

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTERS OF  
CHRISTOPHER LOUIS CONTRERAS**

**VSB DOCKET NOS. 23-042-127395,  
23-042-127424,  
23-042-127768,  
23-042-126886  
23-042-127699**

**CONSENT TO REVOCATION ORDER**

On August 10, 2023, came Christopher Louis Contreras and presented to the Board an Affidavit Declaring Consent to Revocation (hereinafter "Affidavit") of his license to practice law in the courts of this Commonwealth. By tendering his Consent to Revocation at a time when a disciplinary complaint, Investigation or Proceeding is pending, the nature of which is specifically set forth in the attached Affidavit, and Certification, Respondent acknowledges that the material facts contained in the pending disciplinary complaint, Investigation or Proceeding are true.

The Board having considered the Affidavit, and Bar Counsel having no objection, the Board accepts his Consent to Revocation. Bar Counsel has no objection to an effective date of August 25, 2023.

Upon consideration whereof, it is therefore ordered that Christopher Louis Contreras's license to practice law in the courts of this Commonwealth be and the same hereby is revoked, and that the name of Christopher Louis Contreras be stricken from the Roll of Attorneys of this Commonwealth, effective August 25, 2023.

It is further ORDERED that The Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail of the Revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing Attorneys and presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the

wishes of his clients. The Respondent shall give such notice immediately and in no event later than 14 days of the effective date of the Revocation, and make such arrangements as are required herein as soon as is practicable and in no event later than 45 days of the effective date of the Revocation. The Respondent shall also furnish proof to the Clerk of the Disciplinary System of the Virginia State Bar within 60 days of the effective date of the Revocation that such notices have been timely given and such arrangements have been made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the Revocation, he shall submit an affidavit to that effect within 60 days of the effective date of the Revocation to the Clerk of the Disciplinary System at the Virginia State Bar. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein. The burden of proof shall be on the Respondent to show compliance.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order by electronic, regular and certified mail, return receipt requested, to the Respondent, Christopher Louis Contreras, at his address of record with the Virginia State Bar, being Contreras Law PLC, 4250 Fairfax Drive., 6<sup>th</sup> Floor, Arlington, VA 22203 and a copy sent by electronic mail to Renu M. Brennan, Bar Counsel.

Entered this 14<sup>th</sup> day of August, 2023

Virginia State Bar Disciplinary Board

By Kamala H. Lannetti  
Kamala H. Lannetti  
Chair

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF  
CHRISTOPHER LOUIS CONTRERAS**

**VSB Docket Nos. 23-042-127395,  
23-042-127424,  
23-042-127768,  
23-042-126886,  
23-042-127699**

**AFFIDAVIT DECLARING CONSENT TO REVOCATION**

Christopher Louis Contreras, after being duly sworn, states as follows:

1. That I was licensed to practice law in the Commonwealth of Virginia on April 12, 2019;
2. That I submit this Affidavit Declaring Consent to Revocation pursuant to Rule of Court, Part 6, Section IV, Paragraph 13-28;
3. That my consent to revocation is freely and voluntarily rendered, that I am not being subjected to coercion or duress, and that I am fully aware of the implications of consenting to the revocation of my license to practice law in the Commonwealth of Virginia;
4. I am aware that there are currently pending complaints, investigations into, or a proceedings involving, allegations of misconduct, the docket numbers for which are set forth above, and the specific natures of which are here set forth in the attached Certification submitted as Exhibit A;
5. I acknowledge that the material facts upon which the allegations of misconduct are predicated are true; and

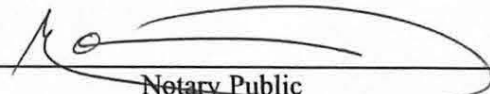
6. I submit this Affidavit and consent to the revocation of my license to practice law in the Commonwealth of Virginia because I know that if the disciplinary proceedings based on the said alleged misconduct were brought or prosecuted to a conclusion, I could not successfully defend them.

Executed and dated on August 10, 2023.

  
\_\_\_\_\_  
Christopher Louis Contreras  
Respondent

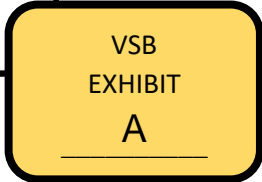
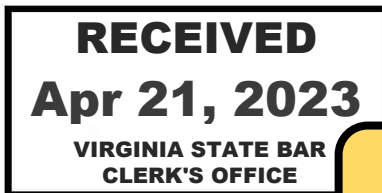
COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Fairfax, to wit:

The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to before me by Christopher Louis Contreras on August 10<sup>th</sup>, 2023.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 10/31/27.





VIRGINIA:

**BEFORE THE FOURTH DISTRICT SUBCOMMITTEE, SECTION II  
OF THE VIRGINIA STATE BAR**

**IN THE MATTERS OF  
CHRISTOPHER LOUIS CONTRERAS**

**VS B Docket Nos. 23-042-127395,  
23-042-127424,  
23-042-127768,  
23-042-126886,  
and  
23-042-127699**

**SUBCOMMITTEE DETERMINATION  
(CERTIFICATION)**

On April 13, 2023, a meeting in this matter was held before a duly convened Fourth District Subcommittee, Section II consisting of Natalie Troyer Page, Esq., Subcommittee Chair; Foster S.B. Friedman, Esq., Member; and Barbara Moore, Lay Member. Pursuant to Part 6, § IV, ¶ 13-15.B.3 of the Rules of the Supreme Court of Virginia, the Fourth District Subcommittee, Section II of the Virginia State Bar hereby serves upon Christopher Louis Contreras (“Respondent”) the following Certification:

**I. ALLEGATIONS OF FACT**

1. In 2019 Respondent was admitted to the Virginia State Bar (“VSB”). At all relevant times, Respondent was a member of the VSB.
2. Respondent is a solo practitioner who practices immigration, criminal, and family law.
3. From 2019 to June 2022, Respondent practiced law at his uncle’s law office<sup>1</sup>, The Law Office of Orlando A. Gamarra.
4. In July 2022 Respondent opened his own law office.

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<sup>1</sup> It is unclear if Respondent practiced as part of his uncle’s office or was a solo practitioner. Based on pleadings and Respondent’s response to the bar complaint, he broke off from his uncle’s firm and opened his solo practice in July 2022. In his interview with the bar investigator, Respondent stated that he has been a sole practitioner since being licensed in 2019, although he had limited administrative assistance from his uncle’s law office staff.

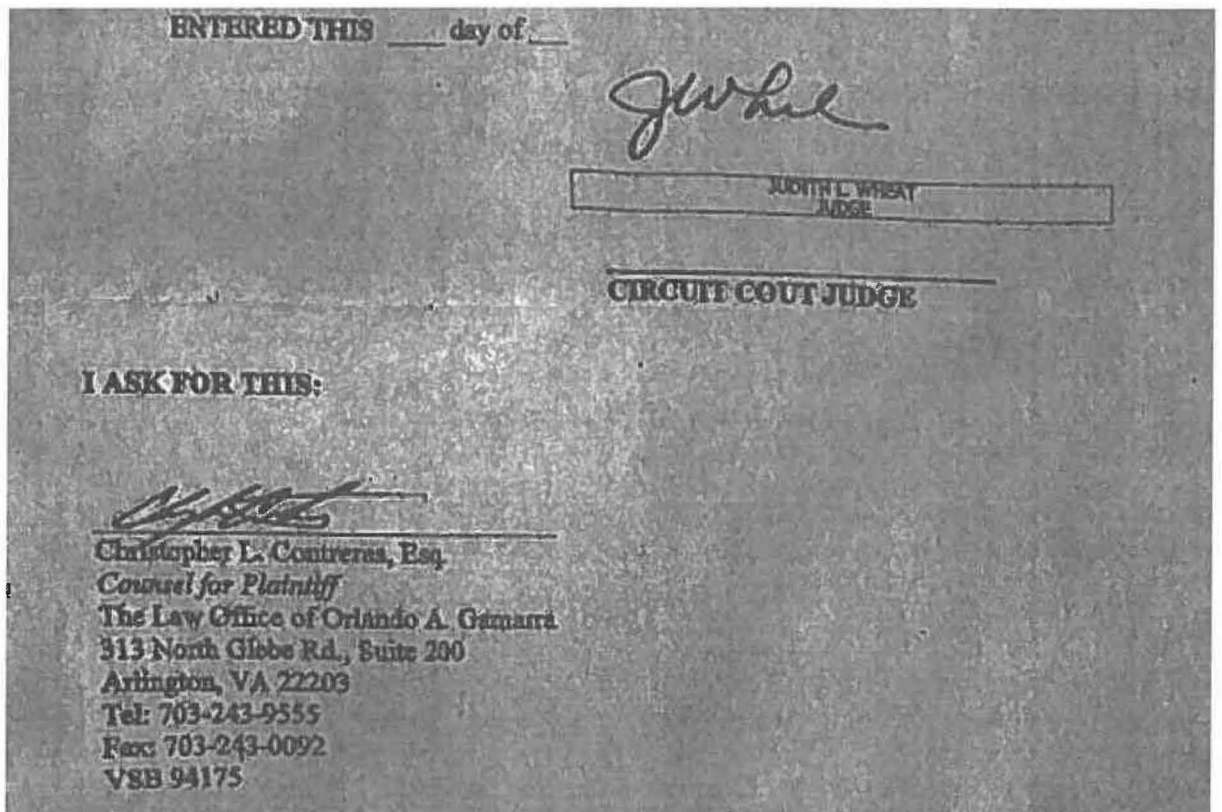
5. On October 19 and 20, 2022, Respondent presented two checks from his law firm account, not a trust account, to the Civil Division of the Arlington Clerk's Office ("Arlington Clerk's Office") as filing fees in two divorce cases. Both checks were returned for insufficient funds. On October 24, 2022, the Arlington Clerk's Office advised Respondent that the checks were returned for insufficient funds. Respondent paid the filing fees in cash.
6. The matter was referred to the VSB as part of Docket No 23-042-127935 below. In his November 28, 2022 response to the VSB regarding the returned checks, Respondent stated that he used the wrong checkbook for the payments.
7. In his February 27, 2023 interview with the VSB Investigator, Respondent stated that the checks were drawn from his personal account, and he had not made a deposit to cover them. He stated that he (1) only had a trust account from February/March to September 2022, (2) opened the trust account for personal injury cases but never had any client funds in the trust account, and (3) did not use the trust account or deposit advance fees in the trust account. Instead, Respondent treated the flat fees as earned upon receipt and deposited the flat fees in his personal account.
8. While Respondent, by email dated March 2, 2023, advised the VSB investigator that he was opening a trust account, Respondent did not respond to the VSB investigator's subsequent attempts to confirm that Respondent opened and is using a trust account.

**VSB Complainant: VSB**  
**VSB Docket No. 23-042-127395**

9. In 2021, Client ESAH retained Respondent to file an uncontested divorce from his wife in Arlington Circuit Court. ESAH does not speak English. Respondent charged ESAH a flat fee of either \$1,000 or \$1,100. There is no written representation agreement.

10. On June 8, 2021, per Respondent, ESAH paid Respondent \$500. ESAH believes he paid Respondent between \$560 and \$600.
11. Respondent did not deposit the fees paid by ESAH into a trust account or otherwise safeguard ESAH's funds. He deposited the funds into his personal account.
12. Respondent did not keep any records regarding the fees paid by ESAH nor did he provide ESAH with any accountings.
13. On March 11, 2022, on behalf of ESAH, Respondent filed a bill of complaint for divorce, a praecipe, plaintiff's affidavit in support of divorce, an affidavit of publication, an order of publication, and a final decree of divorce in Arlington Circuit Court.
14. On April 7, 2022, Respondent met with ESAH at Respondent's law office.
15. By Order entered April 8, 2022, the Arlington Circuit Court scheduled an *ore tenus* hearing for final adjudication of ESAH's complaint for June 22, 2022.
16. Respondent did not advise ESAH that an *ore tenus* hearing was scheduled for June 22, 2022. As set forth below, ESAH understood that a hearing would be held in July.
17. Respondent did not appear at the *ore tenus* hearing on June 22, 2022. Respondent told the bar investigator that "he doesn't think that he put it [the hearing] on his calendar."
18. By orders entered June 29 and July 1, 2022, the Arlington Circuit Court dismissed, without prejudice, ESAH's divorce for failure to prosecute.
19. Respondent states he was on vacation from July 1 to July 8, 2022 and was then in the process of moving his law office.
20. Respondent did not tell ESAH what had happened including that ESAH's divorce had been dismissed. Instead, in July 2022, while ESAH was on his way to Arlington Circuit Court for a hearing he believed was scheduled, Respondent called ESAH and told ESAH

that he did not have to go to the hearing because the Arlington Circuit Court had already signed the divorce decree. ESAH then went to Respondent's office, then at Respondent's uncle's location, and Respondent gave ESAH a copy of a purported divorce decree. See Exhibit A. The third page of the purported decree bore the electronic signature of The Honorable Judith L. Wheat ("Judge Wheat"), but the purported decree did not have a date stamp. A date stamp is automatically applied to Judge Wheat's signature when Judge Wheat signs a document electronically. Under the electronic signature, CIRCUIT COURT JUDGE is misspelled as CIRCUIT "COUT" JUDGE.

