

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

David Brooks Hundley
Attorney at Law

VSB Docket No. 19-010-114365

CONSENT TO REVOCATION ORDER

On August 5, 2020, came David Brooks Hundley (“Respondent”) and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth. By tendering his Affidavit Declaring Consent to Revocation at a time when allegations of Misconduct are pending, the nature of which are specifically set forth in the attached Affidavit and Certification, Respondent acknowledges that that the material facts upon which the allegations of Misconduct are pending are true.

The Board having considered the Affidavit, and Bar Counsel having no objection, the Board accepts Respondent’s Consent to Revocation.

Upon consideration whereof, it is therefore ordered that David Brooks Hundley’s license to practice law in the courts of this Commonwealth be and the same hereby is revoked, and that the name of David Brooks Hundley be stricken from the Roll of Attorneys of this Commonwealth.

Entered this 6th day of August, 2020

Virginia State Bar Disciplinary Board

By Yvonne S. Gibney Digitally signed by Yvonne S. Gibney
Date: 2020.08.06 10:12:40 -04'00'
Yvonne S. Gibney
Chair



VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DAVID BROOKS HUNDLEY

VS B Docket No. 19-010-114365

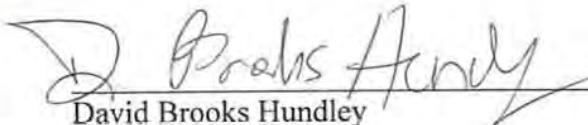
AFFIDAVIT DECLARING CONSENT TO REVOCATION

David Brooks Hundley, after being duly sworn, states as follows:

1. He was licensed to practice law in the Commonwealth of Virginia on October 14, 1999;
2. He submits this Affidavit Declaring Consent to Revocation pursuant to Part 6, Section IV, Paragraph 13-28 of the Rules of Court;
3. His consent to revocation is freely and voluntarily rendered, that he is not being subjected to coercion or duress, and that he is fully aware of the implications of consenting to the revocation of his license to practice law in the Commonwealth of Virginia;
4. He is aware that there is currently pending a Proceeding involving allegations of Misconduct, the docket number for which is referenced above and the specific nature of which is set out in the Subcommittee Determination (Certification), a copy of which is attached hereto and incorporated herein;
5. He acknowledges that the material facts upon which the allegations of Misconduct are predicated are true except those related to Rule 3.3(a)(1) and (c) and those set out in paragraph 40(i)-(v) of the Certification, to which he has explanations and defenses;
6. He submits this Affidavit and consents to the revocation of his license to practice law in the Commonwealth of Virginia because he knows that if Proceedings based on the said alleged Misconduct were prosecuted to a conclusion, he could not successfully defend them,


except as to the fact allegations related to the Rule 3.3(a)(1) and (c) charge and those set out in paragraph 40 (i) – (v) of the Subcommittee Determination (Certification), to which he has explanations and defenses.

Executed on July 23, 2020

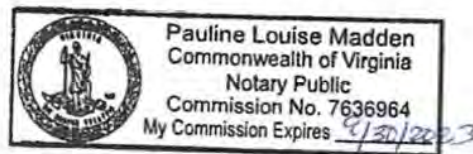

David Brooks Hundley
Respondent

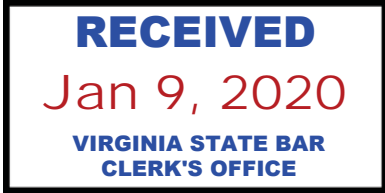
COMMONWEALTH OF VIRGINIA
~~CITY~~/COUNTY OF Henrico, to wit:

The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to before me by David Brooks Hundley on July 23, 2020.


Notary Public Comm # 7636964

My Commission expires: 9/30/2023.





VIRGINIA:

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

**IN THE MATTER OF
DAVID BROOKS HUNDLEY**

**VS. B Docket Nos. 19-010-114365
19-010-115228**

**SUBCOMMITTEE DETERMINATION
(CERTIFICATION)**

On December 16, 2019, a meeting in this matter was held before a duly convened Second District, Section II Subcommittee consisting of Steven F. Shames, Chair Presiding, Veronica E. Meade, Member, and Everett C. Harris, Lay Member. Pursuant to Part 6, § IV, ¶ 13-15.B.3 of the Rules of the Supreme Court of Virginia, the Second District Subcommittee of the Virginia State Bar hereby serves upon David Brooks Hundley ("Respondent") the following Certification:

I. ALLEGATIONS OF FACT

1. At all times relevant hereto, Respondent was: i) an attorney licensed to practice law in the Commonwealth of Virginia; and ii) a partner and director at Hundley & Johnson, P.C. with signatory authority on the firm's trust account at Bank of America titled in the name of James D Hundley PC (Account No. xxxx xxxx 4234) ("Trust Account").

