

Summary of Virginia State Bar Public Disciplinary Actions

Fiscal Year 2022

Last Updated 07/08/2022¹

I. CRIMINAL CONDUCT²

1. In the Matter of Morris Andrew Bander

VS B Docket No. 21-010-120772

Consent to Revocation

August 4, 2021

- Bander pleaded guilty to conspiracy to transport goods in interstate commerce.
- As part of his plea, Bander acknowledged that the government's evidence would have shown that Bander was the co-owner of a pawn shop that purchased stolen goods and re-sold them on eBay. The government alleged that Bander's actions regarding the conspiracy were willful and knowing.

2. In the Matter of Martin Michael Brennan, Jr.

VS B Docket No. 22-000-123282

Consent to Revocation

August 10, 2021

- Reciprocal proceeding based on Brennan's disbarment in North Carolina.
- North Carolina alleged that
 - Brennan and employee associate attorney agreed that each would pay one-half of associate's health insurance premium. For one year Brennan withheld sums from employee attorney's paychecks to pay employee's portion of monthly health and dependent life insurance premiums. Brennan, however, did not pay the premiums as agreed, resulting in the cancellation of the policies. Brennan did not inform attorney that Brennan did not pay the premiums and that the premiums were cancelled. Brennan continued to withhold premiums from attorney's paychecks

¹ Disciplinary cases are included in these written materials shortly after the Memorandum Orders are published. For some matters, the time to note an appeal may not have expired, or an appeal may have been noted after a case was included. For recent information regarding pending appeals, check the Virginia State Bar's website at <https://www.vsb.org/disciplinary.html>.

² Some of the matters included in these written materials include conduct that pertains to more than one category.

for eight (8) months after the premiums were cancelled. Brennan used the funds for his own purposes.

- Brennan failed to remit to the IRS employment taxes which he withheld funds from employees' paychecks. Brennan knowingly converted the funds to his own use.
- For five (5) years over a nine-year span Brennan did not file income federal or state income tax returns or pay his federal and income tax liability for those years.
- By consenting to disbarment, Brennan acknowledged that the material facts upon which the allegations of misconduct were based were true.

3. In the Matters of Matthew James Erasquin

VSB Docket Nos. 22-000-124031, 21-042-121272

Consent to Revocation

October 22, 2021

- Erasquin consented to revocation after pleading guilty to six counts of sex trafficking a minor.

4. In the Matter of Aimee Sangster Clanton

VSB Docket No. 22-000-123805

30-Day Suspension With Terms

Hearing Before Disciplinary Board

February 25, 2022

- In 2019, Clanton was arrested for her third DWI in five years. In dashcam video of Clanton's 2019 arrest, she is shown as unable to walk on her own. Clanton subsequently pled guilty to the DWI charge and was sentenced to six months in jail with work release.
- After her arrest, Clanton joined Alcoholics Anonymous, attended AA meetings regularly and worked with a sponsor. She also contracted with the Judges and Lawyers Assistance Program ("JLAP") and remained in regular contact with her monitor.
- Mitigating Factors: No disciplinary record, self-reported her conviction, cooperated with the bar and Board, pled guilty to her crimes, is serving her sentence and will remain on supervised probation for at least another four years, sober for 2.5 years, complied with contract with JLAP.

II. DISHONESTY

5. Virginia State Bar ex rel Fifth District Committee v. Robert B. Machen

VSB Docket No. 19-051-115338

Revocation

Hearing Before Three-Judge Panel

February 18, 2022

- Beginning in the 1980s and for many years, Machen represented client Wilma R. Williams in legal matters. Machen and Williams were not related.
- On October 25, 2016, Machen prepared a Power of Attorney (“POA”) appointing him and his son as Williams’s attorneys-in-fact in the event Williams became incapacitated or unable to control her affairs.
- On July 5, 2018, Williams, then 93 years old, fell at her home and suffered a stroke. Williams was hospitalized and subsequently admitted to rehabilitation. Williams never returned home. On August 10, 2018, Williams passed away.
- In July 2018, while reviewing Williams’s financial statements with Williams at the hospital, Respondent learned that Williams had over \$1 million in her investment accounts at which time Respondent thought “oh my God, she has a lot of money.”
- On July 26, 2018, Machen recorded an altered POA in Fairfax County. Machen had unilaterally stricken the language allowing Machen to control Williams’s assets only upon her incapacity.
- Also in July 2018, after learning of Williams’s holdings, Machen drafted a will for Williams naming himself the Executor and primary beneficiary and his son successor Executor and contingent beneficiary of Williams’s Estate. Machen included a no contest clause. Neither Machen nor his son were related to Williams. Machen’s son had never met Williams.
- On July 31, 2018, ten days before Williams’s death, Machen falsely asserted that Williams executed three copies of the wills. In a subsequent suit to impeach the probated will, the Fairfax Circuit Court found that the documents purporting to be Williams’s will were not signed by Williams or if Williams “affixed her scribbled signatures that she lacked the testamentary capacity to understand the extent of her assets, the scope of her affections and the consequences of the documents presented to her.”
- On August 17, 2018, within one week of Williams’s death, Machen qualified as executor of her estate and admitted one of the three wills to probate. The probated will was not executed in the presence of two witnesses.
- On August 30, 2018, Machen opened an estate account at Williams’s investment firm.

- On September 7, 2018, Machen caused the estate account to issue a check for \$35,000 payable to the estate.
- In September 2018 Machen hired his friend Mark Kellogg³ to act as estate counsel.
- By letters dated October 15, 2018, drafts of which were reviewed by and exchanged with Machen, Kellogg sent the heirs releases of any claims against the estate and stated that the will contained a clause, “that should be fully enforceable, that would disqualify any heir from continuing to have their right to payment if they contest the Will or complaint [sic] about the administration of the Estate in any way.” Kellogg advised the beneficiaries that if they signed and returned the enclosed releases and accepted nominal bequests of either \$30,000 or \$45,000, Machen would mail them an estate check or deposit the funds overnight if the beneficiary’s bank had a branch in Arlington or Fairfax.
- Machen and Kellogg did not disclose to the beneficiaries that Machen drafted the will, named himself the primary beneficiary and his son the contingent beneficiary, that Machen had a conflict of interest, and that the probated will was not executed in the presence of two witnesses. Machen did not timely provide a copy of the probated will to the beneficiaries.
- On October 17, 2018, Machen caused the estate account to issue a check for \$350,000 to the estate. This was in addition to the \$35,000 he received on September 7. Machen deposited the \$385,000 into an estate account at the Armed Forces Bank.
- In reliance on the correspondence which falsely threatened that the beneficiaries who complained about the estate would get nothing, all beneficiaries except one executed the releases. Machen paid the beneficiaries \$240,000 from the estate account.
- One of the beneficiaries hired an attorney, who, by letter dated November 19, 2018, requested a full inventory of the assets, any wills previously executed by Williams prior to the probated will, any POA, and other information.
- In response to the inquiry, Machen and Kellogg provided a purported holographic will, which Machen forged. The “holographic will” forged by Machen left the beneficiaries substantially less than the \$30,000 under the probated will.
- Machen and Kellogg also provided a POA which was different than the altered POA Machen recorded July 26, 2018. The POA Machen and Kellogg provided the beneficiary’s attorney did not contain Machen’s strike out of the requirement that Williams be incapacitated for Machen to act as her attorney-in-fact.
- On December 3, 2018, the financial institution which held the estate account placed a temporary hold on the disbursement of funds from the estate account pending a review of whether Machen financially exploited Williams.

³ Kellogg consented to revocation of his license on June 14, 2022.

- In February 2019 the institution filed a petition to interplead the remaining funds in the estate account to the Clerk of the Fairfax County Circuit Court. By Order entered August 2019, the Fairfax County Circuit Court granted the institution leave to sell the securities and deposit the funds with the Clerk.
- In February 2019 the beneficiary who did not sign the release, joined later by another beneficiary who had signed the release, successfully sued to impeach the probated will, alleging that Machen engaged in undue influence and fraud. Machen filed a plea in bar of accord and satisfaction against the beneficiary who signed the release.
- Machen filed a complaint to admit to probate one of the other original wills from July 31, 2018, or the purported holographic will. At the end of a four-day jury trial, Machen nonsuited his claim that the alleged holographic will should be probated.
- The jury found that Machen procured Williams's wills by undue influence and fraud and that the undue influence and fraud included Machen's filing of a false POA, the October 15, 2018 letter to the beneficiaries, and the release that contained falsehoods. The Fairfax County Circuit Court vacated the document probating the will and removed Machen as executor, and it denied the defense of accord and satisfaction and set aside the release as unenforceable because it was the byproduct and tool of a fraudulent scheme. Machen appealed, but the Supreme Court of Virginia affirmed the trial court's judgment.
- Machen delayed the return of substantial assets to the estate after his removal as executor.
- Rules Violated: 1.8(c) (Conflict of Interest: Prohibited Transactions); 3.1 (Meritorious Claims and Contentions); 3.3(a)(1), (4) (Candor Toward the Tribunal); 8.4(a-c) (Misconduct).

6. In the Matter of Mark Edward Kellogg

VSB Docket No. 20-051-117703

Consent to Revocation

June 14, 2022

- Kellogg represented Robert Machen (see case summary above) as the executor of the estate of Wilma Williams.
- Kellogg was concerned about Machen's role as both drafter of the wills and beneficiary, but Machen did not withdraw as counsel or report Machen to the VSB.
- Kellogg co-authored letters to the beneficiaries that were written to persuade them to release claims against Machen immediately without questioning Machen's administration of the estate. Kellogg did not disclose his concerns about the validity or enforceability of the will, or that Machen was a convicted felon.
- When one of the beneficiaries retained counsel, who inquired whether Machen wrote the will, Kellogg did not answer the question.

- Prior to Williams’ death, Kellogg removed firearms from her home because he knew Machen was not allowed to possess firearms. Kellogg did not disclose to anyone that he took the firearms. He returned them after the will contest matter was over.