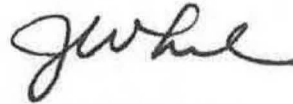


21. Based on Respondent's representations, ESAH believed that Exhibit A was a validly executed divorce decree signed by Judge Wheat.



22. The investigation, including a search of all cases in Arlington Circuit Court in which Respondent was counsel of record, revealed an almost identical signature page bearing Judge Wheat's signature at page 3, as with the decree Respondent provided to ESAH. COURT is also misspelled as "COUT." The only difference in the signature pages is the date stamp of March 4, 2022. *See* Exhibit B.

ENTERED THIS \_\_\_\_ day of \_\_\_\_




03/04/2022

JUDITH L. WHEAT  
JUDGE

**CIRCUIT COUT JUDGE**

**I ASK FOR THIS:**



Christopher L. Contreras, Esq.  
*Counsel for Plaintiff*  
The Law Office of Orlando A. Gamarra  
313 North Glebe Rd., Suite 200  
Arlington, VA 22203  
Tel: 703-243-9555  
Fax: 703-243-0092  
VSB 94175

23. On November 3, 2022, ESAH, who by then sought to get married, attempted to have the Arlington Clerk's Office" certify the divorce decree that Respondent had provided ESAH. *See* Exhibit A.
24. Upon review of the file, the Arlington Clerk's Office saw that ESAH's divorce was dismissed on June 22, 2022 because of Respondent's failure to appear at the *ore tenus* hearing, and the decree was never signed by Judge Wheat.

25. The Arlington Clerk's Office advised ESAH that (1) there was no entered divorce decree in the file, and (2) the file contained an unsigned version of the divorce decree and a dismissal order for failure to prosecute entered June 29, 2022.
26. The Arlington Clerk's Office told ESAH to contact Respondent. ESAH attempted to call Respondent and was told that Respondent had moved offices. ESAH attempted to see Respondent at his new office, but the receptionist did not let him see Respondent, as ESAH did not have appointment. ESAH then tried unsuccessfully to make an appointment with Respondent. Respondent never returned ESAH's calls, nor did he refund any portion of the fee to ESAH.
27. ESAH hired another attorney who filed a new divorce proceeding.
28. The Arlington Circuit Court referred this matter<sup>2</sup> to the VSB.
29. In his response to the bar complaint, dated November 28, 2022, Respondent stated as follows:

... I have checked through my files and do not have a copy of this file in my office as it was already closed. Here is a recollection of what I recall happened in this case. This is a divorce case where we tried to get the other party to agree to do it as a no contest divorce, but we did not have an address for them. After failing to obtain the address a divorce through publication was to be pursued. I remember meeting with [ESAH] after he followed up with me to get an update on his divorce proceeding a few months after we filed and remember seeing a note that said we had received the divorce decree. I remember he came a few months later as he was working out of state, and I grabbed the file made a copy of the decree and gave it to him. I don't remember reviewing the decree before giving it to him.

I am unsure what happened here, but I believe there must have been a mix up in the papers as they were being received and filed. I remember around the time that [ESAH] contacted me to follow up on his case I was in the middle of breaking off from the firm I had been working at and starting up my own solo practice. I had

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<sup>2</sup> The Court also advised the VSB of the checks returned in October 2022 for insufficient funds.

also just lost my secretary that used to help me with all my cases as she had to relocate.

30. In his February 27, 2023 interview with the bar investigator, Respondent said that “he looked through the files and ... thinks that the papers got mixed up... he did his own filing and ... can’t say that anyone else did it... he doesn’t think that he asked for his uncle’s staff to do it.” Respondent believed that he gave ESAH a file stamped copy of the divorce decree, which Respondent states he received from the clerk, on April 7, 2022. April 7, 2022 was less than a month after Respondent filed the divorce complaint. Respondent admitted that he had the orders setting the *ore tenus* hearing and dismissing the case in his file. Respondent believed that ESAH sent him the orders dismissing the case, and Respondent did not recall what else transpired as he was then moving his law offices.
31. Respondent’s only explanation regarding the electronically signed and undated decree he gave ESAH is that it was misfiled. Respondent stated that he has other cases with Judge Wheat, and “it might be the case that the signed page was from one of those cases and that it was misfiled... all [Respondent] did was grab the file and make a copy of the order and give it to [ESAH].”
32. In fact, Respondent altered Judge Wheat’s signature page from another order in a case he handled, Exhibit B, by deleting the date, and then attached the altered signature page to ESAH’s decree, Exhibit A, to make it appear as if the Court had entered the decree when in fact the Court had dismissed ESAH’s divorce for failure to prosecute.
33. As set forth below, Respondent’s actions violate Virginia Rules of Professional Conduct 1.3(a) Diligence; 1.4(a-c) Communication; 1.15(a)(1), (b)(3), (b)(5) Safekeeping

Property; 1.16(d) Declining or Terminating Representation; 8.1(a),(d) Bar Admission and Disciplinary Matters; and 8.4(a-c) Misconduct.

**VS** **B** **C** **o** **m** **p** **l** **a** **i** **n** **a** **n** **t** **:** **F** **r** **a** **n** **c** **i** **s** **c** **o** **O** **.** **M** **o** **r** **a** **n**  
**V** **S** **B** **D** **o** **c** **k** **e** **t** **N** **o** **.** **2** **3** **-** **0** **4** **2** **-** **1** **2** **7** **4** **2** **4**

34. In February 2022, Francisco O. Moran retained Respondent to defend him on a charge of rape by physical helplessness or mental incapacity in Fairfax Circuit Court. The victim was alleged to be intoxicated at the time of the offense. Moran was charged and detained in July 2020. From 2020 to October 2021, Moran had court appointed counsel. From October 2021 to February 2022, Moran was represented by the Fairfax Public Defender.
35. Moran understood that Respondent's fee for the representation was \$7,000. There is no written representation agreement.
36. Moran's employer paid Respondent \$2,500, of which \$500 was for the initial consultation fee. Moran understood that \$1,000 of the \$2,500 was to be used to retain an expert.
37. Respondent did not deposit any of the funds paid on Moran's behalf in a trust account or otherwise safeguard them.
38. Respondent did not keep any records regarding the fees on behalf of Moran nor did he provide Moran with any accountings.
39. By Order entered February 1, 2022, prior to Respondent's substitution as Moran's counsel, upon motion by the Fairfax Public Defender, Dawn Butorac, and after an *ex parte* hearing, the Fairfax Circuit Court had authorized Moran funds to retain a toxicologist.

40. By Order entered February 11, 2022, also prior to Respondent's substitution as counsel and on Butorac's motion, the Fairfax Circuit Court authorized Moran \$2,500 for an expert in sexual assault examinations.
41. Respondent attended at least one of these hearings and was aware of the importance of expert testimony, particularly with respect to toxicology. Respondent does not dispute that he agreed to retain an expert.
42. By Agreed Order of Substitution of Counsel entered February 25, 2022, Respondent formally substituted in as counsel in lieu of the Fairfax Public Defender.
43. By email dated February 23, 2022, Butorac asked Respondent to provide her with an external hard drive so that she could provide him with Moran's file. The file contained information about experts and videos showing Moran's interactions with the alleged victim.
44. By email dated March 1, 2022, Respondent told Butorac that he would drop off an external hard drive at her office and asked Butorac to let him know when it was ready for pick up. Respondent did not do so. Respondent told the bar investigator that he did not know why he did not pick up the file and that he thought it was because he got what he needed from the Commonwealth's Attorney.
45. Other than the initial consultation, Respondent met with Moran three to four times before the trial April 18-21, 2022. One of the meetings was on Friday before the trial, at which Moran said Respondent was with him for an hour or so. Moran said that Respondent told him that he would return that weekend to plan for the defense, but Respondent did not do so.
46. Respondent never discussed the case with Butorac.

47. Respondent did not retain an expert. Respondent did not advise Moran that he did not retain an expert. Respondent told the bar investigator that he could not find an expert.
48. The jury found Moran guilty of rape. The order of conviction was entered May 18, 2022, and the matter was continued to October 21, 2022 for sentencing.
49. Respondent visited Moran once after the trial, on October 20, 2022, the day prior to the sentencing hearing.
50. On October 21, 2022, and by Order subsequently entered November 10, 2022, Moran was sentenced to 30 years with 15 years suspended.
51. After the sentencing hearing, Moran repeatedly sought to communicate with Respondent to request an appeal.
52. By letter dated October 26, 2022, received by the VSB on November 7, Moran filed a bar complaint. In part Moran stated, "As of 10/25/22 I have made attempts to contact [Respondent] about the appeal process, I would like for him to be investigated due to abandoned and failure to provide documents like my Court transcripts my discovery or anything pertaining my case even when my family and myself left messages."
53. By email dated October 31, 2022, which Respondent acknowledged receiving, Butorac asked Respondent to contact Moran regarding an appeal:

Mr. Contreras,  
Mr. Moran has emailed me several times asking about an appeal for his case. He has also said that you are not calling him back. If you are not going to handle an appeal for his case, please file a motion to appoint counsel to do his appeal. As the time is limited for doing so, I suggest you file that motion immediately.

54. Respondent did not contact Moran regarding filing an appeal.

55. Moran also wrote twice to the Fairfax Circuit Court. Moran submitted a “Pro-se request for reconsideration or rehearing” dated November 1, 2022 followed by a letter, filed November 15, 2022, requesting new counsel. Moran stated in part, “Mr. Contreras told me that we would discuss Appeal and Reconsideration on October 24, 2022. He Failed to meet with me and has not returned my phone calls.”
56. By email dated November 15, 2022, Patty Ramirez, Court Clerk to The Honorable Manuel A. Capsalis (“Judge Capsalis”), attached the second letter from Moran to Judge Capsalis and asked that Respondent confirm as soon as possible that he still represented Moran.
57. By email dated November 15, 2022 to Ms. Ramirez, Respondent represented to her that he had visited Moran the previous week and that Moran did not voice any of the concerns in Moran’s submissions to the Court to Respondent. Respondent stated that he believed he was still representing Moran and that he would follow up before the end of the week.
58. Respondent had not visited Moran the previous week.
59. Finally, on November 18, 2022, which was 28 days after the sentencing, Respondent visited Moran.
60. By email dated November 18, 2022 to Ms. Ramirez, Respondent advised her that he had just met with Moran who needed time to decide how to proceed. Respondent concluded, “We will update the court of his decision by Friday November 25, 2022.”
61. In response to Moran’s complaint to the VSB, by letter dated December 5, 2022, Respondent advised the VSB, “After the sentencing hearing, I did tell Mr. Moran I would meet with him, but I was not able to make it to him in time... I have spoken to him since then and I am in the process of doing the appeal in his [sic] so we can continue fighting

on the appeal.” He concluded the letter, “I always kept Mr. Moran’s best interest in mind  
.... now even as I am working on appealing it.”

62. By rebuttal letter dated December 27, 2022, Moran advised the VSB:

My lawyer came on November 21, 2022 to talk about the complaint  
I send it to you, and he told me he will come back on November 25 after  
thanksgiving.

Today is December 27 which I am still waiting for him, I don’t know  
when he is coming back, he never call me, never pick up my calls,  
and never give me the information about my Reconsideration  
and the Appeal.