VS. B Docket Number 19-010-114365
Complainant: Dorothy Curling

2. In the spring of 2012, the complainant, Dorothy Curling (formerly Dorothy Curling-Poyner) ("Ms. Curling"), hired Respondent's firm to represent her in pursuing a medical malpractice claim arising from a missed cancer diagnosis.

3. Respondent accepted and handled the representation of Ms. Curling.

4. Although it was a contingent fee arrangement, Respondent never presented Ms. Curling with a written representation agreement.

5. In early 2013, Respondent informed Ms. Curling that he had consulted with multiple experts who recommended pursuing a claim against Dr. Domingo C. Tan ("Dr. Tan"), a Chesapeake radiologist who had treated Ms. Curling in 2011 and failed to identify the presence of cancer that was later discovered in her shoulder and chest area. In an email to Ms. Curling

dated February 18, 2013, Respondent opined that "I feel like we have a strong case versus the radiologist and will prevail against him."

6. On March 25, 2013, Respondent filed a Complaint on behalf of Ms. Curling in the Chesapeake Circuit Court ("Court") requesting a \$2,000,000.00 judgment naming Dr. Tan as the sole defendant on the basis of his alleged medical malpractice in failing to identify the presence of cancer on certain diagnostic studies he interpreted on March 28, 2011 (*Dorothy Curling-Poyner v. Domingo C. Tan, M.D.* (Case No. CL13-772)).

7. Respondent did not request that Dr. Tan be served with process. In fact, in his cover letter transmitting the Complaint to the Court for filing, he specifically stated "[w]e are not requesting service at this time." Respondent did not send a copy of the Complaint to Dr. Tan nor otherwise notify him of the filing of the Complaint.

8. Respondent never: i) obtained a written opinion from a qualified expert that Dr. Tan had deviated from the applicable standard of care and that deviation was a proximate cause of Ms. Curling's injuries¹; ii) explained to Ms. Curling the need for obtaining that requisite expert opinion; or iii) requested service of process upon Dr. Tan.

Scheme to Deceive Ms. Curling
and
Obtain Entry of a Default Judgment Under False Pretenses

9. Notwithstanding his failures to obtain the requisite expert opinion and to have Dr. Tan served with process, Respondent deliberately deceived Ms. Curling into believing he had pursued her case by falsely informing her, *inter alia*, he had: i) obtained the requisite expert opinion; ii) retained an expert on her behalf; iii) notified Dr. Tan and a hospital where Dr. Tan had privileges of the filing of the Complaint; iv) requested Dr. Tan be served with process; v) successfully had Dr. Tan served²; and v) scheduled a trial for January 2014.

10. In furtherance of his effort to falsely convince Ms. Curling he had made attempts to have Dr. Tan served with process, Respondent fabricated and provided Ms. Curling with, *inter alia*, a letter to the Clerk of the Court dated April 5, 2013 requesting service on Dr. Tan. Respondent never actually sent the letter to the Court.

11. Knowing he had made no effort to have Dr. Tan served, Respondent, shortly prior to the supposed trial in January 2014, told Ms. Curling that she would not be able to proceed with her scheduled trial because he had been unable to confirm whether Dr. Tan had been served. Respondent falsely blamed the lack of service on the Clerk of the Court.

¹ Such a written opinion must be obtained before requesting service of process upon a defendant in a medical malpractice action. Va. Code §8.01-20.1.

² Respondent further falsely informed Ms. Curling that Dr. Tan had legal counsel who had requested a bill of particulars and extension to file a response, that he had granted the extension, and that a judge had taken the request for a bill of particulars "under advisement" which Respondent characterized as "[h]e basically denied it without ruling."

12. Despite knowing Dr. Tan had not been served with process, Respondent filed a motion for default judgment with the Court on February 3, 2014, on the basis of Dr. Tan's "failure to appear or file any pleadings as required by law and the rules of this Court." Respondent did not send a copy of the motion for default judgment to Dr. Tan.

13. Respondent never noticed the motion for default judgment for hearing or secured entry of a default judgment order.

14. In an effort to deceive Ms. Curling into believing he was pursuing a default judgment, Respondent told her he had checked with the Court several times regarding the status of the motion and entry of a default judgment and was informed the Court was "working on it," that he had filed a motion seeking a status update, and then, on May 30, 2014, that a default judgment order had been entered that day, all of which was false.

