

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND**

**VIRGINIA STATE BAR EX REL  
FIFTH DISTRICT, SECTION II COMMITTEE  
VSB Docket No. 20-052-118854**

**Complainant,**

**Case No. CL21-2337-00**

**Matthew James Hunzeker,**

**Respondent.**

**FINAL JUDGMENT MEMORANDUM ORDER**

**THIS MATTER** came to be heard on October 7, 2021 by a Three-Judge Circuit Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia (1950) as amended, consisting of the Honorable Richard E. Moore, Judge of the Sixteenth Judicial Circuit; the Honorable C. Peter Tench, Retired Judge of the Seventh Judicial Circuit; and the Honorable Victoria A.B. Willis, Judge of the Fifteenth Judicial Circuit and designated Chief Judge (“Chief Judge”) of the Three-Judge Circuit Court (collectively, “the Court”).

Senior Assistant Bar Counsel Elizabeth K. Shoenfeld represented the Virginia State Bar (“VSB”). Respondent Matthew Hunzeker, having received proper notice of the proceeding, appeared in person and was represented by Paul D. Georgiadis.

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

**WHEREUPON** a hearing was conducted upon the Rule to Show Cause issued against Respondent. The Rule directed Respondent to appear and to show cause why his license to

practice law in the Commonwealth of Virginia should not be suspended, revoked or otherwise sanctioned by reason of allegations of ethical misconduct set forth in the Certification issued by a Subcommittee of the Fifth District Committee, Section II, of the VSB.

#### Misconduct Phase

Pursuant to the Pre-Hearing Order, the Court admitted VSB Exhibits 1-18 and Respondent's Exhibits 1-19 into evidence without objection.

Prior to the hearing, Respondent argued his motion to call witness John Foote out of order because of a scheduling conflict. The VSB opposed Respondent's motion. The Court ruled that Respondent would not be permitted to call Mr. Foote until after the VSB had completed its case.

Both parties made opening statements. The Court received the testimony of Complainant Krista Kisch for the VSB, after which the VSB rested.

Respondent moved to strike the VSB's evidence. After considering the evidence and the argument of the parties, the Court denied the motion.

The Court received the testimony of Matthew Hunzeker, Marc Carlson, and David Fennessey for Respondent. Respondent also introduced the affidavit of Danny Schwab, which the Court admitted into evidence as Respondent's Exhibit 20 over the VSB's objection. The Court also received letters from Marc Adickes (Respondent's Exhibit 21), John Foote (Respondent's Exhibit 22), Lisa M. Hughes (Respondent's Exhibit 23), and Arthur Grace (Respondent's Exhibit 24) over the VSB's objection.

Respondent renewed and remade his motion to strike. After considering the evidence and the argument of the parties, the Court denied the motion.

Both parties made closing arguments.

Upon due deliberation and consideration of the exhibits, witness testimony, and argument for the parties, the Court made the following findings of fact:

1. Respondent was licensed to practice law in Virginia in 1989. In April 2016, Respondent changed his Virginia State Bar (“VSB”) membership to Associate status, which meant that he was not permitted to practice law under his Virginia license.<sup>1</sup> Respondent remained on Associate status until September 2020, when he transferred to Active membership. Respondent’s Answer, ¶ 1.
2. Respondent understood that while he was an Associate member of the VSB, he was not permitted to practice law using his Virginia license. Respondent’s Answer, ¶ 2.
3. Respondent is not and has never been licensed to practice law in any jurisdiction other than Virginia. Respondent’s Answer, ¶ 3.
4. At all relevant times, Respondent was working from his residence in Florida. Respondent’s Answer, ¶ 4.
5. On February 14, 2020, Complainant Krista Kisch posted on a Facebook community page seeking real estate counsel. Although Kisch lived in Texas, she owned a residential rental property in Jupiter, Florida, and was having issues with the current tenant. Respondent’s wife Sandra Hunzeker responded to Kisch’s post, recommending “Matthew Hunzeker, Esq.” and providing his phone number. Respondent’s Answer, ¶ 5. Respondent testified that he is rarely on Facebook and did not see his wife’s post.
6. On February 17, 2020, Kisch spoke to Respondent on the phone. Respondent’s Answer, ¶ 6. Kisch testified that Respondent did not tell her that he was not admitted to practice law in Florida. Ms. Kisch also testified that if she had known Respondent was not licensed to practice law in Florida, she would not have hired him.
7. On February 18, 2020, Respondent emailed Kisch “the terms under which we have agreed to work together.” Respondent said that he would “arrange for our retainer of \$1500 to be sent to our account.” He then listed “[t]he issues that we are going to represent you on.” VSB Ex. 8.
8. Also on February 18, 2020, Respondent sent Kisch a Venmo request for \$1,500, which Kisch paid. Kisch labeled the Venmo payment as a “Legal Retainer Fee.” This payment was deposited into Respondent’s personal account. Respondent’s Answer, ¶ 8; VSB Ex. 10,
9. Shortly thereafter, Respondent emailed the tenant: “My name is Matt Hunzeker, and I am an attorney representing Krista Kisch in the above referenced matter.” Respondent asked

