e-mail and proved that there was no such a request for Ostrander's file. Respondent testified that he received no requests for Ostrander's file until after the second federal lawsuit had been dismissed. The second federal lawsuit was dismissed solely because Ms. Sherman-Stoltz failed to properly act in the case. After she became counsel of record, Ms. Sherman-Stoltz did nothing to move the case forward of even serve process. Indeed, it is Ms. Sherman-Stoltz that should have been investigated by the Virginia State Bar as to the federal case dismissal rather than the Respondent. This "fact" was not proved by clear and convincing evidence.
44. Objected to because of reliance on a hearsay declaration that violated Respondent's due process rights. Further objected to because Respondent's sworn testimony contradicted Ostrander's hearsay affidavit. Respondent testified that he advised Ostrander of filing the entirely new case. Indeed, Respondent testified that much of the content of the added content in the new case in order to address issues of the initial filing was obtained from Ostrander directly. Further, there was no evidence that supported the naked assertion that "Respondent did not correct the deficiencies that resulted in the dismissal of the prior Federal Civil Action". The pages cited in Exhibit B2 simply do not support that naked assertion and there was no testimony that supports it either. In fact, the referenced "Second Federal Civil Action" was dismissed solely because of Ms. Sherman-Stoltz incompetence of not serving the complaint of the case or amending the complaint if she thought that it should be amended. This "fact" was not proved by clear and convincing evidence.
45. No Objections.
46. Objected to because of reliance on a hearsay declaration that violated Respondent's due process rights. Further objected to because Respondent's sworn testimony contradicted Ostrander's hearsay affidavit. The second federal case was filed as a matter of legal strategy to avoid additional service of process issues from the first case. Most of the new content in the second case was obtained from Ostrander after a full discussion with Ostrander about the case and how it would move forward. This "fact" was not proved by clear and convincing evidence.

47. Objected to because of reliance on a hearsay declaration that violated Respondent's due process rights. Further objected to because Respondent's sworn testimony contradicted Ostrander's hearsay affidavit and the self-serving testimony of Ms. Sherman-Stoltz. Respondent proved that Ms. Sherman-Stoltz lied to the Court in asserting that an e-mail sent by a subordinate requested the file. Respondent produced the actual e-mail and proved that there was no such request for Ostrander's file. Further, Nicholas Ostrander lacked personal knowledge about the files or requests therefor and did not testify as alleged by the Bar. This "fact" was not proved by clear and convincing evidence.
48. Objected to because of reliance on a hearsay declaration that violated Respondent's due process rights.
49. Objected to because of reliance on a hearsay declaration that violated Respondent's due process rights.
50. Respondent objects to this paragraph as stating a legal conclusion rather than a fact. Further objected to for all the other reasons previously stated herein. Said legal conclusions are objected to as follows:

    Rule 1.1 – the claimed violations are predicated upon Ostrander's hearsay affidavit which was contradicted by Respondent's sworn testimony. Rule 1.1 – the claimed violations are predicated upon Ostrander's hearsay affidavit which was contradicted by Respondent's sworn testimony. Respondent produced a statutory reference showing that the strategy implemented by Respondent did not cause the statute of limitations expired. Respondent's Exhibit 10. The stilted testimony of Ms. Sherman-Stoltz concerning Va. Code 8.01-229 proved her unfamiliarity with the statute of limitations in Ostrander's case. Indeed, any statute of limitations issues were solely as a result of the failure of Ms. Sherman-Stoltz to do anything in the case after she became counsel of record. This asserted "MISCODUCT" [sic] [1] was not proved by clear and convincing evidence.
    Rule 1.4 – the claimed violations are predicated upon Ostrander's hearsay affidavit which was contradicted by Respondent's sworn testimony. This asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.
    Rule 1.15 – the claimed violations are predicated upon Ostrander's hearsay affidavit which was contradicted by Respondent's sworn testimony. There was no evidence that any fees paid on Ostrander's behalf were advance fees. This asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.
    Rule 1.16 – Respondent testified that during the time period when Ms. Sherman-Stoltz was involved in the case that any request was ever made for Mr. Ostrander's file. Respondent proved that Ms. Sherman-Stoltz lied to the Court in asserting that an e-mail sent by a subordinate requested the file. Respondent produced the actual e-mail and proved that there was no such a request for Ostrander's file. This asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

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[1] Respondent notes the hypocrisy of the Bar in assailing Respondent as to properly proof-reading pleadings. In its "FINAL MEMORANDUM order, the Bar repeatedly misspells the word "MISCONDUCT" apparently believing that different rules apply to counsel for the Bar compared to those asserted against the Respondent.

Skipwith

Findings of Fact

51. No Objections.
52. No Objections.
53. No Objections.
54. No Objections.
55. No Objections.
56. No Objections.
57. No Objections.
58. No Objections.
59. No Objections.
60. No Objections.
61. No Objections.
62. Objected to in part because Respondent's testimony contradicted the asserted "facts" in part. Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution. Taken in total, the asserted "facts" as stated were not proved by clear and convincing evidence.
63. No Objections.
64. No Objections.
65. No Objections.
66. No Objections.
67. No Objections.
68. No Objections.
69. Objected to because of hearsay testimony of Ms. Skipwith as to actions of Mr. Robinson. Respondent's due process rights were violated by not being able to cross-examine Mr. Robinson.
70. No Objections.
71. No Objections.
72. Objection to as lacking context. Withdrawal was mandated by an earlier suspension of Respondent for two months in 2022. Respondent testified that Mr. Robinson terminated Respondent during that suspension, which rendered Respondent powerless to further pursue Mr. Robinson's case.
73. No Objections.
74. No Objections.
75. No Objections.
76. No Objections.
77. No Objections.
78. Objected as being contrary to the evidence at trial. Ms. Skipwith testified that she attended the entirety of the hearing in October 2022. The cited transfer of disputed funds into Respondent's trust account was clearly testified to at that trial. This alleged "fact" was not proved by clear and convincing evidence.

79. Objected to as lacking context. Ms. Skipwith's request was for a full refund of $25,000 notwithstanding extensive work performed by Respondent on Mr. Robinson's behalf.
80. Objected to as being contrary to testimony at trial. Respondent testified that the funds in the trust account were in dispute and that there was a large disparity between the full $25,000 refund demanded by Skipwith and the amount of fees that Respondent was willing to refund. Respondent believes all fees were earned and the amount held in trust are disputed funds. This alleged "fact" lacks that context and is misleading as a consequence.
81. Objected to as being contrary to testimony at trial. Respondent testified that the funds in the trust account were in dispute and that there was a large disparity between the full $25,000 refund demanded by Skipwith and the amount of fees that Respondent was willing to refund. Respondent believes all fees were earned and the amount held in trust are disputed funds. This alleged "fact" lacks that context and is misleading as a consequence.
82. Objected to as being contrary to testimony at trial. Respondent testified that the funds in the trust account were in dispute and that there was a large disparity between the full $25,000 refund demanded by Skipwith and the amount of fees that Respondent was willing to refund. Respondent believes all fees were earned and the amount held in trust are disputed funds. Respondent testified that some funds might be returned, but such return would be conditioned upon such funds being a full settlement of all disputes of the parties as to fees. To date, Skipwith has failed to indicate that she is willing to resolve the dispute for anything less than the full $25,000. Indeed, Skipwith has filed a claim with the Victim's Recovery Fund for the entire $25,000 despite a massive amount of attorney time expended on Mr. Robinson's behalf. This alleged "fact" lacks that context and is misleading.
83. Objected to as lacking context in view of the testimony at trial. Respondent testified that there was no agreement with either Skipwith or Robinson as to an hourly rate that would be charged if a dispute like the one at issue in this case arose. Respondent reported time spent on the documents submitted in the VSB response based upon a default rate of $300 per hour in the timekeeping system of Dale Jensen, PLC. After additional review of the firm finances and the true overhead costs of representing inmates, Respondent determined that a $600 per hour rate is more reflective of the actual cost to the firm of inmate representation. The alleged "facts" of this paragraph lack that context.
84. No Objections.
85. Respondent objects to this paragraph as stating a legal conclusion rather than a fact.
86. Respondent objects to this paragraph as stating a legal conclusion rather than a fact, which legal conclusion is in error as to:

    Rule 1.15 – the claimed violations are predicated upon the disputed fees transferred to the trust account were "converted". The assertion that the fees were unearned was contradicted by Respondent's testimony as time records for work performed on Robinson's behalf. Exhibit 16. Because of bimonthly certifications of compliance with Rule 1.15 as required under the 2022 order of this Court, the Bar knows that the disputed $6,120 remains in the trust account.

There was no evidence of conversion presented at trial. This asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.
Rule 1.16 – the claimed violations are predicated upon the disputed fees transferred to the trust account were "unearned". The assertion that the fees were unearned was contradicted by Respondent's testimony as well as Respondent's Exhibit 16. This asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.
Rule 8.4 – the claimed violations are predicated upon the disputed fees transferred to the trust account were "unearned". The assertion that the fees were unearned was contradicted by Respondent's testimony as well as Respondent's Exhibit 16. Respondent never "acknowledged" that the disputed amount held in trust were unearned. This asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Charnette Jones

Findings of Fact

87. No Objections.
88. No Objections.
89. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Mr. Albert, who was not made available for cross-examination. This violated Respondent's due process rights.
90. No Objections.
91. No Objections.
92. No Objections.
93. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Mr. George, who was not made available for cross-examination. This violated Respondent's due process rights.
94. No Objections.
95. No Objections.
96. No Objections.
97. Objected to as lacking context. Respondent testified that during the referenced time period that he had received periodic additional case review payments from clients. These payments were received prior to Respondent taking training in trust account accounting procedures. In hindsight, Respondent should have explicitly withdrawn Mr. Albert's funds and showed an equal transfer back in for the client paying funds in the same amount as those of Albert. Respondent denied having any amounts in the trust account that were not appropriately there.
98. Objected to as lacking context. There was no evidence at trial that Ms. Jones ever expressed that she preferred to pursue a pardon.
99. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. George, who was not made available for cross-examination. This violated Respondent's due process rights. These asserted "facts" are also belied by the Engagement Letter shown as VSB Exhs D6 and D8, which clearly shows three levels of

appeal were contemplated in the representation. No one person in their right mind would assert or believe that such a process would be completed with "48 to 72 hours". This statement is an apparent lie by a person that admitted to being convicted of crimes of moral turpitude. Accordingly, Respondent objects to the assertions of paragraph 99 fell short of the clear and convincing evidence standard in view of Respondent's testimony.

100. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Mr. Albert, who was not made available for cross-examination. This violated Respondent's due process rights.
101. No Objections.
102. Objected to because Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution.
103. Objected to because Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution.
104. Objected to because Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution.
105. Objected to because Ms. Jones testimony was contradicted by Respondent. Ms. Jones admitted to being a convicted felon and her testimony fell short of proving this asserted fact by clear and convincing evidence. Moreover, Mr. Albert should have been released pursuant to the Motion to Vacate filed on his behalf. The court that denied said motion should have recognized and followed the United States Constitution as being the supreme law of the land.
106. No Objections.
107. Objected to because the asserted "fact" is contrary to testimony at trial. Respondent testified that the referenced "order", which was only located by the court after the motion to vacate was filed, speaks for itself and is defective because it does not prove that the indictment was returned in open court as required under Virginia law. VSB Exhibit I to certification; Virginia Supreme Court Rule 3A:5(c) – Respondent's Exhibit 18.
108. Objected to as lacking context. Courts speak through their orders and the referenced alleged "indictment" were not of record in compliance with at least Virginia Supreme Court Rule 3A:5(c) – Respondent's Exhibit 18
109. Objected to as lacking context. Respondent testified that the referenced "order", which speaks for itself does not prove that the indictment was returned in open court as required under Virginia law. VSB Exhibit I to certification; Virginia Supreme Court Rule 3A:5(c) – Respondent's Exhibit 18.
110. Objected to as lacking context. Respondent testified that the referenced "order", which speaks for itself does not prove that the indictment was returned in open court as required under Virginia law. VSB Exhibit I to certification; Virginia Supreme Court Rule 3A:5(c) – Respondent's Exhibit 18.
111. No Objections.
112. No Objections.

113. Objected to because the initial payment was received for work previously performed by Respondent. Respondent's Exhibit 19.
114. No Objections.
115. Objected to because the payments were received for work previously performed by Respondent. Respondent's Exhibit 19. Further objected to as lacking context. Respondent had not had time to fully understand LEO 1606 and certainly did not realize that the Bar incorporated it into the Rules of Professional Conduct without referring to it in said rules.
116. Objected to because the payments were received for work previously performed by Respondent and were not advance payments for work. Respondent's Exhibit 19.
117. Objected to as lacking context. Respondent testified that the indictment was and is defective because the referenced "order", which speaks for itself does not state that the indictment was returned in open court as required under Virginia law. VSB Exhibit I to certification; Virginia Supreme Court Rule 3A:5(c) – Respondent's Exhibit 18. Accordingly, Albert was not properly indicted.
118. Objected to as lacking context. Respondent testified that there was no agreement with either Ms. Jones or Mr. Albert as to an hourly rate that would be charged if a dispute like the one at issue in this case arose. Respondent reported time spent on the documents submitted in the VSB response based upon a default rate of $300 per hour in the timekeeping system of Dale Jensen, PLC. After additional review of the firm finances and the true overhead costs of representing inmates, Respondent determined that a $600 per hour rate is more reflective of the actual cost to the firm of inmate representation. The alleged "facts" of this paragraph lack that context. Moreover, Investigator Baker was not qualified as an expert in human psychology and provided no basis for his subjective belief about Respondent.
119. Objected to as lacking context. Respondent testified that there was no agreement with either Ms. Jones or Mr. Albert as to an hourly rate that would be charged if a dispute like the one at issue in this case arose. Respondent reported time spent on the documents submitted in the VSB response based upon a default rate of $300 per hour in the timekeeping system of Dale Jensen, PLC. After additional review of the firm finances and the true overhead costs of representing inmates, Respondent determined that a $600 per hour rate is more reflective of the actual cost to the firm of inmate representation. The alleged "facts" of this paragraph lack that context.
120. Objected to as lacking context. Respondent never had a discussion with Mr. Baker concerning a proper hourly rate. Respondent reported time spent on the documents submitted in the VSB response based upon a default rate of $300 per hour in the timekeeping system of Dale Jensen, PLC. After additional review of the firm finances and the true overhead costs of representing inmates, Respondent determined that a $600 per hour rate is more reflective of the actual cost to the firm of inmate representation. The alleged "facts" of this paragraph lack that context.
121. Objected to as being contrary to the evidence presented in the case. Respondent testified that significant work was performed on Mr. Albert's pleadings. Respondent's Exhibit 20 showed differences between the pleadings filed for Mr. Albert – they were not

proved to be "identical" in almost all respects. This asserted fact was not proved by clear and convincing evidence.