7. In the Matters of Jonathon Alden Moseley⁴

VSB Docket Nos. 19-053-114672, 20-053-117461, 20-053-117932

Revocation

Hearing Before Three-Judge Panel

April 1, 2022

- In the first of two matters in which the court found rule violations, Moseley deposited an advanced legal fee into a non-trust account. He later opened a new trust account, deposited funds from another client into it, and labeled the deposits as from the first client. The bar subpoenaed Moseley’s trust accounting records and Moseley responded only partially. The bar filed a notice of noncompliance, to which Moseley did not respond, and consequently his license was suspended on an interim basis. After a hearing at which the Board chair directed Moseley regarding the documents he needed to produce, Moseley complied, and the suspension was lifted. Rules Violated: 1.15(a)(1), (b)(3), (5), (d)(2) (Safekeeping Property); 8.1(c-d) (Bar Admission and Disciplinary Matters); 8.4(b) (Misconduct).
- In the second matter, Moseley appeared for calendar control and did not disclose his suspension after he admitted he was aware of his suspension. Moseley and his client were required to pay attorney’s fees and costs based on a discovery issue. Moseley filed a motion to vacate in which he alleged that his suspension was based on an “unfounded dispute.” The court held Moseley in contempt for failing to pay the sanctions awarded. Moseley did not appear for a subsequent show cause hearing, so the court issued a capias and Moseley was jailed for six days. Moseley filed a Writ of Prohibition in the Supreme Court of Virginia and a federal lawsuit regarding the sanctions order. In the federal matter, Moseley alleged that the defendants (the presiding judge and opposing counsel” had “chosen to engage in terrorism, threats, and intimidation not warranted under State law.”
- Rules Violated: 3.1 (Meritorious Claims and Contentions); 3.3(a)(1) (Candor Toward the Tribunal); 3.4(d), (j) (Fairness to Opposing Party and Counsel); 5.5(c) (Unauthorized Practice of Law); 8.2 (Judicial Officials).

8. In the Matters of Edward Allen Malone

VSB Docket Nos. 20-041-117386, 20-041-119014

Revocation

Hearing Before Disciplinary Board

January 28, 2022

- Malone, who was at the time admitted to the Maryland and Virginia bars, sought to waive into the Texas bar. In his application, Malone failed to disclose that he was admitted to

⁴ Moseley has noticed an appeal.

the Virginia bar and that he had previously been disciplined by both Virginia and the United States District Court for the District of Maryland.

- After learning that he would have to provide Texas with proof that he had practiced in another jurisdiction for five years, Malone converted his application to a general application and sat for the Texas bar exam.
- After Malone was admitted to the Texas bar, the Texas Board of Bar Examiners learned that Malone had failed to disclose his Virginia admission and discipline and recommended to the Supreme Court of Texas that Malone's law license be withdrawn and canceled. The Supreme Court of Texas canceled Malone's Texas license and prohibited Malone from holding himself out as a Texas attorney.
- After Malone's license was canceled, he appeared in Texas traffic court on behalf of a client and negotiated a payment plan with the prosecutor. When asked to note his representation in the matter, Malone signed a document with his Virginia State Bar number and the notation "pro hac." Malone did not have local counsel and had not been admitted *pro hac vice*.
- Rules Violated: Texas Disciplinary Rules of Professional Conduct 3.03(a)(1) (Candor Toward the Tribunal); 8.01(a)(3), (b)(11) (Misconduct).

9. In the Matter of Gary Don Wright⁵

VSB Docket No. 20-051-118148

Revocation

Hearing Before Disciplinary Board

April 21-22, 2022

- Complainant Summer Smith married Wright's long-term client, Geary Simon.
- Prior to the marriage, Wright represented Smith regarding Smith's transfer of control of a condominium she owned to Simon. When Wright was representing Smith in this transaction, he was also Simon's attorney.
- The condo association sued to collect unpaid assessments. Without informing Smith, Wright appeared on Smith's behalf and signed an order agreeing to a judgment against Smith for \$5,234.
- Subsequently, Smith thought that Wright was hiring a private investigator to follow Smith's former paramour. In fact, Wright directed the private investigator to follow Smith.

⁵ Wright has noticed an appeal.

- When Simon filed for bankruptcy, Wright represented Nine Lenders, an entity associated with Simon that was identified as a creditor in the bankruptcy. When interviewed by the bar investigator, Wright denied representing Nine Lenders.
- Wright also filed for eviction of Smith from the marital home on Simon's behalf, and then filed a complaint for divorce on Simon's behalf. In the divorce, Smith's counsel subpoenaed documents related to financial transactions between Wright, his firm, Simon, and Simon's related entities. Wright was ordered to produce documents but claimed he did not have any because he did not bill Simon. However, the bar investigator found evidence of 73 financial transactions between Wright, Simon, and Simon's related entities.
- Wright also instructed a third party to delay responding to a subpoena from Smith's counsel.
- Rules Violated: Virginia Rules of Professional Conduct 1.2(a) (Scope of representation); 1.7(a) (Conflict of Interest); 1.15(d)(34-4) (Safekeeping Property); 8.1(a) (Bar Admission and Disciplinary Matters); 8.4(c) (Misconduct). DC Rules of Professional Conduct 1.7(b) (Conflict of Interest); 1.9 (Conflict of Interest: Former Client); 3.3(a)(1) (Candor to Tribunal); 3.4(a-c) (Fairness to Opposing Party and Counsel); 8.1(a) (Bar Admission and disciplinary Matters); 8.4(c) (Misconduct).
- Aggravating Factors: dishonest motive, pattern of misconduct, numerous offenses, bad faith obstruction of disciplinary process, failure to appear for hearing, substantial experience.
- Mitigating Factor: no disciplinary record.

10. In the Matter of Robert Bailey Smith, IV

VSJ Docket No. 20-033-117568

Consent to Revocation

December 17, 2021

- Smith was a Managing Director for a consulting firm that was hired as the financial advisor for the LandAmerica Financial Group Liquidation Trust ("LFG Trust)."
- The Chapter 11 plan for LFG called for a six-year wind down period. LFG Trustee Bruce Matson proposed a \$3.1 million wind down budget. Matson asked Smith to include language in the budget language authorizing additional compensation to the dissolution trustee and other professionals. Smith questioned this language but Matson declined to change it.
- Although the bankruptcy court's prior order precluded Matson from disbursing trust funds to Smith or others until 2021, on January 9, 2019, Smith received a wire transfer of \$1.5 million from the LFG Trust. Smith transferred the money to personal accounts to provide bonuses to financial professionals, including himself.

- On August 26, 2019, Smith represented to the bankruptcy court that these proceeds were held in legal escrow when they were not.
- Smith returned the \$1.5 million that he received.

11. In the Matters of Ellen Mary Lynch

VS B Docket Nos. 18-051-112300, 21-000-122407

Consent to Revocation

September 7, 2021

- Lynch, an attorney for the Department of Justice, represented to the court several times that she had ordered title searches for property at issue when in fact she had not. Lynch also requested a continuance on the basis that the title search results were necessary before the case could be tried.
- Lynch also misrepresented the status of the title search to her employer and her supervisors, which is essentially misrepresenting the status to her client, the United States.
- Lynch never responded to the bar complaint or to the bar investigator's efforts to investigate the bar complaint.
- After charges were filed, Lynch consented to an Impairment suspension. After her suspension, Lynch failed to provide proof to the bar that she had complied with her obligation to notify her clients, opposing counsel, and presiding judges of her suspension, as well as make appropriate arrangements for the handling of her matters.

12. In the Matter of Glen Nelson Mackey, Jr.

VS B Docket No. 20-080-116957

Consent to Revocation

Nov. 17, 2021

- In 2002, Mackey learned of stock issued in the name of his former law firm. An heir of one of the former partners alleged that Mackey misrepresented that the stock was not of sufficient value to justify securing the necessary bond to convert the stock.
- In 2009, Mackey sold the outstanding shares.
- The Circuit Court for the City of Roanoke found that Mackey obtained proceeds from the sales of stock belonging to his former law firm and the heirs of the members of that law firm using methods involving misrepresentation, obstruction and deceit. On appeal, the Supreme Court of Virginia did not disturb the Circuit Court's factual findings.

13. In the Matter of Jesus Diokno Salang
VSB Docket No. 21-041-121352
Public Reprimand
Agreed Disposition Before Subcommittee
June 8, 2022

- Salang registered a trademark for AMTGARD, which was associated with a Live Action Role Playing (“LARP”) organization with which Salang was involved. Salang’s trademark was limited to role-playing board games.
- In a letter posted on his website, Salang asserted that his trademark applied to LARP games as well.
- Salang’s trademark was contested, and the Trademark Trial and Appeal Board held that Salang “attempted to wrest control of the AMTGARD LARP from Petitioner by registering Petitioner’s AMTGARD mark. This is a misuse of the trademark registration system, and Mr. Salang, Respondent’s principal, should have known better, including because he is an attorney and AMTGARD player.”
- Rules Violated: 3.1 (Meritorious Claims and Contentions); 8.4(c) (Misconduct).

III. SAFEKEEPING PROPERTY

14. In the Matters of David Gary Hoffman
VSB Docket Nos. 20-051-115298, 20-051-116229
Revocation
Hearing Before Disciplinary Board
December 17, 2021

- Hoffman’s former law partner submitted a bar complaint regarding Hoffman’s general business practices. Hoffman’s work involved estate planning and estate administration. For his estate planning work, Hoffman charged advanced, flat fees. For the estate administration work, Hoffman charged a percentage of the client’s estate. Hoffman’s fee agreements said that the fees were “earned when paid.” None of these advanced fees were deposited into a trust account. Rather, they were deposited into a business account and then promptly transferred to Hoffman’s personal account.
- In a second matter, Hoffman accepted \$2,182 to prepare estate documents for a 90-year-old man with dementia. The fee agreement stated that the fee was “earned upon receipt,” and Hoffman deposited the fee into his business checking account.
- Hoffman later visited the client at the memory care unit of an assisted living center. During that visit, Hoffman had the client sign a second agreement and charged him \$12,818 for estate settlement services. Hoffman charged the fee to a credit card that had

the chip removed and the magnetic strip scratched, although the numbers remained visible.

- After Hoffman visited the client in the memory care unit, Hoffman spoke to the client's son, who held his father's power of attorney. The son told Hoffman about his father's condition. Hoffman subsequently agreed to return the client's payments, but never did so.
- Rules Violated: 1.5(a) (Fees); 1.15(a)(1), (b)(5), (c)(2), (c)(4), (d)(3)(i), (d)(3)(iii) (Safekeeping Property); 8.4(b-c) (Misconduct).
- Mitigating Factor: No prior disciplinary record.
- Aggravating Factors: Pattern of misconduct, refusal to acknowledge wrongful nature of conduct, dishonest or selfish motive, vulnerable victims, refusal to make restitution.
- "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."

15. In the Matter of Robert Steven Pope

VS B Docket Nos. 21-070-122811, 21-070-122839

Consent to Revocation

November 29, 2021

- In 2014, Pope received \$291,684 into his trust account on behalf of a husband and wife.
- In 2019, after husband died, wife demanded return of the money. Pope raised certain probate laws to justify a delay in returning the funds. Pope gave the wife a record of his trust account balance that falsely reflected sufficient funds, despite the fact that Pope had already misappropriated all but \$100 of the funds.
- In response to the bar complaint, Pope falsely stated that there was a dispute over the funds and that he was working on resolving those disputes to release the funds. Based on his misrepresentation, the bar dismissed the complaint against him.
- It was only after a subsequent complaint regarding the funds that led to discovery of the misappropriate and misrepresentations.