15. Despite knowing Dr. Tan had never been served with process and no default judgment had been granted, Respondent:

- Filed notices with the Court in June, September and November 2014 of the scheduling of a hearing for entry of a monetary judgment against Dr. Tan in favor of Ms. Curling³; and
- Proceeded with the damages hearing on December 3, 2014, before The Honorable F.B. Lowe ("Judge Lowe") sitting as a substitute judge in the Court, at which Dr. Tan did not appear either personally or by counsel. Respondent did not disclose to Judge Lowe that Dr. Tan had not been served, and, according to Ms. Curling, represented to Judge Lowe that Dr. Tan had been served, following which evidence of Ms. Curling's damages was introduced. Respondent claims he submitted photographs of Ms. Curling, medical records and a medical bill summary, but the Court's file contains only photographs of Ms. Curling and no medical records or bills or any other exhibits. According to Respondent and Ms. Curling, at the conclusion of the hearing, Judge Lowe announced judgment against Dr. Tan for \$2,000,000.00.

16. Respondent subsequently provided Ms. Curling with what he told her was a Final Judgment Order awarding a \$2,000,000.00 monetary award against Dr. Tan bearing an entry date of 12/17/14 and the purported signature of Judge Lowe. Respondent admits preparing the Final Judgment Order and insists he sent it to Judge Lowe for entry and received an entered copy back from the Court.

³ Respondent told Ms. Curling he had sent the hearing notices to Dr. Tan. He also told the bar during its investigation that he sent the hearing notices to Dr. Tan, and as proof, provided to the bar versions of the hearing notices that include a second page containing a certificate of service. However, those versions of the hearing notices are unsigned, and, moreover, the notices actually filed with the Court are one page and do not contain a certification that a copy had been mailed to Dr. Tan, who never received any of the hearing notices nor had any knowledge of the lawsuit until 2018.

17. The Final Judgment Order falsely states that the Court had awarded a default judgment on June 4, 2014.⁴

18. Judge Lowe does not specifically recall conducting a hearing on December 3, 2014, and, based on the absence of any medical bills or evidence in the Court's file and the Court's docket entry indicating the matter was continued generally on that date, does not believe he granted a monetary award, but rather continued the matter.

19. Judge Lowe does not believe he entered the Final Judgment Order for a number of reasons, including: i) the unlikelihood that he would have granted such a large monetary award without damages evidence; ii) the 12/17/14 entry date is not in his handwriting; iii) he was not in the Court on December 17, 2014; and iv) the authenticity of his signature is questionable and may have been cut and pasted.

20. Additional evidence establishing the Final Judgment Order is not authentic includes that: i) neither it nor the Respondent's letter dated December 4, 2014 purportedly sending it to Judge Lowe for entry are in the Court's file; ii) the copy Respondent provided to Ms. Curling is not file-stamped or a copy teste; and iii) Respondent never made any attempt to enforce it and instead, beginning in June 2015, issued payments to Ms. Curling exceeding \$400,000 from the Trust Account and his own personal bank account under the guise they were proceeds from payments received towards the judgment.

In addition, because Dr. Tan had never been served and the Final Judgment Order was never filed with the Clerk of the Court, on July 1, 2015, the Clerk of the Court issued a Notice of Dismissal-No Service In One Year to Respondent notifying him that Ms. Curling's case would be dismissed on the basis Dr. Tan had not been served within one year of the filing of the Complaint (as required by §8.01-275.1 of the Code of Virginia and Rule 3:5(e) of the Rules of Court), unless Ms. Curling appeared on August 4, 2015 and showed that she had exercised due diligence to obtain service on Dr. Tan. Respondent did not notify Ms. Curling of the issuance of that notice nor respond to it or appear in the Court on August 4, 2015. Accordingly, on August 5, 2015, Ms. Curling's case was dismissed with prejudice on the basis that Dr. Tan had not been served within a year of the filing of the Complaint and Ms. Curling had not shown she had made a good faith effort to have him served. Respondent stated in his answer to this bar complaint that he did not oppose the dismissal because he did not receive the dismissal notice or know about the dismissal until 2018. That statement is false. First, the Notice of Dismissal-No Service In One Year issued on July 1, 2015 indicates that a copy was sent to Respondent. Second, Ms. Curling discussed the dismissal with Respondent in August 2015 (and in the following months and years) after she discovered it by going onto the Court's information website and seeing it noted in her case. Respondent falsely assured her that information was erroneous and that she had obtained a judgment in December 2014.