122. Objected to as being contrary to Respondent's testimony. Objected to as drawing improper inferences. The work performed on Mr. Albert's behalf included significant case law and document review in order to confirm that the best arguments possible were being made on behalf of Mr. Albert. This asserted fact was not proved by clear and convincing evidence.
123. Objected to as lacking context. Respondent testified that his staff obtained all records that court staff provided. The records were obtained during a time period when COVID-19 restrictions severely limited access to such records. Ex post, Attorney Robert Taylor had no such restrictions later. Moroever, Respondent testified that the indictment was and is defective because the referenced "order", which speaks for itself does not state that the indictment was returned in open court as required under Virginia law. VSB Exhibit I to certification; Virginia Supreme Court Rule 3A:5(c) – Respondent's Exhibit 18. Moreover, the United States Constitution is the controlling authority in Mr. Albert's case and his case was properly and thoroughly briefed. There was simply no requirement under the ethical rules to cite to either *Epps* because it is not controlling authority – the United States Constitution was and is the controlling authority.
124. Respondent objects to this asserted "fact". The motion filed by Albert was not the "same motion" filed on behalf of Ostrander. The United States Constitution is the controlling authority in Mr. Albert's case and his case was properly and thoroughly briefed. There was simply no requirement under the ethical rules to cite to *Ostrander* because it is not controlling authority – the United States Constitution was and is the controlling authority.
125. Objected to because Respondent's testimony differed from that of Ms. Jones. Respondent testified that there were numerous calls with Ms. Jones during the referenced time period. The asserted "facts" of this paragraph were not proved by clear and convincing evidence. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Mr. Albert, who was not made available for cross-examination.
126. Objected to because Ms. Jones did not provide any testimony as to how she determined that her number had been "blocked". Respondent denied having blocked her number. The asserted "facts" of this paragraph were not proved by clear and convincing evidence.
127. Objected to as lacking context. The asserted "facts" ignore the strictures on court hearings in 2021 caused by COVID-19. Respondent testified that when hearings were allowed to resume, he made inquiries with the court and was advised that the Commonwealth's Attorney was the only one allowed to set hearings. Respondent made several attempts to contact the Commonwealth's Attorney but did not have any of his calls returned until approximately March of 2023.
128. No Objections.
129. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Ms. Cox, who was not made available for cross-examination. No evidence was presented that Ms. Cox would have had personal knowledge of calls made to the court or the Commonwealth's Attorney's office.

130. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Ms. Cox or the person in the Commonwealth's Attorney's office that she allegedly contacted (double hearsay), neither of which was not made available for cross-examination in violation of Respondent's due process rights. No evidence was presented that Ms. Cox would have had personal knowledge of calls made to the court or the Commonwealth's Attorney's office.
131. No Objections.
132. No Objections.
133. No Objections.
134. No Objections.
135. No Objections.
136. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Ms. Cox, who was not made available for cross-examination. No evidence was presented that Ms. Cox would have had personal knowledge of calls made to the court or the Commonwealth's Attorney's office.
137. Objected to as not reflecting the full testimony of Ms. Jones. No photographs were taken by Ms. Jones of Respondent's actual office door or even the door of the suite of Respondent's office. Only photographs of the door entering the building were placed in evidence. No explanation was provided by Ms. Jones as to why, if she actually delivered the letter, why she did not show either Respondent's office door or at least the door entering the suite in which Respondent's office is located. Upon cross examination, Ms. Jones could not even correctly identify that either of those doors were wooden doors. Instead, she testified that the doors were "grey", which is not true. Respondent has no way of knowing whether or where Ms. Jones actually delivered said letter, which door she might have slipped it under, or whether this was part of a setup that she and Mr. Albert had concocted to attempt to discredit Respondent. Respondent testified that he never received the letter allegedly dated on January 19, 2022. See paragraph 140.
138. Objected to as lacking proper context. Respondent testified that he never received the letter allegedly dated on January 19, 2022.
139. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Mr. Albert, who was not made available for cross-examination. Further, no Department of Corrections mailing records were introduced into evidence showing that the letter was ever sent. The claims concerning the alleged letter are belied by the testimony of Ms. Jones who continued to contact Respondent's office in her attempts to expedite a hearing date for Mr. Albert well after January 26, 2022. See, e.g, paragraph 141 of the asserted "facts".
140. No Objections.
141. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Ms. Cox, who was not made available for cross-examination. No evidence was presented that Ms. Cox would have had personal knowledge of calls made to the court or the Commonwealth's Attorney's office.
142. No Objections.
143. No Objections.

144. Respondent denies that he was "previously terminated" and that asserted "fact" was not proved by clear and convincing evidence. Respondent testified that he was finally able to set the trial on March 28, 2022, believing that he was still representing Mr. Albert.
145. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Mr. Albert, who was not made available for cross-examination in violation of Respondent's due process rights.
146. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Mr. Albert, who was not made available for cross-examination in violation of Respondent's due process rights.
147. Objected to the extent that the asserted "fact" is derived from hearsay testimony of Mr. Albert, who was not made available for cross-examination in violation of Respondent's due process rights.
148. No Objections.
149. Objected to as incorrectly stating the evidence of the case. Respondent admitted to having been advised that via letter Mr. Albert terminated his representation shortly after the hearing of April 8, 2022. That letter written in April 2022 was the first and only indication that the Respondent had that Mr. Albert had terminated his services. Respondent had even noticed an appeal for Mr. Albert prior to receiving said letter.
150. Objected to as lacking context. Respondent disputes that any of the highly discounted fees paid by Mr. Albert were unearned in view of the time spent on his case.
151. Respondent objects to this paragraph as stating a legal conclusion rather than a fact.
152. Respondent objects to this paragraph as stating a legal conclusion rather than a fact. Further objected to for all the other reasons previously stated herein. Said legal conclusions are objected to as follows:

    Rule 1.2 – Ms. Jones admitted to repeatedly seeking an expedited hearing. Even though Respondent never received Ms. Jones letter, that letter did not "fire" Respondent. Nor did the letter state that Ms. Jones had any authority to "fire" Respondent. Respondent never received Mr. Albert's letter. The assertions that Mr. Albert "fired" respondent are also belied by repeated attempts after that letter by Ms. Jones to expedite scheduling a hearing (see, e.g., asserted facts at paragraph 141). Mr. Albert was duly advised of his hearing by the court in executing a transportation order for the hearing. Because all the arguments presented on his behalf were purely legal in character, nothing more was required under the rules. Mr. Albert's testimony was not required, and facts were not in dispute at the hearing. This asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

    Rule 1.3 – Respondent testified that he scheduled the hearing as expeditiously as possible in view of COVID-19 restrictions on hearings in 2021. Indeed, the orders of judicial emergency declared by the Virginia Supreme Court extended until June 22, 2022 (see, FORTIETH ORDER EXTENDING DECLARATION OF JUDICIAL EMERGENCY IN RESPONSE TO COVID-19 EMERGENCY issued by the Virginia Supreme Court and dated May 27, 2022). Respondent notes that the "FORTEITH ORDER was actually issued after the hearing was held for Mr. Albert. No

evidence was presented proving that the hearing could have been scheduled significantly earlier in view of the "JUDICIAL EMERGENCY" declarations of the Virginia Supreme Court. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 1.4 – Respondent testified that he had numerous communications with Mr. Albert and Ms. Jones during the representation. In view of the Motion to Vacate filed on Mr. Albert's behalf being purely legal arguments, no additional communications were required under an objective reading of Rule 1.4. Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 1.5 – Respondent presented evidence supporting the reasonableness of his fees. The Bar, by contrast, presented no evidence as to what reasonable fees would be for such representation. Further, the alleged rule violation is Objected to as being contrary to the evidence presented in the case. Respondent testified that significant work was performed on Mr. Albert's pleadings. Respondent's Exhibit 20 showed differences between the pleadings filed for Mr. Albert – they were not proved to be "copied almost verbatim" from documents filed on behalf of other clients. Moreover, the assertions about not fully detailing Respondent's work in pursuing relief for other clients in defective indictment cases have anything to do with the reasonableness of fees. It was made clear to both Mr. Albert and Ms. Jones that it would likely be necessary to pursue appeals up to at least the Virginia Supreme Court (see, e.g, VSB Exhibit D4). Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 1.15 – Respondent objects to this assertion because fees paid were earned prior to their payment. None were advanced fees. Respondent objects to not having received proper notice of LEO 1606 and its incorporation into the Rules of Professional Conduct without any reference in those Rules of Professional Conduct to LEO 1606. As a matter of policy, the Virginia Supreme Court should explicitly state the full scope and extent of its rules rather than "hiding the ball" and depending upon individual attorneys to read thousands of legal ethics opinions.

Rule 1.16 – Respondent testified and presented evidence that fees paid were earned. Respondent's Exhibit 19. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 5.3 – None of the statements made by Respondent's nonlawyer assistants were false. Instead, those statements asserted optimism that Virginia courts would recognize the basic civil right to a proper grand jury indictment enumerated in the Fifth Amendment. Respondent and his nonlawyer assistants should be able to rely on the United States Constitution as the supreme law of the land. Mr. Albert's civil right to a proper grand jury indictment should have been recognized and he should have been released. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 8.1 – Respondent testified and presented evidence as to the amount of time actually spent in performing work on behalf of Mr. Albert. Respondent's Exhibit 19. Respondent made no false statements in his testimony. The Bar did not have one of its agents present at the time that the work was being performed to be able to contest this testimony. Respondent's process was likely more involved and different from what another attorney might have used, but that does not make Respondent's statements either "false" or "knowingly" "false". Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 8.4 – Respondent testified and presented evidence as to the amount of time actually spent in performing work on behalf of Mr. Albert. Respondent's Exhibit 19. Respondent made no false statements in his testimony. The Bar did not have one of its agents present at the time that the work was being performed to be able to contest this testimony. Respondent's process was likely more involved and different from what another attorney might have used, but that does not make Respondent's statements false. Respondent and his clients should be entitled to rely upon the United States Constitution as the supreme law of the land. Respondent made no false statements in his representation of Mr. Albert. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Antonio Townsend/Maria Lankford

Findings of Fact

153. No Objections.
154. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Townsend and Ms. Lankford, who were not made available for cross-examination. This violated Respondent's due process rights.
155. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Townsend, who was not made available for cross-examination. This violated Respondent's due process rights.
156. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Townsend, who was not made available for cross-examination. This violated Respondent's due process rights.
157. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Townsend, who was not made available for cross-examination. This violated Respondent's due process rights.
158. No Objections.
159. No Objections.
160. No Objections.
161. No Objections.
162. No Objections.
163. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Townsend, who was not made available for cross-examination. This violated

Respondent's due process rights. Objected to because Respondent and his clients should be entitled to rely upon the United States Constitution as the supreme law of the land.

164. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Ms. Lankford, who was not made available for cross-examination. This violated Respondent's due process rights.
165. No Objections.
166. No Objections.
167. No Objections.
168. Objected to because no evidence was introduced about who actually sent the referenced e-mail so Respondent could cross-examine them. It is axiomatic that Mr. Dennis could not have sent the e-mail because he was incarcerated at the time and had no ability to access computer equipment to send the referenced e-mail.
169. Objected to because Mr. Dennis did not, and indeed could not have, sent the e-mail. No evidence was presented as to who actually sent the e-mail. Respondent testified that he knew nothing about the e-mail. Respondent personally performed all work on Mr. Townsend's case.
170. Objected to because the asserted "facts" are derived from hearsay testimony of Mr. Townsend and possibly Mr. George (double hearsay). Neither Mr. Townsend nor Mr. George were not made available for cross-examination. This violated Respondent's due process rights.
171. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Townsend and Ms. Lankford, who were not made available for cross-examination. This violated Respondent's due process rights. Further objected to because there was no evidence of any communications allegedly from Mr. Townsend.
172. Objected to because the asserted "fact" is inconsistent with the evidence. The communication was not with Respondent but with one of Respondent's employees. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Ms. Lankford, who was not made available for cross-examination. This violated Respondent's due process rights.
173. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Ms. Lankford about what Taylor Biggs allegedly said (double hearsay). Neither Ms. Lankford nor Ms. Biggs were not made available for cross-examination. This violated Respondent's due process rights.
174. No Objections.
175. No Objections.
176. No Objections.
177. Objected to because no evidence was presented proving any "typographical errors" in the filings, much less "identical typographical errors". Further, the asserted facts are misleading because they do not reflect the extent of work performed in developing the pleadings.
178. Objected to as misleading. The reference to the multi-jurisdictional grand jury was a single artifact sentence in the motion. No argument was made concerning the artifact sentence in the memorandum in support of motion.

179. Objected to because no evidence was introduced introducing that Mr. Townsend made any such communications. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Ms. Lankford or Mr. Townsend, neither of which were made available for cross-examination. This violated Respondent's due process rights.
180. Objected to as vague as to which communications are being referenced. Further objected to as mischaracterizations of the communications, which speak for themselves.
181. Objected to as misleading. Respondent testified that he had contacted the court and was told that only the Commonwealth's Attorney would need to set a hearing.
182. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Ms. Lankford, who was not made available for cross-examination. This violated Respondent's due process rights.
183. Objected to because the asserted "facts" are inconsistent with the evidence relied upon. There is no allegation that Mr. Townsend ever made such a communication with Respondent. Instead, e-mails from Ms. Lankford have been proffered. These e-mails are objected to because there is no evidence that Ms. Lankford had authority from Mr. Townsend to terminate representation. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Ms. Lankford, who was not made available for cross-examination. This violated Respondent's due process rights.
184. Objected to because the asserted "facts" are inconsistent with the evidence relied upon. There is no allegation that Mr. Townsend ever made such a communication with Respondent. Instead, e-mails from Ms. Lankford have been proffered. These e-mails are objected to because there is no evidence that Ms. Lankford had authority from Mr. Townsend to terminate representation. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Ms. Lankford, who was not made available for cross-examination. This violated Respondent's due process rights.
185. Objected to as lacking context. Respondent was prevented from continuing in the case because of termination by Mr. Townsend.
186. Objected to because evidence presented at trial was insufficient to prove that any fees were unearned by clear and convincing evidence.
187. Objected to as lacking context. Respondent was compelled to withdraw from Mr. Townsend's case due to his two-month suspension from practice by this Court in 2022. No request was made for Mr. Townsend's file. No documents in Mr. Townsend's file fall within the rubric of Rule 1.16.
188. Objected to as not accurately reflecting Respondent's testimony. Respondent testified that no refund would be granted until either a settlement could be reached as to the amount, or a ruling was obtained in a case pending that does not involve Townsend or any of his family as to a proper methodology for making a quantum meruit determination. LEO 1606 provides no methodology for making a quantum meruit determination.
189. Objected to as lacking context. Time records were prepared based primarily upon computer metadata logged contemporaneously with work performed. That computer metadata showed when Respondent worked on the matter.
190. Objected to to the extent that it does not accurately reflect the testimony of Mr. Baker. Further objected to because Mr. Baker provided no foundation for what his "impression"

was based upon. Mr. Baker was not qualified as an expert in any field whatsoever and did not state a factual basis for any asserted "impressions" that he might have had. Speculation on the part of Mr. Baker is not entitled to much, if any, weight.