16. In the Matters of Michael Steven Arif

VS B Docket Nos. 19-053-113618, 22-000-124726

Five-Year Suspension With Terms (Agreed Disposition Before Disciplinary Board), then

Consent to Revocation

August 26, 2021 (Suspension); January 31, 2022 (Revocation)

- Arif served as trustee for an irrevocable special needs trust with a starting value of \$121,560.54. He was directed to use the funds "to result in the highest quality of human

life possible” for the minor beneficiary. The terms allowed Arif to pay up to \$1,000 per month for the beneficiary’s expenses.

- Although the settlement order that established the trust required Arif to qualify as trustee and provide an inventory and accountings to the Commissioner of Accounts, Arif did not do so for nine years after his appointment.
- Arif loaned \$4,000 of the trust funds to another client for an auto loan. Only \$3,000 of the loan was repaid. Arif also loaned himself \$60,000 to pay law firm expenses and salaries. Arif said that he would repay the funds with interest and that the beneficiary’s mother “tacitly” agreed. Approximately three years after Arif borrowed the money from the trust, he had repaid only \$33,350.
- After Arif loaned his law firm the money, he stopped paying the rent for the beneficiary’s mother, even though he had done so for approximately six years. Arif told the bar investigator he stopped paying because he was irritated with the mother and believed she was living with a pedophile. But Arif did not report the issue to law enforcement or Child Protective Services. Meanwhile, Arif told the mother that he had stopped paying because there was no money left.
- Arif also charged the trust \$12,356.68 in legal fees for assisting with the mother’s immigration case, a criminal matter, and the loss of social security benefits for the minor.
- Arif also failed to pass on to the mother funds he received from the minor’s structured settlement.
- At the time of the bar’s investigation, Arif said he still owed the trust \$12,392.65.
- After the mother filed the bar complaint, Arif asked her to withdraw it. Arif also did not mention the loans he took from the trust in his initial written response to the bar complaint.
- Rules Violated: 1.3(a), 1.3(b), 1.3(c) (Diligence); 1.15(b)(4), 1.15(b)(5) (Safekeeping Property); 3.4(d) (Fairness to Opposing Party and Counsel); 8.1(b) (Bar Admission and Disciplinary Matters); 8.4(b), 8.4(c) (Misconduct).
- Terms of Five-Year Suspension: Arif was required to file action seeking appointment of replacement trustee, resign as trustee, and file an accounting for the trust. Arif was also required to comply with the demands of the Commissioner, the court, and any successor trustee, including reimbursing the trust for any deficiencies.
- Arif failed to comply with these terms. Although Arif sent a copy of a Petition for Aid and Direction to the bar, Arif declined to pay a filing fee to have the petition heard. Arif did not file an accounting.

17. In the Matter of Matthew Howard Swyers
VSB Docket No. 18-052-110203
Two-Year Suspension
Agreed Disposition Before Disciplinary Board
August 25, 2021

- Swyers operated a law firm called The Trademark Company, through which he filed more than 17,000 trademark applications during a five-year period.
- Clients paid for their trademark preparation and filing package in advance by credit card. Swyers did not deposit these advanced legal fees, including filing fees, into a trust account. Swyers justified this by stating that the work was completed by the time the fees were deposited into his account. However, Swyers acknowledged that these advanced fees including filing fees, and that some packages he sold could not be completed immediately.
- Swyers relied on paralegals to prepare and file trademark applications. Although Swyers said he reviewed every application, for a period he did not review some of the applications until after they were filed. Paralegals were permitted to add Swyers's electronic signature to the applications.
- Some of the specimens, or examples, attached to the trademark applications filed by Swyers's firm were not representative of how the mark was being used in commerce.
- Rules Violated: 1.1 (Competence); 1.3(a) (Diligence); 1.15(a)(1), 1.15(b)(5) (Safekeeping Property); 5.3(a), 5.3(b), 5.3(c) (Responsibilities Regarding Nonlawyer Assistants); 5.5(c) (Unauthorized Practice of Law); 8.4(a) (Misconduct). The Agreed Disposition also included corresponding provisions of the rules of the United States Patent and Trademark Office.

18. In the Matter of Darren Scott Haley⁶
VSB Docket No. 20-080-117732
18-Month Suspension
Hearing Before Disciplinary Board
November 19, 2021

- Haley overdrafted his trust account. The overdraft was caused in part by a credit card payment Haley made from the trust account.
- The investigation revealed that Haley was taking credit card payments for advanced legal fees via Square and having the funds deposited into his operating account. Haley's records did not reflect that he subsequently transferred the fees to his trust account.

⁶ Haley has noticed an appeal.

- Although Haley provided a receipts journal, it did not include all the information required and did not match or support the other documents Haley required. Haley's records also did not contain evidence of reconciliations.
- Haley used his trust account to pay personal expenses.
- The North Carolina State Bar Grievance Commission had issued Haley a reprimand for failing to disclose his disciplinary history in a *pro hac vice* motion. Haley failed to report the reprimand to the VSB.
- During the VSB investigation, Haley claimed that one of the transactions was from a South Carolina client named Michael Campbell, when actually it was for a Virginia client named Michael Campbell. However, Haley had not represented the South Carolina client in many years and knew that the transaction was for the Virginia client.
- Rules Violated: 1.5(a) (Fees); 1.15(a)(3), (c)(1-4), (d)(1-4) (Safekeeping Property); 8.1(a-b) (Bar Admission and disciplinary Matters); 8.4(c) (Misconduct).
- Aggravating Factors: prior discipline, including trust accounting violations, deceptive statements during bar investigation, substantial experience.
- Mitigating Factors: no dishonest or selfish motive, cooperative attitude toward proceedings by stipulating to a lot of the misconduct, good reputation.

19. In the Matter of OlaDipo Akinwunmi AkinDeko

VSB Docket No. 21-051-119428

Nine-Month Suspension

Agreed Disposition Before Disciplinary Board

October 22, 2021

- After AkinDeko was retained to represent a client in a civil lawsuit, he filed the lawsuit but did not send a copy to the client, nor did he communicate with her.
- AkinDeko took no further action on the client's case. Approximately six months after he was retained, AkinDeko said he took a leave of absence, but he never advised the client of the leave of absence.
- Almost a year after AkinDeko said he took a leave of absence, his license was administratively suspended. He did not advise the client of the suspension.
- AkinDeko did not respond to the bar complaint and did not respond to the VSB's subpoena.
- AkinDeko did not withdraw as counsel from the client's case until after the Certification in this matter was filed.

- Rules Violated: 1.3(a) (Diligence); 1.4(a-b) (Communication); 1.15(b)(3) Safekeeping Property); 1.16(a, c-d) (Declining or Terminating Representation).
- Note: AkinDeko was already serving an indefinite suspension, which was the result of a separate reciprocal disciplinary matter.

20. In the Matter of Robert Hasbrouck Nutt, II

VSB Docket No. 21-022-121213

90-Day Suspension

Agreed Disposition Before Disciplinary Board

January 21, 2022

- In a divorce matter, the court entered an order requiring Nutt to hold proceeds from the sale of the marital residence in escrow until either the court ordered disbursement or the parties agreed in writing to disburse.
- Nutt paid himself \$5,000 from the proceeds. Nutt said his client and his wife authorized the disbursement. Nutt’s client did not recall authorizing the transfer until approximately two months after it was made. Nutt did not tell opposing counsel about the transfer until after he made it.
- Nutt subsequently disbursed \$9,000 from the proceeds to his client to pay the parties’ taxes. Nutt did not notify opposing counsel of the disbursement and did not obtain prior written agreement of the parties.
- Prior to the agreed disposition, Nutt completed six hours of CLE in trust accounting and reviewed Lawyers and Other People’s Money and Legal Ethics Opinion 1606.
- Rules Violated: 1.15(b)(5) (Safekeeping Property); 3.4(d) (Fairness to Opposing Party and Counsel).

21. In the Matter of Jason Alexander Atkins

VSB Docket No. 21-010-122888

Public Reprimand With Terms

Agreed Disposition Before Subcommittee

April 27, 2022

- Atkins was hired to assist with a client’s custody and visitation issues. Atkins required a \$5,000 fee deposit, and his fee agreement said that the fee was “earned upon receipt.”
- The client paid \$2,000 of the \$5,000 deposit immediately. Less than two months later, the client terminated the representation and requested a refund. Atkins provided an accounting reflecting that he had earned the entire \$2,000.
- The bar issued a subpoena duces tecum to Atkins for his trust accounting records. Atkins did not produce any trust accounting documents and acknowledged he had failed to maintain the fee in his trust account.

- Rules Violated: 1.5(a) (Fees); 1.15(a)(1), (b)(3), (c)(1-4), (d)(2-3) (Safekeeping Property).
- Terms: Six CLE credits regarding law office management.

22. In the Matter of Kevette Beard Elliott

VSF Docket No. 21-032-121578

Public Reprimand With Terms

Agreed Disposition Before Subcommittee

March 24, 2022

- Elliott accepted a \$4,000 advanced fee to represent clients in a dispute with their contractor and to report the contractor to the Department of Professional and Occupational Regulation (“DPOR”). Elliott deposited the advanced fee directly into her operating account.
- Several months into the representation, Elliott had not filed the DPOR complaint despite representing that she would do so. Elliott admitted that her communications had been “very scarce.”
- Elliott ultimately refunded the entire fee the clients had paid. Although Elliott had been accepting all credit card payments into her operating account, she has since changed her system so that only earned fees are deposited into her operating account.
- Rules Violated: 1.3(a) (Diligence); 1.4(b) (Communication); 1.15(a)(1) (Safekeeping Property).
- Terms: VSB investigator to conduct unannounced inspections of trust accounting records to ensure compliance with Rule 1.15.

23. In the Matter of James Paul Kent, Jr.

VSF Docket No. 21-090-121271

Public Reprimand

Agreed Disposition Before Subcommittee

November 30, 2021

- While serving as a trustee, Kent failed to note a \$6,760 disbursement to the beneficiary, which caused the accounting to be incorrect. Kent did not catch this error in two future accountings and represented an inflated balance to the Commissioner of Accounts. A proper reconciliation should have revealed this error.
- When the trust’s beneficiary died, Kent attempted to disburse what he believed was the total balance of the trust, but the check was returned for insufficient funds. Kent’s office immediately transferred funds into the account to cover the overdraft.
- Rules Violated: 1.3(a) (Diligence); 1.15(d)(3) (Safekeeping Property).