I am also ask him about my Discovery and my Transcripts  
which he never produce it to me.

63. Respondent never noted an appeal on Moran’s behalf. Respondent did not consult with  
Moran about a delayed appeal. Respondent did nothing further for Moran.
64. As set forth below, Respondent’s actions violate Virginia Rules of Professional Conduct  
1.1 Competence; 1.3(a) Diligence; 1.4(a-c) Communication; 1.15(a)(1), (b)(3), (b)(5)  
Safekeeping Property; 1.16(d) Declining or Terminating Representation; 8.1(a),(d) Bar  
Admission and Disciplinary Matters; and 8.4(c) Misconduct.

**VSB Complainant: Reina A. Cruz-Iglesias**

**VSB Docket No. 23-042-127768**

65. On or about June 14, 2021, Respondent agreed to represent Carlos Portillo Ortez on  
charges of aggravated sexual battery in Fairfax Circuit Court. Respondent charged a flat  
fee of \$10,000.00. There is no written representation agreement.
66. Respondent was paid \$8,600.00. Respondent did not deposit the funds paid by Ortez or  
on Ortez’s behalf in a trust account or otherwise preserve these funds. Respondent did  
not keep any records regarding the funds paid by or on Ortez’s behalf. Respondent did  
not provide any accounting of the fees paid.



67. Respondent failed to represent Ortez competently and diligently as set forth in the attached Motion for New Trial, attached as Exhibit C. *See also* Exhibit D, Order entered December 16, 2022 granting a motion for new trial. Respondent failed to:

- File a discovery motion;
- Respond in writing to the Commonwealth's motion pursuant to Va. Code Section 19.2-268.3 to admit hearsay statements from the victim during a forensic interview, obtain a complete ruling from the court on the motion, or object to the forensic interviewer's testimony;
- Discuss, prior to trial, with defendant whether defendant wanted to be tried by judge or jury;
- Conduct a thorough cross-examination of the complaining witness;
- Cite any case law or statutes in his two-sentence initial motion to strike and to re-raise the issue of inherent incredibility in the renewed motion to strike; and
- Properly advise witnesses of the Rule on Witnesses resulting in his decision/inability to call two of five defense witnesses.

Respondent also stipulated to the admission of two exhibits which he subsequently tried to discredit in closing argument.

68. On April 6, 2022, Ortez was convicted on two counts of aggravated sexual battery.

69. Prior to the June 24, 2022 sentencing hearing Ortez fired Respondent. Respondent did not seek leave to withdraw as counsel. Respondent did not appear at the June 24, 2022 sentencing hearing. On June 24, 2022, the Fairfax Circuit Court continued the matter and appointed the Fairfax Public Defender to represent Ortez.

70. The Fairfax Public Defender successfully moved for a new trial and to set aside the verdict based on ineffective assistance of counsel. *See* Exhibits C-D.
71. The Fairfax Public Defender requested Ortez's file from Respondent. Respondent did not provide the file to the Fairfax Public Defender.
72. As set forth below, Respondent's actions violate Virginia Rules of Professional Conduct 1.1 Competence; 1.3(a) Diligence; 1.15(a)(1), (b)(3), (b)(5) Safekeeping Property; and 1.16(a)(3), (c-e) Declining or Terminating Representation.

**VSB Complainant: Monica L. Alconini**

**VSB Docket No. 23-042-126886**

73. On April 6, 2021, Monica L. Alconini hired Respondent to represent her in a visitation matter. She paid Respondent an advance fee of \$3,500. Respondent did not deposit the \$3,500 in a trust account or preserve the fee until it was earned.
74. Respondent did not keep any records regarding the fees paid by Alconini nor did he provide Alconini with any accountings.
75. As set forth below, Respondent's actions violate Virginia Rules of Professional Conduct 1.15(a)(1) and (b)(3) Safekeeping Property.

**VSB Complainant: Carol Y. Betancourt**

**VSB Docket No. 23-042-127699**

76. On November 22, 2022, Carol Betancourt retained Respondent to handle her divorce. On November 23, 2022, Ms. Betancourt paid Respondent an advance fee of \$450.00. Respondent did not deposit the advance fee in a trust account or preserve the fee until it was earned.
77. Respondent did not keep any records regarding the fees paid by Betancourt nor did he provide her with any accountings.

78. As set forth below, Respondent's actions violate Virginia Rules of Professional Conduct 1.15(a)(1) and (b)(3) Safekeeping Property.

## II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct<sup>3</sup>:

**VSBS Complainant: VSBS**  
**VSBS Docket No. 23-042-127395**

*By failing to calendar and attend the June 22, 2022 ore tenus hearing, and by failing to tell his client about the June 22, 2022 ore tenus hearing, Respondent violated 1.3(a).*

### RULE 1.3 Diligence

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

*By failing to tell his client that he missed the June 22, 2022 ore tenus hearing and that the Arlington County Circuit Court dismissed his client's divorce for failure to prosecute, and by failing to answer any of his client's attempts to communicate with him after November 3, 2022, when the client contacted Respondent to determine what happened with respect to the divorce decree, and by misrepresenting the facts and making it appear as if the Court entered a decree in ESAH's case, when in fact the Court dismissed ESAH's case for failure to prosecute, Respondent violated Rules 1.4(a) – (c).*

### RULE 1.4 Communication

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

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

(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

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<sup>3</sup> *Italicized language is explanatory and is not intended to limit the findings of the tribunal.*

*By failing to deposit the unearned legal fee in a trust account or otherwise preserve his client's fee, Respondent violated Rule 1.15(a)(1).*

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

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

*By failing to keep any records regarding the fee(s) paid by ESAH and by failing to provide any accountings to ESAH, Respondent violated Rule 1.15(b)(3).*

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

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

*By depositing the fee paid by ESAH in his personal account, and not returning the funds to ESAH, Respondent violated Rule 1.15(b)(5).*

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

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

*By failing to return any portion of the advance fee paid by ESAH when the divorce was dismissed, and by failing to take any steps reasonably practicable to protect ESAH's interest, Respondent violated Rule 1.16(d).*

RULE 1.16 Declining Or Terminating Representation

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

*By telling the VSB in his response to the bar complaint and in his interview with the VSB investigator that he received the decree that Respondent forged from the Arlington County Circuit Court and that it was misfiled, and by not disclosing to the VSB that he had in fact forged the decree and presented the same to his client, Respondent violated Rule 8.1(a) and (d).*

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

\*\*\*

(d) obstruct a lawful investigation by an admissions or disciplinary authority.

*By telling his client that the Arlington County Circuit Court entered a decree granting his client a divorce, when in fact the Arlington County Circuit Court dismissed his client's case without prejudice for failure to prosecute, and by forging the divorce decree and presenting the same to his client to make his client believe that the Arlington County Circuit Court had entered the decree and granted the divorce when in fact the Arlington County Circuit Court had dismissed the client's case without prejudice because of Respondent's failure to prosecute the case and attend the ore tenus hearing, Respondent violated Rules 8.4(a)-(c).*

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

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

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

\*\*\*

VSF Complainant: Francisco O. Moran

VSF Docket No. 23-042-127424

*By failing (1) to meet with his client sufficiently to defend his client, (2) to obtain and review the Fairfax Public Defender's file including the materials with respect to expert selection, (3) hire an expert, and (4) note an appeal and/or file a motion for delayed appeal, despite his client's stated desire to appeal, Respondent violated Rules 1.1 and 1.3(a).*

#### RULE 1.1 Competence

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

#### RULE 1.3 Diligence

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

*By failing to keep his client advised regarding the case, including regarding the retention of an expert, and by failing to respond to his client's numerous attempts to communicate regarding an appeal, Respondent violated Rule 1.4(a)-(c).*

#### RULE 1.4 Communication

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

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

(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

*By failing to deposit the unearned legal fee in a trust account or otherwise preserve the advance legal fee, Respondent violated Rule 1.15(a)(1).*

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

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

*By failing to keep any records or provide any accountings of the fee paid by or on behalf of his client, Respondent violated Rule 1.15(b)(3).*

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

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

*By depositing the fee paid by or on behalf of his client in his personal account, and by not returning the funds, Respondent violated Rule 1.15(b)(5).*

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

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

*By telling the VSB, including in his response to the bar complaint, that he was “in the process of doing the appeal in his [sic] so we can continue fighting on the appeal” and by*

*further stating .... “even as I am working on appealing it” when Respondent did not file an appeal, Respondent violated Rule 8.1(a) and (d).*

**RULE 8.1 Bar Admission And Disciplinary Matters**

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

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

\*\*\*

(d) obstruct a lawful investigation by an admissions or disciplinary authority.

*By his November 15, 2022 email to the Fairfax Circuit Court in which Respondent represented that he had visited his client the previous week, when Respondent had not visited his client the previous week, Respondent violated Rule 8.4(c).*

**RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

\*\*\*

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

\*\*\*

VSB Complainant: Reina A. Cruz-Iglesias  
VSB Docket No. 23-042-127768

*By failing to effectively represent his client, including by failing to:*

- *File a discovery motion;*
- *Respond in writing to the Commonwealth’s motion pursuant to Va. Code Section 19.2-268.3 to admit hearsay statements from the victim during a forensic interview, obtain a complete ruling from the court on the motion, or object to the forensic interviewer’s testimony;*
- *Discuss, prior to trial, with his client whether he wanted to be tried by judge or jury;*
- *Conduct a thorough cross-examination of the complaining witness;*



- *Cite any case law or statutes in his two-sentence initial motion to strike and to re-raise the issue of inherent incredibility in the renewed motion to strike;*
- *Properly advise witnesses of the Rule on Witnesses resulting in his decision/inability to call two of five defense witnesses;*
- *Appear at the sentencing hearing when he was still counsel of record; and*
- *Provide successor counsel with the file,*

*and by stipulating to the admission of two exhibits which Respondent subsequently tried to discredit in closing argument, Respondent violated Rules 1.1 and 1.3(a).*

#### RULE 1.1 Competence

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

#### RULE 1.3 Diligence

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

By failing to deposit the \$8,600.00 in a trust account or otherwise safeguard the advanced fee paid on behalf

*By failing to deposit the unearned legal fee of \$8,600.00 paid on his client's behalf in a trust account or otherwise preserve the fee paid on behalf of his client, Respondent violated Rule 1.15(a)(1).*

#### RULE 1.15 Safekeeping Property

(a) Depositing Funds.

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

*By failing to keep any records or provide any accountings of the \$8,600.00 paid by or on behalf of client to Respondent, Respondent violated Rule 1.15(b)(3).*

#### RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

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

*By depositing the \$8,600 paid in his personal account, and not returning the advance fee paid on behalf of his client, Respondent violated Rule 1.15(b)(5).*

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

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

*By failing to withdraw as counsel after his client discharged him, Respondent violated Rule 1.16(a)(3).*

RULE 1.16 Declining Or Terminating Representation

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

\*\*\*

(3) the lawyer is discharged.

*By failing to appear at the June 24, 2022 sentencing hearing when he was still counsel of record, Respondent violated Rule 1.16(c).*

RULE 1.16 Declining Or Terminating Representation

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

*By failing to take any steps to protect his client's interests, including but not limited to, providing the file to the Public Defender, Respondent violated Rule 1.16(d) and (e).*

**RULE 1.16 Declining Or Terminating Representation**

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

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

billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

VSB Complainant: Monica L. Alconini  
VSB Docket No. 23-042-126886

*By failing to deposit the unearned legal fee in a trust account or otherwise preserve his client's fee, Respondent violated Rule 1.15(a)(1).*

**RULE 1.15 Safekeeping Property**

**(a) Depositing Funds.**

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

*By failing to keep any records or provide any accountings of the legal fee paid by or on behalf of client to Respondent, Respondent violated Rule 1.15(b)(3).*

**RULE 1.15 Safekeeping Property**

**(b) Specific Duties. A lawyer shall:**

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

VSB Complainant: Carol Y. Betancourt

VSB Docket No. 23-042-127699

*By failing to deposit the unearned legal fee in a trust account or otherwise preserve his client's fee, Respondent violated Rule 1.15(a)(1).*

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

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

*By failing to keep any records or provide any accountings of the legal fee paid by or on behalf of client to Respondent, Respondent violated Rule 1.15(b)(3).*

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

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

**III. CERTIFICATION**

Accordingly, it is the decision of the Subcommittee to certify the above matters to the

Virginia State Bar Disciplinary Board.