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<sup>1</sup> Pursuant to the Rules of Supreme Court of Virginia, Part 6, § IV, ¶ 3(b), “Associate members shall be entitled to all the privileges of active members except that they may not practice law, vote or hold office (other than as members of committees) in the Virginia State Bar.”

the tenant to provide him with the contact information for his attorney. Respondent's Answer, ¶ 9.

10. Later that day, the tenant responded. Respondent wrote back: "Under ethical cannons [sic], if you are represented by counsel I cannot contact you directly in this matter without his or her consent. Can you confirm for me that you do not have a lawyer representing you in this matter?" Respondent's Answer, ¶ 10.
11. On March 2, 2020, Kisch paid Respondent an additional \$750. Kisch annotated this payment as "Legal fees (Feb. 2020)." Kisch said she paid Respondent because he said he had run out of the initial retainer payment and needed more money. This payment was also deposited into Respondent's personal account. Respondent's Answer, ¶ 11.
12. On March 3, 2020, Kisch and Respondent agreed that they should move forward with an eviction. Kisch testified that Respondent told her that this would cost about \$5,000 and he would provide a budget for his legal services. Respondent never provided a budget. Respondent's Answer, ¶ 12.
13. On March 4, 2020, Kisch sent Respondent a check for \$5,000 and wrote "Legal Retainer" on the memo line. The next day, Respondent deposited the check into a personal account. Respondent's Answer, ¶ 13; VSB Ex. 12.
14. On March 13, 2020, Respondent told Kisch that he was going to affiliate with Julie Hogan, a licensed Florida attorney, to pursue the eviction. Respondent said he needed to work with Hogan to draft a seven-day notice for the tenant, which would initiate the eviction process. Respondent's Answer, ¶ 14. Kisch testified that this was the first time Respondent disclosed to Kisch that he was not licensed to practice law in Florida.
15. On March 16, 2020, Kisch emailed Respondent and said that she did not know that he was not licensed in Florida and she was concerned about double billing. She asked for invoices every two weeks or in \$1,000 increments. VSB Ex. 13. Kisch and Respondent testified that Respondent did not provide Kisch with any invoices.
16. On March 25, 2020, Hogan prepared and sent a seven-day notice to Kisch's tenants. On or about April 1, 2020, Respondent told Kisch that the tenant was willing to negotiate a lease termination agreement. Respondent's Answer, ¶ 16.
17. On April 1, 2020, Kisch emailed Hunzeker, "When you are talking to him (the tenant) is that a 15 minute conversation or an hour? I just want to be cognizant of him running up my legal bill while buying himself more time." Respondent replied, "I need to have a discussion with you regarding billable hours. I want to make sure that you are not stressed about same, and I certainly do not allow [tenant] to go on and on on a billable hour basis." VSB Ex. 5, Bates No. 56.
18. On or about April 7, 2020, Hogan prepared a lease termination letter for Kisch's tenant. The tenant declined to sign it. Respondent's Answer, ¶ 17.

19. Hogan charged \$2,000 for the work she performed on Kisch's case, which included preparing the seven-day notice and the lease termination letter. Respondent paid Hogan's bill. Respondent's Answer, ¶ 18.
20. On May 12, 2020, Respondent told Kisch that he had used up the legal budget and asked for more money. Respondent did not request a specific amount. Kisch asked Respondent for a legal retainer agreement to document their working relationship and billing. Respondent did not provide an agreement. Respondent's Answer, ¶ 19.
21. On May 20, 2020, Kisch wrote to Respondent to request a time log so she could review Respondent's billing. Respondent replied that he "[w]ould like to speak with you regarding the time I've spent on this matter." Respondent's Answer, ¶ 20.
22. On May 21, 2020, Kisch emailed Respondent to terminate his legal services. She stated that on February 18, 2020 she "retained you to provide legal services regarding a tenant issue and eviction process . . ." She asked Respondent to provide an invoice and to return the unused portion of the \$7,250 she had paid. She also asked that Respondent return certain file materials, including his notes from conversations with the tenants. Respondent's Answer, ¶ 21.
23. Kisch filed a bar complaint, and the VSB referred this matter for investigation. Respondent's Answer, ¶ 22.
24. In response to the bar complaint, Respondent claimed that he was not acting as a lawyer, but instead he was offering Kisch "property management services," which he described as non-legal services. Respondent's Answer, ¶ 23; VSB Ex. 18. Respondent also stated that Kisch contacted him "seeking property management services." VSB Ex. 18.
25. When asked why he identified himself as Kisch's attorney when corresponding with her tenant, Respondent testified that he did so in order to determine whether the tenant had an attorney.
26. Respondent told the VSB that the \$1,500 "retainer" that Kisch paid on February 18, 2020 was a "flat fee" for his property management services. He said that the additional \$5,250 he was paid was for "continued property management services" and to pay Hogan. VSB Ex. 5, Bates Nos. 27-28.
27. When asked why he charged Ms. Kisch more money after charging her a purported flat fee, Respondent said that the work had taken more time than he anticipated.
28. Respondent did not keep any itemized timesheets of the work he did in Ms. Kisch's case. Respondent's Answer, ¶ 27.
29. Respondent never provided Kisch with any invoices detailing the time he spent or the services he provided. Respondent's Answer, ¶ 28.
30. On or about July 14, 2021, Respondent refunded \$5,250 to Ms. Kisch as part of a Stipulation for Permanent Injunction with the Florida Bar. Respondent's Ex. 19.