24. In the Matters of Walter Ware Morrison
VSB Docket Nos. 20-022-118646, 21-022-120601
Public Reprimand With Terms
Agreed Disposition Before Subcommittee
July 15, 2021

- In one matter, Morrison accepted a \$5,500 flat fee. Although he deposited it into his trust account, he disbursed the entire fee before the representation was completed. Morrison's associate handled the client's case, and the final divorce decree did not contain the information necessary for the client to obtain her share of her ex-husband's retirement benefits. When the client called Morrison's office, Morrison's receptionist told the client that she would need to pay an additional \$2,500 to have the decree fixed.
- In another matter, Respondent accepted a \$15,000 flat fee. Morrison disbursed most of the flat fee before the representation was complete, even though his retainer agreement did not expressly authorize him to do so. Morrison assigned an associate to work on the case. The associate left the firm during the representation, but no one notified the client. Two other associates worked on the matter but were unable to complete the case. When Morrison eventually took over, he finalized the case within two months.
- Rules Violated: 1.15(b)(5) (Safekeeping Property); 5.1(a), 5.1(b) (Responsibilities of Partners and Supervisory Lawyers).
- Terms: Eight hours of CLE in family law with at least two hours specific to military family law, engage law office management consultant.

25. In the Matter of Daymen William Xavier Robinson
VSB Docket No. 22-021-123422
Public Reprimand Without Terms
Agreed Disposition Before Subcommittee
June 22, 2022

- Robinson was unable to attend a client's custody trial because he was ill. Although Robinson's assistant attempted to contact the court and opposing counsel to notify them of Robinson's illness, no one notified the client that Robinson would not attend the trial. The client appeared and was told her case had been dismissed.
- Robinson refunded the client's advanced legal fee, but the refund was drawn on a non-trust account and Robinson did not have the books and records required by Rule 1.15.
- Rules Violated: 1.4(a) (Communication); 1.15(c)(1-2) (Safekeeping Property).

IV. COMPETENCE/DILIGENCE/COMMUNICATION/GENERAL NEGLECT

26. In the Matter of Kevin Peter Shea

VSB Docket No. 21-010-121227

Revocation

Hearing Before Disciplinary Board

February 25, 2022

- Shea accepted a malicious prosecution case on behalf of a client and against the client's former employer. The client paid Shea a \$20,000 advanced legal fee plus 30% of any recovery over \$60,000. Shea deposited only \$6,000 of the \$20,000 advanced fee into his trust account. Shea later said that the fee was "nonrefundable."
- Shea postponed the client's trial four times. The first two continuances were because Shea's co-counsel was sick and Shea said that he was physically unable to try the case by himself. The second two continuances were because of the illness of Shea's wife. When the court continued the trial for the fourth time, it ordered that there would be no more continuances and required Shea to have another attorney prepared to try the case if Shea could not do so.
- Shea requested a fifth continuance on the day of the trial. He said that he had been unable to sleep because he was caring for his wife, and said he felt unable to try the case. The court denied the continuance. It considered allowing a second nonsuit (Shea had already used the first nonsuit) and set another hearing for opposing counsel to make a written submission of the fees they would request if a second nonsuit were allowed.
- Opposing counsel filed a request for \$60,000-\$100,000 in the event Shea's client was allowed to re-file her case. Shea's client said that Shea did not tell her about this fee request before the hearing.
- Shea's client decided to dismiss her case with prejudice because she would have to pay the fees requested in order to re-file.
- After a bar complaint was filed, bar counsel issued a subpoena to Shea for his client file, including trust accounting records for the client. Shea moved to quash, alleging that the request was unduly burdensome. Shea's motion to quash was denied, and during the hearing he was asked how long it would take him to get the records together. Shea responded that he had it "right here." Shea subsequently did not produce any trust accounting records and said that he didn't have them.
- Aggravating Factors: Shea had an extensive disciplinary history, including prior findings for failure to have a contingency fee agreement in writing, having a non-refundable fee, failing to keep proper trust accounting records, failure to account for time expended to the client, and general lack of competence and diligence.

- Rules Violated: 1.1 (Competence); 1.4(b-c) (Communication); 1.5(b) (Fees); 1.15(a)(1), (b)(3), (c)(1-2), (d)(3-4) (Safekeeping Property); 1.16(a)(2) (Declining or Terminating Representation) 8.1(a) (Bar Admission and Disciplinary Matters).

27. In the Matter of Judy Raye Moats

VS B Docket No. 21-052-121504

Consent to Revocation

January 25, 2022

- Moats was retained to assist with the probate process for an estate and qualified as the co-executor of the estate.
- Moats's first few filings had some deficiencies, but Moats resolved them. When Moats filed the Second and Final Account, an auditor for the Commissioner's office noted that Moats and her co-executor appeared to have taken in excess of the guideline fee. Moats was asked to either return the difference or provide signed consents from the residuary beneficiaries. Despite several reminders and a summons, Moats did not address the deficiency.
- After Moats failed to appear for three hearings, she was removed as a fiduciary and forfeited her bond.
- In addition, Moats failed to respond to the bar complaint and a bar subpoena. Although Moats scheduled an interview, she did not appear for the interview and did not respond to the investigator's efforts to follow up.

28. In the Matters of Christopher Matthew Reyes

VS B Docket Nos. 21-060-119412, 21-060-120802, 21-060-122109, 21-060-121800, 22-060-123129, 22-060-123651, 22-000-124071

Consent to Revocation

January 27, 2022

- Reyes consented to revocation with seven matters pending.
- Pursuant to a prior suspension with terms, Reyes was required to enter into a contract with the JLAP and comply with that contract. Reyes failed to comply with his JLAP contract.
- The other matters involved procedural defaults, failure to keep clients apprised of developments in their matters, and failure to make pretrial filings.
- Reyes also failed to respond to the bar complaints and to many of the bar investigator's attempts to interview him.
- Rules Violated (across all matters); 1.1 (Competence); 1.2(a-d) (Scope of Representation); 1.3(a-b) (Diligence); 1.4(a-c) (Communication); 1.15(b)(3-4) (Safekeeping Property); 1.16(d) (Declining or Terminating Representation); 3.4(e), (g)

(Fairness to Opposing Party and Counsel); 8.1(c-d) (Bar Admission and disciplinary Matters).

29. In the Matters of Randall Sousa

VSB Docket Nos. 20-052-116377, 20-052-117438, 20-052-117991, 20-052-117965, 20-052-117557

Revocation

Hearing Before Three-Judge Panel

August 9-10, 2021

- The first of five matters arose from Sousa's representation of a client in a divorce case. Sousa failed to respond to discovery and to file witness and exhibit lists. As a result, his client was not allowed to introduce evidence at her equitable distribution hearing. Sousa appeared at the hearing approximately an hour late because he had double-booked two equitable distribution hearings in different courtrooms. Sousa asked for a continuance because he was unprepared to proceed.
- The bar issued a subpoena duces tecum in the matter, and Sousa did not respond. Consequently, Sousa's license was suspended until he responded. As of the date of the hearing, Sousa had still not responded. Sousa also failed to provide the bar with requested documents in the other matters. He acknowledged that he had the documents but refused to share them without a court order.
- In three matters, Sousa accepted advanced legal fees and failed to provide an accounting to the clients.
- Rules Violated: 1.1 (Competence); 1.3(a) (Diligence); 1.15(b)(3), 1.15(b)(4) (Safekeeping Property); 1.16(a)(1) (Declining or Terminating Representation); 8.1(c), 8.1(d) (Bar Admission and Disciplinary Matters).

30. In the Matters of Barry Ray Taylor

VSB Docket Nos. 19-022-115655, 19-022-116041, 20-022-118980, 21-022-120790

Five-Year Suspension

Agreed Disposition Before Disciplinary Board

May 18, 2022

- 19-022-115655: Taylor was retained for a divorce case and a civil matter. In the divorce matter, Taylor failed to file prior counsel's substitution order for more than a year. In the civil matter, Taylor's client sought recovery of funds from the sale of a commercial property. Taylor failed to respond to efforts to resolve the matter and then failed to file timely responsive pleadings to an interpleader action regarding the funds. Taylor did not appear for the hearing on the interpleader, although his former partner appeared and asked for a continuance. Taylor told the bar investigator that he did not receive notice of the hearing, but Taylor's client said that Taylor was aware of the hearing. Taylor failed to provide a copy of the file to the client's new counsel when requested. Rules Violated: 1.3(a) (Diligence); 1.4(a) (Communication); 1.16(d-e) (Declining or Terminating Representation); 8.1(a) (Bar Admission and Disciplinary Matters).

- 19-022-116041: Taylor filed a medical malpractice case for a client and then nonsuited it without telling his client. The client said that Taylor failed to return phone calls and emails and failed to appear for scheduled appointments. Taylor ultimately told the client he was withdrawing from the case, but almost a year later Taylor remained counsel of record. Rules Violated: 1.3(a) (Diligence); 1.4(a) (Communication).
- 20-022-118980: Taylor filed a medical malpractice case for a client and then nonsuited it and re-filed it without telling the client. Taylor then disclosed an expert witness whom Taylor had not paid and who had not reviewed any records. Taylor failed to appear at a hearing and the case was subsequently dismissed with prejudice. Taylor did not timely respond to the client’s bar complaint or to the bar’s subpoena duces tecum. Taylor also failed to make himself available for an interview. Rules Violated: 1.1 (Competence); 1.3(a) (Diligence); 1.4(a) (Communication); 8.1(a, c) (Bar Admission and Disciplinary Matters); 8.4(c) (Misconduct).
- 21-022-120790: Taylor agreed to represent a client in a medical malpractice case and did not tell the client that his license was suspended. The client said that Taylor still had all his medical records. Taylor did not timely respond to the client’s bar complaint or to the investigator’s attempts to interview him. Taylor purported to send a late response with attached records, but no records were attached. Rules Violated: 1.4(a) (Communication); 1.16(d-e) (Declining or Terminating Representation); 8.1(a, c) (Bar Admission and Disciplinary Matters); 8.4(c) (Misconduct).

31. In the Matters of Victor Rivera-Nieves
 VSB Docket Nos. 20-032-118029, 20-032-118068
 Three-Year Suspension With Terms⁷
 Agreed Disposition Before Disciplinary Board
 February 22, 2022

- Rivera-Nieves is licensed to practice law in Puerto Rico and Washington State only but maintained an office in Virginia where he practiced immigration law.
- In the first of two cases, a client hired Rivera-Nieves to obtain a “green card.” Rivera-Nieves charged a “retainer fee” and a “legal fee,” and characterized the “retainer fee” as a “type of flat fee.” Rivera-Nieves said the “retainer fee” is usually nonrefundable. Rivera-Nieves deposited the advanced fees his operating account. Although the client met with Rivera-Nieves a few times and provided information, Rivera-Nieves did not file anything on his behalf. The client asked for a refund and Rivera-Nieves refunded most of the client’s payments.
- In the second case, the client obtained Rivera-Nieves to obtain a visa for his wife. Rivera-Nieves deposited an advanced fee and filing fee into his operating account. Rivera-Nieves then failed to respond to the client’s communications for several months. Rivera-Nieves told the bar investigator that he mailed documents for the client and a

⁷ Because Rivera-Nieves is not admitted in Virginia, the Board suspended his privilege to practice law in Virginia.

filing fee, but neither his file nor his bank records contained evidence that it had been filed.