191. Objected to as not being proved based upon clear and convincing evidence. Respondent testified to his process and the time actually spent performing work on Mr. Townsend's behalf. Respondent's Exhibit 22.

192. Objected to as lacking context. Respondent testified that there was no agreement with Mr. Townsend or any of his family members as to an hourly rate that would be charged if a dispute like the one at issue in this case arose. Respondent reported time spent on the documents submitted in the VSB response based upon a default rate of $300 per hour in the timekeeping system of Dale Jensen, PLC. After additional review of the firm finances and the true overhead costs of representing inmates, Respondent determined that a $600 per hour rate is more reflective of the actual cost to the firm of inmate representation. The alleged "facts" of this paragraph lack that context.

193. Objected to as lacking context. Respondent testified that there was no agreement with Mr. Townsend or any of his family members as to an hourly rate that would be charged if a dispute like the one at issue in this case arose. Respondent reported time spent on the documents submitted in the VSB response based upon a default rate of $300 per hour in the timekeeping system of Dale Jensen, PLC. After additional review of the firm finances and the true overhead costs of representing inmates, Respondent determined that a $600 per hour rate is more reflective of the actual cost to the firm of inmate representation. The alleged "facts" of this paragraph lack that context.

194. Objected to as lacking context. Respondent never had a discussion with Mr. Baker concerning a proper hourly rate. Respondent reported time spent on the documents submitted in the VSB response based upon a default rate of $300 per hour in the timekeeping system of Dale Jensen, PLC. After additional review of the firm finances and the true overhead costs of representing inmates, Respondent determined that a $600 per hour rate is more reflective of the actual cost to the firm of inmate representation. The alleged "facts" of this paragraph lack that context.

195. Respondent objects to this paragraph as stating a legal conclusion rather than a fact.

196. Respondent objects to this paragraph as stating a legal conclusion rather than a fact. Further objected to for all the other reasons previously stated herein. Said legal conclusions are objected to as follows:

> Rule 1.3 – Respondent testified that he scheduled the hearing as expeditiously as possible in view of COVID-19 restrictions on hearings in 2021. Indeed, the orders of judicial emergency declared by the Virginia Supreme Court extended until June 22, 2022 (see, FORTIETH ORDER EXTENDING DECLARATION OF JUDICIAL EMERGENCY IN RESPONSE TO COVID-19 EMERGENCY issued by the Virginia Supreme Court and dated May 27, 2022). The Bar presented no evidence of procedures of the court at issue as a consequence of COVID-19. No evidence was presented proving that the hearing could reasonably have been scheduled significantly earlier in view of the "JUDICIAL EMERGENCY" declarations of the Virginia Supreme Court. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 1.4 – Evidence admitted during trial showed that Respondent's office had numerous communications with Mr. Townsend's family during the representation. Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 1.5 – Respondent presented evidence supporting the reasonableness of his fees. The Bar, by contrast, presented no evidence as to what reasonable fees would be for such representation. Further, the alleged rule violation is Objected to as being contrary to the evidence presented in the case. Respondent testified that significant work was performed on Mr. Townsend's pleadings. Respondent's Exhibit 22. Respondent's Exhibit 21 showed differences between the pleadings filed for Mr. Townsend – they were not proved to be "copied almost verbatim" from documents filed on behalf of other clients. Moreover, the assertions about not fully detailing Respondent's work in pursuing relief for other clients in defective indictment cases have anything to do with the reasonableness of fees. It was made clear to both Mr. Townsend and his family that it would likely be necessary to pursue appeals up to at least the Virginia Supreme Court (see, e.g, VSB Exhibit E7). Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 1.15 – Respondent objects to not having received proper notice of LEO 1606 and its incorporation into the Rules of Professional Conduct without any reference in those Rules of Professional Conduct to LEO 1606. As a matter of policy, the Virginia Supreme Court should explicitly state the full scope and extent of its rules rather than "hiding the ball" and depending upon individual attorneys to read thousands of legal ethics opinions.

Rule 1.16 – Respondent testified and presented evidence that fees paid were earned. Respondent's Exhibit 22. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 5.3 – None of the statements made by Respondent's nonlawyer assistants were false. Instead, those statements asserted optimism that Virginia courts would recognize the basic civil right to a proper grand jury indictment enumerated in the Fifth Amendment. Respondent and his nonlawyer assistants should be able to rely on the United States Constitution as the supreme law of the land. Mr. Townsend's civil right to a proper grand jury indictment should have been recognized and he should have been released. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 8.1 – Respondent testified and presented evidence as to the amount of time actually spent in performing work on behalf of Mr. Townsend. Respondent's Exhibit 22. Respondent made no false statements in his testimony. The Bar did

not have one of its agents present at the time that the work was being performed to be able to contest this testimony. Respondent's process was likely more involved and different from what Bar counsel or others might have used, but that does not make Respondent's statements either "false" or "knowingly" "false". Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 8.4 – Respondent testified and presented evidence as to the amount of time actually spent in performing work on behalf of Mr. Townsend. Respondent's Exhibit 22. Respondent made no false statements in his testimony. The Bar did not have one of its agents present at the time that the work was being performed to be able to contest this testimony. Respondent's process was likely more involved and different from what Bar counsel might have used, but that does not make Respondent's statements false. Respondent and his clients should be entitled to rely upon the United States Constitution as the supreme law of the land. Respondent made no false statements in his representation of Mr. Townsend. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Eugene A. Fredo

Findings of Fact

197. No Objections.
198. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Eugene A. Fredo, who was not made available for cross-examination. This violated Respondent's due process rights.
199. No Objections.
200. No Objections.
201. No Objections.
202. No Objections.
203. No Objections.
204. No Objections.
205. No Objections.
206. No Objections.
207. No Objections.
208. No Objections.
209. No Objections.
210. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Eugene A. Fredo, who was not made available for cross-examination. This violated Respondent's due process rights.
211. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Eugene A. Fredo, who was not made available for cross-examination. This violated Respondent's due process rights. Further objected to because Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution.

212. No Objections.
213. No Objections.
214. No Objections.
215. No Objections.
216. Objected to as lacking context. Respondent testified that after additional review of the subject case, an alternate legal strategy was selected and asserted on Mr. Eugene A. Fredo's behalf. This was a matter of legal strategy within the scope of the representation.
217. Objected to as misleading. The reference to the multi-jurisdictional grand jury was a single artifact sentence in the motion. No argument was made concerning the artifact sentence in the memorandum in support of motion.
218. Objected to because Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution.
219. Objected to because the indictments of Mr. Eugene A. Fredo were defective in violation of his constitutional rights. Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing that Virginia is not subject to the requirements of the United States Constitution.
220. Respondent's Exhibit 25 showed differences between the pleadings filed for Mr. Eugene A. Fredo – they were not proved to be "copied almost verbatim" from documents filed on behalf of other clients. Objected to because no evidence was presented proving any "typographical errors" in the filings, much less "identical typographical errors". Further, the asserted facts are misleading because they do not reflect the extent of work performed in developing the pleadings.
221. Objected to as lacking context. Respondent testified that the grounds of "emotional and psychological abuse as a child" was not pursued because denial of access to Mr. Eugene A. Fredo for psychological examination by the Virginia Department of Corrections. Mr. Eugene A. Fredo had expressed a desire to use this argument, but there was no evidence of such in his file and it would have been necessary to obtain a new expert opinion in order to assert such an argument. Respondent testified that no such examination was possible in 2020 or most of 2021 due to COVID-19 restrictions imposed by the Virginia Department of Corrections.
222. Objected to because Respondent's Exhibit 25 showed differences between the pleadings filed for Mr. Eugene A. Fredo. The referenced arguments were based upon a diminished capacity of Mr. Eugene A. Fredo not properly considered at sentencing. The argument presented was proper.
223. Objected to as grossly oversimplifying the nuances of arguments made on behalf of Mr. Townsend.
224. Objected to as being contrary to the evidence of the case. There is no evidence that the arguments advanced on behalf of Mr. Eugene A. Fredo were "wholly irrelevant" to his case. Instead, arguments advanced on behalf of Mr. Eugene A. Fredo are entirely consistent with his diminished capacity because of his severe post-traumatic distress disorder following military service.

225. There was no evidence at trial that *Graham* is inapposite to the case of Mr. Eugene A. Fredo. Bar counsel's naked post-trial assertions cannot be considered as evidence. Indeed, had bar counsel performed proper legal research prior to signing the "FINAL MEMORANDUM ORDER", he would have recognized that *Graham* stands for the basic premise that those with reduced culpability should receive less severe sentencing that others without reduced culpability. As just a single portion of Graham, Respondent quotes the following (emphasis added):

> Community consensus, while "entitled to great weight," is not itself determinative of whether a punishment is cruel and unusual. Kennedy, 554 U.S., at 434, 128 S. Ct. 2641, 2658, 171 L. Ed. 2d 525, 548. In accordance with the constitutional design, "the task of interpreting the Eighth Amendment remains our responsibility." Roper, 543 U.S., at 575, 125 S. Ct. 1183, 161 L. Ed. 2d 1. **The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question**. Id., at 568, 125 S. Ct. 1183, 161 L. Ed. 2d 1; Kennedy, supra, at 418, 128 S. Ct. 2641, 171 L. Ed. 2d 525; cf. Solem, 463 U.S., at 292, 103 S. Ct. 3001, 77 L. Ed. 2d 637. In this inquiry the Court also considers whether the challenged sentencing practice serves legitimate penological goals. Kennedy, supra, at 443, 128 S. Ct. 2641, 2662, 171 L. Ed. 2d 525, 552; Roper, supra, at 571-572, 125 S. Ct. 1183, 161 L. Ed. 2d 1; Atkins, 536 U.S., at 318-320, 122 S. Ct. 2242, 153 L. Ed. 2d 335.

Graham v. Florida, 560 U.S. 48, 67-68, 130 S. Ct. 2011, 2026 (2010). Respondent encourages Bar counsel to fulfill his ethical responsibilities to the court and read legal authority before representing to a court that it has "no bearing" on Mr. Eugene A. Fredo's case.

226. Objected to as not considering the pleadings filed on behalf of Mr. Eugene A. Fredo in its entirety.

227. Objected to as mischaracterizing the evidence of the case as presented at trial. Further objected to as misleading and not properly reflecting actual time spent by Respondent on the case of Mr. Eugene A. Fredo.

228. Objected to as lacking context. Respondent testified that there was no agreement with Mr. Eugene A. Fredo or any of his family members as to an hourly rate that would be charged in the event that a dispute like the one at issue in this case arose. Respondent reported time spent on the documents submitted in the VSB response based upon a default rate of $300 per hour in the timekeeping system of Dale Jensen, PLC. After additional review of the firm finances and the true overhead costs of representing inmates, Respondent determined that a $600 per hour rate is more reflective of the actual cost to the firm of inmate representation. The alleged "facts" of this paragraph lack that context.

229. Objected to as lacking context. Respondent testified that there was no agreement with Mr. Eugene A. Fredo or any of his family members as to an hourly rate that would be charged in the event that a dispute like the one at issue in this case arose. Respondent reported time spent on the documents submitted in the VSB response based upon a default rate of $300 per hour in the timekeeping system of Dale Jensen,

PLC. After additional review of the firm finances and the true overhead costs of representing inmates, Respondent determined that a $600 per hour rate is more reflective of the actual cost to the firm of inmate representation. The alleged "facts" of this paragraph lack that context.

230. Objected to as lacking context. Respondent testified that Department of Corrections rules precluded the previously planned psychological examination of Mr. Eugene A. Fredo.

231. Objected to as lacking context. Respondent testified that Department of Corrections rules precluded the previously planned psychological examination of Mr. Eugene A. Fredo.

232. Objected to as misleading. Respondent actually told Mr. Baker that he had identified an expert for use in the case of Mr. Eugene A. Fredo. Respondent did not remember whether that expert had been retained for Mr. Eugene A. Fredo's case or that of another client. After further review, Respondent confirmed to Mr. Baker that the expert was retained on behalf of another client.

233. No Objections.

234. No Objections.

235. No Objections.

236. Objected to because of this Court not properly granting a requested continuance in this case in order to allow for proper trial preparation. Respondent admits to mistakenly recalling that it was Ms. Boss that was denied access to a client in the Virginia Department of Corrections. Additional research, which Respondent just didn't have time to perform in time for the trial, revealed that it was another forensic psychologist, Sahair Monfared, who was informed that she would not be allowed to examine a client in Greensville Correctional Center.

237. Objected to because of this Court not properly granting a requested continuance in this case in order to allow for proper trial preparation. Respondent admits to mistakenly recalling that it was Ms. Boss that was denied access to a client in the Virginia Department of Corrections. Additional research, which Respondent just didn't have time to perform in time for the trial, revealed that it was another forensic psychologist, Sahair Monfared, who was informed that she would not be allowed to examine a client in Greensville Correctional Center.

238. Objected to because of this Court not properly granting a requested continuance in this case in order to allow for proper trial preparation. Respondent admits to mistakenly recalling that it was Ms. Boss that was denied access to a client in the Virginia Department of Corrections. Additional research, which Respondent just didn't have time to perform in time for the trial, revealed that it was another forensic psychologist, Sahair Monfared, who was informed that she would not be allowed to examine a client in Greensville Correctional Center.

239. Objected to because the truly relevant inquiry as to availability of a forensic examination of Mr. Eugene A. Fredo was not the experience of Ms. Boss or even Sahair Monfared. The relevant inquiry was what the Department of Corrections allowed during COVID-19. Despite having many months to investigate this case, there was no evidence

that the Bar or any of its agents ever made such an inquiry. Respondent should have been granted a continuance to develop such evidence.

240. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Eugene A. Fredo, who was not made available for cross-examination. This violated Respondent's due process rights.

241. No Objections.

242. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Eugene A. Fredo, who was not made available for cross-examination. This violated Respondent's due process rights.

243. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Eugene A. Fredo about double hearsay attributed to Matthew George, neither of which were not made available for cross-examination. This violated Respondent's due process rights.

244. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Eugene A. Fredo, who was not made available for cross-examination. This violated Respondent's due process rights.

245. Objected to the extent that the asserted "facts" are derived from hearsay statements of Mr. Eugene A. Fredo, who was not made available for cross-examination. This violated Respondent's due process rights.

246. Objected to as misleading. Respondent testified that he did not receive notice of the denial of the Motion to Vacate filed on behalf of Mr. Eugene A. Fredo until after the time period for appeal had expired.

247. Objected to because evidence produced at trial proved that the fees charged were earned. Respondent's Exhibit 24.

248. No Objections.

249. Respondent objects to this paragraph as stating a legal conclusion rather than a fact.

250. Respondent objects to this paragraph as stating a legal conclusion rather than a fact. Further objected to for all the other reasons previously stated herein. Said legal conclusions are objected to as follows:

> Rule 1.1 – Respondent testified that he drafted the filings made on behalf of Mr. Eugene A. Fredo based upon his best judgment. There was no evidence that presented at trial that the pleadings were not adequately reviewed. There was no evidence that the pleadings as filed were not "competent" to the extent required under Rule 1.1. Respondent could have corrected the appellate issues had representation been allowed to continue. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.
>
> Rule 1.3 – Respondent testified that he was not notified of the denial of the Motion to Vacate in time to notice an appeal. This could have been corrected with a civil case filing had Respondent been allowed to continue in the case. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.
>
> Rule 1.4 – Evidence admitted during trial showed that Respondent's office had numerous communications with Mr. Eugene A. Fredo's family during the representation. Respondent relied upon the United States Constitution as being

the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 1.5 – Respondent presented evidence supporting the reasonableness of his fees. The Bar, by contrast, presented no evidence as to what reasonable fees would be for such representation. Further, the alleged rule violation is Objected to as being contrary to the evidence presented in the case. Respondent testified that significant work was performed on Eugene A. Fredo's pleadings. Respondent's Exhibit 22. Respondent's Exhibit 21 showed differences between the pleadings filed for Eugene A. Fredo – they were not proved to be "copied almost verbatim" from documents filed on behalf of other clients. Moreover, the assertions about not fully detailing Respondent's work in pursuing relief for other clients in defective indictment cases have anything to do with the reasonableness of fees. It was made clear to both Mr. Eugene A. Fredo and his family that it would likely be necessary to pursue appeals up to at least the Virginia Supreme Court (see, e.g, VSB Exhibit F8). Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 1.15 – Respondent objects to not having received proper notice of LEO 1606 and its incorporation into the Rules of Professional Conduct without any reference in those Rules of Professional Conduct to LEO 1606. As a matter of policy, the Virginia Supreme Court should explicitly state the full scope and extent of its rules rather than "hiding the ball" and depending upon individual attorneys to read thousands of legal ethics opinions.

Rule 1.16 – Respondent testified and presented evidence that fees paid were earned. Respondent's Exhibit 24. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 5.3 – Objected to as being based upon double hearsay of statements allegedly made by Matthew George to Mr. Eugene A. Fredo. Admission of this testimony violated Respondent's due process rights. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 8.1 – Respondent testified and presented evidence as to the amount of time actually spent in performing work on behalf of Mr. Eugene A. Fredo. Respondent's Exhibit 22. Respondent made no false statements. Respondent did not tell Investigator Baker that he had contacted an expert witness on behalf of Mr. Eugene A. Fredo. Instead, Respondent truthfully told Investigator Baker that an expert had been identified but that he did not recall whether said expert had been retained for Mr. Eugene A. Fredo or for another client. As to time records, the Bar did not have one of its agents present at the time that the work was being performed to be able to contest this testimony. Respondent's process was likely more involved and different from what Bar counsel or others might

have used, but that does not make Respondent's statements either "false" or "knowingly" "false". Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 8.4 – Respondent testified and presented evidence as to the amount of time actually spent in performing work on behalf of Mr. Eugene A. Fredo. Respondent's Exhibit 22. Respondent made no false statements in his testimony. The Bar did not have one of its agents present at the time that the work was being performed to be able to contest this testimony. Respondent's process was likely more involved and different from what Bar counsel might have used, but that does not make Respondent's statements false. Respondent and his clients should be entitled to rely upon the United States Constitution as the supreme law of the land. Respondent made no false statements in his representation of Mr. Eugene A. Fredo. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Thomas Purcell

Findings of Fact

251. No Objections.
252. No Objections.
253. No Objections.
254. No Objections.
255. No Objections.
256. No Objections.
257. No Objections.
258. No Objections.
259. No Objections.
260. Objected to because Respondent testified that he had no knowledge or notice of the existence of LEO 1606 on December 3, 2019. As a matter of policy, the Virginia Supreme Court should cite to or reference LEO 1606 in its rules in order to provide proper notice to members of the Bar.
261. No Objections.
262. No Objections.
263. No Objections.
264. No Objections.
265. No Objections.
266. No Objections.
267. No Objections.
268. No Objections.
269. Objected to because Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution.

270. Objected to because Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution.
271. Objected to because Respondent testified that he had no knowledge or notice of the existence of LEO 1606 on December 3, 2019. As a matter of policy, the Virginia Supreme Court should cite to or reference LEO 1606 in its rules in order to provide proper notice to members of the Bar.
272. No Objections.
273. Objected to because Respondent testified that he had no knowledge or notice of the existence of LEO 1606 on December 3, 2019. As a matter of policy, the Virginia Supreme Court should cite to or reference LEO 1606 in its rules in order to provide proper notice to members of the Bar.
274. Objected to because Respondent testified that he had no knowledge or notice of the existence of LEO 1606 on December 3, 2019. As a matter of policy, the Virginia Supreme Court should cite to or reference LEO 1606 in its rules in order to provide proper notice to members of the Bar.
275. Objected to because Respondent testified that he had no knowledge or notice of the existence of LEO 1606 on December 3, 2019. As a matter of policy, the Virginia Supreme Court should cite to or reference LEO 1606 in its rules in order to provide proper notice to members of the Bar.
276. Objected to as being misleading. Respondent misidentified the payment made on behalf of Mr. Purcell. This misidentification does not support the assertion that "Respondent was unaware of who actually paid for services on behalf of Mr. Purcell."
277. Objected to as being misleading. Respondent misidentified the payment made on behalf of Mr. Purcell. This misidentification does not support the assertion that "Respondent was unaware of who actually paid for services on behalf of Mr. Purcell."
278. Objected to as being misleading. Respondent misidentified the payment made on behalf of Mr. Purcell. This misidentification does not support the assertion that "Respondent was unaware of who actually paid for services on behalf of Mr. Purcell."
279. Objected to as being misleading. Respondent misidentified the payment made on behalf of Mr. Purcell. This misidentification does not support the assertion that "Respondent was unaware of who actually paid for services on behalf of Mr. Purcell."
280. Objected to because Respondent testified that he had no knowledge or notice of the existence of LEO 1606 on December 3, 2019. As a matter of policy, the Virginia Supreme Court should cite to or reference LEO 1606 in its rules in order to provide proper notice to members of the Bar.
281. No Objections.
282. Objected to as not being supported by the evidence produced at trial. See Respondent's Exhibit 26. The compared documents are not "nearly identical".
283. Objected to as misleading. Respondent testified that the Petition Writ of Actual Innocence was not filed because Mr. Purcell never provided a signed document for filing as required by law. Respondent had prepared the filing and believed it was nearly ready to file but could not file without Mr. Purcell's signature.

284. Objected to because the asserted facts do not include Mr. Purcell's admission that he produced no records at trial proving mailing of the documents that he claims to have sent.
285. No Objections.
286. No Objections.
287. No Objections.
288. No Objections.
289. Objected to because Respondent testified that his services were terminated by Mr. Purcell and had no authority to file the opening brief.
290. Objected to because Respondent testified that his services were terminated by Mr. Purcell and had no authority to file the opening brief.
291. Objected to because of missing context. Respondent testified that a petition for writ of habeas corpus could not be filed prior to a resolution of the planned Petition for Writ of Actual Innocence.
292. Objected to because of missing context. Respondent testified that Mr. Purcell had requested a refund in an amount far more than any amount that Respondent could agree to in view of the extensive work performed on Mr. Purcell's behalf.
293. Respondent objects to this paragraph as stating a legal conclusion rather than a fact.
294. Respondent objects to this paragraph as stating a legal conclusion rather than a fact. Further objected to for all the other reasons previously stated herein. Said legal conclusions are objected to as follows:

    Rule 1.3 – The Bar presented no evidence that the denial of the Motion to Vacate was not timely rendered. Post-trial assertions by bar counsel are not evidence. Further, Respondent testified that the possible petition for writ of habeas corpus could not be filed until or unless the Petition for Writ of Actual Innocence was denied. The Bar did not present any contradictory evidence. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.
    Rule 1.4 – Evidence admitted during trial showed that Respondent's office had numerous communications with Mr. Purcell during the representation. Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.
    Rule 1.5 – Respondent presented evidence supporting the reasonableness of his fees. The Bar, by contrast, presented no evidence as to what reasonable fees would be for such representation. Further, the alleged rule violation is Objected to as being contrary to the evidence presented in the case. Respondent testified that significant work was performed on Mr. Purcell's pleadings. Respondent's Exhibit 27. Respondent's Exhibit 26 showed differences between the pleadings filed for Mr. Purcell compared to another referenced pleading – they were not proved to be "copied almost verbatim" from documents filed on behalf of other clients. Moreover, the assertions about not fully detailing Respondent's work in pursuing relief for other clients in defective indictment cases have anything to do with the reasonableness of fees. It was made clear to Mr. Purcell that it would

likely be necessary to pursue appeals up to at least the Virginia Supreme Court (see, e.g, VSB Exhibit G4). Respondent relied upon the United States Constitution as being the supreme law of the land. The Bar provided no evidence showing the referenced case law was or is superior authority to the United States Constitution. Further objected to because the possible petition for writ of habeas corpus could not be filed until or unless the Petition for Writ of Actual Innocence was denied. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 1.15 – Respondent objects to not having received proper notice of LEO 1606 and its incorporation into the Rules of Professional Conduct without any reference in those Rules of Professional Conduct to LEO 1606. As a matter of policy, the Virginia Supreme Court should explicitly state the full scope and extent of its rules rather than "hiding the ball" and depending upon individual attorneys to read thousands of legal ethics opinions.

Rule 8.4 – Respondent testified and presented evidence as to the amount of time actually spent in performing work on behalf of Mr. Purcell. Respondent's Exhibit 27. Respondent made no false statements in his testimony. The Bar did not have one of its agents present at the time that the work was being performed to be able to contest this testimony. Respondent's process was likely more involved and different from what Bar counsel might have used, but that does not make Respondent's statements false. Respondent could not file the Petition for Writ of Actual Innocence prepared on Mr. Purcell's behalf because Mr. Purcell failed to provide a signed copy. Petition for Writ of Actual Innocence could not be filed without Mr. Purcell's signature. The petition for writ of habeas corpus could not be filed until or unless the Petition for Writ of Actual Innocence was denied. The Respondent and his clients should be entitled to rely upon the United States Constitution as the supreme law of the land. Respondent made no false statements in his representation of Mr. Townsend. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Monique Nichols

Findings of Fact

295. No Objections.
296. No Objections.
297. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Nichols, who was not made available for cross-examination. This violated Respondent's due process rights.
298. No Objections.
299. Objection as lacking context as to when fees were actually earned under the August 23, 2017 letter.
300. No Objections.
301. Objected to because no evidence was presented that any of the fees paid on behalf of Mr. Nichols were paid in advance of work such that deposit in the trust account was required even under LEO 1606.

302. No Objections.
303. Objected to because no evidence was presented that any of the fees paid on behalf of Mr. Nichols were paid in advance of work such that deposit in the trust account was required even under LEO 1606.
304. Objected to because no evidence was presented that any of the fees paid on behalf of Mr. Nichols were paid in advance of work such that deposit in the trust account was required even under LEO 1606.
305. Objected to because no evidence was presented that any of the fees paid on behalf of Mr. Nichols were paid in advance of work such that deposit in the trust account was required even under LEO 1606.
306. No Objections.
307. No Objections.
308. Objected to the extent that the asserted "facts" are derived from hearsay testimony of Mr. Nichols, who was not made available for cross-examination. This violated Respondent's due process rights.
309. Objected to the extent that the asserted "facts" are derived from hearsay testimony of members of the Nichols family that were not made available for cross-examination. This violated Respondent's due process rights.
310. No Objections.
311. No Objections.
312. Objected to as lacking context. Respondent testified that he submitted the affidavit in good faith believing that Mr. George was truthful in his affidavit. It was not until well after the submission of the affidavit that Respondent became aware of the incorrect statements in the affidavit.
313. No Objections.
314. No Objections.
315. No Objections.
316. Objected to as lacking context. Respondent testified that he relied upon statements made by Mr. George. Respondent further reasonably believed that letters in Mr. Nichols file were actually sent to him by Mr. George.
317. Respondent objects to this paragraph as stating a legal conclusion rather than a fact.
318. Respondent objects to this paragraph as stating a legal conclusion rather than a fact. Further objected to for all the other reasons previously stated herein. Said legal conclusions are objected to as follows:

    Rule 1.4 – Evidence admitted during trial showed that Respondent's office had numerous communications with Mr. Nichol's family during the representation. Respondent reasonably believed Mr. George as to some communications that presently appear not have taken place. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

    Rule 1.15 – There was no evidence that any fees paid on Ostrander's behalf were advance fees. Instead, the fees were paid in small increments after work was performed. This asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Rule 1.16 – Respondent testified and presented evidence that fees paid were earned. Respondent's Exhibit 31. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.
Rule 5.3 – Respondent was not aware that any of the statements made by Respondent's nonlawyer assistant, Mr. George, were false. Respondent did not "ratify" the affidavit of Mr. George as to any false statements made therein. Respondent did not ascertain that the affidavit contained false statements until well after the affidavit was signed and filed with the Bar. At the time that the affidavit was provided to the Bar, Respondent had no basis to doubt the truthfulness of the affidavit. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.
Rule 8.1 – Respondent was not aware that any of the statements made by Respondent's nonlawyer assistant, Mr. George, were false. Respondent did not "ratify" the affidavit of Mr. George as to any false statements made therein. Respondent did not ascertain that the affidavit contained false statements until well after the affidavit was signed and filed with the Bar. At the time, Respondent had no basis to doubt the truthfulness of the affidavit. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.
Rule 8.4 – Respondent was not aware that any of the statements made by Respondent's nonlawyer assistant, Mr. George, were false. Respondent did not "ratify" the affidavit of Mr. George as to any false statements made therein. Respondent did not ascertain that the affidavit contained false statements until well after the affidavit was signed and filed with the Bar. At the time, Respondent had no basis to doubt the truthfulness of the affidavit. Accordingly, this asserted "MISCODUCT" [sic] was not proved by clear and convincing evidence.