### Findings Regarding Rule Violations

The Court unanimously determined that the VSB had proven, by clear and convincing evidence, that Respondent violated Florida Rules of Professional Conduct 4-1.5(c)(1); 4-1.15; 4-5.5(a) and (b)(2) and Virginia Rule of Professional Conduct 8.1(a). The Court did not find that Respondent violated Florida Rules of Professional Conduct 4-8.4(b) and (c).<sup>2</sup>

#### **FLORIDA RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES**

##### **(e) Duty to Communicate Basis or Rate of Fee or Costs to Client and Definitions.**

(1) **Duty to Communicate.** When the lawyer has not regularly represented the client, the basis or rate of the fee and costs must be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. A fee for legal services that is nonrefundable in any part must be confirmed in writing and must explain the intent of the parties as to the nature and amount of the nonrefundable fee. The test of reasonableness found in subdivision (b), above, applies to all fees for legal services without regard to their characterization by the parties. The fact that a contract may not be in accord with these rules is an issue between the lawyer and client and a matter of professional ethics, but is not the proper basis for an action or defense by an opposing party when fee-shifting litigation is involved.

The Court made the following findings of fact to support a violation of Florida Rule of Professional Conduct 4-1.5(e)(1):

1. Respondent never explained his billing system to Ms. Kisch.
2. Although invoices were requested several times, Respondent never provided any invoices. There was a conflict between Respondent's testimony that he was charging a flat fee and his statements to Ms. Kisch regarding billable hours.

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<sup>2</sup> Pursuant to Virginia Rule of Professional Conduct 8.5(a), "[a] lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of Virginia, regardless of where the lawyer's conduct occurs. Pursuant to Virginia Rule of Professional Conduct 8.5(b), the rules of professional conduct in the jurisdiction in which the lawyer's conduct occurred apply. Because Respondent's conduct regarding Ms. Kisch occurred in Florida and was related to a real estate dispute in Florida, the Florida Rules of Professional Conduct apply. Regarding Respondent's conduct in the VSB investigation, the Virginia Rules of Professional Conduct apply.

In addition, Respondent stipulated that if the Court found a violation of Florida Rule of Professional Conduct 4-5.5, then it should find that he violated Florida Rule of Professional Conduct 4-1.5(e)(1).

**FLORIDA RULE 4-1.15 SAFEKEEPING PROPERTY Compliance With Trust Accounting Rules.**

A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.

**FLORIDA RULE REGULATING TRUST ACCOUNTS 5-1.1**

**(a) Nature of Money or Property Entrusted to Attorney.**

**(1) Trust Account Required; Location of Trust Account; Commingling Prohibited.** A lawyer must hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, must be kept in a separate federally insured bank, credit union, or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account except:

**(A)** A lawyer may maintain funds belonging to the lawyer in the lawyer's trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account; and

**(B)** A lawyer may deposit the lawyer's own funds into trust to replenish a shortage in the lawyer's trust account. Any deposits by the lawyer to cover trust account shortages must be no more than the amount of the trust account shortage, but may be less than the amount of the shortage. The lawyer must notify the bar's lawyer regulation department immediately of the shortage in the lawyer's trust account, the cause of the shortage, and the amount of the replenishment of the trust account by the lawyer.

The Court made the following findings of fact to support a violation of Florida Rule of Professional Conduct 4-1.15:

1. Respondent secured fees that were marked as "legal fees" and a "retainer," failed to make any correction as to that and deposited those fees into his personal account before earning them.