- Rules Violated: 1.3(a-b) (Diligence); 1.4(a) (Communication); 1.15(a)(1) (Safekeeping Property); 1.16(a)(1) (Declining or Terminating Representation).
- Rivera-Nieves represented that he intended to take down his website and close his law practice by April 15, 2022.
- Terms: Rivera-Nieves will not represent any person living in Virginia for three years.

32. In the Matter of Alfred Robertson, Jr.

VSB Docket No. 19-051-116059

One-Year and One-Day Suspension

Hearing Before Disciplinary Board

June 25, 2021, Memorandum Order entered on July 16, 2021

- Robertson served as counsel for the appellant on three criminal appeals that the Court of Appeals dismissed on procedural grounds.
- In the first matter, Robertson filed a notice of appeal but then “forgot about it.” His client did not learn of the dismissal until he wrote to the Court of Appeals directly. The Court of Appeals responded, with a copy to Robertson, and suggested pursuing a delayed appeal. Robertson did not pursue the delayed appeal.
- In the second matter, Robertson did not file a timely petition for appeal. Robertson did not notify his client of the dismissed appeal or of his options to continue pursuing the appeal.
- In the third matter, Robertson filed a notice of appeal and a motion for an extension of time to file transcripts. Robertson failed to file the transcripts and failed to file the petition for appeal. Robertson did not notify his client of the dismissed appeal or his options to continue pursuing the appeal.
- Robertson did not submit an answer to the bar complaint.
- Rules Violated: 1.3(a), 1.3(b) (Diligence); 1.4(a), 1.4(b), 1.4(c) (Communication); 8.1(c) (Bar Admission and Disciplinary Matters).
- The Board found the misconduct represented failures of his duties to clients, the public, the legal system and the profession; that his misconduct was knowing; and clients suffered injury or potential injury in that they were denied the opportunity, or hampered in the ability, to remedy the procedural errors, further protect their appeal rights or retain other counsel to assist them with their appeals.
- Aggravating Factors: Extensive disciplinary history, vulnerable victims, and Respondent’s 20 years of experience. From April 2009 to December 2019 Respondent

received two private admonitions, four public reprimands and a sixty-day suspension. Respondent's misconduct included violations of Rules 1.3, 1.4 and 8.1. Two sanctions involved the mishandling of appeals. Respondent also had a pattern of not responding to bar complaints, including a 2016 public reprimand which required Respondent to timely respond to bar complaints.

- Mitigating Factors: No dishonest or selfish motive, cooperative attitude toward the proceeding and Board, reputation as caring and respectful with clients and with attorneys who seek advice on immigration matters and efforts to obtain case management software.

33. In the Matter of Melissa Lynch Freeman

VSB Docket No. 22-060-123426

Nine-Month Suspension With Terms

Agreed Disposition Before Disciplinary Board

April 14, 2022

- Freeman represented a client in a divorce matter. She accepted an advanced fee of \$2,500, which Freeman did not deposit in a trust account.
- Freeman did not file witness lists, exhibit lists, or expert designations by the deadline in the court's scheduling order.
- The opposing party filed a motion for sanctions and attorney's fees against Freeman's client. The day before the hearing, Freeman told her client that she tested positive for COVID and that she did not think she had a choice but to file a motion to continue. However, Freeman did not file a motion to continue and the hearing went forward without Freeman or her client. The next day, the client asked Freeman to send her a copy of the continuance information and Freeman said that she would, even though no motion to continue had been filed. Freeman filed a motion to continue the trial, which was granted.
- Freeman also failed to respond to communications from her client.
- Freeman never accounted for the \$2,500 she was paid and never refunded any portion of it.
- Following this representation, Freeman was suspended for Impairment, and a Receiver was appointed for her practice. Freeman told the Receiver that she had a trust account, but she did not.
- Rules Violated: 1.3(a-b) (Diligence); 1.4(a) (Communication); 1.15(a)(1), (b)(3), (b)(5) (Safekeeping Property); 1.16(a), (c-d) (Declining or Terminating Representation); 8.1(a) (Bar Admission and Disciplinary Matters); 8.4(b) (Misconduct).
- Terms: Six hours of CLE, at least two in trust accounting; read *Lawyers and Other People's Money* and LEO 1606, submit to inspection of trust account, pay \$2,500 in restitution to client. Alternate sanction of two-year suspension.

34. In the Matter of Andrea Celestine Long
VSB Docket No. 20-032-117741
Six-Month Suspension
Agreed Disposition Before Disciplinary Board
July 15, 2021

- Long represented the same client in three different personal injury matters.
- In one matter, the client was on a public bus that was sideswiped by another vehicle. Video of the incident reflected that Long’s client did not move at all during the incident. In a settlement letter to the transit company, Long said her client alleged that the incident exacerbated a pre-existing injury and “I am not a medical doctor and therefore cannot say with any degree of certainty whether the jolt from the accident exacerbated a pre-existing condition or not.” Despite this admission, Long later filed suit against the unidentified driver and the transit company, alleging that her client suffered “serious and permanent injuries.” She sought damages of \$35,000. The case sat dormant for three years and was removed from the docket.
- In a second matter, Long filed a personal injury suit alleging the wrong injury date. Long waited until six days before the one-year deadline to attempt service, and because the defendant could not be located, she filed an affidavit requesting service via the Commissioner of the Department of Motor Vehicles.
- In a third matter, Long filed suit despite the fact that her paralegal had previously told the client that they did not think he could win. Long did not tell her client the weaknesses of his case because she “felt sorry for him.”
- Long said that she had been semi-retired since 2017 and agreed to transfer her VSB membership to retired status.
- Rules Violated: 1.1 (Competence); 1.3(a) (Diligence); 1.4(b) (Communication); 1.16(a)(1) (Declining or Terminating Representation); 3.1 (Meritorious Claims and Contentions).

35. In the Matter of Robert Charles Neeley, Jr.
VSB Docket Nos. 21-02-122291, 21-022-122292
Six-Month Suspension
Agreed Disposition Before Disciplinary Board
April 15, 2022

- The Court of Appeals notified the bar that Neeley was counsel of record on three cases that were dismissed for failure to file a timely petition for appeal.

- One of the clients for whom Neeley failed to file a timely petition for appeal filed an individual bar complaint. Neeley had not advised the client of the dismissal of the appeal. After receiving the bar complaint, and more than a year after the appeal was dismissed, Neeley filed a motion for delayed appeal beyond the statutory deadline. The motion was denied.
- Rules Violated: 1.3(a) (Diligence); 1.4(a) (Communication).

36. In the Matter of Jesse Burkhardt Beale

VSB Docket No. 20-051-118711

Public Reprimand With Terms

Agreed Disposition Before Disciplinary Board

October 12, 2021

- In April 2019, Beale accepted an \$11,500 flat fee for pursuing habeas relief on his client's behalf. Previously, Beale had accepted \$4,000 from the client's parents to conduct a case review and meet with the client.
- Beale never filed a petition for writ of habeas corpus.
- During a four-month period, the client's mother called Beale nine times to obtain information about the habeas. The client's mother claimed she never spoke with Beale, although Beale asserted that he spoke with her and the client's father.
- Approximately five months after paying the \$11,500 flat fee, Beale was terminated. Beale issued a refund of \$8,625 and claimed he had earned \$2,875. Beale had no documentation of the time he had spent but claimed he kept the numbers in his head.
- Beale did not provide a copy of his client's file until 10 months after it was first requested.
- Rules Violated: 1.4(a), 1.4(b) (Communication); 1.5(a)(1) (Fees); 1.16(d), 1.16(e) (Declining or Terminating Representation).
- Term: three years of probation.

37. In the Matter of Alexander Harkness Bell

VSB Docket No. 20-010-118703

Public Reprimand Without Terms

Agreed Disposition Before Subcommittee

August 11, 2021

- Bell failed to tell his clients about pending discovery requests, including requests for admissions, and failed to respond to the requests on a timely basis.

- The defendants asked the court to deem the requests for admissions admitted and based on those admissions filed a motion for summary judgment. Bell never responded to the motion for summary judgment.
- Even after receiving the motion for summary judgment, Bell waited approximately four months to notify his clients that he had not responded to discovery and of the pending motion for summary judgment. Bell did not submit responses to the discovery until six days before the hearing on the motion for summary judgment.
- The court granted the motion for summary judgment.
- Rules Violated: 1.3(a) (Diligence); 1.4(a) (Communication).
- Mitigating Factors: Bell has changed law firms, changed the nature of his practice, and now has additional support staff.

38. In the Matter of Steven Scott Biss

VS B Docket No. 21-070-122445

Public Reprimand Without Terms

Agreed Disposition Before Subcommittee

March 9, 2022

- Biss represented a client who sued the Anti-Defamation League for defamation. Biss charged a flat fee of \$10,000 plus a contingency fee of 20% of any settlement or verdict.
- Biss deposited the flat fee into his trust account but disbursed it to himself after he had performed sufficient work to have earned the fee if were working on an hourly basis. But because the fee was described as a flat fee, it was not earned until the representation concluded.
- On several occasions, Biss told the client that he would have a draft of the complaint ready within a short timeframe, but Biss did not meet the time expectations he set for himself.
- Rules Violated: 1.3(a) (Diligence); 1.15(b)(5) (Safekeeping Property).

39. In the Matter of Gregory Thomas Casker

VS B Docket No. 20-090-113958

Public Reprimand Without Terms

Agreed Disposition Before Subcommittee

December 29, 2021

- Casker filed a Petition for Appeal and Motion to Withdraw as Counsel pursuant to *Anders v. California*, 386 U.S., 738 (1967) with the Court of Appeals.

- The Court of Appeals notified Casker that his Petition failed to comply with the rules because it did not identify the standard of review to apply. The Court of Appeals gave Casker 10 days to file an Amended Petition.
- Casker filed an Amended Petition, but the Court of Appeals denied Casker's motion to withdraw because it was "no more than a conclusory assessment by counsel that the appeal lacks merit." Casker was given 15 days to file an Amended Petition.
- Casker then filed a Second Amended Petition assigning error to the trial court's denial of the motions to strike. The Court of Appeals denied the Second Amended Petition on the merits.
- Casker then appealed to the Supreme Court, which dismissed the appeal because the assignment of error was insufficient. Casker did not immediately notify his client of the Supreme Court's dismissal of the appeal.
- Rules Violated: 1.1 (Competence); 1.4(a) (Communication).