21. Based on what Respondent represented to her, Ms. Curling believed Respondent had obtained a valid judgment on her behalf. When Respondent did not promptly disburse any monies from the supposed judgment to her, she began questioning him about the delays and when she would receive her share of the proceeds. Rather than admit his failure to obtain

⁴ Respondent also told the bar's investigator that default judgment was awarded following a hearing in June 2014.

service, obtain entry of a valid judgment, or to otherwise pursue her case, Respondent instead, beginning in December 2014 and continuing over the course of the following almost four years, engaged in an elaborate ruse to deceive Ms. Curling into continuing to believe he had obtained a valid judgment by: i) sending her sporadic payments - primarily from the Trust Account - which he falsely represented to Ms. Curling were proceeds from the judgment; and ii) telling her a multitude of lies as to the efforts he was making to collect the judgment and the reasons for the delays in payment, including that:

- He was pursuing payment from Dr. Tan and his medical malpractice insurance carrier;
- Dr. Tan's medical malpractice insurer and the legal malpractice insurer for Dr. Tan's attorney ("Insurers") were disputing which was responsible for paying the judgment;
- He had filed debtor's interrogatories which would be conducted under the supervision of a commissioner who was also overseeing the dispute between the Insurers regarding responsibility for payment of the judgment;
- The Insurers had told him they had mailed him two checks and when the checks were not received, he notified the commissioner and planned to file a "Motion for Sanctions" because he was "tired of the BS";
- He had filed a sanctions motion and discussed it with the commissioner who ordered the Insurers to wire funds to Respondent and sanctioned the Insurers \$100/day for not wiring the funds, and the Insurers had appealed the sanctions order;
- He had garnished Dr. Tan's wages and discovered a retirement account in his name which he was attempting to levy, following which he had heard from a lawyer with one of the Insurers and received a check; and
- He was making extensive efforts to collect the judgment, including subjecting Dr. Tan to debtor's interrogatories; consulting with an accountant with respect to Dr. Tan's finances and assets; incurring costs and expenses; pursuing Dr. Tan's assets such as the supposed liquidation of a retirement account and auction of real estate; collecting proceeds; communicating with the commissioner, lawyers, and other third parties; and the filing of various pleadings and attending hearings.

Respondent also told Ms. Curling a myriad of additional lies as to monies he had supposedly collected on her behalf and the reasons for deductions from and delays in payments, including that the Insurers had attempted to mediate their dispute regarding which was responsible for the payment of the judgment, and when that failed, participated in an arbitration which resulted in a decision that the legal malpractice carrier was liable, and that the Insurers and/or their counsel had been show caused and sanctioned for failing to comply with the commissioner's orders⁵.

⁵ Respondent told Ms. Curling that in addition to monetary penalties, the lawyers for the Insurers had been ordered to complete CLEs and perform community service and that they could be and then later actually had been jailed.

22. In the fall of 2017, Respondent falsely told Ms. Curling that he had received a payment offer from "the other party representatives" and that insurance carrier Liberty Mutual Group was willing to guarantee payment of the judgment in full in exchange for her agreeing to a payment schedule as set out in multiple drafts of a purported agreement he provided to her (the "Agreement"). On December 14, 2017, Respondent emailed Ms. Curling what he represented to be a final version of the Agreement under which Liberty Mutual Group and Dr. Tan purportedly agreed to pay Ms. Curling \$2,150,000.00 via an annual payment of \$50,000.00 and monthly payments of \$15,000.00, Dr. Tan agreed to pay her his retirement benefits, and the parties agreed to be bound by the decision of "the Court" where "a motion is pending between the parties" as to a dispute over \$30,000.00. The Agreement bears the purported signatures of Dr. Tan and a representative of Liberty Mutual Group by the name of Christopher Peirce. Ms. Curling, at Respondent's request and inducement, signed and returned it to Respondent.

23. The Agreement is a complete fiction fabricated by Respondent who forged the signatures of Dr. Tan and Christopher Peirce onto it without their authorization or knowledge, and presented it to Ms. Curling as a legitimate, valid and binding agreement.

24. Beginning in January 2018, Respondent, in a further effort to convince Ms. Curling that the Agreement was legitimate and payments were being made pursuant to it, issued monies to Ms. Curling, from both the Trust Account and his personal bank account at Virginia Credit Union, which he falsely represented to Ms. Curling had been received pursuant to the Agreement. He made other false statements to her as well, including that he was making efforts to collect the retirement benefits and other sums due under the Agreement.