FOURTH DISTRICT, SECTION II  
SUBCOMMITTEE OF THE VIRGINIA STATE  
BAR

By



Natalie T. Page, Esq.  
Subcommittee Chair.

CERTIFICATE OF SERVICE

April 21, 2023

I certify that on \_\_\_\_\_, I emailed to  
christopher.lous.contreras@gmail.com and mailed by first-class mail and certified mail a true  
and correct copy of the foregoing Subcommittee Determination (Certification) to Christopher  
Louis Contreras, Esquire, Respondent, at Contreras Law PLC, 4250 Fairfax Dr. 6th Floor,  
Arlington, VA 22203, Respondent's last address of record with the Virginia State Bar.

*Renu Brennan*

\_\_\_\_\_  
Renu M. Brennan  
Bar Counsel

VSB  
EXHIBIT  
A

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF  
ARLINGTON

RECEIVED  
MAY 11 AM 8:55

Ebal Saul Argueta Hernandez  
309 Pioneer Dr.  
Springfield, VA 22150  
Plaintiff

v.

Gloria E. Zepeda Merino  
Defendant

CASE No: CL \_\_\_\_\_

FINAL DECREE OF DIVORCE

THIS CAUSE came to be heard, upon the filing of the Bill of Complaint for Divorce and upon the testimony of Plaintiff, Ebal Saul Argueta Hernandez and his corroborating witness in accordance with Section 20-106(B) of the Code of Virginia 1950, as amended; and upon the issuance of an Order of Publication to publish notice of the complaint on 4 separate times; and

IN CONSIDERATION WHEREOF, it appearing to the Court, independently of the admissions of either party in the pleadings or otherwise that the Plaintiff, Ebal Saul Argueta Hernandez and the Defendant, Gloria E. Zepeda Merino were married on August 18, 2014 in Fairfax, Virginia; that Plaintiff is and has been a bona fide resident of and domiciled in the Commonwealth of Virginia for more than six (6) months preceding the commencement of this suit; that Plaintiff and Defendant are both over the age of eighteen (18) years; that neither is or has been during the pendency of this suit a member of the Armed Forces of the United States; that both parties are of sound mind; that one child was born to the marriage; namely Anthony Joel Argueta Zepeda; that there are no property or support issues between the parties to be decided by this Honorable Court; that the parties have lived separate and apart for a period of more than one year, that is, since on or about May 1, 2018, without any cohabitation and without interruption; that at the time of the parties separation, it was the intention of at least one of the parties that the

separation be permanent and ultimately result in a divorce, and that this intention has continued through the present time; that no reconciliation has taken place or is probable; that this court has jurisdiction to hear and determine this cause; and that provisions of Section 20-60.3 of the Code of Virginia, 1950, as amended, are not applicable; and

Notice is hereby given to the parties that beneficiary designations for any death benefit, as defined in subsection B of Section 20-111.1 of the Code of Virginia, made payable to a former spouse may or may not be automatically revoked by operation of law upon the entry of a final decree of annulment or divorce. If a party intends to revoke any beneficiary designation made payable to a former spouse following annulment or divorce, the party is responsible for following any and all instruction to change such beneficiary designation given by the provider of the death benefit. Otherwise, existing beneficiary designations may remain in full force and effect after the entry of a final decree or annulment or divorce; it is now therefore,

**ADJUDGED, ORDERED and DECREED** that Ebal Saul Argueta Hernandez, be and he hereby is awarded a divorce *A Vinculo Matrimonii*, from Gloria E. Zepeda Merino, on the grounds that the parties have lived separate and apart continuously and without interruption for a period of more than one year preceding this suit, pursuant to Section 20-91(A)(9) of the Code of Virginia, 1950, as amended; that the Confidential Addendum filed in this matter is hereby incorporated by reference; and it is further;

**ADJUDGED, ORDERED and DECREED** that Christopher L. Contreras, Esquire is hereby selected as counsel of record for the Plaintiff, and it is further,

**ADJUDGED, ORDERED AND DECREED** that the bonds of matrimony heretofore existing between the parties hereto are forever dissolved and the Clerk of the Court may issue certified copies hereto to the parties forthwith.

And nothing further remaining to be done in this case, it is hereby ordered stricken from the docket and filed among the ended causes.

ENTERED THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_.



And nothing further remaining to be done in this case, it is hereby ordered stricken from the docket and filed among the ended causes.


ENTERED THIS \_\_\_\_\_ day of \_\_\_\_\_



JUDITH L. WHEAT  
JUDGE

CIRCUIT COURT JUDGE

I ASK FOR THIS:



Christopher L. Contreras, Esq.  
Counsel for Plaintiff  
The Law Office of Orlando A. Gamara  
313 North Glebe Rd., Suite 200  
Arlington, VA 22203  
Tel: 703-243-9555  
Fax: 703-243-0092  
VEB 94175

FILED by Arlington County Circuit Court  
03/04/2021



Page 8/11

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF  
ARLINGTON**

JULIO CESAR SEJAS VILLCA	)
3508 Paul St.	)
Alexandria, VA 22311	)
Plaintiff	)
	)
v.	)
	)
FELICIA MATTIE LEE DIAZ OLIVERA	)
2030 Alice Ave. #201	)
Oxon Hill, MD 20745	)
Defendant	)

CASE No: CL  CL21004405-00  
DIV  
FD

**FINAL DECREE OF DIVORCE**

**THIS CAUSE** came to be heard, upon the filing of the Bill of Complaint for Divorce and upon the testimony of Plaintiff, Julio Cesar Sejas Villca and his corroborating witness in accordance with Section 20-106(B) of the Code of Virginia 1950, as amended; and upon the Acceptance of the Service and Waiver of future Service of Process by the Defendant, Felicia Mattie Lee Diaz Olivera; and

**IN CONSIDERATION WHEREOF**, it appearing to the Court, independently of the admissions of either party in the pleadings or otherwise that the Plaintiff, Julio Cesar Sejas Villca and the Defendant, Felicia Mattie Lee Diaz Olivera were married on January 7, 2019 in Arlington, Virginia; that Plaintiff is and has been a bona fide resident of and domiciled in the Commonwealth of Virginia for more than six (6) months preceding the commencement of this suit; that Plaintiff and Defendant are both over the age of eighteen (18) years; that neither is or has been during the pendency of this suit a member of the Armed Forces of the United States; that both parties are of sound mind; that no children were born or adopted to the marriage; that there are no property or support issues between the parties to be decided by this Honorable Court; that the parties have lived separate and apart for a period of more than six months, that is, since on or about December

1, 2019, without any cohabitation and without interruption; that at the time of the parties separation, it was the intention of at least one of the parties that the separation be permanent and ultimately result in a divorce, and that this intention has continued through the present time; that no reconciliation has taken place or is probable; that this court has jurisdiction to hear and determine this cause; and that provisions of Section 20-60.3 of the Code of Virginia, 1950, as amended, are not applicable; and

**Notice is hereby given to the parties that beneficiary designations for any death benefit, as defined in subsection B of Section 20-111.1 of the Code of Virginia, made payable to a former spouse may or may not be automatically revoked by operation of law upon the entry of a final decree of annulment or divorce. If a party intends to revoke any beneficiary designation made payable to a former spouse following annulment or divorce, the party is responsible for following any and all instruction to change such beneficiary designation given by the provider of the death benefit. Otherwise, existing beneficiary designations may remain in full force and effect after the entry of a final decree or annulment or divorce; it is now therefore,**

**ADJUDGED, ORDERED and DECREED** that Julio Cesar Sejas Villca, be and he hereby is awarded a divorce *A Vinculo Matrimonii*, from Felicia Mattie Lee Diaz Olivera, on the grounds that the parties have lived separate and apart continuously and without interruption for a period of more than six months preceding this suit, pursuant to Section 20-91(A)(9) of the Code of Virginia, 1950, as amended; and it is further; The Private Addendum is incorporated by reference.

**ADJUDGED, ORDERED and DECREED** that the Separation Agreement be incorporated into the divorce decree.

**ADJUDGED, ORDERED and DECREED** that Christopher L. Contreras, Esquire is hereby released as counsel of record for the Plaintiff, and it is further,

**ADJUDGED, ORDERED AND DECREED** that the bonds of matrimony heretofore existing between the parties hereto are forever dissolved and the Clerk of the Court may issue certified copies hereto to the parties forthwith.

And nothing further remaining to be done in this case, it is hereby ordered stricken from the docket and filed among the ended causes.

ENTERED THIS \_\_\_\_ day of \_\_\_\_



03/04/2022

JUDITH L. WHEAT  
JUDGE

**CIRCUIT COURT JUDGE**

**I ASK FOR THIS:**



---

Christopher L. Contreras, Esq.  
*Counsel for Plaintiff*  
The Law Office of Orlando A. Gamarra  
313 North Glebe Rd., Suite 200  
Arlington, VA 22203  
Tel: 703-243-9555  
Fax: 703-243-0092  
VSB 94175

**VIRGINIA:**  
**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

FILED  
CRIMINAL

**COMMONWEALTH OF VIRGINIA** :  
 :  
**vs.** :  
 :  
**CARLOS ALBERTO PORTILLO ORTEZ,** :  
**Defendant.** :

2022 NOV 18 P 2:16  
**Case No.: FE-2021-705, -706**  
JOHN T. FREY  
CLERK-CIRCUIT COURT  
FAIRFAX, VA  
**Sentencing: December 16, 2022**

**NOTICE AND MOTION FOR NEW TRIAL**

COMES NOW the defendant, Carlos Alberto Portillo Ortez, by counsel, Gretchen Schumaker, and respectfully moves this Honorable Court, pursuant to Virginia Supreme Court Rule 3A:15, to set aside the verdict of convictions and order a new trial in the above-referenced case on the grounds that Mr. Portillo Ortez was deprived of his Fifth and Sixth Amendment rights when he received ineffective assistance from his previous counsel, Christopher Contreras.

PLEASE TAKE NOTICE that on Friday, December 16, 2022, at 10:00 a.m., before the Honorable Robert J. Smith, Mr. Portillo Ortez will move this Honorable Court to set aside the verdict of convictions in this case. In support of the Motion, counsel states the following:

**STATEMENT OF FACTS**

In November 2021, Carlos Alberto Portillo Ortez was indicted on two counts of aggravated sexual battery and one count of penetration of the mouth of a child with lascivious intent. The allegations were made by Mr. Portillo Ortez's partner's niece, E [REDACTED] I [REDACTED] C [REDACTED], who lived with Mr. Portillo Ortez and his family between 2019 and 2021, except for a few months during 2020. (Tr. 4/4/22 at 100-01). Mr. Portillo Ortez retained Christopher Contreras as counsel to represent him on these matters.

On March 21, 2022, the Commonwealth filed a motion pursuant to Virginia Code Section 19.2-268.3 to admit hearsay statements E [REDACTED] made to Child Protective Services and during a forensic interview. Other than Mr. Contreras's entry of appearance, the

Commonwealth's motion was the only pre-trial filing in this case.<sup>1</sup> Mr. Contreras did not file a written objection to the motion. The motion was initially heard on April 1, 2022, by the Honorable Christie A. Leary. At that hearing, the Commonwealth argued that they should be allowed at trial to admit the hearsay testimony of Carla Claudio Silva, who conducted the forensic interview with E [REDACTED]. (Tr. 4/1/22 at 5). The Commonwealth specifically moved the Court to allow the admission of the video recording of the interview—which was conducted entirely in Spanish—so that the jury could observe the complaining witness's demeanor during the interview. (Tr. 4/1/22 at 39-44). Mr. Contreras's opposition to the motion was that "we believe that the victim should have to testify and be present so that we can question and cross examine her, as it is my client's constitutional right to do so." (Tr. 4/1/22 at 45). He did not challenge whether the statutory requirements, most relevant that the statement was inherently trustworthy, had been met. The issue was ultimately deferred to the judge presiding over the trial. (Tr. 4/1/22 at 49-50).