Virginia State Bar/Trust Account

Findings of Fact

319. No Objections.
320. No Objections.
321. No Objections.
322. No Objections.
323. Objected to for being unduly vague. The order should be specific as to dates and amounts that would have been subject to Rule 1.15.
324. Objected to as not being fully reflective of testimony. Further objected to as presenting a legal conclusion rather than a finding of fact.
325. No Objections.
326. Objected to for being unduly vague. The order should be specific as to dates and amounts that would have been subject to Rule 1.15.
327. Objected to as not being fully reflective of testimony. Further objected to as presenting a legal conclusion rather than a finding of fact. Respondent objects to not

having received proper notice of LEO 1606 and its incorporation into the Rules of Professional Conduct without any reference in those Rules of Professional Conduct to LEO 1606. As a matter of policy, the Virginia Supreme Court should explicitly state the full scope and extent of its rules rather than "hiding the ball" and depending upon individual attorneys to read thousands of legal ethics opinions.

328. No Objections.
329. No Objections.
330. No Objections.
331. No Objections.
332. No Objections.
333. No Objections.
334. No Objections.
335. No Objections.
336. No Objections.
337. No Objections.
338. No Objections.
339. No Objections.
340. No Objections.
341. No Objections.
342. No Objections.
343. No Objections.
344. Objected to for being unduly vague. The order should be specific as to dates and amounts that would have been subject to Rule 1.15.
345. Objected to for being unduly vague. The order should be specific as to dates and amounts that would have been subject to Rule 1.15.
346. No Objections.
347. Objected to for being unduly vague. The order should be specific as to dates and amounts that would have been subject to Rule 1.15.
348. Objected to for being unduly vague. The order should be specific as to dates and amounts that would have been subject to Rule 1.15.
349. No Objections.
350. No Objections.
351. Objected to as lacking context and inconsistent with Respondent's testimony at trial.
352. No Objections.
353. No Objections.
354. No Objections.
355. Objected to as lacking context. Respondent testified that during the referenced time period that he had received periodic additional case review payments from clients. These payments were received prior to Respondent taking training in trust account accounting procedures. In hindsight, Respondent should have explicitly withdrawn Mr. Albert's funds and showed an equal transfer back in for the client paying funds in the same amount as those of Albert. Respondent denied having any amounts in the trust account that were not appropriately there.
356. No Objections.

357. No Objections.
358. No Objections.
359. Objected to as lacking context. Respondent testified that during the referenced time period that he had received periodic additional case review payments from clients. These payments were received prior to Respondent taking training in trust account accounting procedures. In hindsight, Respondent should have explicitly withdrawn Mr. Albert's funds and showed an equal transfer back in for the client paying funds in the same amount as those of Albert. Respondent denied having any amounts in the trust account that were not appropriately there.
360. No Objections.
361. No Objections.
362. No Objections.
363. No Objections.
364. No Objections.
365. Objected to for being unduly vague. The order should be specific as to dates and amounts that would have been subject to Rule 1.15. Further objected to because Respondent needed time to review and analyze LEO 1606 during 2021.
366. Objected to as being contrary to the evidence of the case. Respondent began work will before the fee referenced in March 2021 was paid. Respondent's Exhibit 19. The Bar did not prove that any of the fees paid on behalf of Mr. Albert were paid in advance of work being performed.
367. Objected to as a legal conclusion that Mr. Baker had no apparent ability to make because he was never qualified as an expert.
368. Objected to as being contrary to the evidence of the case. Respondent began work will before the fee referenced in March 2021 was paid. Respondent's Exhibit 19. The Bar did not prove that any of the fees paid on behalf of Mr. Albert were paid in advance of work being performed.
369. No Objections.
370. No Objections.
371. No Objections.
372. Objected to as lacking context. Respondent had no checks for the trust account with him on a cross-country trip. Respondent made a check out to Dr. Holzknecht in the proper amount on the same day the funds were transferred. The funds were deposited by Dr. Holzknecht in due course.
373. Objected to as lacking context. Respondent testified that he had no checks for the trust account with him on a cross-country trip. Respondent made a check out to the other client in the proper amount on the same day the funds were transferred. The funds were deposited by the other client in due course.
374. Objected to as lacking context. Respondent had no checks for the trust account with him on a cross-country trip. Respondent made a check out to Dr. Holzknecht in the proper amount on the same day the funds were transferred. The funds were deposited by Dr. Holzknecht in due course.
375. Objected to as lacking context. Respondent had no checks for the trust account with him on a cross-country trip. Respondent made a check out to Dr. Holzknecht in the

proper amount on the same day the funds were transferred. The funds were deposited by Dr. Holzknecht in due course.

Respondent objects to the "**FINDINGS OF MISCODUCT**" [sic] as follows:

Rule 1.15 – Respondent objects because no evidence showed any specific deposits or advance fees that should have been deposited into the referenced trust account beyond those referenced herein, *supra*. Consequently, no additional violation was proved by clear and convincing evidence. Respondent objects to not having received proper notice of LEO 1606 and its incorporation into the Rules of Professional Conduct without any reference in those Rules of Professional Conduct to LEO 1606. As a matter of policy, the Virginia Supreme Court should explicitly state the full scope and extent of its rules rather than "hiding the ball" and depending upon individual attorneys to read thousands of legal ethics opinions.

IMPOSITION OF SANCTIONS

For all of reasons stated herein, Respondent objects to the imposed sanctions as being unduly harsh in view of the totality of the circumstances and testimony presented in the case. Applicant had certified compliance with Rule 1.15 bimonthly pursuant to this Court's order of June 2022. In view of this compliance as well as Respondent not having taken any post-conviction relief cases for over two years, an admonition or at most a modest suspension should have been imposed instead of an immediate outright revocation of Respondent's license to practice law.

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SUPREME COURT RULE 25

Tennessee Lawyers' Fund for Client Protection

Section 1. Tennessee Lawyers' Fund for Client Protection.

1.01. There is hereby established the Tennessee Lawyers' Fund for Client Protection to reimburse claimants for losses caused by any dishonest conduct committed by lawyers practicing in this state.

1.02. The purpose of the Tennessee Lawyers' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession as a whole by reimbursing losses caused by the rare instances of dishonest conduct of lawyers practicing in this state.

1.03. As used in these rules, "dishonest conduct"means the misappropriation or willful misapplication of a person's money, securities or other property.

1.04. This rule shall apply to dishonest conduct that arose out of the practice of law in Tennessee.

1.05. For purposes of this Rule, "lawyer" shall include a person:

(a) licensed to practice law in this jurisdiction;

(b) admitted as in-house counsel;

(c) admitted pro hac vice;

(d) practicing in Tennessee under the authority of Tennessee Supreme Court Rule 8, RPC 5.5(d)(1);

(e) admitted only in a non-United States jurisdiction but who is authorized to practice law in this jurisdiction; or

(f) recently suspended or disbarred whom clients reasonably believed to be licensed to practice law when the dishonest conduct occurred.

Section 2. Funding.

2.01. The Fund shall consist of monies or other properties obtained by the following:

(a) Annual payments from lawyers in an amount set by the Court in Rule 9, Section 10.2(c) collected annually with the yearly registration fees by the Board of Professional Responsibility of the Supreme Court of Tennessee; lawyers exempted under Rule 9, Section 10.3 are also exempted from this rule; lawyers who became life members of the Fund on or before December 7, 1993, shall also be exempted from this rule

(b) Recoveries by subrogation or from lawyers or former lawyers or their estates reimbursed to the Fund for payments made by the Fund;

(c) Gifts or bequests from any source; and

(d) Earnings on investments of the Fund.

Section 3. Funds.

3.01. All monies or other assets allocated to the Fund shall be held in a separate account in the name of the Fund, subject to written direction of the Board of the Tennessee Lawyers' Fund for Client Protection (the "Board").

Section 4. Composition of Board.

4.01. The Board shall consist of six lawyers and three non-lawyers appointed for initial terms as follows:

(a) One lawyer from the Grand Division of East Tennessee to be appointed by the Supreme Court of Tennessee for a three year term;

(b) One lawyer from the Grand Division of Middle Tennessee to be appointed by the Supreme Court of Tennessee for a two year term;

(c) One lawyer from the Grand Division of West Tennessee to be appointed by the Supreme Court of Tennessee for a one year term;

(d) One non-lawyer from the Grand Division of East Tennessee to be appointed by the Supreme Court of Tennessee for a three year term;

(e) One non-lawyer from the Grand Division of Middle Tennessee to be appointed by the Supreme Court of Tennessee for a two year term;

(f) One non-lawyer from the Grand Division of West Tennessee to be appointed by the Supreme Court of Tennessee for a one year term;

(g) One lawyer from the Grand Division of East Tennessee to be appointed by the Supreme Court of Tennessee for a one year term;

(h) One lawyer from the Grand Division of Middle Tennessee to be appointed by the Supreme Court of Tennessee for a two year term;

(i) One lawyer from the Grand Division of West Tennessee to be appointed by the Supreme Court of Tennessee for a three year term.

4.02. Subsequent appointments shall be for a term of three years. Bar associations within the State of Tennessee may recommend individuals for appointment to the Board.

4.03. No appointee who has served two full terms of three years shall be eligible for reappointment to the Board until three years after the termination of the most recent term.

4.04. Vacancies shall be filled by appointment by the Supreme Court of Tennessee, whether said vacancies exist due to expiration of a member's term, resignation, removal, death, or disability.

4.05. The Supreme Court of Tennessee shall select a chairperson, vice-chairperson, secretary-treasurer and such other officers as the Court deems appropriate.

4.06. The Board members shall be bonded in such manner and amount as the Supreme Court of Tennessee may determine.

4.07. Board members shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

Section 5. Board Meetings.

5.01. The Board shall meet as frequently as necessary to carry out its duties, but no less than once per year. There shall be no personal appearances except upon request of the Board, pursuant to Tenn. Sup. Ct. R. 25, § 10.6, or written authorization of the Board Chair, pursuant to a written request submitted to the Board fourteen (14) days in advance of the Board Meeting.

5.02. The Chairperson shall call a meeting at any reasonable time, or upon the request of at least three members of the Board.

5.03. A quorum for any meeting of the Board shall be five members. Unless otherwise permitted by this Rule, an affirmative vote of five members of the Board shall be necessary to authorize any action. If time restraints are such that a regular or special meeting of the Board is impractical, Disciplinary Counsel shall circulate to the members of the Board in writing the reasons for the recommendation of a particular action supported by a factual report. Board members may communicate their vote for or against the recommendation by telephone, facsimile, regular mail, or electronic means. Any member of the Board may request that Disciplinary Counsel convene a telephone conference of the Board, whereupon such conference must be convened with at least a quorum so conferring.

5.04. Minutes of meetings shall be taken and permanently maintained by the Board.

5.05. Meetings by telephone conference are permitted.

5.06. When the Board is hearing a claim, approval of a claim shall require the affirmative vote of a majority of members present. See Section 10.08 for the procedures for hearing claims.

Section 6. Duties and Responsibilities of the Board.

6.01. The Board shall have the following duties and responsibilities:

(a) To receive, evaluate, determine and pay approved claims;

(b) To promulgate rules of procedure not inconsistent with these Rules and subject to prior approval by the Supreme Court of Tennessee;

(c) To provide a full report at least annually to the Supreme Court of Tennessee and make other reports and publicize the activities to the public and the Bar by providing a notice of payment of the claim, including the nature of the claim, the amount of reimbursement and the name of the lawyer, to all State judges and to the Tennessee Bar Association, and by causing the same to be published in online or print media in each county in which the attorney maintained an office for the practice of law, if available, and in such other manner as the Board may determine to be appropriate.

(d) The staff and physical resources of the Board of Professional Responsibility will assist in the Board's performance of its functions effectively and without delay; the Board will compensate the staff for its services;

(e) To retain and compensate consultants, actuaries, agents, legal counsel and other persons as necessary; this authority to contract for professional services as needed by the Board shall not be construed to authorize the Board to hire employees of the Board;

(f) To prosecute claims for restitution to which the Fund is entitled;

(g) To submit an annual budget for approval by the Supreme Court of Tennessee;

(h) To perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the Fund.

Section 7. Conflict of Interest.

7.01. A member of the Board who has or has had a lawyer-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.

7.02. A member of the Board with a past or present relationship, other than as provided in Section 7.01 of this rule, with a claimant or the lawyer whose alleged conduct is the subject of the claim shall disclose such relationship to the Board and, if the Board deems appropriate, that member shall not participate in any proceeding relating to such claim.

Section 8. Immunity.

8.01. The members, employees and agents of the Board are absolutely immune from civil liability for all acts in the course of and within the scope of their official duties.

Section 9. Procedures and Responsibilities for Claimants.

9.01. The Board shall prepare and approve a form of claim.

9.02. The form shall include at least the following information provided by the claimant under penalty of perjury:

(a) Name and address of claimant, home and business telephone, occupation and employer;

(b) Name, address and telephone number of the lawyer alleged to have engaged in dishonest conduct;

(c) The nature of services the lawyer performed and/or was to perform for the claimant, if any;

(d) Whether the claimant's agreement with the lawyer was in writing, and, if so, attach a copy;

(e) Specify whether the claimant's loss involves money, securities or other property;

(f) The amount of loss and the date when the loss occurred, and if documentation is available, attach a copy;

(g) The date when the claimant discovered the loss, and how the claimant discovered the loss;

(h) A description of the lawyer's alleged dishonest conduct and the names and addresses of any persons who have knowledge regarding the loss;

(i) Whether the loss has been reported to the district attorney, police, disciplinary agency or other (specify); and if so, furnish a copy of the complaint and describe what action was taken;

(j) Whether the loss potentially can be reimbursed from any other source, such as insurance, fidelity or surety agreement and, if so, specify the source of such potential recovery;

(k) Description of any steps taken to recover the loss directly from the lawyer, or any other source;

(l) Any other facts believed to be important to the Fund's consideration of the claim;

(m) How the claimant learned about the Fund;

(n) The name, address and telephone number of the claimant's present lawyer, if any;

(o) A statement that the claimant agrees to cooperate with the Board in reference to the claim or civil actions which may be brought in the name of the Board or in the name of the claimant pursuant to a subrogation and assignment which shall be contained within the claim.

9.03. The claimant shall have the responsibility of completion of the claim form and establishing that a compensable claim may exist.