Fraudulent Payments/Conversion and Misappropriation of Funds

25. Respondent never collected any proceeds in Ms. Curling's case.

26. In furtherance of his scheme to falsely convince Ms. Curling he had secured a substantial judgment and collected monies on her behalf, Respondent disbursed the following monies to her under the false pretense they represented proceeds from her case, the judgment and/or the Agreement:

From the Trust Account:

- Wire Transfer on June 23, 2015 for \$24,000.00
- Check # 7148 dated July 27, 2015 for \$5,312.74
- Check # 7185 dated August 26, 2015 for \$11,666.66
- Check # 7307 dated November 20, 2015 for \$14,376.00
- Check # 7359 dated December 22, 2015 for \$13,200.00
- Check # 7775 dated October 19, 2016 for \$5,036.00
- Check # 7777 dated October 31, 2016 for \$35,000.00
- Wire Transfer on August 4, 2017 for \$34,050.00
- Check # 8153 dated August 18, 2017 for \$1,800.00
- Check # 8177 dated September 22, 2017 for \$1,800.00

- Check # 8215 dated October 31, 2017 for \$1,800.00
- Check # 8250 dated December 1, 2017 for \$1,800.00
- Check # 8277 dated December 22, 2017 for \$5,000.00
- Check # 8285 dated December 29, 2017 for \$5,500.00
- Wire Transfer of January 31, 2018 for \$10,500.00
- Wire Transfer of February 28, 2018 for \$10,500.00
- Check # 8401 dated April 23, 2018 for \$27,548.10
- Check # 8410 dated May 4, 2018 for \$10,000.00
- Check # 8459 dated June 8, 2018 for \$12,586.51
- Check # 8460 dated June 8, 2018 for \$14,788.49
- Wire Transfer of July 17, 2018 for \$10,475.00
- Wire Transfer of August 1, 2018 for \$47,250.00
- Wire Transfer of September 6, 2018 for \$10,550.00
- Wire Transfer of October 15, 2018 for \$49,700.00

Total from Trust Account: \$364,239.50

From Respondent's Personal Account at Virginia Credit Union:

- Official Check # 852351 dated February 17, 2018 for \$50,000.00
- Check # 2945 dated March 28, 2018 for \$10,500.00
- Check # 2949 dated April 9, 2018 for \$16,200.00
- Check # 2960 dated May 3, 2018 for \$500.00

Total from Personal Account: \$77,200.00

Grand Total of Fraudulent Payments: \$441,439.50

27. Respondent personally disbursed all of those monies, including writing and signing the checks, each of which contained the notation of "Settlement," "Settlement Proceeds" or similar words falsely indicating they represented proceeds received in Ms. Curling's case.

28. None of the monies Respondent disbursed to Ms. Curling from either the Trust Account or his personal bank account at Virginia Credit Union were proceeds from her case.

29. Rather, the monies disbursed from the Trust Account belonged either to Respondent's firm or to other client(s) of Respondent's firm. Based on the firm's trust account records, Respondent disbursed at least \$70,850.00 belonging to an underage client of Respondent's firm for whose benefit the firm was holding monies in the Trust Account ("M.V"). Respondent's disbursement of the monies belonging to either Respondent's firm or other client(s) of Respondent's firm constituted the conversion and misappropriation of those monies for his personal use and benefit.

Commingling of Personal Funds Into the Trust Account

30. In order to cover some of the disbursements he made to Ms. Curling from the

Trust Account, Respondent deposited his own personal funds into the Trust Account, including as follows:

- \$6,000.00 on October 19, 2016 in order to cover the payment he made to Ms. Curling in the amount of \$5,036.00 via Check # 7775 he issued on that same date; and
- \$35,000.00 on November 29, 2016 in order to cover the payment he made to Ms. Curling in the amount of \$35,000.00 via Check # 7777 he issued on October 31, 2016.