The case proceeded to trial on April 4, 2022, before the Honorable Robert J. Smith. The Court first took up the Commonwealth's motion that had been carried over from the previous hearing. (Tr. 4/4/22 at 3). The Commonwealth again argued for the admission of the video of the forensic interview. The Court, after learning that the interview was entirely in Spanish and no translation was available, denied the Commonwealth's request to admit the video. (Tr. 4/4/22 at 15). Mr. Contreras never made any argument that hearsay testimony from the interview should be entirely excluded, and the Court did not rule on that issue.

During the pre-trial colloquy, Mr. Portillo Ortiz told the Court that he had not discussed with Mr. Contreras whether he should be tried by a judge or by a jury. (Tr. 4/4/22 at 19-20). It

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<sup>1</sup> Mr. Contreras did not file a motion for discovery or any other pre-trial motions.

was then left to the Court to explain the difference between a bench and a jury trial. (Tr. 4/4/22 at 20). Only after Mr. Portillo Ortiz told the Court that he wanted the Court to decide the case did Mr. Contreras ask to confer with Mr. Portillo Ortiz. (Tr. 4/4/22 at 21). After their discussion, Mr. Portillo Ortiz told the Court he wanted to be tried by a jury. (Tr. 4/4/22 at 22).

Before calling any witnesses, the Commonwealth introduced two exhibits that Mr. Contreras stipulated to—*anatomical diagrams that were labeled during B [REDACTED]'s forensic interview.* (Tr. 4/4/22 at 23). The Commonwealth also informed the Court that Mr. Contreras had stipulated to Fairfax County being the appropriate venue for the charges. (Tr. 4/4/22 at 25).

The Commonwealth's first witness was Rosa Iglesias Cruz, B [REDACTED]'s mother. (Tr. 4/4/22 at 98). She testified about who lived in the apartment, (Tr. 4/4/22 at 102), and that B [REDACTED] first told her about the allegations against Mr. Portillo Ortiz on June 1, 2021, (Tr. 4/4/22 at 110). On cross-examination, Mr. Contreras attempted to ask Ms. Iglesias Cruz about her boyfriend, presumably to explore an alternative suspect or a possible motive for B [REDACTED] to lie. (Tr. 4/4/22 at 151).

The Commonwealth's second witness was B [REDACTED]. On direct examination, she described two instances where Mr. Portillo Ortiz touched her breasts and vagina and one instance where he kissed her. (Tr. 4/4/22 at 131, 138, 144). B [REDACTED] frequently answered by saying that she did not remember specific details, such as how old she was when these events occurred. (Tr. 4/4/22 at 136-37, 144). She testified that she did not remember any details about the kissing. (Tr. 4/4/22 at 144). On cross-examination, Mr. Contreras asked B [REDACTED] only sixteen questions. (Tr. 4/4/22 at 149-52). Mr. Contreras's questions focused almost entirely on the apartment—both the layout and who lived there at various points in time. *Id.* The only questions that he asked about the specific allegations against Mr. Portillo Ortiz were whether everyone was in the apartment when

he touched her on the couch, and whether it was light or dark out when that happened. (Tr. 4/4/22 at 151-52). He did not ask any questions about the incident in the kitchen or the allegation of kissing. Despite the fact that B [REDACTED]'s statements were inconsistent with the statements she made during the forensic interview, Mr. Contreras never made any attempts to impeach her testimony.

On the second day of trial, the Commonwealth called Carla Claudio Silva, the forensic interviewer who interviewed B [REDACTED] in June 2021. (Tr. 4/5/22 at 6). When the Commonwealth elicited detailed testimony about the statements that B [REDACTED] made during the interview, Mr. Contreras did not object. (Tr. 4/5/22 at 16, 20). Ms. Claudio Silva recounted details that E [REDACTED] provided during the interview that B [REDACTED] had testified the previous day that she did not remember. (Tr. 4/5/22 at 20-28).

Next, the Commonwealth called Detective Garcia of the Fairfax County Police Department to testify. (Tr. 4/5/22 at 42). Detective Garcia did not conduct the investigation in this case, and was only present during Mr. Portillo Ortiz's interview to translate for the primary detective, Detective Cropp. (Tr. 4/5/22 at 46). Detective Cropp did not testify at trial. Detective Garcia testified about statements that Mr. Portillo Ortiz made denying the allegations. (Tr. 4/5/22 at 53). The detective further testified that during the interview, Mr. Portillo Ortiz said that E [REDACTED] might be making up these allegations because of a "possible immigration issue between the mom who had previously been deported at some point." (Tr. 4/5/22 at 56).

At the conclusion of the Commonwealth's evidence, Mr. Contreras made a very brief motion to strike, arguing that the evidence was insufficient because the Commonwealth had not established the required lascivious intent. (Tr. 4/5/22 at 61-63). The Court denied the motion to strike on the two aggravated sexual battery charges, but after raising its own arguments, struck



the penetration of the mouth of a child with lascivious intent charge on the basis that B [REDACTED] was inherently incredible. (Tr. 4/5/22 at 64).

When court reconvened to start the defense case, the Commonwealth told the Court that they had observed Mr. Portillo Ortiz talking to one of the defense witnesses outside the courtroom. (Tr. 4/5/22 at 66). Neither party proffered what was said in the hallway, but Mr. Contreras conceded that, after discussion with the Commonwealth, he would not call two defense witnesses. (Tr. 4/5/22 at 66).

The defense called three witnesses: Reina Cruz Iglesias, [REDACTED], and Jose Iglesias Cruz. (Tr. 4/5/22 at 67, 104, 121). Reina Cruz Iglesias, Mr. Portillo Ortiz's partner, testified that there was a five-month period in 2020 when B [REDACTED] and her mother did not live with them. (Tr. 4/5/22 at 72). She also confirmed that B [REDACTED] had a bad relationship with her mother's boyfriend, (Tr. 4/5/22 at 77), that her sister, B [REDACTED]'s mother, did have immigration problems, (Tr. 4/5/22 at 85), and that B [REDACTED]'s mother had a dispute with Mr. Portillo Ortiz when they briefly worked together, (Tr. 4/5/22 at 119). On cross-examination, the Commonwealth introduced a diagram of the apartment to impeach her testimony about whether all areas of the apartment could be seen at the same time. (Tr. 4/5/22 at 91).

[REDACTED], Mr. Portillo Ortiz's step-daughter, testified about the routines of the people living in the apartment, including B [REDACTED] and Mr. Portillo Ortiz. (Tr. 4/5/22 at 108-11). She testified to the limited interactions between Mr. Portillo Ortiz and B [REDACTED], and that she never noticed a change in B [REDACTED]'s behavior. (Tr. 4/5/22 at 112).

The defense's final witness, Jose Iglesias Cruz, was Reina's brother—essentially Mr. Portillo Ortiz's brother-in-law. (Tr. 4/5/22 at 121). He testified that on the date of the second

alleged touching, which B [REDACTED] testified happened on the couch in the living room, he was in the living room watching television with other members of the family. (Tr. 4/5/22 at 124-25).

At the close of the defense case, Mr. Contreras briefly renewed his motion to strike, arguing again that the Commonwealth had failed to establish intent, which the Court denied. (Tr. 4/5/22 at 140-41).

In closing argument, Mr. Contreras argued that it was not possible that these allegations could have happened without anyone else witnessing it in such a crowded apartment, and that there was a period of time when the families were not living together. (Tr. 4/6/22 at 21-22). He also vaguely referenced the lack of details in B [REDACTED]'s testimony, and that B [REDACTED] and the forensic interviewer were inconsistent about who circled and labeled the anatomical diagrams. (Tr. 4/6/22 at 24). He made no mention of B [REDACTED]'s possible motives to lie, such as her bad relationship with her mother's boyfriend, her mother's work dispute with Mr. Portillo Ortiz, or their immigration problems, despite having elicited that testimony from several witnesses. Near the end of his closing argument, Mr. Contreras stated "This case will be over soon, and I have tried my best to show you that these allegations don't make sense. I've tried my best, but my job is done." (Tr. 4/6/22 at 27).

After deliberating for approximately two hours, the jury convicted Mr. Portillo Ortiz of both remaining charges of aggravated sexual battery. (Tr. 4/6/22 at 33-34). The Court set the case for sentencing on June 24, 2022, and revoked Mr. Portillo Ortiz's bond. (Tr. 4/6/22 at 36-38).

At the June 24, 2022 sentencing hearing, Mr. Contreras did not appear. While Mr. Portillo Ortiz told the Court that he wished to have new counsel appointed and Mr. Contreras was no longer retained to represent him, Mr. Contreras never formally withdrew from the case.

(Tr. 6/24/22 at 5-6). His withdrawal from the case was a surprise to both the Commonwealth and the Court. At that time, the Court appointed the Office of the Public Defender to represent Mr. Portillo Ortiz (Tr. 6/24/22 at 8). After attempts to obtain a copy of Mr. Contreras's file were unsuccessful, new defense counsel obtained discovery from the Commonwealth and began independently investigating the case and preparing a sentencing memo with letters from friends, family, and members of the community on Mr. Portillo Ortiz's behalf.

### ARGUMENT

Pursuant to Rule 3A:15 of the Rules of the Supreme Court of Virginia, "[if] the jury returns a verdict of guilty, the court may, on motion of the accused made not later than 21 days after entry of a final order, set aside the verdict for error committed during the trial . . . ." Va. Sup. Ct. R. 3A:15(b). Mr. Portillo Ortiz has yet to be sentenced in this case; therefore, no final order has been entered and the Court may set aside the verdict.

The Constitution guarantees the right to a fair trial which is secured in part under the Sixth Amendment's right to counsel. *Strickland v. Washington*, 466 U.S. 668, 684-85 (1984). Under the Sixth Amendment, the right to counsel guarantees the right to effective assistance of counsel. *Strickland*, 466 U.S. at 685. Under this guarantee, "a defendant is entitled to counsel who is reasonable competent and who gives advice that is within the range of competence required of attorneys in criminal cases." *Lewis v. Warden of the Fluvanna Corr. Ctr.*, 274 Va. 93, 112 (2007) (citing *Strickland*, 466 U.S. at 687).

In *Strickland*, the United States Supreme Court established a two-prong test to determine if a claim of ineffective assistance of counsel could prevail. *Strickland*, 466 U.S. at 687. To meet the first prong, it be shown that "counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. To show counsel's conduct was not reasonable, a petitioner must

show that the challenged actions were not "sound trial strategy." *Id.* at 689 (citing *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). The second prong, known as the prejudice prong, requires showing that "there was a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686.

In *Walker v. Mitchell*, the Supreme Court of Virginia faced the issue of whether claims of ineffective assistance of counsel were cognizable on direct appeal. *Walker v. Mitchell*, 224 Va. 568 (1983). The Court noted that for error to be assigned there must have been an objection made; however, "[i]t would be a rare case, indeed, where counsel would raise in the trial court, and seek that court's ruling upon, his own inadequacies in representing an accused." *Id.* at 570. The Court reasoned that an "ordinary trial record is not developed adequately to permit on direct appeal a fair resolution of questions involving ineffective assistance." *Id.* at 570-571. The Court then went on to say "[o]f course, if the record of the criminal trial is sufficient itself to show the merit or lack of merit of a habeas petition, the case may be determined upon that record alone." *Id.* at 571.

Two years after *Walker*, Virginia Code § 19.2-317.1 was enacted and allowed a claim of ineffective assistance of counsel to be raised on direct appeal "if assigned as error and if all matters relating to such issues are fully contained within the record of the trial." (1985). The Virginia Court of Appeals reasoned that § 19.2-317.1 "was enacted to provide a defendant with an opportunity for immediate relief rather than requiring him to pursue the habeas corpus route in cases where the incompetence of counsel is so egregious as to preclude an adequate

explanation and all matters pertaining to such issue are fully contained within the record of the trial." *Hill v. Commonwealth*, 8 Va. App. 60, 68 (1989). In 1990, the legislature repealed § 19.2-317.1. This restored *Walker* to good law which recognized "that there may be instances where the trial record is sufficient for a trial or appellate court to grant relief to the petitioner . . ." *Hill*, 8 Va. at 67 (citing *Walker*, 224 Va. at 571).