9.04. The claim shall be filed with the Board in the manner and place designated in its rules of procedure.

Section 10. Processing Claims.

10.01. Immediately upon receipt by the Board, a copy of the claim shall be served upon the lawyer by certified mail or personal delivery directed to the address currently listed for such lawyer in the records of the Board of Professional Responsibility.

10.02. Whenever it appears that a claim is not compensable pursuant to these rules, the claimant shall be advised of the reasons why the claim is not compensable, and that unless additional facts to support eligibility are submitted to the Fund within 30 days, the claim shall be dismissed.

10.03. A certified copy of an order disciplining a lawyer for the same conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall be evidence that the lawyer committed such conduct.

10.04. The Board of Professional Responsibility of the Supreme Court of Tennessee shall be promptly notified of the claim and requested to furnish a report of its investigation on the matter to the Board. Upon receipt of the report of investigation of the Board of Professional Responsibility, the Board shall evaluate whether the investigation is complete and determine whether the Board shall conduct additional investigation. The Board may withhold final action on any claim until disciplinary proceedings involving the same act or conduct have been concluded, or may proceed before disciplinary proceedings are concluded, in its discretion.

10.05. The Board may conduct its own investigation when it deems it appropriate.

10.06. The Board may request that testimony be presented to complete the record. Upon request, the claimant and lawyer, or either of their personal representatives, will be given an opportunity to be heard. Attendance of witnesses and production of evidence may be compelled by a subpoena.

10.07. When the record is complete the claim shall be determined on the basis of all available evidence. Determinations shall be made upon the basis of a preponderance of the evidence.

10.08. Hearings may be held in the Grand Division of the State where the claimant and/or the accused lawyer resides. The Chairperson may designate the Board to sit in panels of three Board members as assigned by the Chairperson. A concurrence of all three panel members sitting shall constitute a decision of the Board. If a claim is not unanimously approved by a panel of three, then the full Board shall be presented the record and approval of a claim shall

require the affirmative vote of a majority of Board members present. Notice shall be given to the claimant and the lawyer of the Board's determination and the reasons therefore.

10.09. Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings. The claimant shall have the duty to supply relevant evidence to support the claim.

Section 11. Judgments.

11.01. The Board may require that claimants seeking more than $1,000 obtain a judgment against the offending lawyer or former lawyer. Claimants may be eligible for payment from the Fund if the judgment shall remain unpaid after reasonable efforts to collect same.

Section 12. Eligible Claims.

12.01. A claim must be filed within three years of the date that a loss occurred or reasonably should have been discovered, but in no event later than five years from the date of a loss. This provision applies prospectively to losses that occur after the date of its adoption.

12.02. Except as provided by Section 12.03 of this rule, the following losses shall not be reimbursable:

(a) Losses suffered by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;

(b) Losses covered by any bond, surety agreement, insurance contract to the extent covered thereby; including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(c) Losses of any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(d) Loss of any business entity controlled by the lawyer or any person or entity described in Section 12.02, (a), (b) or (c) hereof;

(e) Losses of a governmental entity or agency.

12.03. In cases of special and unusual circumstances, the Board may, in its discretion, recognize a claim which would otherwise be excluded under this rule.

12.04. Paragraph 12.03 above notwithstanding, no payment from the Fund shall include interest, costs or attorneys' fees accrued as a result or consequence of prosecuting the claim before the Board, except as may be allowed pursuant to Section 18.01 herein.

Section 13. Limitations on Amount of Reimbursements.

13.01. No payment shall exceed the sum of $100,000 for loss sustained by any one claimant nor the aggregate sum of $400,000 with respect to losses caused by any one lawyer or former lawyer, unless otherwise determined by the Board and approved by the Court. No payment shall exceed $400,000 per transaction regardless of the number of persons aggrieved or the amount of loss in such transaction unless otherwise determined by the Board and approved by the Court. No payment shall exceed ten percent of the assets of the Fund at the time it is made, unless otherwise determined by the Board and approved by the Court. Where joint liability of wrongdoers exists, the Board has discretion to allocate payments as it deems appropriate within these limits. Payments may be in lump sum or installments as the Board may determine.

Section14. Considerations on Payment of Claims.

14.01. In determining whether to pay a claim and the amount to be paid, the Board may consider any matter which, in its discretion, it deems relevant, including but not limited to the following:

(a) The conduct, including negligence, if any, of the claimant which contributed to the loss;

(b) The hardship which the claimant suffered because of the loss;

(c) The total amount of reimbursable losses of applicants on account of any one lawyer or former lawyer or association of lawyers;

(d) The total amount of reimbursable losses in previous years for which total reimbursement has not been made and the total assets of the Fund; and

(e) Other sources of funds available to compensate the claimant for the loss.

Section 15. Legal Rights to Payment from Fund.

15.01. No person shall have any right to payment from the Fund as a claimant, third-party beneficiary or otherwise.

15.02. Decisions of the Board shall be final and not be subject to appeal or review by any court.

Section 16. Subrogation.

16.01. Payments on approval claims shall be made from the Fund only upon condition that the Board receives, in consideration for any payment from the Fund, a pro tanto assignment from the claimant of the claimant's right against the lawyer involved, or his or her personal representative, his or her estate or assigns or of the claimant's right against any third party or entity concerning the dishonestly caused loss for which the claimant is receiving reimbursement from the Fund, and to the extent of such payment, a lien shall be created in favor of the Fund which shall attach to any asset that may be payable to the claimant from, or

on behalf of, the person or entity who caused the claimant's loss and which resulted in the claimant's award of reimbursement from the Fund.

16.02. If the reimbursement is made, the Fund shall be subrogated in the amount of the reimbursement. The Board may bring such action as it deems advisable against the lawyer, the lawyer's estate and any other person or entity who may be liable for the loss.

16.03. Should the claimant bring any action for recovery or reimbursed losses directly against the lawyer, the lawyer's estate or any other person or entity who may be liable for the loss, the claimant shall notify the Board of such action and send a copy of the complaint. Any voluntary payment from the lawyer or other recovery from any source shall also be reported to the Board.

16.04. The claimant shall cooperate in any effort the Board undertakes to achieve reimbursement for the Fund.

Section 17. Confidentiality.

17.01. Applications, proceedings and reports involving applications for reimbursement are confidential until the Board authorizes reimbursement to the claimant, except as provided below.

17.02. If the lawyer whose alleged conduct gave rise to the claim requests that the matter be made public, or if the lawyer's alleged conduct is the subject of a public disciplinary, civil or criminal proceeding, the requirement of confidentiality is waived.

17.03. Section 17.01 shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Board shall authorize, or the release of statistical information which does not disclose the identity of the lawyer or the parties.

17.04. Both the claimant and the lawyer shall be advised of the status of the Board's consideration of the claim and shall be informed of the final determination and the reasons for the determination.

17.05. The Board shall have discretion to seal such parts of a file that would be damaging to a claimant or to which the claimant has a statutory right of confidentiality.

Section 18. Compensation for Representing Claimants.

18.01. No lawyer shall charge or accept compensation for prosecuting a claim on behalf of a claimant (a) on a contingency basis or (b) in excess of a fee of $300.00. The fee shall be earned at an hourly rate to be approved by the Board and not above that provided in Rule 13 section (2)(c) of the Tennessee Supreme Court Rules. Lawyers owe a duty to the public to assist individuals wronged by members of the profession and may count hours spent assisting a claimant in the prosecution of a claim as pro bono hours if conducted without receiving a fee.

18.02. This prohibition only pertains to proceedings before the Board and not to the seeking of civil judgments and other actions taken by lawyers on behalf of claimants.

Section 19. Payments to the Board.

19.01. Failure of any lawyer to pay the amounts required by Section 2.01(a) of this rule shall be grounds for the suspension of the license to practice.

19.02. The Board of Professional Responsibility shall deposit all funds collected on behalf of the Tennessee Lawyer's Fund for Client Protection with the State Treasurer; all such funds including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Tennessee Lawyer's Fund for Client Protection. Withdrawals from those funds shall only be made by the Tennessee Lawyer's Fund for Client Protection for the purposes set forth in this rule, and for such other purposes as this Court may from time to time authorize or direct.

ABA's Model Rules of Professional Conduct

Client-Lawyer Relationship

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; and

(8) whether the fee is fixed or contingent.

(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 upon the amount of alimony or support, or property settlement in lieu thereof; 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, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

* * * * *

RULE 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account 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.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(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 property.

(e) When in the course of representation a lawyer is in possession of property 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 as to which the interests are not in dispute.

* * * * *

RULE 1.16 Declining or Terminating Representation

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged; or

(4) the client or prospective client seeks to use or persists in using the lawyer’s services to commit or further a crime or fraud, despite the lawyer’s discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

ABA's Model Rules for Client Protection

Rule 1 - Purpose and Scope

A. The purpose of the Lawyers' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers licensed or otherwise authorized to practice law in the courts of this jurisdiction occurring in the course of the client-lawyer or other fiduciary relationship between the lawyer and the claimant.

B. For purposes of these Rules, "lawyer" shall include a person:

(1) licensed to practice law in this jurisdiction, regardless of where the lawyer's conduct occurs;

(2) admitted as in-house counsel;

(3) admitted *pro hac vice*;

(4) admitted as a foreign legal consultant;

(5) admitted only in a non-United States jurisdiction but who is authorized to practice law in this jurisdiction; or

(6) recently suspended or disbarred whom clients reasonably believed to be licensed to practice law when the dishonest conduct occurred.

C. Every lawyer has an obligation to the public to participate in the collective effort of the bar to reimburse persons who have lost money or property as a result of the dishonest conduct of another lawyer. Contribution to the Lawyers' Fund for Client Protection is an acceptable method of meeting this obligation.

Rule 2 - Establishment

1. There is established the Lawyers' Fund for Client Protection ("Fund") to reimburse claimants for losses caused by dishonest conduct committed by lawyers admitted to practice in this state.

2. There is established, under the supervision of the highest court in this jurisdiction ("Court"), the Lawyers' Fund for Client Protection Board of Trustees ("Board"), which shall receive, hold, manage and disburse from the Fund such monies as may from to time be allocated to the fund.

3. These rules shall be effective for claims filed with the Board after [date] and the Board shall not pay claims for losses incurred as a result of dishonest conduct committed prior thereto.

Rule 3 - Funding

1.The Court shall provide for funding by the lawyers admitted and licensed to practice law in the jurisdiction in amounts adequate for the proper payment of claims and the costs of administering the Fund.

2.A lawyer's failure to pay any fee assessed shall be a cause for suspension from practice until payment has been made.

Rule 4 - Fund

All monies or other assets of the Fund shall constitute a trust and shall be held in the name of the Fund, subject to the direction of the Board.

Rule 5 - Composition and Officers of the Board

1. The Board shall consist of five lawyers and two nonlawyers appointed by the Court for initial terms as follows:

2.

A. two lawyers for one year;

B. one nonlawyer for two years;

C. two lawyers for two years;

D. one nonlawyer for three years; and

E. one lawyer for three years.

Subsequent appointments shall be for a term of three years. The Court may limit the number of successive terms that Trustees may serve on the Board.

3. Trustees shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

4. Vacancies shall be filled by appointment by the Court for any unexpired terms.

5. The Board shall select a Chair, Secretary, Treasurer and such other officers as the Board deems appropriate.

6. The Treasurer shall be bonded in such manner and amount as the Board shall determine.

Rule 6 - Board Meetings

1. The Board shall meet as frequently as necessary to conduct the business of the Fund and to timely process claims.

2. The Chair shall call a meeting at any reasonable time or upon the request of at least two Trustees.

3. A quorum for any meeting of the Board shall be four Trustees. A motion shall pass upon the affirmative vote of four Trustees.

4. Minutes of meeting shall be taken and permanently maintained by the Secretary.

Rule 7 - Duties and Responsibilities of the Board

The Board shall have the following duties and responsibilities:

1. to receive, evaluate, determine and pay claims;

2. to promulgate rules of procedure not inconsistent with these Rules;

3. to prudently invest such portions of the funds as may not be needed currently to pay losses, and to maintain sufficient reserves as appropriate;

4. to provide a full report at least annually to the Court and to make other reports as necessary;

5. to publicize its activities to potential claimants, the public and the bar;

6. to employ adequate staff to assure the Board's effective and efficient performance of its functions;

7. to retain and compensate consultants, administrative staff, investigators, actuaries, agents, legal counsel and other persons as necessary;

8. to prosecute claims for restitution to which the Fund is entitled;

9. to engage in studies and programs for client protection and prevention of dishonest conduct by lawyers; and

10. to promote effective communication between lawyer disciplinary authorities and the Fund, and

11. to perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the Fund.

Rule 8 - Conflict of Interest

1. A Trustee who has or has had a client-lawyer relationship or a financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.

2. A Trustee with a past or present relationship, other than as provided in Paragraph A, with a claimant or the lawyer whose alleged conduct is the subject to the claim, or who has other potential conflicts of interest, shall disclose such relationship to the Board and, if the Board deems appropriate, that Trustee shall not participate in any proceeding relating to such claim.

Rule 9 - Immunity

The Trustees, employees and agents of the Board shall be absolutely immune from civil liability for all acts in the course of their official duties. Absolute immunity shall also extend to claimants and lawyers who assist claimants for all communications to the Fund.

Rule 10 - Eligible Claims

A. The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship between the lawyer and the claimant.

B. The claim shall have been filed no later than five years after the claimant knew or should have known of the dishonest conduct of the lawyer.

C. As used in these Rules, "dishonest conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:

(1) Failure to refund unearned fees in advance as required by [Rule 1.6 of the ABA *Model Rules for Professional Conduct*]; and

(2) The borrowing of money from a client without intention to repay it; or with disregard of the lawyer's inability or reasonably anticipated inability to repay it.

D. Except as provided by Paragraph E of this Rule, the following losses shall not be reimbursable:

(1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;

(2) Losses covered by a bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extend of that subrogated interest;

(3) Losses incurred by any financial institution that are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by the lawyer(s), any person or entity described in Subparagraph D (1), (2) or (3) of this Rule;

(5) Losses incurred by any governmental entity or agency;

(6) Losses arising from business or personal investments not arising in the course of the client-lawyer relationship; and

(7) Consequential or incidental damages, such as lost interest, or lawyer's fees or other costs incurred in seeking recovering of a loss.