Falsification of Trust Account Records

31. In addition to the false notations on each of the checks he issued to Ms. Curling indicating they represented proceeds received in Ms. Curling's case, Respondent, in a further effort to conceal the fraudulent disbursements he made to Ms. Curling, falsified Trust Account and other records of his law firm, including as follows:

- Falsely recorded on a Trust Account checkbook stub that Check # 7148 for \$5,312.74 represented "Partial Settlement Proceeds" in Ms. Curling's case;
- Falsely recorded on a settlement statement for a different client of the law firm that Check # 7185 for \$11,666.66 had been issued to the United States Treasury;
- Falsely recorded on a Trust Account checkbook stub that Check # 7307 for \$14,376.00 represented "Settlement Proceeds" in Ms. Curling's case;
- Falsely recorded on a Trust Account checkbook stub that Check # 7359 for \$13,200.00 represented "Settlement Proceeds" in Ms. Curling's case;
- Falsely recorded on a Trust Account checkbook stub that Check # 7775 for \$5,036.00 represented "Settlement Proceeds" in Ms. Curling's case;
- Falsely recorded on a Trust Account checkbook stub that Check # 7777 for \$35,000.00 was made payable to "VA 521 Plan" on behalf of M.V. as "Partial Proceeds in Lieu of Structure;"
- Falsely recorded on a Trust Account client ledger card for M.V. that Check # 7777 for \$35,000.00 was made payable to "VA 521 Plan";
- Falsely recorded on a Trust Account client ledger card for M.V. and other records that the wire transfer to Ms. Curling on August 4, 2017 in the amount of \$34,050.00 was sent to M.V.;
- Falsely recorded on a Trust Account client ledger card for M.V. that Check # 8153 for \$1,800.00 was made payable to M.V. as and for "Partial Proceeds;"

- Falsely recorded on a Trust Account checkbook stub that Check # 8153 for \$1,800.00 was made payable to M. V. as and for "Settlement Proceeds";
- Falsely recorded on a Trust Account client ledger card and checkbook stub that Check # 8177 for \$1,800.00 was made payable to a different client of the law firm, as and for "Settlement Proceeds";
- Falsely recorded on a Trust Account checkbook stub that Check # 8215 for \$1,800.00 was made payable to an expert on behalf of a different client of the law firm;
- Falsely recorded on a Trust Account checkbook stub that Check # 8250 for \$1,800.00 was made payable to a different client of the law firm, as and for "Settlement Proceeds";
- Falsely recorded on a Trust Account checkbook stub that Check # 8277 for \$5,000.00 was made payable to a different client of the law firm, as and for "Settlement Proceeds";
- Falsely recorded on a Trust Account checkbook stub that Check # 8285 for \$5,500.00 was made payable to a different client of the law firm, as and for "Settlement Proceeds";
- Falsely recorded on a Trust Account Deposit Record that the wire transfer to Ms. Curling on January 31, 2018 in the amount of \$10,500.00 was sent to a different client of the law firm;
- Falsely recorded on a Trust Account client ledger card and Deposit Record that the wire transfer to Ms. Curling on February 28, 2018 in the amount of \$10,500.00 was sent to a different client of the law firm;
- Falsely recorded on a Trust Account checkbook stub that Check # 8401 for \$27,548.10 represented "Settlement Proceeds" in Ms. Curling's case;
- Falsely recorded on a Trust Account checkbook stub that Check # 8410 for \$10,000.00 represented "Settlement Proceeds" in Ms. Curling's case;
- Falsely recorded on a Trust Account checkbook stub that Check # 8459 for \$12,586.51 was made payable to a different client of the law firm as and for "Settlement Proceeds";
- Falsely recorded on a Trust Account client ledger card and checkbook stub that Check # 8460 for \$14,788.49 was made payable to a different client of the law firm;
- Falsely recorded on a Trust Account client ledger card and Deposit Record that the wire transfer to Ms. Curling on July 17, 2018 for \$10,475.00 was sent to or on behalf of a different client of the law firm;

- Falsely recorded on a Trust Account Deposit Record that the wire transfer to Ms. Curling of August 1, 2018 for \$47,250.00 was sent to "CAN Insurance" on behalf of a different client of the law firm;
- Falsely recorded on a Trust Account client ledger card and Deposit Record that the wire transfer to Ms. Curling of September 6, 2018 for \$10,550.00 was sent to a different client of the law firm in "Partial Settlement"; and
- Falsely recorded on a Trust Account client ledger card and Deposit Record that the wire transfer to Ms. Curling of October 15, 2018 for \$49,700.00 was sent to a different client of the law firm.

Discovery of Respondent's Fraudulent Scheme

32. In or about October 2018, Ms. Curling complained to Respondent's father, James D. Hundley ("Mr. Hundley"), who at the time was the managing partner of Hundley & Johnson, P.C., about the prolonged and sporadic delivery of what she believed to be her share of the settlement proceeds from her case.