**1. The Court erred in allowing Christopher Contreras to represent Mr. Portillo Ortiz ineffectively during the course of the trial.**

In this case, error occurred when the Court allowed Mr. Contreras to ineffectively represent Mr. Portillo Ortiz over the course of the three-day trial despite numerous instances of poor representation. The trial transcripts show that Mr. Contreras's representation fell well below an objective standard of reasonableness and ultimately deprived Mr. Portillo Ortiz of his right to a fair trial. Due to Mr. Contreras's ineffective representation, it is likely that the jury's verdict was influenced by some or all of the errors made by Mr. Contreras while ineffectively representing Mr. Portillo Ortiz.

While Mr. Contreras was retained by Mr. Portillo Ortiz, the Standards of Practice for Indigent Defense Counsel, in addition to ABA Standards for Criminal Justice Discovery and Trial by Jury, serve as a guide to measure his conduct during the trial for ineffective assistance of counsel. If these are the standards that appointed counsel are held to, it is only logical that retained counsel's conduct should not fall below what is required of their appointed counterparts.

Considering these standards, it is clear that Mr. Contreras's representation was ineffective in the following ways: 1) Mr. Contreras failed to file a discovery motion; 2) Mr. Contreras failed respond to the Commonwealth's motion pursuant to § 19.2-268.3 in writing, obtain a complete ruling from the Court on the motion, or object to the testimony of the forensic interviewer; 3) Mr. Contreras failed to discuss with Mr. Portillo Ortiz, prior to trial, whether he wanted to be tried by

a judge or a jury; 4) Mr. Contreras stipulated to the admission of Commonwealth's Exhibits 2 and 3, which he then tried to discredit in closing argument; 5) Mr. Contreras failed to conduct a thorough cross-examination of the complaining witness; 6) Mr. Contreras failed to cite any case law or statutes in his two-sentence initial motion to strike and failed to re-raise the issue of inherent incredibility in the renewed motion to strike; 7) Mr. Contreras failed to properly advise witnesses of the Rule on Witnesses, and therefore elected not to call two of the five defense witnesses; 8) Mr. Contreras failed to appear at the June 24, 2022 sentencing hearing, even though he had not yet officially withdrawn from the case; 9) Mr. Contreras failed to provide a copy of his file to Mr. Portillo Ortiz's new counsel.

*1) Mr. Contreras failed to file a discovery motion.*

Mr. Contreras never filed a discovery motion to obtain any documents or evidence from the Commonwealth. There is neither a discovery order or a motion for discovery in the court file. The VIDC standards regarding discovery state that:

Counsel must pursue discovery procedures provided by the Constitution of the United States, the Code of Virginia, the Rules of the Supreme Court of Virginia, and any local practices of the court, and pursue such available informal discovery methods as soon as practicable unless there is a sound tactical reason for not doing so.

*VIDC Standards of Practice for Indigent Defense Counsel* Standard 4.2 Formal and Informal Discovery.

As a criminal defense attorney, Mr. Contreras knew or should have known that it was necessary and essential to file a discovery motion in order to get evidence in the case from the Commonwealth as soon as possible. His failure to file such a motion left providing discovery up to the discretion of the Commonwealth. His failure to perform such a basic and important task was in no way part of a sound trial strategy and certainly hindered the adversarial process of trial.

Although Mr. Contreras filed his own witness list, the Commonwealth was not required to file a witness list, and did not file one. Mr. Contreras was potentially guessing about what witnesses the Commonwealth would call to testify, which certainly could have impaired his ability to thoroughly prepare cross-examination. If Mr. Portillo Ortez had had any other lawyer, a discovery order would have been filed on his behalf, giving him the opportunity to adequately prepare his defense.

*2) Mr. Contreras failed to object to the Commonwealth motion to admit prior statements pursuant to Virginia Code Section 19.2-268.3.*

On March 21, 2022, the Commonwealth filed a pre-trial motion pursuant to Virginia Code Section 19.2-268.3 seeking to admit the complaining witness's hearsay statements made during a forensic interview at the Child Advocacy Center. Mr. Contreras never filed a written opposition to the motion. At the April 1, 2022 motion hearing before the Honorable Christie A. Leary, Mr. Contreras's opposition to the motion was that "we believe that the victim should have to testify and be present so that we can question and cross examine her, as it is my client's constitutional right to do so." (Tr. 4/1/22 at 45). He seemed only to object on the basis that the complaining witness should have to testify in addition to the forensic interviewer, not that the testimony of the forensic interviewer should be excluded as inadmissible hearsay or that it did not meet the statutory requirement of being inherently trustworthy.

When the issue was ultimately decided by the trial Court, the Court ruled only on the admissibility of the video recording of the interview, not whether the forensic interviewer could testify at all. Mr. Contreras did not ask the Court to rule on whether the forensic interviewer would be allowed to testify about the complaining witness's statements:

The Court: I don't think she can say – we'll have to take it as (inaudible) so no video. Are we ready to go to trial?

shall not, without the client's express authority . . . request or waive trial by jury . . . ." *VIDC Standards of Practice for Indigent Defense Counsel* Standard 1.0 The Lawyer-Client Relationship. Mr. Contreras's obvious failure to advise his client about whether to have a bench or jury trial speaks to a lack of preparation and trial strategy. If he had not discussed with his client whether to have a jury or bench trial, he likely had not considered the strategic implications of the decision, or at the very least, never discussed them with his client. If Mr. Contreras did not advise Mr. Portillo Ortez about whether he should have a jury or a bench trial, it leaves open the question of what other important decisions Mr. Contreras failed to talk to him about, such as having a judge or jury sentencing or whether he wanted to testify.<sup>2</sup>

4) *Mr. Contreras stipulated to the admission of Commonwealth's Exhibits 2 and 3 and then argued they were not authentic in closing argument.*

At trial, Commonwealth's Exhibits 2 and 3 were admitted as having been stipulated to by the defense. (Tr. 4/4/22 at 23). Commonwealth's Exhibits 2 and 3 were anatomical diagrams that they proffered were circled, in key areas, by the complaining witness during the forensic interview. There was a discrepancy between the testimony of B [REDACTED] and the forensic interviewer about who circled the relevant body parts on the diagrams. The forensic interviewer testified that B [REDACTED] drew circles on the diagrams showing where Mr. Portillo Ortez touched her, and showing what part of his body he used to touch her. (Tr. 4/5/22 at 30). B [REDACTED] testified that she did not draw the circles, the forensic interviewer did. (Tr. 4/4/22 at 147-48). Mr. Contreras mentioned this discrepancy in closing, but failed to argue the meaning of the inconsistencies. (Tr. 4/6/22 at 23-24).

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<sup>2</sup> It is unclear whether Mr. Contreras discussed with Mr. Portillo Ortez whether he wished to testify because the Court did not conduct a colloquy with M. Portillo Ortez about whether he wanted to testify.



Where B [REDACTED] was touched by Mr. Portillo Ortiz was an essential fact in this case, given the allegations of aggravated sexual battery. There was an obvious disadvantage to stipulating to the admissibility of evidence that corroborated the allegations, which Mr. Contreras should have recognized. *See VIDC Standards of Practice for Indigent Defense Counsel* Standard 7.4(B) Confronting the Prosecution's Case ("Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case."). The fact that B [REDACTED] was either mistaken or lying about who drew on the diagrams is relevant to her credibility. It is also possible that had Mr. Contreras not stipulated to their admissibility, the diagrams would not have been admitted as evidence to bolster B [REDACTED]'s testimony. There is no strategic benefit to stipulating to the admissibility of diagrams that corroborate the allegations, only to argue—albeit vaguely—in closing arguments that the authenticity of who labeled the diagrams was in dispute.

5) *Mr. Contreras failed to adequately cross-examine the complaining witness.*

Mr. Contreras asked B [REDACTED] only *sixteen questions* on cross-examination. His questioning of the most important witness in this case could not have lasted more than a few minutes and covers only a little more than two pages in the transcripts. (Tr. 4/4/22 at 149-51). He asked questions about the layout of the apartment, who was present during one of the incidents, and what time of year one of the incidents happened. *Id.* He asked one question about B [REDACTED]'s mother's boyfriend, but no follow-up questions. (Tr. 4/4/22 at 151). He did not address her other possible motives to lie, such as the family's immigration status, which was mentioned by other witnesses. (Tr. 4/5/22 at 85). He did not confront B [REDACTED] with any of the inconsistencies between her testimony on direct and the statements that she made during the forensic interview.

In a case where his client was charged with three sexual offenses, the mere number of questions that he asked is ineffective, without even addressing their meager contents. The

content of the questions demonstrates an obvious lack of strategy. He seemed to ask only about the circumstances surrounding the allegations, such as the apartment and who lived there, rather than the actual incidents with Mr. Portillo Ortez. He did not broach any of the topics that might have established that an alternative suspect or motive to lie. Overall, Mr. Contreras's cross-examination of B [REDACTED] was entirely devoid of the important facts of the case.

6) *Mr. Contreras failed to cite any case law or statutes in his two-sentence motion to strike.*

At the close of the Commonwealth's case, Mr. Contreras moved to strike the evidence.

His initial argument during the motion was exactly two sentences:

At this point the Defense would move to strike the evidence in this case. Commonwealth has not met their burden and established all of the elements necessary for the offenses which my client is being charged with. Specifically, we believe they have not established sufficient intent.

(Tr. 4/5/22 at 61). He did not cite any statutes. He did not cite any case law. He did not argue any specific facts that were presented by the Commonwealth. After the Commonwealth was given an opportunity to respond, his rebuttal argument was similarly lacking: "Your Honor, the motion should at least stand as it relates to the misdemeanor offense, there has not been enough evidence to demonstrate intent as to lascivious intent." (Tr. 4/5/22 at 61-62).

The Court made more argument on behalf of Mr. Portillo Ortez than Mr. Contreras did. The Court talked about the elements of one of the charges. (Tr. 4/5/22 at 63). The Court exchanged arguments with the Commonwealth about the inconsistencies between B [REDACTED]'s testimony at trial and the statements she made during the forensic interview. (Tr. 4/5/22 at 63). Finally, the Court cited the doctrine of inherent incredibility, and specifically *Willis v. Commonwealth*, 218 Va. 560 (1977), to support its ruling that the complaining witness's testimony regarding the misdemeanor charge was inherently incredible and insufficient to

establish the charge even at the initial motion to strike phase. (Tr. 4/5/22 at 64). The Court cited a statute, a legal doctrine, case law, and facts in evidence to support Mr. Contreras's motion to strike after he failed to do so.

The fact that the Court struck the misdemeanor charge based on the witness's inherent incredibility speaks to the harm that Mr. Contreras did by failing to effectively prepare and argue a thorough motion to strike. Defense counsel should always make a motion to strike, and support it with argument. *See VIDC Standards of Practice for Indigent Defense Counsel* Standard 7.4(G) Confronting the Prosecution's Case. There was ample room for argument regarding the complaining witness's credibility and inconsistencies, and Mr. Contreras wholly failed to recognize it during cross-examination and argue it during the initial motion to strike. Instead, his motion was several sentences devoid of law or facts and he never mentioned B [REDACTED]'s credibility at all.

While Mr. Contreras technically renewed his motion to strike the evidence at the close of the defense case, he again failed to cite any statutes, case law, or facts. His renewed motion to strike consisted of only a few sentences:

I would like to renew the motion to strike the evidence, Your Honor. I believe that the Commonwealth has not met their burden and established statutorily all of the elements have been met specifically as to intent once again. . . . Your Honor, the testimony that was provided was secondhand, came from the forensic interviewer. I understand that it is in the light most favorable to the Commonwealth, but I still do not believe that they have met their burden.

(Tr. 4/5/22 at 140-41).

Despite the fact that the Court clued Mr. Contreras into the relevant issue—inherent incredibility—during the initial motion to strike, Mr. Contreras still neglected to cite any case law or adequately argue the obvious legal issue. He even cited an incorrect, and lower, standard

of proof for the renewed motion to strike. Taken as a whole, Mr. Contreras's motions to strike demonstrate a complete lack of preparation, strategy, and diligence.