E. In determining whether it would be more appropriate for this Fund or another Fund to pay a claim, the Board should consider the following factors:

(1) the Fund(s) into which the lawyer is required to pay an annual assessment or into which an appropriation is made on behalf of the lawyer by the bar association;

(2) the domicile of the lawyer;

(3) the domicile of the client;

(4) the residence(s) of the lawyer;

(5) the number of years the lawyer has been licensed in each jurisdiction;

(6) the location of the lawyer's principal office and other offices;

(7) the location where the attorney-client relationship arose;

(8) the primary location where the legal services were rendered;

(9) whether at the time the legal services were rendered, the lawyer was engaged in the unauthorized practice of law as defined by the jurisdiction in which the legal services were rendered; and

(10) any other significant contacts.

F. The Board may enter into an agreement with the Fund of another jurisdiction to reimburse a portion of the loss suffered by a claimant whose claim may be eligible for payment under both Funds. The Board may take into consideration the other Fund's rules on payment of claims for reimbursement prior to entering into such an agreement.

G. In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion and consistent with the purpose of the Fund, recognize a claim that would otherwise be excluded under these Rules.

H. In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the claim.

Rule 11 Procedures and Responsibilities for Claimants

1. The Board shall prepare and approve a form for claiming reimbursement.

2. The form shall include at least the following information provided by the claimant under penalty of perjury:

3.

A. the name and address of claimant, home and business telephone, occupation and employer, social security number;

B. the name, address and telephone number of the lawyer alleged to have dishonestly taken the claimant's money or property, and any family or business relationship of the claimant to the lawyer;

C. the legal or other fiduciary services the lawyer was to perform for the claimant;

D. the amount paid to the lawyer;

E. a copy of any written agreement pertaining to the claim;

F. copies of any checks, money orders, receipts, or other proofs of payment;

G. the form of the claimant's loss (e.g. money, securities or other property);

H. the amount of loss and the date when the loss occurred;

I. the date when the claimant discovered the loss, and how the claimant discovered the loss;

J. the lawyer's dishonest conduct and the names and addresses of any persons who have knowledge of the loss;

K. the name of the person, if any, to whom the loss has been reported (e.g. district attorney, police, disciplinary agency, or other person or entity) and a copy of any complaint and description of any action that was taken;

L. the source, if any, from which the loss can be reimbursed including any insurance, fidelity or surety agreement;

M. the description of any steps taken to recover the loss directly from the lawyer, or any other source;

N. the circumstances under which the claimant has been, or will be, reimbursed for any part of the claim (including the amount received, or to be received, and the source); along with a statement that the claimant agrees to notify the Board of any reimbursements the claimant receives during the pendency of the claim;

O. the existence of facts believed to be important to the Fund’s consideration of the claim;

P. the manner in which the claimant learned about the Fund:

Q. the name, address and telephone number of the claimant's present lawyer;

R. the claimant's agreement to cooperate with the Board in reference to the claim or as required by Rule 16, in reference to civil actions which may be brought in the name

of the Board pursuant to a subrogation and assignment clause which shall also be contained within the claim.

S. the claimant's agreement to repay Fund if the claimant is subsequently reimbursed from another source;

T. The name and address of any other state Fund to which the claimant has applied or intends to apply for reimbursement, together with a copy of the application; and

U. A statement that the claimant agrees to the publication of appropriate information about the nature of the claim and the amount of reimbursement if reimbursement is made.

4.The claimant shall have the responsibility to complete the claim form and provide satisfactory evidence of a reimbursable loss.

5.The claim shall be filed with the Board in the manner and place designated in the Board's rules.

Rule 12 Processing Claims

1.Whenever it appears that a claim is not eligible for reimbursement pursuant to Rule 10, the claimant shall be advised of the reasons why the claim may not be eligible for reimbursement, and that unless additional facts to support eligibility are submitted to the Fund, the claim file shall be closed.

2.An order disciplining a lawyer for the same dishonest act or conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall be evidence that the lawyer committed such dishonest act or conduct.

3.The lawyer disciplinary agency shall be promptly notified of the claim and required to furnish a report of its investigation of the matter to the Board. The lawyer disciplinary agency shall allow the Fund's representative access to its records during an investigation of a claim. The Board shall evaluate whether the investigation is complete and determine whether the Board should conduct additional investigation or await the pendency of any disciplinary investigation or proceeding involving the same act or conduct that is alleged in the claim.

4.The Board may conduct its own investigation when it deems it appropriate.

5.The lawyer shall be notified of the claim and given an opportunity to respond to the claim. A copy of the claim shall be provided to the lawyer, or the lawyer's representative. The lawyer or representative shall have 20 days in which to respond.

6.The Board may request that testimony be presented to complete the record. Upon request, the claimant or lawyer, or their representatives, will be given an opportunity to be heard.

7. The Board may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.

8. When the record is complete, the claim shall be determined on the basis of all available evidence, and notice shall be given to the claimant and the lawyer of the Board's determination and the reasons therefor. The approval or denial of a claim shall require the affirmative votes of at least four trustees.

9. Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings. The claimant shall have the duty to supply relevant evidence to support the claim.

10. The Board shall determine the order and manner of payment and pay all approved claims, but unless the Board directs otherwise, no claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct that is alleged in the claim.

Rule 13 - Request for Reconsideration

The claimant or respondent may request reconsideration in writing within 30 days of the denial or determination of the amount of a claim. If the claimant or respondent fails to make a request or the request is denied, the decision of the Board is final and there is no further right or appeal.

Rule 14 - Payment of Claims for Reimbursement

1. The Board may from time to time fix a maximum amount on reimbursement that is payable by the Fund.

2. Payment of reimbursement shall be made in such amounts and at such times as the Board deems appropriate and may be paid in lump sum or installment amounts.

3. If a claimant is a minor or an incompetent, the reimbursement may be paid to any person or entity authorized to receive the reimbursement for the benefit of the claimant.

Rule 15 - Reimbursement from the Fund is Discretionary

No person shall have the legal right to reimbursement from the Fund. There shall be no appeal from a decision of the Board.

Rule 16 - Restitution and Subrogation

1. A lawyer whose dishonest conduct results in reimbursement to a claimant shall be liable to the Fund for restitution; and the Board may bring such action as it deems advisable to enforce such obligation.

2. A lawyer whose dishonest conduct has resulted in reimbursement to a claimant shall make restitution to the Fund including interest and the expense incurred by the Fund in processing the claim. A lawyer's failure to make satisfactory arrangement for restitution shall be cause for suspension, disbarment, or denial of an application for reinstatement.

3. As a condition of reimbursement, and to the extent of the reimbursement provided by the Fund, a claimant shall be required to provide the Fund with a transfer of the claimant's rights against the lawyer, the lawyer's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the claimant's loss.

4. Upon commencement of an action by the Board as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

5. In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another entity that may be liable for the claimant's loss, the claimant shall be required to notify the Board of such action.

6. The claimant shall be required to agree to cooperate in all efforts that the Board undertakes to achieve restitution for the Fund, and to repay the Fund if claimant is subsequently reimbursed from another source an amount that exceeds the difference between the principal misappropriated and the Fund award. Such repayment shall not exceed the amount of the Fund award.

Rule 17 - Judicial Relief

1. The Board may make application to the appropriate court for relief to protect the interests of claimants or the Fund where:

A. the assets of clients appear to be in danger of misappropriation or loss, or to secure the claimant's or Fund's rights to restitution or subrogation; or

B. the lawyer disciplinary agency has failed to exercise jurisdiction.

2. A court's jurisdiction in such proceedings shall include the authority to appoint and compensate custodial receivers to conserve the assets and practices of disciplined, missing, incapacitated and deceased lawyers.

Rule 18 - Confidentiality

1. Claims, proceedings and reports involving claims for reimbursement are confidential until the Board authorizes reimbursement to the claimant, except as provided below, unless provided

otherwise by law. After payment of the reimbursement, the Board shall publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer. The name and the address of the claimant shall not be publicized by the Board unless specific permission has been granted by the claimant.

2. This rule shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Board shall authorize, or the release of statistical information that does not disclose the identity of the lawyer or the parties, or the use of such information as is necessary to pursue the Fund's subrogation rights under Rule 16.

Rule 19 - Compensation for Representing Claimants

No lawyer shall accept any payment for assisting a claimant with prosecuting a claim, unless such payment has been approved by the Board.

Additional Resources

- Tennessee Attorney's Trust Account Handbook, available at tn-attorneys-trust-account-handbook-2023.pdf (tbpr.org)

- Board of Professional Responsibility Trust Accounting and Ethics Workshop Video, available at https://youtu.be/8LY5mOT0z-Y?si=PYN1T4e2xQD1BHrw

- Tennessee's Proactive Management-Based Regulation (Voluntary Self-Assessment), available at https://www.tbpr.org/tennessees-pmbr

- Board of Professional Responsibility's Formal Ethics Opinions, available at https://www.tbpr.org/for-legal-professionals/formal-ethics-opinions

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: ANDY LAMAR ALLMAN, BPR #017857
An Attorney Licensed to Practice Law in Tennessee
(Sumner County)

No. M2018-01080-SC-BAR-BP
BOPR No. 2017-2765-6-AW

ORDER OF ENFORCEMENT

This matter is before the Court upon a Petition for Discipline filed against Andy Lamar Allman on August 29, 2017; upon the Board's Motion for Default Judgment and that Charges in Petition for Discipline Be Deemed Admitted filed on November 2, 2017; upon Order Granting Default Judgment in Petition for Discipline entered on November 13, 2017; upon Mr. Allman's Motion to Continue Hearing filed on December 4, 2017; upon Response of Board in Opposition to Respondent's Motion to Continue Hearing filed on December 5, 2017; upon Supplemental Response of Board in Opposition to Respondent's Motion to Continue Hearing filed on December 7, 2017; upon Respondent's Reply to Board Response in Opposition to Motion to Continue filed on December 7, 2017; upon the Order entered by the Panel on December 7, 2017; upon a Notice of Filing by the Board on December 28, 2017; upon a Notice of Board Regarding Hearing Dates filed by the Board on January 23, 2018; upon the entry of an Order Setting Case for Final Hearing by the Hearing Panel on February 24, 2018; upon Motion to Stay Disciplinary Hearings and Memorandum in Support filed on February 9, 2018; upon the Response of the Board in Opposition to Motion to Defer filed February 15, 2018; upon the Order entered by the Panel on February 16, 2018; upon the Order of Disbarment entered February 23, 2018; upon service to Respondent by the Executive Secretary of the Board of the Order of Disbarment on February 23, 2018, upon the Board's Application for Assessment of Costs filed on March 2, 2018; upon the Order Granting Application for Assessment of Costs entered by the Hearing Panel March 20, 2018; upon service of the Order Granting Application for Assessment of Costs to Respondent by the Executive Secretary of the Board on March 20, 2018; upon consideration and approval by the Board on May 7, 2018; upon expiration of the appeal period with no appeal taken; and upon the entire record in this cause.

From all of which the Court adopts the Hearing Panel's Order of Disbarment as the Court's Order.

On September 9, 2016, Mr. Allman was temporarily suspended by this Court pursuant to Tenn. Sup. Ct. R. 9, § 12.3 (Case No. M2016-01848-6-AW-12.3), and Mr. Allman has not requested, nor been granted reinstatement.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

(1) Andy Lamar Allman is disbarred from the practice of law and shall pay restitution in the amount of $320,050.00 to the specific individuals and amounts set forth in summary Trial Exhibit 2 attached hereto as Exhibit A.

(2) Prior to seeking reinstatement, Mr. Allman must have met all CLE requirements; have remitted all outstanding registration fees and outstanding professional privilege taxes, including those due from the date of this disbarment until the date of reinstatement; and have remitted all court costs and Board costs in this matter.

(3) The Order of Temporary Suspension entered September 9, 2016, (Case No. M2016-01848-SC-BAR-BP) is hereby dissolved.

(4) Pursuant to Tenn. Sup. Ct. R. 9, § 31.3(d), Mr. Allman shall pay to the Board of Professional Responsibility the expenses and costs of this matter in the amount of $6,395.60 and shall pay to the Clerk of this Court the costs incurred herein, within ninety (90) days of the entry of this Order, for all of which execution may issue if necessary.

(5) Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.

(6) The Board of Professional Responsibility shall cause notice of this discipline to be published as required by Tenn. Sup. Ct. R. 9, § 28.11.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: ANDY LAMAR ALLMAN, BPR #017857
An Attorney Licensed to Practice Law in Tennessee
(Sumner County)

No. M2018-01279-SC-BAR-BP
BOPR No. 2018-2830-6-AW

ORDER OF ENFORCEMENT

This matter is before the Court upon a Petition for Discipline filed against Andy Lamar Allman on February 21, 2018, a Supplemental Petition for Discipline approved by the Board but not yet filed, and two (2) disciplinary complaints (#52720 and #56319) under investigation; upon Mr. Allman's Notice of Intent to Enter a Conditional Guilty Plea in Lieu of Answer on May 18, 2018; upon Mr. Allman's Conditional Guilty Plea, with attached Schedule A, filed on June 8, 2018; upon the Hearing Panel's Order Recommending Approval of Conditional Guilty Plea, including Schedule A, entered June 18, 2018; upon consideration and approval by the Board on June 19, 2018; and upon the entire record in this cause.

From all of which the Court accepts the recommendation of the Hearing Panel and adopts the Order Recommending Approval of Conditional Guilty Plea as the Court's Order.

Mr. Allman was disbarred by this Court by Order of Enforcement (Case No. M2018-01080-SC-BAR-BP) entered on June 19, 2018, and has neither requested nor been granted reinstatement from said Order.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

(1) Pursuant to Tenn. Sup. Ct. R. 9, § 12.1, Andy Lamar Allman is hereby disbarred and shall pay restitution in the amount of $322,898.85 to the specific individuals and amounts set forth in Schedule A attached hereto. To the extent restitution is paid by the Tennessee Lawyer's Fund for Client Protection ("TLFCP"), Mr. Allman shall reimburse TLFCP for said amount and shall remain obligated to the individuals listed above for any unpaid restitution.

(2) Pursuant to Tenn. Sup. Ct. R. 9, § 31.3(d), Mr. Allman shall pay to the Board of Professional Responsibility the expenses and costs of this matter in the amount of $3,203.64 and shall pay to the Clerk of this Court the costs incurred herein, within ninety (90) days of the entry of this Order, for all of which execution may issue if necessary.

(3) Prior to seeking reinstatement, Mr. Allman must have met all CLE requirements; have remitted all outstanding registration fees and outstanding professional privilege taxes, including those due from the date of this disbarment until the date of reinstatement; and have remitted all court costs and Board costs in this matter.

(4) The Board of Professional Responsibility shall cause notice of this discipline to be published as required by Tenn. Sup. Ct. R. 9, § 28.11.

(5) Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.