40. In the Matter of Steven Paul Hanna

VSB Docket No. 21-031-121740

Public Reprimand Without Terms

Agreed Disposition Before Subcommittee

September 10, 2021

- Hanna noted a timely appeal to his client's criminal conviction but failed to file a timely Petition for Appeal. Hanna said he never received the email identifying the due date for the Petition.
- After the Court of Appeals dismissed the appeal, Hanna requested a delayed appeal, which was granted.
- Hanna filed a Petition for Appeal, but the appeal was dismissed because Hanna failed to address the standard of review appropriately and did not provide legal authorities, including the relevant statute for the offense or any case law listing the elements of the offense. Consequently, the Court of Appeals treated the assignment of error as waived.
- Hanna noted an appeal to the Supreme Court of Virginia, but the appeal was dismissed because Hanna's assignment of error did not address any ruling or lack thereof of the Court of Appeals.
- Hanna advised his client that the appeal was dismissed and offered to help her file a petition for a writ of habeas corpus, but the client did not respond. Hanna asserted that the client later told him that she did not care about the appeal anymore.
- Rules Violated: 1.1 (Competence); 1.3(a) (Diligence).

41. In the Matter of Andrew Paul Hill
VSB Docket No. 21-070-121842
Public Reprimand Without Terms
Agreed Disposition Before Subcommittee
May 11, 2022

- While representing a homeowner’s association, Hill filed suit on behalf of both the association and the 49 individual members of the association. Prior to filing suit, Hill did not obtain direct consent from all the members to name them as plaintiffs.
- Hill also failed to communicate with the individual plaintiffs regarding developments in the lawsuit.
- When some of the plaintiffs complained about being included in the lawsuit, Hill filed a motion to dismiss them. However, the defendants had counterclaimed against the individual plaintiffs and therefore they could not be released from the lawsuit. Judgment was entered against the individual plaintiffs but no monetary judgments were awarded.
- Rules Violated: 1.3(a) (Diligence); 1.4(a) (Communication).

42. In the Matters of Mark Joseph Madigan
VSB Docket Nos. 21-053-121004,21-053-121538
Public Reprimand
Agreed Disposition Before Subcommittee
November 9, 2021

- In the first of two matters, Madigan qualified as the executor of an estate. He overpaid the probate tax and failed to seek a rebate until it was too late. Madigan personally reimbursed the estate for the error. He filed the First and Second Accounts late. When he failed to respond to a reminder letter for the Second Account, the Commissioner of Accounts issued a summons. Madigan asserted that he did not receive the summons, and he did not respond. After the bar complaint was filed, Madigan filed the Second and then the Third Account. Although both Accounts had certain deficiencies, Madigan resolved them and the Accounts were approved.
- Rules Violated: 1.1 (Competence); 1.3(a) (Diligence)
- In the second matter, Madigan represented the wife in a divorce case. The client provided Madigan with discovery responses but Madigan failed to timely serve them. The husband’s counsel met and conferred and filed a motion to compel, and Madigan still did not submit responses to the discovery. Madigan agreed to an order granting the motion to compel and did not tell the client about the order until two weeks after it was entered. The day before the discovery was due, Madigan asked the client to come in to “sign off on some pleadings.” The client was distressed to learn about the state of the

discovery. Madigan agreed to refund part of the client's fee and pay the discovery sanction and acknowledged that the failure to timely respond to discovery was not the client's fault.

- Rules Violated: 1.3(a) (Diligence); 1.4(a) (Communication); 3.4(e) (Fairness to Opposing Party and Counsel).

43. In the Matter of Wade Morgan McNichols

VSB Docket No. 22-101-123993

Public Reprimand With Terms

Agreed Disposition Before Subcommittee

May 31, 2022

- McNichols was hired to modify a custody arrangement. The client alleged that the children's safety was in jeopardy.
- The client paid a flat fee of \$1,600, which McNichols properly deposited into his trust account. However, McNichols did not maintain a client ledger.
- Although McNichols began working on draft pleadings, he did not file anything with the court and did not respond to the client's approximately 20 phone calls. McNichols acknowledged that he was aware the client was trying to reach him.
- After a few weeks, the client found McNichols at his office. The client requested and McNichols provided a full refund.
- Rules Violated: 1.3(a) (Diligence); 1.4(a) (Communication); 1.15(c)(2) (Safekeeping Property).
- Term: submit to unannounced reviews of trust account by a VSB investigator.

44. In the Matters of Brian Randolph Moore

VSB Docket Nos. 21-090-121354, 21-090-121540

Public Admonition Without Terms

Agreed Disposition Before Three-Judge Panel

January 19, 2022

- In the first of two matters, Moore's client gave him information to respond to written discovery, but Moore never served discovery responses. Opposing counsel moved to compel and the court sanctioned Moore for failing to respond. Moore stopped communicating with the client and the client hired another attorney. Moore also failed to respond to the bar complaint.
- In the second matter, Moore failed to communicate with his client for approximately seven months and accomplished nothing for his client for a period of more than a year.

- In both cases, Moore gave the clients substantial refunds of their initial payments.
- The bar issued subpoenas duces tecum to Moore for his trust account books and records pertaining to these two clients. Moore did not produce any responsive records.
- Rules Violated: 1.3(a) (Diligence); 1.4(a) (Communication); 1.15(c)(1-2, 4) (Safekeeping Property); 8.1(c) (Bar Admissions and Disciplinary Matters).

45. In the Matter of Brian Randolph Moore

VSJ Docket No. 22-090-123027

Public Reprimand Without Terms

Agreed Disposition Before Three-Judge Panel

April 19, 2022

- A client hired Moore to represent him in an uncontested divorce and paid a flat fee of \$1,500. Moore said he deposited the \$1,500 into his trust account.
- During the next several weeks, the client made numerous attempts to contact Moore for an update, including sending at least seven emails. Moore never responded.
- The client filed a bar complaint alleging that Moore was not communicating with him. In response, Moore apologized to the client and offered to continue the representation or provide a full refund. The client requested a refund, which Moore issued from his operating account.
- Moore acknowledged that he performed no legal services for the client after receiving the flat fee.
- Rules Violated: 1.4(a) (Communication); 1.15(a)(1), (b)(5) (Safekeeping Property).

46. In the Matter of Donald Frank Rosendorf

VSJ Docket No. 21-042-122392

Public Reprimand With Terms

Agreed Disposition Before Subcommittee

December 6, 2021

- Rosendorf accepted a contingency fee matter for a 42 U.S.C. § 1983 claim against a former deputy sheriff. The fee agreement was not in writing.
- Rosendorf twice promised, but did not, file the complaint within a specific timeframe.
- When Rosendorf eventually filed suit in federal court, he failed to provide proof of service within 90 days as required. Rosendorf subsequently filed a proof of service but took no further action for five months. A show cause order was issued directing

Rosendorf's client to show cause why the case should not be dismissed for failure to prosecute.

- Rosendorf moved for entry of a default judgment, but it was denied because there was insufficient evidence that Rosendorf had the defendant served at a proper address. Rosendorf then filed a second motion for default, which was denied because Rosendorf acknowledged the address he used was not correct. Ultimately, Rosendorf filed a Notice of Voluntary Dismissal.
- About six months after dismissing the first case, Rosendorf re-filed the matter in federal court and again failed to provide timely proof of service. The proof Rosendorf provided included a different address than the address listed in the complaint. The court issued another show cause order. Rosendorf attempted to move for entry of default again, but Rosendorf failed to follow the proper procedure. Rosendorf was then hospitalized and did not take the necessary steps to move the default forward. The court dismissed the refiled lawsuit.
- Rosendorf did not reinstate the case even after he assured his client he would do so.
- After a bar complaint was filed, Rosendorf again represented that he would refile the case, but did not do so.
- Rules Violated: 1.1 (Competence); 1.3(a) (Diligence); 1.4(a-b) (Communication); 1.5(c) (Fees); 1.16(a) (Declining or Terminating Representation).
- Terms: stop taking new clients, take website down, take retired status by December 15, 2021, give notice of retirement to all clients, opposing counsel, and judges for matters he is currently handling, make appropriate arrangements for disposition of his matters.

47. In the Matter of Andrew Robert Sebok

VSB Docket No. 20-021-118914

Public Reprimand With Terms

Agreed Disposition Before Subcommittee

August 11, 2021

- Sebok was court appointed to represent a client in his appeal of criminal convictions.
- Sebok filed a motion for an extension of time to file the petition for appeal, which was granted, but Sebok did not file the petition until four days after the extended deadline. Sebok said he mistakenly used the wrong type of delivery, causing the petition to arrive late. The appeal was dismissed for failure to file a timely petition.
- Sebok said that he told his client about the ability to seek a delayed appeal, but the client chose not to do so.

- Rules Violated: 1.1 (Competence); 1.3(a) (Diligence).
- Terms: three years of probation, participate in psychological evaluation and follow the psychologist's recommendations.

48. In the Matter of Brian Damas Thoman
 VSB Docket No. 21-021-121968
 Public Reprimand With Terms
 Agreed Disposition Before District Committee
 April 6, 2022

- Thoman was retained to have a charge expunged from his client's record. Thoman filed the petition, but the court issued a notice that it could not be reviewed until additional documentation was submitted.
- For several months, the client called and emailed Thoman with no response. When Thoman finally responded, he said he had been sick.
- After the client filed a bar complaint, Thoman corresponded with the client and provided a new order for expungement. However, this order was rejected because a full fingerprint card had not been submitted.
- The expungement order was entered about a year and a half after Thoman was retained and more than a year after the client filed the bar complaint.
- Rules Violated: 1.3(a) (Diligence); 1.4(a-b) (Communication).
- Term: Four hours of CLE in legal ethics.

49. In the Matter of Madeline Agnes Trainor
 VSB Docket No. 20-041-118814
 Public Reprimand With Terms
 Agreed Disposition Before Disciplinary Board
 December 2, 2021

- Trainor agreed to serve as the administrator of an estate.
- In March 2006, Trainor filed an Inventory. She filed the First Account in November 2007, about eight months late, and acknowledged that she had procrastinated.
- Beginning with the Sixth Account filed in 2012, Trainor reported that she was negotiating with the IRS over back taxes. She repeated this assertion in 2013, 2015, 2016 and 2018. Despite this, she could not produce any evidence of these negotiations to the VSB.

- In 2018, the bank statements reflected that the approximately \$48,000 in the estate accounts escheated to the Commonwealth of Virginia.
- Trainor failed to timely file the 12th Account and a summons was issued. Trainor did not respond to the summons.
- Trainor agreed to resign as administrator, and a new administrator was appointed. The new administrator discovered that the majority of the funds had not escheated, and the bank was able to recover them. The escheated funds, along with other escheated assets of the estate, were also recovered by the new administrator.
- Rules Violated: 1.1 (Competence); 1.3(a-b) (Diligence); 1.16(a)(1) (Declining or Terminating Representation).
- Terms: one year of probation, six hours of CLE in trusts and estate law. Alternate sanction of six-month suspension.