7) *Mr. Contreras failed to properly advise defense witnesses of the Rule on Witnesses, and then elected not to call two of them.*

Mr. Contreras intended to call five witnesses on behalf of Mr. Portillo Ortiz—he filed a witness list that included five names and all five appeared in court during the trial. It appears that Mr. Contreras failed to adequately instruct his client and witnesses about the Rule on Witnesses. See Virginia Code § 19.2-265.1. After the Commonwealth informed the Court that they had observed Mr. Portillo Ortiz speaking to one of the witnesses during a recess, Mr. Contreras told the Court that he had agreed, based on what the Commonwealth observed, not to call two of Mr. Portillo Ortiz's witnesses to testify. (Tr. 4/5/22 at 64). No one proffered what the conversation was about, or that it violated the Rule on Witnesses, but nevertheless, Mr. Contreras conceded that he would not call two of his five witnesses—almost half the defense case. Presumably, had Mr. Contreras adequately advised his client and witnesses not to discuss the case or their testimony, this interaction would not have necessitated the decision not to call two of the witnesses.

The implicit failure to advise defense witnesses about behavior in court does not comply with the Standards of Practice related to presenting a defense case which require that “[c]ounsel should prepare all witnesses for direct and possible cross-examination,” and “[c]ounsel should advise witnesses of suitable courtroom dress and demeanor.” See *VIDC Standards of Practice for Indigent Defense Counsel* Standard 7.5 Presenting the Defense Case. An effective attorney would not have allowed the lack of preparation of witnesses to impact his ability to present Mr. Portillo Ortiz's defense.

- 8) *Mr. Contreras failed to appear at the June 24, 2022 sentencing hearing, even though he was not yet officially withdrawn from the case.*

Mr. Contreras did not appear at the sentencing hearing on June 24, 2022, despite the fact that he was still counsel of record and Mr. Portillo Ortiz was, by that time, incarcerated. No motion to withdraw counsel was ever filed. Mr. Portillo Ortiz appeared without counsel and explained to the Court that he no longer wanted to work with Mr. Contreras, and did not have the funds to retain new counsel. (Tr. 6/24/22 at 5-6).

While this was an inconvenience to the Court, the Commonwealth, and the Commonwealth's sentencing witnesses, more importantly it was a dereliction of Mr. Contreras's duty to his client. The Standards of Practice require that counsel not only withdraw when they can no longer represent the client, but they have an obligation to keep the client informed of the progress in their case. *See VIDC Standards of Practice for Indigent Defense Counsel Standard 1.3(C) General Duties of Defense Counsel.* Even if Mr. Contreras intended to withdraw from the case and Mr. Portillo Ortiz desired that he do so, he should have appeared at the sentencing hearing to explain this to the Court and formally withdraw. Mr. Portillo Ortiz was left to advocate for himself at the hearing and request new counsel. The least that Mr. Contreras could have done for his now-former client was appear in court for a few minutes to withdraw from the case. His failure to appear at the final hearing in this case is an apt representation of the absence of effective representation throughout the course of the case.

- 9) *Mr. Contreras failed to provide a copy of his file to Mr. Portillo Ortiz's new counsel, despite numerous requests.*

After the Office of the Public Defender was appointed to represent Mr. Portillo Ortiz at sentencing and in filing post-trial motions, new counsel began efforts to get a copy of Mr. Contreras's file. On a phone call in early July 2022, Mr. Contreras told new counsel that Mr.

Portillo Ortiz's file was in his storage facility, and he would have to retrieve it. New counsel sent Mr. Contreras several follow-up emails requesting a copy of the file. Mr. Contreras never responded or sent a copy of the file.

Without the ability to know what kind of information or discovery Mr. Contreras actually had, particularly given that he never filed a discovery order, new counsel began investigating the case anew. New defense counsel informally obtained discovery from the Commonwealth Attorney, used an investigator to interview multiple witnesses, and began the process of gathering mitigation information for sentencing. Although it is unknown what efforts Mr. Contreras originally undertook to investigate the case and prepare for sentencing, if any, these efforts might not need to have been duplicated had Mr. Contreras been diligent in providing his file to new counsel.

#### CONCLUSION

It is clear that Mr. Contreras provided ineffective assistance of counsel throughout the entirety of the trial. His blatant errors span the entire course of the case, from the failure to file a discovery order to his failure to appear at sentencing and provide a copy of the file to new counsel. There can be no assurances made that any one instance of misconduct, let alone all of them, did not affect the jury.

Mr. Contreras's conduct throughout the trial meets both prongs of the test set out in *Srickland*. His decisions were clearly not sound trial strategy. They reflect a lack of communication with his client and defense witnesses, and a lack of preparation for pre-trial motions and cross-examination of witnesses. Further, there is a reasonable probability that, but for Mr. Contreras's errors, the result in this case would have been different. Many errors relate to the heart of the Commonwealth's case: the failure to properly challenge the credibility of the

testimony of the Commonwealth's primary witness. The Commonwealth's case rested entirely on B [REDACTED]'s statements. Without properly challenging her credibility through effective pre-trial advocacy during the § 19.2-268.3 motion, effective cross-examination, and effective argument during closing, the jury was left with essentially unchallenged testimony from B [REDACTED]. Because of Mr. Contreras's failures and the prejudice created by them, justice can only be achieved by setting aside the jury verdict and giving Mr. Portillo Ortez a new trial.

WHEREFORE, Mr. Portillo Ortez respectfully requests this Court vacate his conviction for the aforementioned reasons, as well as those that counsel may raise during the hearing.

Respectfully submitted,

**CARLOS ALBERTO PORTILLO ORTEZ**  
By Counsel

THE OFFICE OF THE PUBLIC DEFENDER

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Certificate of Service

I, Gretchen Schumaker, hereby certify that on this 18th day of November, 2022, a true copy of the foregoing Notice was hand-delivered to the Office of the Commonwealth's Attorney, 4110 Chain Bridge Road, Fairfax, Virginia.

*Gretchen Schumaker*  
Gretchen Schumaker  
Assistant Public Defender

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED  
CRIMINAL

COMMONWEALTH OF VIRGINIA

Case No.: FE-2021-705, -706 2022 NOV 18 P 2:16

vs.

CARLOS ALBERTO PORTILLO ORTEZ,  
Defendant.

JOHN T. FREY  
CLERK-CIRCUIT COURT  
FAIRFAX VA  
Sentencing: December 16, 2022

**NOTICE AND MOTION TO SET ASIDE THE VERDICT  
FOR INSUFFICIENT EVIDENCE**

COMES NOW the defendant, Carlos Alberto Portillo Ortez, by counsel, Gretchen Schumaker, and respectfully moves this Honorable Court, pursuant to Virginia Supreme Court Rule 3A:15, to set aside the verdict of convictions on Count I of the Indictment in each of the above-referenced cases on the grounds that the evidence was insufficient as a matter of law to sustain the jury's verdict.

PLEASE TAKE NOTICE that on Friday, December 16, 2022, at 10:00 a.m., before the Honorable Robert J. Smith, Mr. Portillo Ortez will move this Honorable Court to set aside the verdict of convictions in this case. In support of the Motion, counsel states the following:

**STATEMENT OF FACTS**

Carlos Alberto Portillo Ortez was charged with two counts of aggravated sexual battery and one count of penetration of the mouth of a child with lascivious intent. The allegations were made by Mr. Portillo Ortez's partner's niece, E [REDACTED] I [REDACTED] C [REDACTED], who lived with Mr. Portillo Ortez and his family between 2019 and 2021, except for a few months during 2020. (Tr. 4/4/22 at 100-101).

At trial on April 4 and 5, 2022, E [REDACTED] testified about three interactions with Mr. Portillo Ortez that formed the basis of the charges: an allegation of touching her vagina in the kitchen, a later allegation of touching her vagina in the living room, and an allegation of kissing. First,



B [REDACTED] testified about an incident with Mr. Portillo Ortiz in the kitchen of their apartment. She testified that she did not remember how old she was, but it might have happened the year before, meaning sometime in 2021. (Tr. 4/4/22 at 136-37). She testified that Mr. Portillo Ortiz was already in the kitchen when she went to heat up a yogurt for her sister. (Tr. 4/4/22 at 133). She said that Mr. Portillo Ortiz was standing behind her and touched her vagina on top of her clothes, but immediately also testified that he sometimes touched her under her clothes. (Tr. 4/4/22 at 131). She testified that Mr. Portillo Ortiz, on that occasion only, touched her chest. (Tr. 4/4/22 at 132).

The Commonwealth called Carla Claudio Silva to testify about a forensic interview that she conducted with B [REDACTED] on June 11, 2021. (Tr. 4/5/22 at 16). She testified that during the interview, B [REDACTED] told her that on one occasion in the kitchen, Mr. Portillo Ortiz touched her vagina over her clothes. (Tr. 4/5/22 at 26). She did not testify that B [REDACTED] told her that Mr. Portillo Ortiz touched her chest during that encounter.

B [REDACTED] also testified about a separate incident when Mr. Portillo Ortiz touched her while they were sitting on the couch in the living room of the apartment. She testified that it happened when she was 11 years old. (Tr. 4/4/22 at 143). She testified that Mr. Portillo Ortiz was sitting next to her on the couch and reached under the blanket and touched her vagina. (Tr. 4/4/22 at 139-40). She did not remember if Mr. Portillo Ortiz touched her over or under her clothes. (Tr. 4/4/22 at 140). She testified that she did not remember how the touching stopped. (Tr. 4/4/22 at 141).

In contrast, the forensic interviewer testified that B [REDACTED] told her that Mr. Portillo Ortiz touched her breast over her clothes while they were on the couch. (Tr. 4/5/22 at 20-21). She further testified that B [REDACTED] told her that Mr. Portillo Ortiz touched her over her underwear but

under her shorts. (Tr. 4/5/22 at 22). She testified that B ■■■ told her the touching stopped when she got up to go to the kitchen. (Tr. 4/5/22 at 21).

Finally, B ■■■ testified that she did not remember how many times Mr. Portillo Ortez kissed her or how old she was when it happened. (Tr. 4/4/22 at 144-45). She remembered that Mr. Portillo Ortez's hands were on her face, but did not remember if his mouth was open or closed or whether she felt anything inside her mouth. (Tr. 4/4/22 at 145). The forensic interviewer testified that B ■■■ told her that, confusingly, Mr. Portillo Ortez kissed her whenever he touched her, but also not as often as he touched her. (Tr. 4/5/22 at 27-28). She testified that B ■■■ said that Mr. Portillo Ortez put his tongue on her tongue and moved it around whenever he would kiss her. (Tr. 4/5/22 at 28).

At the close of the Commonwealth's case, Mr. Portillo Ortez's defense counsel moved to strike all of the charges. (Tr. 4/5/22 at 56). While he did not argue that B ■■■'s testimony was inherently incredible, the Court nevertheless struck the misdemeanor kissing charge on that basis. (Tr. 4/5/22 at 64).

#### STANDARD OF REVIEW

When challenging the sufficiency of the evidence, an appellate court "will only reverse the judgment of the trial court if the judgment is plainly wrong or without evidence to support it." *Burton v. Commonwealth*, 281 Va. 622, 626 (2011). "[T]he relevant question is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Kelly v. Commonwealth*, 41 Va. App. 250, 257 (2003).

## ARGUMENT

- I. **The evidence was insufficient to prove either charge of aggravated sexual battery beyond a reasonable doubt because E█████'s testimony was inherently incredible.**

Count I of the Indictment in case number FE-2021-705 alleged that Mr. Portillo Ortiz, between the 1st day of April, 2020, and the 3rd day of March, 2021, did unlawfully and feloniously sexually abuse B█████, a child under the age of thirteen, by intentionally touching her intimate parts or the material covering such intimate parts. Count I of the Indictment in case number FE-2021-706 alleged the same offense, but that it specifically happened on the 31st of May, 2021.

The Commonwealth's case rested entirely on B█████'s statements. There was no physical evidence presented. There were no witnesses who saw these alleged offenses, even though many people lived in the apartment, and by B█████'s own testimony, were present during both incidents. (Tr. 4/4/22 at 127, 138). B█████'s testimony at trial about the earliest allegation of sexual abuse lacked detail and was inconsistent with what the forensic interviewer testified B█████ disclosed in the June 2021 interview. B█████'s testimony was inconsistent about whether Mr. Portillo Ortiz touched her over or under her clothes, and she did not know how old she was when it happened. B█████'s testimony about the second allegation of sexual abuse was similarly inconsistent and lacking in detail. The forensic interviewer testified that B█████ told her details about how the touching started and what caused it to stop. At trial, B█████ could not remember any of those details. She also could not remember whether Mr. Portillo Ortiz touched her over or under her underwear, an important detail that she had previously relayed to the forensic interviewer.