PER CURIAM

SCHEDULE A

2018-2830-6-AW

Complaint No.	File No.	Client Name	Date Respondent Received	Date Deposited/ Cashed	Check No.	Check Amount
1	49087	Nicholas Rouse	4/27/2016	4/28/2016	6840601742	$4,500.00
2	50005c	Jay Cohen	6/30/2016			$4,500.00
3	50306	Kaylah Pate	7/9/2014	7/9/2014	1342	$4,500.00
4	50531	Robert Willis, Jr.	May-12			$1,750.00
5	50753	Cynthia Taylor	12/3/2015	12/3/2018	2598	$4,500.00
6	50767	Jeffery Johnson	12/20/2013			$4,500.00
6	50767	Jeffery Johnson	2/10/2015	2/23/2015	653722	$2,355.10
6	50767	Jeffery Johnson	2/12/2015	2/23/2015	1075220	$3,166.67
7	50809	Kathy Eggers	8/28/2015	9/1/2015	3103	$4,500.00
8	50869	Gregory Wright	2013			$4,500.00
9	50877	Wanda Meeks	8/12/2014			$4,500.00
10	50898	Phillip Stinson, Jr.	11/25/2014	11/26/2014	2417	$2,500.00
10	50898	Phillip Stinson, Jr.	12/1/2014	12/1/2014	2419	$2,000.00
11	50902	Mark Weakley	10/13/2014	10/13/2014	42588	$43,000.00
11	50902	Mark Weakley	10/13/2014	10/13/2014	42589	$100,000.00
NO #	50923	Barabara Johnson	7/11/2013		Cash	$4,500.00
12	50960	Michael Dycus	3/14/2014	3/17/2014	94	$108,077.08
13	50962	Kyle Fletcher	10/14/2015		Cash	$4,500.00
14	51000	Charles Carr	6/30/2014	7/1/2014	4487	$7,500.00
15	51041	Mary Jenkins	7/3/2014	7/3/2014	1965	$4,500.00
16	51045	Frances Taylor	8/28/2015	9/1/2015	1652	$4,500.00
17	51191	Sharon Gaye	11/28/2014	11/28/2015	976002563	$4,500.00
18	51214	Randy Johnson	Apr-14			$5,000.00
19	51422	Josephine McQuail	1/12/2016	1/12/2016	1115	$4,000.00
20	51433	Virgil Gamble	10/19/2012	10/22/2012	2555	$4,500.00
21	51434	Ana Williams	8/7/2015	8/7/2015	5955	$4,500.00
22	51462c	Ernest J. Blanchard	4/20/2015	4/20/2015	1638	$7,500.00
23	51712	Pamela Tanner	5/7/2014	5/7/2014	Money Orders	$2,500.00
24	51859	Pamela Davis	9/22/2015	9/22/2015	2562	$2,500.00
25	51956	Gregory Brent	11/16/2011			$1,000.00
25	51956	Gregory Brent	Nov-11		Cash	$1,500.00
26	51996	Julie Baker	10/27/2015	10/27/2015	4444	$3,000.00
27	52052	Roger Bobo	10/30/2014			$3,500.00
28	52113	Deborah Gunther	12/29/2014	12/30/2014	512548 Cashier's	$4,500.00
29	52189	Steven Engel	Sep-13		Cash	$600.00
29	52189	Steven Engel	Sep-13		Check	$500.00

30	52222	Pamela McInish	4/10/2013	4/10/2013	103	$4,500.00
31	52298	Bryan Fox	6/6/2014	6/6/2014	4855	$4,500.00
32	52708	Inge Goodson	3/7/2013	3/7/2013	1101	$4,500.00
33	53064	Leland Fuller	3/17/2015	3/17/2015	1419	$4,500.00
34	50108	Brooklyn Harris	10/3/2014	11/4/2014	3695	$4,500.00
35	50665	Beverly Ward	12/5/2014		Cash	$4,500.00
36	50852	Jackqueline Brewer	Jul-10			$700.00
36	50852	Jackqueline Brewer	Oct-10			$4,000.00
37	51116	Dorothy Kirk	1/13/2014	1/13/2014	2072	$2,500.00
38	52706	Teresa Roark	6/8/2012			$750.00
39	52765	Mark Plush	7/2/2015	7/2/2015	106	$4,500.00
40	52826	Ezekiel Banks	1/21/2011			$1,500.00
41	53155	Carol Jarman	4/8/2014			$4,500.00
42	53167	Doris Barnett	5/13/2015			$1,000.00
42	53167	Doris Barnett	6/9/2015	6/9/2015	2806	$3,500.00
43	53637	Sandra Hudson	8/1/2016		CASH	$4,500.00
44	53636	Board	N/A	N/A	N/A	N/A
45	53706	Valerie Bynum	6/24/2015	6/24/2015	1176	$4,500.00
46	53887	Media Report	N/A	N/A	N/A	N/A
			Supplemental Petition			
1	44183c	Carrel Liles	April, 2013			
2	50493	Deborah Grodzicki	1/16/2015	1/16/2015	2512	$7,500.00
3	51149	Teresa Kidd	1/15/2015	1/15/2015	1006	$4,500.00
4	52610	Patricia McNamara	5/1/2016	5/2/2016	1030	$2,500.00
5	53589	Dennis Troutman	3/18/2014			$4,500.00
6	54339	Karen Chan	1/31/2015			$4,500.00
7	54905	Daniel Johnson	3/9/2016	3/10/2016	1426	$4,500.00
			Pending Complaints Not Filed			
1	52720	Cyril DeMasana	NA	NA	NA	$2,500.00
2	56319	Beverly Roberts	NA	NA	NA	$2,500.00

TOTAL - $322,898.85

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: ANDY LAMAR ALLMAN, BPR #017857
An Attorney Licensed to Practice Law in Tennessee
(Sumner County)

No. M2018-01208-SC-BAR-BP
BOPR No. 2016-2564-6-AW

ORDER OF ENFORCEMENT

This matter is before the Court upon a Petition for Discipline filed against Andy Lamar Allman on March 2, 2016; upon Mr. Allman's Answer to the Petition for Discipline filed May 20, 2016; upon a Supplemental Petition for Discipline filed against Mr. Allman on August 29, 2016; upon a Second Supplemental Petition for Discipline filed against Mr. Allman on November 15, 2016; upon a Third Supplemental Petition for Discipline filed against Mr. Allman on June 7, 2017; upon Order Concerning Certain Motions Filed By The Respondent Allman And The Board entered by the Hearing Panel on January 19, 2018; upon Order Concerning Certain Motions Filed By The Respondent Allman And Board Responses entered by the Hearing Panel on April 26, 2018; upon Notice of Intent To Enter Conditional Guilty Plea In Lieu Of Answer filed by Mr. Allman on May 18, 2018; upon Mr. Allman's Conditional Guilty Plea with the attached Schedule B filed on June 8, 2018; upon the Hearing Panel's Order Recommending Approval of Conditional Guilty Plea entered June 18, 2018; upon consideration and approval by the Board on June 19, 2018; and upon the entire record in this cause.

From all of which the Court accepts the recommendation of the Hearing Panel and adopts the Order Recommending Approval of Conditional Guilty Plea as the Court's Order.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

(1) Pursuant to Tenn. Sup. Ct. R. 9, § 12.1, Andy Lamar Allman is hereby disbarred and shall pay restitution in the amount of $511,386.50 to the specific individuals and amounts set forth in Schedule B attached hereto. To the extent restitution is paid by the Tennessee Lawyer's Fund for Client Protection ("TLFCP"), Mr. Allman shall reimburse TLFCP for said amount and shall remain obligated to the individuals listed above for any unpaid restitution.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: JUDSON WHEELER PHILLIPS, BPR #013029
An Attorney Licensed to Practice Law in Tennessee
(Davidson County)

No. M2018-01480-SC-BAR-BP
BOPR No. 2018-2897-5-WM-23

ORDER OF ENFORCEMENT

This cause is before the Court upon a Notice of Submission filed by the Board of Professional Responsibility providing notice pursuant to Tenn. Sup. Ct. R. 9, § 23, of the affidavit of Judson Wheeler Phillips, consenting to disbarment. Mr. Phillips is an attorney licensed to practice law in the State of Tennessee and is subject to the disciplinary jurisdiction of the Supreme Court of Tennessee, pursuant to Rule 9 of the Rules of the Supreme Court of Tennessee.

It appears to the Court that Judson Wheeler Phillips has delivered to the Board of Professional Responsibility an affidavit in compliance with Tenn. Sup. Ct. R. 9, § 23.1. Mr. Phillips has consented to disbarment because he cannot successfully defend himself against the charges alleged in the pending Petition for Discipline, Docket No. 2018-2865-5-WM, nor in the pending Board files listed in the appendix hereto.

On August 8, 2018, Mr. Phillips was temporarily suspended by this Court pursuant to Tenn. Sup. Ct. R. 9, § 12.3, for posing a threat of substantial harm to the public in Case No. M2018-01432-SC-BAR-BP. Mr. Phillips has not requested, nor been granted, reinstatement.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

(1) Judson Wheeler Phillips is hereby disbarred from the practice of law in Tennessee.

(2) This Order of Enforcement shall be a matter of public record.

(3) Pursuant to Tenn. Sup. Ct. R. 9, § 23.3, the affidavit filed by Judson Wheeler Phillips shall not be publicly disclosed or made available for use in any other proceeding except upon further Order of this Court.

(4) The Board of Professional Responsibility shall cause notice of this disbarment to be published in accordance with Tenn. Sup. Ct. R. 9, § 28.11.

(5) Upon entry of this Order, the Order of Temporary Suspension entered August 8, 2018, in Case No. M2018-01432-SC-BAR-BP, is hereby dissolved.

(6) Additionally, Mr. Phillips shall comply in all aspects with Tenn. Sup. Ct. R. 9, §§ 28 and 30.4, regarding the obligations and responsibilities of disbarred attorneys and the procedure for reinstatement. Prior to seeking reinstatement, Mr. Phillips must meet all CLE requirements and pay any outstanding registration fees including those due from the date of suspension/disbarment until the date of reinstatement.

(7) Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.

(8) Mr. Phillips shall pay to the Clerk of this Court the costs incurred herein, for all of which execution may issue if necessary.

(9) The Board may make application for the assessment of its necessary and reasonable costs incurred in the Petition for Discipline, Docket No. 2018-2865-5-WM, pursuant to Tenn. Sup. Ct. R. 9, § 31.3.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: JUDSON WHEELER PHILLIPS, BPR #013029
An Attorney Licensed to Practice Law in Tennessee
(Davidson County)

No. M2019-00891-SC-BAR-BP
BOPR No. 2019-3000-5-WM-23

ORDER OF ENFORCEMENT

This cause is before the Court upon a Notice of Submission filed by the Board of Professional Responsibility providing notice pursuant to Tenn. Sup. Ct. R. 9, § 23, of the affidavit of Judson Wheeler Phillips, consenting to disbarment. Mr. Phillips is an attorney licensed to practice law in the State of Tennessee and is subject to the disciplinary jurisdiction of the Supreme Court of Tennessee, pursuant to Rule 9 of the Rules of the Supreme Court of Tennessee.

It appears to the Court that Judson Wheeler Phillips has delivered to the Board of Professional Responsibility an affidavit in compliance with Tenn. Sup. Ct. R. 9, § 23.1. Mr. Phillips has consented to disbarment because he cannot successfully defend himself against the charges alleged in the pending Board files listed in the affidavit.

On August 24, 2018, Mr. Phillips was disbarred by this Court pursuant to Tenn. Sup. Ct. R. 9, § 12.1, in Case No. M2018-01480-SC-BAR-BP. Mr. Phillips has not requested, nor been granted, reinstatement.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

(1) Judson Wheeler Phillips is hereby disbarred from the practice of law in Tennessee.

(2) This Order of Enforcement shall be a matter of public record.

(3) Pursuant to Tenn. Sup. Ct. R. 9, § 23.3, the affidavit filed by Judson Wheeler Phillips shall not be publicly disclosed or made available for use in any other proceeding except upon further Order of this Court.

(4) The Board of Professional Responsibility shall cause notice of this disbarment to be published in accordance with Tenn. Sup. Ct. R. 9, § 28.11.

(5) Additionally, Mr. Phillips shall comply in all aspects with Tenn. Sup. Ct. R. 9, §§ 28 and 30.4, regarding the obligations and responsibilities of disbarred attorneys and the procedure for reinstatement. Prior to seeking reinstatement, Mr. Phillips must meet all CLE requirements and pay any outstanding registration fees including those due from the date of disbarment until the date of reinstatement.

(6) Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.

(7) Mr. Phillips shall pay to the Clerk of this Court the costs incurred herein, for all of which execution may issue if necessary.

(8) The Board may make application for the assessment of its necessary and reasonable costs.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: JUDSON WHEELER PHILLIPS, BPR #013029
An Attorney Licensed to Practice Law in Tennessee
(Davidson County)

No. M2021-00115-SC-BAR-BP
BOPR No. 2020-3130-5-AW

ORDER OF ENFORCEMENT

This cause is before the Court upon a Notice of Submission filed by the Board of Professional Responsibility providing notice pursuant to Tenn. Sup. Ct. R. 9, § 23, of the affidavit of Judson Wheeler Phillips, consenting to permanent disbarment. Mr. Phillips is an attorney licensed to practice law in the State of Tennessee and is subject to the disciplinary jurisdiction of the Supreme Court of Tennessee, pursuant to Rule 9 of the Rules of the Supreme Court of Tennessee.

It appears to the Court that Judson Wheeler Phillips has delivered to the Board of Professional Responsibility an affidavit in compliance with Tenn. Sup. Ct. R. 9, § 23.1. Mr. Phillips has consented to permanent disbarment because he cannot successfully defend himself against the charges alleged in the pending Petition for Discipline, Docket No. 2020-3130-5-AW, nor in disciplinary complaint File No. 65186-6-DB not yet filed as a formal petition for discipline.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED, AND DECREED BY THE COURT THAT:

(1) Judson Wheeler Phillips is hereby permanently disbarred from the practice of law in Tennessee.

(2) This Order of Enforcement shall be a matter of public record.

(3) Pursuant to Tenn. Sup. Ct. R. 9, § 23.3, the affidavit filed by Judson Wheeler Phillips shall not be publicly disclosed or made available for use in any other proceeding except upon further Order of this Court.

(4) The Board of Professional Responsibility shall cause notice of this disbarment to be published in accordance with Tenn. Sup. Ct. R. 9, § 28.11.

(5) Mr. Phillips shall comply in all aspects with Tenn. Sup. Ct. R. 9, §§ 28 and 30.4 regarding the obligations and responsibilities of permanently disbarred attorneys.

(6) Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.

(7) Mr. Phillips shall pay to the Clerk of this Court the costs incurred herein for which execution, if necessary, may issue.

PER CURIAM