50. In the Matter of Keith Hamner Waldrop

VSB docket No. 22-70-123459

Public Reprimand With Terms

Agreed Disposition Before Subcommittee

December 8, 2021

- Waldrop was hired to pursue collection of about \$30,000 for unpaid home care services. Waldrop sent two letters requesting payment, did some research and prepared draft complaints, but Waldrop did not pursue the collection any further. Waldrop said he did not take further action because the situation was complicated and he was suffering from health problems for a two-year period.
- Between mid-2015, when Waldrop stopped working on the matter, and August 2021, Waldrop did not respond to the client's inquiries or provide any updates.
- Waldrop failed to file a timely answer to the bar complaint.
- Rules Violated: 1.1 (Competence); 1.3(a-b) (Diligence); 1.4(a-c) (Communication); 1.16(a), (d) (Declining or Terminating Representation); 8.1(c) (Bar Admission and Disciplinary Matters).
- Terms: create office policy regarding regular communications with clients, create docket control system, probation for three years.

51. In the Matters of Daymen William Xavier Robinson

VS B Docket Nos. 21-021-121400, 20-021-121743

Public Reprimand Without Terms

Agreed Disposition Before Subcommittee

January 5, 2022

- The Supreme Court of Virginia reported that Robinson was counsel of record on three appeals resulting in procedural defaults. The client in one of the three matters also filed a complaint.
- In the first matter, Robinson was appointed to represent a client convicted of felony possession of marijuana with intent to distribute. Robinson's appeal to the Court of Appeals was denied on the merits. He attempted to appeal to the Supreme Court of Virginia but failed to timely file the Notice of Appeal or Petition for Appeal with that Court, resulting in denial of the appeal. Robinson requested a delayed appeal, which was granted, and the client's appeal was denied on the merits.
- In the second matter, Robinson was appointed to appeal a client's felony probation violation. Robinson's appeal to the Court of Appeals was denied on the merits. He attempted to appeal to the Supreme Court of Virginia but did not timely file the Notice of Appeal or Petition for Appeal with that Court, resulting in dismissal of the appeal. Robinson was unsure whether he advised the client of the dismissal.
- In the third matter, Robinson was appointed to represent a client who was convicted of first-degree murder and sentenced to life in prison. Robinson's appeal to the Court of Appeals was rejected on the merits. He attempted to appeal to the Supreme Court of Virginia but failed to timely file a Notice of Appeal or Petition for Appeal with the Supreme Court. Robinson filed a motion for delayed appeal, which was granted, and the client's appeal was then denied on the merits. The client alleged that Robinson did not advise him of the denial of his appeal.
- Rules Violated: 1.3(a) (Diligence); 1.4(a-b) (Communication).

52. In the Matter of Martin Bullock

VS B Docket No. 21-021-118003

Public Admonition With Terms

Agreed Disposition Before Subcommittee

December 15, 2021

- Bullock represented a client who pleaded guilty to felony charges and was sentenced to more than 15 years of incarceration.
- The client wanted to withdraw the plea, and Bullock filed a motion to withdraw the plea agreement and modify the sentence. The motion was denied and Bullock sent the client a copy of the court's order.

- The client asked Bullock if his appeal had been filed, and Bullock said he would file another motion to suspend or modify the sentence. He told the client that pleading guilty waived his right to appeal. This was not correct, because the Supreme Court of Virginia has held that a guilty plea waives only non-jurisdictional defects that occurred before entry of the plea.
- Rule Violated: 1.1 (Competence).
- Terms: Two hours of CLE in criminal defense.

53. Virginia State Bar ex rel Second District, Section II Committee v. Timothy Paul Sceviour
Case No. CL20-6015
VSB Docket No. 20-022-116875
Public Reprimand Without Terms
Hearing Before Three-Judge Panel
August 18-19, 2021

- Rules Violated: 1.3(a) (Diligence); 1.4(a) (Communication); 1.7(a)(2) (Conflict of Interest).

V. FEES

54. Virginia State Bar ex rel Seven District Committee v. Jose Angel Baez
Case No. CL21-4583-7
VSB Docket No. 20-070-117366
Public Admonition With Terms
Agreed Disposition Before Three-Judge Panel
December 8, 2021

- Baez, a Florida attorney, was admitted *pro hac vice* to represent Complainant Rose McGowan in a criminal matter.
- McGowan paid a flat fee for the representation. Baez’s retainer agreement said that the fee was “earned when paid” and nonrefundable.
- Rules Violated: 1.5(a) (Fees); 1.16(d) (Declining or Terminating Representation).
- Terms: Baez to read the Virginia Rules of Professional Conduct and certify that he has done so, ensure that any future fee agreements for Virginia work comply with the Virginia Rules.

55. In the Matter of Ardra Monique O’Neal
VSB Docket No. 20-041-118685
Public Reprimand Without Terms
Agreed Disposition Before Subcommittee
July 1, 2021

- O’Neal agreed to represent a client in an appeal to the Maryland Court of Special Appeals. Although O’Neal was not admitted in Maryland, her associate was.
- The representation agreement included language regarding retainer, hourly, and contingency fee arrangements. The client believed the representation was on a contingency basis. When the client became dissatisfied with O’Neal’s representation, O’Neal emailed the client an invoice for \$22,612.50.
- The Maryland Grievance Commission approved a public reprimand for O’Neal for violations of Maryland Rules 1.4 (Communication); 1.5(b) (Fees); 5.5(b) (Unauthorized Practice of Law); 8.4(a), (d) (Misconduct).
- O’Neal did not self-report this discipline to the VSB.
- Rules Violated: Maryland Rules 1.4 (Communication); 1.5(b) (Fees); 5.5(b) (Unauthorized Practice of Law); 8.4(a), (d) (Misconduct); Virginia Rule 8.3 (Reporting Misconduct).

VI. TERMS VIOLATIONS

56. In the Matter of Britney Hope Maddux
VSB Docket No. 22-000-125317
18-Month Suspension
Consent Order for Imposition of Alternative Sanction
June 22, 2022

- In a prior disciplinary matter, Maddux agreed, as a term of discipline, to hire a CPA to conduct a review of her escrow account and assist her with the proper disbursement of funds. If Maddux did not comply, she agreed to an alternative sanction of an 18-month suspension.
- Maddux acknowledged that she failed to comply with the term and agreed to the imposition of the alternative sanction.

57. In the Matter of Jody Lynn Castillo
VSB Docket No. 22-080-124931
Public Reprimand Without Terms
Agreed Disposition Before District Committee
May 6, 2022

- Pursuant to a prior private reprimand with terms, Castillo was required to enter a monitoring contract with JLAP and comply with the terms of the contract.
- JLAP advised the bar that Castillo was not in compliance, and Respondent agreed that she had not complied fully with the contract.

58. In the Matter of Charles John Covati
VSB Docket No. 22-000-123229
Consent to Revocation
August 26, 2021

- On May 17, 2021, Covati was suspended for 3.5 years. Pursuant to Part 6, Section IV, Paragraph 13-29 of the Rules of Supreme Court of Virginia, Covati was required to notify his clients, opposing counsel, and courts in which he had cases pending of his suspension, arrange for the disposition of his client matters, and file proof with the bar that he had done so.
- Covati failed to submit proof that he had complied with these requirements.

59. In the Matter of Britney Hope Maddux
VSB Docket No. 20-000-123274
Six-Month Suspension With Terms
Agreed Disposition Before Disciplinary Board
October 18, 2021

- Pursuant to a public reprimand with terms, Maddux was required to engage a CPA to assist her with documenting and disbursing the funds in her escrow account.
- Maddux failed to engage a CPA by the deadline.
- The terms of the suspension also required Maddux to engage the CPA. If she fails to meet these requirements for a second time, her license will be suspended for 18 months.

60. In the Matter of Christopher Broughton Shedlick

VS B Docket No. 21-000-123012

Three-Month Suspension

Agreed Disposition Before Disciplinary Board

August 23, 2021

- On February 19, 2021, Shedlick was suspended for three months with terms on trust accounting recordkeeping violations. The terms required Shedlick to hire a CPA and implement the CPA's recommendations according to a schedule. If Shedlick did not comply with the term, the alternate sanction was an additional three-month suspension.
- Shedlick acknowledged that he did not comply with the term, and therefore an additional three-month suspension was imposed.

61. In the Matter of Brenton Daniel Vincenzen

VS B Docket No. 21-051-122941

Public Reprimand Without Terms

Agreed Disposition Before District Committee

July 12, 2021

- On July 17, 2020, Vincenzen received a private reprimand with terms, which required him to cooperate with a random review of his trust accounting records by a bar investigator. Vincenzen agreed that if this term was not met, a public reprimand would be imposed.
- Vincenzen declined to meet in person due to health concerns, but also failed to send the investigator all the records needed to conduct the review.

VII. UNAUTHORIZED PRACTICE OF LAW

62. In the Matters of Brian Keith Snyder

VS B Docket Nos. 21-032-120625, 21-032-121764

Consent to Revocation

November 1, 2021

- Snyder's license was administratively suspended for a total of about 2.5 years for a combination of failure to complete CLE requirements and failure to pay annual dues. While suspended, Snyder communicated with opposing counsel, settled cases, and held himself out as fully licensed. He appeared in more than 20 circuit courts and two general district courts as counsel.
- In one matter, opposing counsel moved to disqualify Snyder based on his license suspension. Snyder falsely told the court that he did not know he had been suspended, he did not know that one could be suspended for MCLE noncompliance, and that he had

never previously been suspended. In fact, Snyder had previously been suspended for MCLE noncompliance.

- He restated these false statements in response to the bar’s investigation.

63. In the Matter of Brian Wesley Barger

VS B Docket No. 22-000-123539

Eight-Month Suspension

Hearing Before Disciplinary Board

November 19, 2021

- On May 14, 2021, Barger was suspended for 90 days.
- Before his suspension, Barger was substituted as counsel for himself and three LLCs that he owned in ongoing litigation in the Circuit Court of Henrico County. Although Barger was acting as counsel, he did not notify the court of his suspension pursuant to ¶ 13-29. Although at least one of the pro se defendants was aware of the suspension, she did not receive notice from Barger via certified mail.
- Despite this active matter, Barger filed an affidavit with the Clerk of the Disciplinary System stating that he did not have any active matters at the time he was suspended.
- While suspended, Barger propounded Requests for admissions to one of the pro se defendants and signed an attorney-issued subpoena duces tecum to a third party.
- Aggravating Factors: recent prior disciplinary record, selfish motive, refusal to acknowledge wrongful nature of conduct.
- Mitigating Factors: good character and reputation for honesty and diligence.