Uncorroborated testimony by a complainant can provide proof beyond a reasonable doubt, if such testimony is credible. *Barker v. Commonwealth*, 198 Va. 500, 503 (1956).

However, the Virginia Supreme Court has “consistently refused to approve a conviction where such testimony is contrary to human experience and is inherently incredible.” *Id.*; see *Vance v. Commonwealth*, 155 Va. 1028 (1930) (reversing conviction for rape due to complainant’s uncorroborated testimony, in part because there were adult witnesses to the alleged rape who did not intervene or testify at trial); *Day v. Commonwealth*, 187 Va. 457 (1948) (reversing conviction for attempted rape where the complainant’s uncorroborated testimony was incredible as she was composed and collected shortly after the incident); *Addington v. Commonwealth*, 161 Va. 975 (1933) (reversing a conviction for rape because complainant returned to the home of the defendant after the alleged incident, had dinner with his family, and accused another man of raping her before the defendant). The Virginia Supreme Court has found that evidence is inherently incredible when it is “so contrary to human experience or to usual human behavior as to render it unworthy of belief.” *Willis v. Commonwealth*, 218 Va. 560, 563 (1977).

The law on inherent incredibility often involves child sexual assault cases. It is a reflection that juries have difficulty assessing the credibility of a child and find it difficult to believe that a child would lie about being sexually assaulted. But the appellate courts recognize that children do lie and have overturned convictions in cases that involved repeated inconsistencies and contradictions, where the testimony is so contrary to human experience as to render it unworthy of belief. A single discrepancy or lack of recollection is not enough to overcome the longstanding rule that witness credibility is solely in the purview of the factfinder who observes and hears the witness testify. See *Schneider v. Commonwealth*, 230 Va. 379, 382 (1985); *Cardwell v. Commonwealth*, 209 Va. 412, 414 (1968). However, repeated inconsistencies and contradictions can render uncorroborated testimony incredible. *Willis*, 218 Va. at 563.

Here, the inconsistencies and lack of detail in E [REDACTED]'s testimony demonstrate that she was inherently incredible and that no rational trier of fact could have found that her testimony credibly established the elements of aggravated sexual battery. Her statements were wholly uncorroborated. There were no witnesses to the alleged incident, despite the fact that many people lived in the apartment. There was no confession by Mr. Portillo Ortez. Despite the fact that one of the alleged incidents occurred only a day before E [REDACTED] reported it to her mother (Tr. 4/4/22 at 110), no physical evidence was admitted at trial to corroborate her statements.

The Court's citation to *Willis* in striking the misdemeanor charge, (Tr. 4/5/22 at 64), was apt. While the Court did not reference specific facts in finding that E [REDACTED] was inherently incredible about the kissing charge, her testimony about that charge was just like the rest of the trial—lacking in detail and inconsistent with her statements during the forensic interview. For example, E [REDACTED] testified that she did not remember how many times Mr. Portillo Ortez kissed her. (Tr. 4/4/22 at 144). She did not remember how old she was when it happened, or if she felt anything inside her mouth when it happened. (Tr. 4/4/22 at 144-46). The forensic interviewer, by contrast, testified that E [REDACTED] told her that Mr. Portillo Ortez kissed her whenever he touched her and that he put his tongue in her mouth and moved it around. (Tr. 4/5/22 at 27-29). These are the same kind of inconsistencies as whether Mr. Portillo Ortez touched E [REDACTED] over or under her clothes, and what caused the touching to stop—the kind of inconsistencies that plagued her testimony about the aggravated sexual batteries.

In *Willis*, the Virginia Supreme Court found a complainant's testimony inherently incredible because it was uncorroborated and "replete with contradictions and inconsistencies." 218 Va. at 563. The adult complainant claimed that two men raped her in her home. *Id.* at 562. However, the complainant testified inconsistently as to which defendant raped her first, whether

she struggled with the defendants before and/or after the assault, and whether her clothes were on or off before the rape. *Id.*

Here, like in *Willis*, B■■■■'s statements at trial and in the forensic interview were completely inconsistent. She was inconsistent about whether Mr. Portillo Ortez touched her over or under her clothes, and whether he touched her breast during the same incident. She also could not remember many details, such as how old she was when it happened, or even any context clues about when it might have happened—such as the season. (Tr. 4/4/22 at 137). For some details, like what caused the touching on the couch to stop, she seemed to have remembered them during the forensic interview, but was then unable to recall the same facts at trial.

Unlike in *Willis*, there are cases where a complaining witness's testimony has been found sufficient to establish sexual abuse charges. In *Diaz v. Commonwealth*, 2022 Va. App. LEXIS 158, Diaz was convicted of aggravated sexual battery. His granddaughter, E.Z., testified that several years prior, Diaz came into her bedroom, smelling like alcohol, and locked the door. *Id.* at \*2. She testified that Diaz touched her inner thigh with both hands over her clothes, squeezed her right breast over her clothes, and then left the bedroom. *Id.* On appeal, Diaz argued that E.Z.'s testimony was inherently incredible because she was inconsistent about small details, like whether she was sitting on a bed or on a pallet with blankets, and whether she was using a tablet or a phone when Diaz came into the room. *Id.* at \*11. The Court of Appeals held that E.Z.'s testimony was not inherently incredible because she was always consistent about the key details of abuse—specifically Diaz's actions when he came into the room, locked the door, smelled like alcohol, and touched her upper thighs and breast over her clothes. *Id.* The Court of Appeals further held that her testimony was corroborated by the statements that she made to family members and Child Protective Services. *Id.* at \*12. The Court of Appeals noted that the circuit

court had an opportunity to evaluate E.Z.'s credibility and "concluded E.Z. was a credible witness." *Id.* at \*14.

While unpublished, *Diaz* is a helpful comparison. Here, unlike in *Diaz*, the inconsistencies in B [REDACTED]'s testimony were about the key details—what Mr. Portillo Ortiz did and where he touched her, like whether he touched her breast and whether he touched her over or under her clothes. The inconsistencies go to the heart of the allegations and are not about collateral details like in *Diaz*. Further, unlike in *Diaz*, her testimony was not corroborated by statements made to the forensic interviewer or her mother, but rather her testimony at trial was contradicted by her earlier statements. While the circuit court in *Diaz* specifically found that E.Z. was a credible witness, the exact opposite happened in this case—this Court found that B [REDACTED] was inherently incredible about the misdemeanor kissing charge. For that charge, her testimony at trial was similarly inconsistent with her statements in the forensic interview, and contradictory about when the kissing happened and what Mr. Portillo Ortiz actually did. This Court's conclusion about the complaining witness's credibility is the exact opposite of that in *Diaz*. This Court recognized the incredibility of her testimony when it found that the evidence was insufficient, even at the initial motion to strike phase, and struck the misdemeanor charge.

**II. The Court rendered impermissibly inconsistent verdicts when it struck the misdemeanor charge based on inherent incredibility but denied the motion as to the remaining charges because all of the charges relied on the same evidence, which the Court found inherently incredible.**

The Court found that B [REDACTED] was inherently incredible when it struck the misdemeanor charge. That finding necessarily applies to the remainder of the charges. It strains reason that Brainy would have been inherently incredible about one charge but not the other two, when all of the charges were based on B [REDACTED]'s statements and involved the same lack of detail and inconsistencies. In cases where multiple charges depend on the testimony of a single witness that

is alleged to be inherently incredible, courts consistently treat all of the charges the same—finding that a witness is either inherently incredible about all of the charges or credible about all of them. *See, e.g., Hammer v. Commonwealth*, 74 Va. App. 225 (2022) (trial court did not err in refusing to find witness inherently incredible after Hammer argued to set aside three charges of abduction, eluding, and driving after being declared a habitual offender); *Lambert v. Commonwealth*, 70 Va. App. 740 (2019) (finding witness testimony not inherently incredible, even without forensic corroboration, to support convictions of possession of a controlled substance with intent to distribute, manufacturing a controlled substance, possession of a firearm while possessing a controlled substance, three counts of receiving money from prostitution, and three counts of sex trafficking); *Ashby v. Commonwealth*, 33 Va. App. 540 (2000) (finding witness not inherently incredible and evidence sufficient to support convictions of carnal knowledge of a minor and two counts of attempted carnal knowledge of a minor). Courts do not distinguish between charges where a witness is inherently incredible and charges where they are not—multiple charges that hinge on the testimony of the same witness are treated as a whole in credibility determinations.

When the Court granted the motion to strike on the misdemeanor charge it ruled on the merits and found that B [REDACTED] was inherently incredible. Striking a charge is a judgment of acquittal that is final. *McBride v. Commonwealth*, 2022 Va. App. LEXIS 479 at \*16, \*21. When the Court dismissed the misdemeanor charge but denied the motion to strike on the felony charges, it essentially rendered inconsistent verdicts, which is reversible error. *See Akers v. Commonwealth*, 31 Va. App. 521, 524 (2000) (dismissing firearm charge where judge inconsistently found Akers guilty of *unlawful* wounding and use of a firearm to *maliciously* wound). “Verdicts or convictions are inconsistent when the essential elements in the count



wherein the accused is acquitted are identical and necessary to proof of conviction on the guilt count.” *Wandenberg v. Commonwealth*, 70 Va. App. 124, 139 (2019). Unlike inconsistent jury verdicts, inconsistent verdicts from judges are not supported by the possible rationales of lenity, mistake, or compromise. *Id.* at 531. When a judge renders inconsistent verdicts without explanation, “there is a danger that the defendant was not proved guilty beyond a reasonable doubt.” *Id.* at 532 (quoting *Haynesworth v. United States*, 473 A.2d 366, 372 (D.C. Court of Appeals 1984)).

This Court rejected the only evidence that would support the convictions—B■■■■’s testimony. *Cf. Meade v. Commonwealth*, 74 Va. App. 796 (2022) (verdicts acquitting of attempted murder and attempted malicious wounding but convicting of shooting at an occupied building not inconsistent because of different intent requirements). The essential element that is the same between all of the charges is B■■■■’s credibility. Her credibility was necessary to prove all of the charges—the only evidence that the Commonwealth had to support these charges was her statements, both in court and in the forensic interview. The Court rejected her testimony as inherently incredible when it dismissed the misdemeanor charge. That leaves the Commonwealth without any credible evidence to support the two remaining charges. Accordingly, the Court rendered inconsistent verdicts between the acquittal on the misdemeanor charge and the failure to strike the felony charges.

#### CONCLUSION

B■■■■’s testimony was inherently incredible such that it was unworthy of belief. Her statements about the key facts for these charges—particularly how and when Mr. Portillo Ortiz touched her, lacked detail, and were inconsistent between the trial and forensic interview. The Court recognized her inherent incredibility when it struck the misdemeanor charge on that basis.

Allowing the felony charges to proceed past the motion to strike after dismissing the misdemeanor charge was an inconsistent verdict that cannot stand.

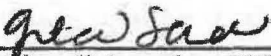
WHEREFORE, Mr. Portillo Ortiz respectfully requests this Court vacate his convictions for the aforementioned reasons, as well as those that counsel may raise during the hearing.

Respectfully submitted,

**CARLOS ALBERTO PORTILLO ORTEZ**  
By Counsel


THE OFFICE OF THE PUBLIC DEFENDER

By:

  
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**Certificate of Service**

I, Gretchen Schumaker, hereby certify that on this 18th day of November, 2022, a true copy of the foregoing Notice was hand-delivered to the Office of the Commonwealth's Attorney, 4110 Chain Bridge Road, Fairfax, Virginia.

  
\_\_\_\_\_  
Gretchen Schumaker  
Assistant Public Defender

VIRGINIA:  
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

vs.

CARLOS ALBERTO PORTILLO ORTEZ,  
Defendant.

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Case No.: FE-2021-705, -706

Sentencing: December 16, 2022

ORDER

THIS CAUSE came before the Court on motion of the Defendant, by counsel, Gretchen Schumaker, for a new trial; and it is hereby

ORDERED that the Motion for a New Trial is granted :

ENTERED this 16 day of Dec, 2022.

[Signature]  
JUDGE

1/2/23  
C