In addition, Respondent stipulated that if the Court found a violation of Florida Rule of Professional Conduct 4-5.5, then it should find that he violated Florida Rule of Professional Conduct 4-1.15

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**FLORIDA RULE 4-5.5 UNLICENSED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) **Practice of Law.** A lawyer may not practice law in a jurisdiction other than the lawyer's home state, in violation of the regulation of the legal profession in that jurisdiction, or in violation of the regulation of the legal profession in the lawyer's home state or assist another in doing so.

(b) **Prohibited Conduct.** A lawyer who is not admitted to practice in Florida may not:

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in Florida[.]

The Court made the following findings of fact to support a violation of Florida Rule of Professional Conduct 4-5.5(a) and 4-5.5(b)(2):

1. Respondent held himself out in emails as an attorney.
2. Respondent took actions in line with holding himself out as an attorney.
3. Respondent charged a per hour billable rate that was excessive for a property manager.

**VIRGINIA 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[.]

The Court made the following findings of fact to support a violation of Virginia Rule of Professional Conduct 8.1(a):



1. Respondent affirmatively stated that Ms. Kisch contacted him for property management services. All the evidence corroborated Ms. Kisch's testimony and refuted Respondent's affirmative statements.

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## FLORIDA RULE 4-8.4 MISCONDUCT

A lawyer shall not:

...

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

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule[.]

The Court did not find that Respondent violated Florida Rule 4-8.4(b) or (c). To support its decision, the Court stated:

1. As to Florida Rule 4-8.4(b), although the Court found that Respondent engaged in the unlicensed practice of law, the Court found that Respondent had not been criminally convicted of the unlicensed practice of law in Florida and was uncomfortable making a finding that Respondent had committed a felony in Florida.
2. As to Florida Rule 4-8.4(c), this violation was withdrawn by the VSB based on the Court's finding of a Virginia Rule 8.1(a) violation.

### Sanctions Phase

The Court then proceeded to the sanctions phase of the proceeding.

The VSB introduced a certification of Respondent's disciplinary record, which stated that Respondent did not have a disciplinary record in Virginia. The Court admitted the certification without objection as VSB Exhibit 20.

The Court received Respondent's own testimony for Respondent. The Court also admitted Respondent's Exhibit 24, a copy of Respondent's current letterhead, without objection.

The VSB and Respondent then presented argument regarding the sanction to be imposed on Respondent for the misconduct found, and the Court recessed to deliberate. During Respondent's argument, the Court received Respondent's Exhibit 25, *In the Matter of Sam Goldstein*, VSB Docket No. 20-052-118130, without objection.

#### Determination

After due consideration of the evidence as to mitigation and aggravation and argument of counsel, the Court reconvened to announce its sanction of a six-month suspension of Respondent's license to practice law in the Commonwealth of Virginia.

Accordingly, it is hereby ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is suspended for six months, effective on October 17, 2021.

It is further ORDERED that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to any clients for whom he is currently handling matters or was handling matters as of October 7, 2021, and to all opposing attorneys and presiding judges in pending litigation. Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice immediately and in no event later than 14 days after the

effective date of the suspension, and make such arrangements as are required herein as soon as is practicable and in no event later than 45 days after the effective date of the suspension.

Respondent shall also furnish proof to the VSB within 60 days of the effective date of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if Respondent is not handling any client matters on the effective date of the suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the VSB. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the VSB Disciplinary Board.

It is further ORDERED that the Clerk shall send a copy teste of this Memorandum Order to Respondent, Matthew Hunzeker, by certified mail, return receipt requested, at 1785 SE Westmoreland Boulevard, Port Saint Lucie, FL 34952, his address of record with the VSB; to Respondent's counsel Paul D. Georgiadis, Law Office of Paul D. Georgiadis, PLC, 2060 Buford Road, Richmond, VA 23235; to the Honorable DaVida M. Davis, Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219; and to Elizabeth Shoenfeld, 1111 E. Main Street, Suite 700, Richmond, Virginia 23219.

The hearing was recorded by Jacquelin Longmire, Chandler & Halasz Stenographic Court Reporters, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222.

ENTER: 11/15/21

  
The Honorable Victoria A.B. Willis  
Chief Judge Designate

Virginia State Bar:



Elizabeth K. Shoenfeld (VSB 65635)  
Senior Assistant Bar Counsel  
Virginia State Bar  
1111 East Main Street, Suite 700  
Richmond, Virginia 23219  
Telephone: 804-775-9410  
shoenfeld@vsb.org

Seen and Objected to for the reasons set out on the record including Respondent's  
Motions to Strike, closing arguments, and arguments stated in the sanctions phase.  
PDG  
10/22/21



Paul D. Georgiadis (VSB 26340)  
Law Office of Paul D. Georgiadis, PLC  
2060 Buford Road  
Richmond, VA 23235  
Telephone: 804-270-1154  
pdglex@pdglex.com