64. In the Matter of Matthew James Hunzeker

VS B Docket No. 20-052-118854

Six-Month Suspension

Hearing Before Three-Judge Panel

October 7, 2021

- Hunzeker was licensed to practice law in Virginia only, but at all relevant times he was on associate status, which meant he could not practice law under his Virginia license.
- When Complainant Krista Kisch posted on a Facebook community page in Florida seeking real estate counsel, Hunzeker’s wife responded and recommended Hunzeker. Hunzeker, who was living in Florida, talked to Kisch and agreed to assist her with her matter and to charge a \$1,500 retainer. Kisch paid the retainer by Venmo and identified it as a “Legal Retainer Fee.” Hunzeker accepted the funds into a personal account.
- Hunzeker wrote to the opposing party: “I am an attorney representing Krista Kisch in the above-referenced matter.” Hunzeker also accepted additional funds marked “legal fees”

from Kisch and deposited them into his personal account. Kisch believed she had retained an attorney and that Hunzeker was acting as her attorney.

- Kisch ultimately terminated the representation and requested invoices and a refund.
- In response to the bar complaint, Hunzeker claimed that he was acting as a property manager and not an attorney.
- The Florida Bar conducted a UPL investigation and Hunzeker stipulated to an injunction preventing him from engaging in UPL in Florida. Hunzeker also agreed to refund \$5,250 of the \$7,250 Kisch had paid him.
- Rules Violated: Florida Rules 4-1.5 (Fees and Costs for Legal Services); 4-1.15 (Safekeeping Property); 4-5.5 (Unlicensed Practice of Law); Virginia Rule 8.1(a) (Bar Admission and Disciplinary Matters).

65. In the Matter of Tito Vladimir Alejandro Castro

VS B Docket No. 21-070-121936

Public Reprimand

Agreed Disposition Before Subcommittee

December 1, 2021

- Every year since 2017, Castro's license has been administratively suspended for 1-2 months for failure to comply with membership requirements.
- On three different occasions, Castro filed a pleading or appeared in court while suspended.
- Castro failed to file a written response to the bar complaint.
- Rules Violated: 5.5(c) (Unauthorized Practice of Law); 8.1(c) (Bar Admission and Disciplinary Matters).

VIII. MISCELLANEOUS

66. In the Matter of Jason Edward Rheinstein

VS B Docket No. 20-000-118005

Revocation

Hearing Before Disciplinary Board

June 25, 2021

- Reciprocal matter from Maryland. After Rheinstein was served with a disciplinary petition in Maryland, he attempted to remove it to federal court twice. Rheinstein also failed to file a timely answer and failed to respond to discovery until approximately three years after the requests were served, and after a motion for sanctions had been filed. The

Maryland trial court issued a default judgment against Rheinstein. The Maryland Court of Appeals affirmed the decision and disbarred Rheinstein.

- During the hearing, Rheinstein argued that the default judgment denied him due process. The Board rejected this argument.
- Rheinstein argued that imposing the same sanction as in Maryland would result in an injustice. To support this argument, Rheinstein argued that his ADHD diagnosis should mitigate the sanction imposed in Virginia. The Board rejected this argument.
- Rheinstein argued that his conduct would not be grounds for discipline in Virginia. However, each Maryland Rule violated had an almost identical provision in the Virginia Rules of Professional Conduct, and consequently this argument was rejected.
- Finally, Rheinstein argued that the misconduct in Maryland would have resulted in substantially lesser discipline in Virginia. Although Rheinstein pointed to other Virginia disciplinary cases that resulted in a sanction less than revocation, the Board found that Rheinstein's specific conduct would warrant revocation in Virginia, and that Rheinstein could not prove that he would have been subjected to a substantially lesser sanction in Virginia had the matter originated in Virginia.

67. In the Matter of John Carter Morgan, Jr.

VSB Docket No. 20-000-117734

One-Year Suspension With Terms

Agreed Disposition Before Three-Judge Panel

January 25, 2022

- The United States Bankruptcy Court for the Western District of Virginia suspended Morgan from practice before the court for 18 months and fined him \$5,000.
- Morgan established a Virginia presence for Upright Law, which sought to become a national bankruptcy law firm. Morgan signed petitions that were prepared by Upright's "headquarters" in Chicago, and then agreed to attend the Section 341 meetings of creditors for those cases.
- The engagement agreements that Upright used misrepresented the local attorneys' true hourly rates and stated that funds were "earned when paid."
- Morgan filed nine cases for Upright. In one of those cases, Morgan did not review the client's petition or schedules with the client and did not witness her signing them. The filings included many errors, including failure to disclose the proper amount of fees and failing to reflect who paid the fees.
- Morgan had been previously suspended for three years based on his commission of a felony.

- Before the bankruptcy court, Morgan was “defiant” and took “little responsibility for anything.”
- Term: Extra 12 hours of CLE.

68. In the Matter of Alicia Ellen Rowedder
 VSB Docket No. 21-033-122282
 Six-Month Suspension
 Agreed Disposition Before Disciplinary Board
 March 23, 2022

- Rowedder failed to respond to the bar complaint and failed to respond to the bar investigator’s attempts to interview her.
- Rule Violated: 8.1(c-d) (Bar Admission and Disciplinary Matters)

69. In the Matter of Guillermo D. Uriarte
 VSB Docket No. 20-000-124239
 90-Day Suspension
 Hearing Before Disciplinary Board
 March 25, 2022

- Reciprocal disciplinary matter based on Uriarte’s 90-day suspension by the bankruptcy court for the Eastern District of Virginia.
- Uriarte filed two bankruptcy petitions without a timely certificate of credit counseling, which is required for the petition to be valid.
- Uriarte also represented in the petition that his fee was \$0, when it was not.
- The cases were dismissed, Uriarte re-filed at his own expense.
- In the re-filed petitions, Uriarte said the clients hadn’t filed bankruptcy in the last eight years.
- Uriarte contested imposition of reciprocal discipline, but the Board found that Uriarte failed to prove by clear and convincing evidence why the Board should not impose the same discipline or substantially similar discipline.

70. In the Matters of Gerald R. Curran and Demian John McGarry
VSB Docket Nos. 20-070-117742 and 20-070-117743
Public Reprimand Without Terms
Agreed Disposition Before Three-Judge Panel
March 7, 2022

- Curran and McGarry represented the wife in a divorce case. The wife engaged in extensive, allegedly illegal surveillance of her estranged husband. The husband discovered certain recordings, which included private communications between the husband and a third party. The husband later learned that the surveillance included as many as 180 separate recordings, many of which were taken by a recording device concealed under the seat of the husband's car.
- Opposing counsel advised Curran and McGarry of the existence of the recordings.
- While preparing for the deposition of the third party, Curran and McGarry prepared an outline with specific dates and locations for the activities of the third party and the husband. This information appeared to have been derived from the wife's surveillance, although Curran and McGarry denied this.
- Curran and McGarry denied that they ever listened to the recordings, but acknowledged that they did not take adequate, affirmative steps to ensure that the topics their client provided were not taken from allegedly illegal recordings.
- Rules Violated: 1.2(e) (Scope of Representation); 1.3(a) (Diligence).

71. In the Matter of Denis Charles Englisby
VSB Docket No. 21-032-120687
Public Reprimand With Terms
Agreed Disposition Before District Committee
October 29, 2021

- Englisby filed a warrant in debt for unpaid legal fees against a former client. Subsequently, the client filed a Chapter 7 bankruptcy petition. The court mailed notice of the bankruptcy case to Englisby, but he maintained he never received the notice.
- Englisby nonsuited his case against the client and did not participate in the bankruptcy.
- The client was discharged and the court mailed the discharge notice to Englisby, although Englisby maintained he never received this notice either.
- Englisby then contacted the client regarding his unpaid fees and, when she responded that the fees were discharged in bankruptcy, asked for proof that he was named as a creditor

in the bankruptcy case. Englisby wrote that “the probability is that you still owe my firm the amount that you tried to bankrupt.”

- After the client provided the discharge notice, Englisby filed another warrant in debt to collect the unpaid fees. After the bar complaint was filed, Englisby agreed to dismiss the case.
- Rules Violated: 3.1 (Meritorious Claims and Contentions); 3.4(j) (Fairness to Opposing Party and Counsel); 4.3(b) (Dealing with Unrepresented Persons).

72. In the Matter of Thomas Page Cheeley

VSJ Docket No. 21-032-120751

Public Reprimand Without Terms

Hearing Before District Committee

January 18, 2021

- Cheeley was the Commissioner of Accounts for the Circuit Court of the City of Colonial Heights until August 31, 2020.
- The administrator of an estate failed to file an inventory or annual accounts with Cheeley for nearly 12 years. During that time, the beneficiaries alleged that estate assets were mishandled and their distributions were delayed.
- Despite being authorized to do so, Cheeley never acted against the administrator by issuing a summons or notifying the court of the administrator’s delinquency.
- The Standing Committee on Commissioners of Accounts investigated the matter and reporting its findings to the court. Shortly thereafter, Cheeley was terminated as Commissioner.
- Rule Violated: 8.4(b) (Misconduct).

73. In the Matter of Jason Andrew Carey

VSJ Docket No. 22-042-125819

Public Reprimand Without Terms

Agreed Disposition Before Subcommittee

June 9, 2022

- During discovery in a bid protest case before the United States Government Accountability Office in DC, Carey received an ineffectively redacted document. Rather than notifying the sending party of the redaction issue, Carey manipulated, read, and attempted to use the document.
- Carey failed to report to the discipline to the Virginia State Bar Clerk of the Disciplinary System.

- Rules Violated: DC Rule 4.4(b) (Respect for Rights of Third Persons); Virginia Rule 8.3(e)(1) (Reporting Misconduct).

74. In the Matter of Aaron Michael Burgin

VSJ Docket No. 22-070-124046

Public Reprimand With Terms

Agreed Disposition Before Subcommittee

June 8, 2022

- After a probation officer acknowledged that she made a mistake regarding calculation of sentencing guidelines, Burgin initially thanked her for the clarification.
- When the matter was raised in court, however, Burgin was aggressive in his cross-examination. The next day, he emailed the probation officer, "Don't f--- around with me or one of my clients again. I will always be the best f---ing attorney in the court room. Try and pull that kind of s--- again and you will be begging to get off the witness stand."
- Rules Violated: 3.4 (Fairness to Opposing Party and Counsel); 4.4 (Respect for Rights of Third Persons); 8.4(b) (Misconduct).
- Terms: Contract with the Judges and Lawyers Assistance Program, four hours of CLE in ethics, apology to the probation officer.

75. In the Matter of Rachael Alexandra Schmid Moshman

VSJ Docket No. 22-000-125358

Seven-Month Suspension With 30 Days Stayed, One Year Probation With Terms

Agreed Disposition Before Disciplinary Board

June 16, 2022

- Reciprocal matter from the District of Columbia.
- Moshman was appointed as a conservator for an incapacitated adult ward. Moshman negligently misappropriated funds from the ward and otherwise mishandled the estate. For example, Moshman paid her rent from the ward's account because she mixed up her checkbooks. Moshman also failed to deposit checks on a timely basis. Moshman corrected her mistakes.
- Moshman admitted to her misconduct in the District of Columbia and agreed to imposition of the same discipline in Virginia.