33. Mr. Hundley looked into the situation by, *inter alia*, speaking with Respondent who falsely informed him that: i) he had obtained a valid default judgment and monetary award against Dr. Tan; ii) he had been dealing with Dr. Tan's lawyers regarding payment of that judgment; and iii) the Agreement between Liberty Mutual Group, Dr. Tan and Ms. Curling was legitimate.

34. Based on Respondent's assurances to him that Dr. Tan had been served and that a valid default judgment had been entered in 2014, Mr. Hundley filed a motion to set aside the dismissal of Ms. Curling's case.

35. After subsequently learning that Respondent had not obtained service on Dr. Tan, the Agreement was forged, and the firm had never received any monies from Dr. Tan or any insurance carrier, Mr. Hundley filed a motion to withdraw as counsel for Ms. Curling.

Subsequent Court Proceedings

36. Ms. Curling's successor counsel pursued setting aside the dismissal of her case on the basis of the supposed actual notice to Dr. Tan of the lawsuit and purported entry of the Final Judgment Order. A hearing was conducted before Judge John W. Brown ("Judge Brown") on July 3, 2019, at which Respondent testified. Respondent, *inter alia*, admitted he never had Dr. Tan served, but insisted he sent him a letter dated April 8, 2013 advising of the filing of the lawsuit, which he claimed prompted a call from an employee of a hospital who requested an extension to file an answer on behalf of Dr. Tan which Respondent granted as memorialized in his letter to the hospital dated April 15, 2013. Respondent also insisted that: i) a hearing was held on the motion for default judgment on June 4, 2014, at which default judgment was granted; ii) he had sent Dr. Tan copies of the hearing notices he filed with the Court in June, September

and November 2014; iii) he presented medical records, medical bills and a medical summary during the damages hearing held on December 3, 2014; iv) Judge Lowe announced an award to Ms. Curling of \$2,000,000.00 at the conclusion of that hearing; and v) he prepared and sent to Judge Lowe the Final Judgment Order bearing an entry date of 12/17/14. Respondent further claimed he had sent a copy of the Final Judgment Order to either the hospital or Dr. Tan, but admitted he had never attempted to enforce it. When asked about the Agreement between Liberty Mutual Group, Dr. Tan and Ms. Curling, Respondent refused to answer any questions about it and invoked his 5th Amendment privilege not to incriminate himself.

37. Judge Brown took the matter under advisement, but expressed his concerns that Dr. Tan was never served and the Final Judgment Order was not in the Court's file and Respondent had "inexplicably" never attempted to enforce it.

38. By letter opinion dated August 7, 2019, Judge Brown declared that he did not find Respondent's testimony credible and indicated that the "purported" Final Judgment Order would be a nullity and void *ab initio* even if it had actually been entered due to the lack of service on Dr. Tan. He announced his decision to deny the motion to set aside the dismissal on the basis that Dr. Tan had never been served. Judge Brown further found that the conduct of Respondent and Mr. Hundley in pursuing the default judgment and attempting to obtain entry of a monetary award in the absence of any service on Dr. Tan warranted sanctions. An Order denying the motion to set aside the dismissal was entered on 11/5/19.

Other Dishonest Conduct

39. In November 2016, Ms. Curling told Respondent she had applied for a residential mortgage refinancing and needed to provide her lender with verification of the source of the \$35,000 check she had deposited into her bank account on October 31, 2016 (Trust Account Check # 7777 dated October 31, 2016 for \$35,000.00). In response, Respondent prepared and provided to Ms. Curling for delivery to her lender a letter dated November 28, 2016 falsely stating that those monies represented proceeds from her lawsuit.

40. In connection with the bar's investigation of this complaint, Respondent made several false statements to the bar, including that he: i) sent the April 2013 letters to Dr. Tan and the hospital and that he was subsequently contacted by legal counsel who said he would be responding to the lawsuit on behalf of Dr. Tan; ii) obtained entry of a default judgment order in June 2014; iii) sent Dr. Tan copies of the notices of the damages hearing; iv) sent the Final Judgment Order to Judge Lowe for entry, received an endorsed copy back, and that it is a valid order; v) did not know about the dismissal of the lawsuit until 2018; and vi) used only approximately \$10,000 of monies belonging to M.V. in issuing the fraudulent payments to Ms. Curling.

VSB Docket Number 19-010-115228
Complainant: Humphrey Johnson

41. In 2015, the complainant, Humphrey Johnson ("Mr. Johnson"), hired Respondent's firm to represent him in pursuing damages arising from injuries he sustained in a fall at a Marriott hotel in Norfolk.

42. Respondent handled the representation, and in May 2017, filed a \$70,000.00 lawsuit on behalf of Mr. Johnson in the Norfolk Circuit Court.

43. In November 2017, Mr. Hundley settled Mr. Johnson's claims for \$28,000.00.

44. On November 14, 2017, the third-party administrator handling the claim ("Claims Administrator") emailed Respondent a Release of All Claims containing signature lines for both Mr. Johnson and his wife Veronica Johnson ("Mrs. Johnson") and an acknowledgment.

45. On December 15, 2017, Mr. Johnson signed the Release of All Claims and returned it to Respondent by mail⁶. Mr. Johnson did not sign the Release of All Claims before a notary and returned it to Respondent with the acknowledgment left blank.

46. The Release of All Claims also contains a completed acknowledgment signed by a notary public who was Respondent's paralegal at the time falsely attesting that Mr. Johnson had personally appeared before the notary public on December 19, 2017 and executed the Release of All Claims and/or acknowledged his signature. Contrary to that attestation, Mr. Johnson did not appear before the notary public on that or any other date and sign the Release of All Claims or acknowledge his signature and Respondent induced the notary public to falsely attest that Mr. Johnson had done so.

47. Respondent subsequently asked Mr. Johnson to have his wife also sign the Release of All Claims. Mr. Johnson informed Respondent that she would not sign it since she was not a party to the lawsuit or claim.

48. Respondent, without the knowledge or authorization of Mr. Johnson or Mrs. Johnson, signed their names to a version of the Release of All Claims bearing the date of January 22, 2018 ("Second Release"). Respondent also induced a notary public who was an employee of Respondent's firm at the time to falsely attest that Mr. Johnson and Mrs. Johnson had personally appeared before the notary public on January 22, 2018 and executed the Second Release and/or acknowledged their signatures. Contrary to that attestation, neither Mr. Johnson nor Mrs. Johnson appeared before the notary public on that or any other date and signed the Second Release or acknowledged their signatures.

49. By email dated January 23, 2018, Respondent provided the Claims Administrator with the forged and falsely notarized Second Release.

⁶ Mrs. Johnson did not sign the Release of All Claims.

50. Upon receiving the Second Release from Respondent, the Claims Administrator issued the settlement payment via a check dated January 23, 2018 in the amount of \$28,000.00 made payable to Mr. Johnson, Mrs. Johnson and Respondent's firm. The back of that check bears the purported endorsements of both Mr. Johnson and Mrs. Johnson. Neither Mr. Johnson nor Mrs. Johnson endorsed that check nor authorized Respondent or anyone else to do so on their behalf. Respondent forged the signatures of Mr. Johnson and Mrs. Johnson on that check without their authorization or knowledge and subsequently caused it to be endorsed on behalf of Respondent's firm and negotiated.

51. In his written answer to this complaint, Respondent falsely stated that Mr. Johnson and Mrs. Johnson signed the Second Release in his presence on January 22, 2018. He later informed the bar's investigator that he had no recollection of how the Second Release was signed or notarized.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

VSF Docket Number 19-010-114365

Complainant: Dorothy Curling

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

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.

RULE 1.15 Safekeeping Property

- (a) Depositing Funds.

...

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

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

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

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

...

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

...

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

RULE 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

...

(c) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of fact or law;

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;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

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

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

VSB Docket Number 19-010-115228
Complainant: Humphrey Johnson

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law;

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:

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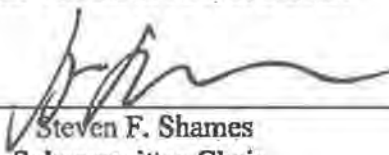
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

III. CERTIFICATION

Accordingly, it is the decision of the Subcommittee to certify the above matters to the Virginia State Bar Disciplinary Board.

SECOND DISTRICT, SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By _____



Steven F. Shames
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that on the 9th day of JANUARY, 2020, I mailed by certified mail a true and correct copy of the foregoing Subcommittee Determination (Certification) to David Brooks Hundley, Respondent, at P.O. Box 13187, Richmond, VA 23225, his last address of record with the Virginia State Bar and to Paul D. Georgiadis, Respondent's Counsel, via USPS first-class mail at Paul D. Georgiadis, PLC, 2819 N Parham Road, Suite 110, Richmond, VA 23294-4425, his last address of record with the Virginia State Bar and via e-mail at PDGLEX@PDGLEX.com.



M. Brent Saunders
Senior Assistant Bar Counsel