

VIRGINIA :

BEFORE THE CIRCUIT COURT OF THE CITY OF STAUNTON

VIRGINIA STATE BAR EX REL)
EIGHTH DISTRICT COMMITTEE)
Complainant,)
v.)
DALE REESE JENSEN)
Respondent.)

Case No. CL21-653

FINAL JUDGMENT MEMORANDUM ORDER

THIS MATTER, originally scheduled to be heard on March 22 and 23, 2022, and continued for good cause shown, was heard on June 22 and 23, 2022 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 Onzlee Ware, Judge of the 23rd Judicial Circuit, the Honorable William D. Broadhurst, Judge of the 23rd Judicial Circuit (Retired), and the Honorable James W. Updike, Jr., Judge of the 24th Judicial Circuit and designated Chief Judge ("Chief Judge") of the Three-Judge Circuit Court (collectively "the Court"). While the Court was convened as the Circuit Court for the City of Staunton, the proceedings took place in the Circuit Court for the County of Bedford for the convenience of the parties by the agreement of the Court, counsel for the Virginia State Bar ("VSB"), and counsel for Respondent.

Paulo E. Franco, Jr., Assistant Bar Counsel, represented the VSB. Respondent, having received proper notice of the proceeding, appeared in person and was represented by H. Robert Yates, III, Esquire.

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

WHEREUPON a hearing was conducted upon the Rule to Show Cause issued on December 21, 2021, against Respondent. The Rule directed Respondent to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked, or otherwise sanctioned by reason of the allegations of ethical misconduct set forth in the Certification issued by a subcommittee of the Eighth District Committee of the VSB dated October 5, 2021 (“Certification”). The Certification addressed four matters as follows: VSB Docket No. 20-080-118487, Complainant Brenda Lee Tucker (the “Tucker Case”); VSB Docket No. 21-080-121205, Complainant Jason Robles (the “Robles Case”); 21-080-122456, Complainant Michael Alonzo Robinson, Jr. (the “Robinson Case”); and VSB Docket No. 21-080-122790, Complainant DeAndre Gordon (the “Gordon Case”).

The Court further notes that Judge Updike convened a conference call on July 8, 2022, with counsel for the VSB and Respondent to review the findings stated herein.

Misconduct Phase

Both parties made opening statements.

Respondent stipulated to violations related to Rule 1.15 of the Virginia Rules of Professional Conduct as set forth in the Certification.

The Court received and admitted the following exhibits on behalf of the VSB:
VSB Exs. 1-8A; VSB Exs. 11-44A; VSB Exs. 45-49A; VSB Ex. 50; VSB Exs. 52-55;

and VSB Ex. 57. The Court further received and admitted the following exhibits on behalf of Respondent: Respondent's 14 and 15; Respondent's 22-25.

The Court heard live testimony from the following witnesses during the VSB's case in chief:

Brenda Tucker, Asia Hunt (by remote testimony), Flora Skipwith, and Dave Jackson, VSB Investigator.

The VSB then rested.

Respondent moved to strike all charges to which he did not stipulate. The VSB withdrew the charge related to Rule 1.1 in the Gordon Case. After due consideration and deliberation of the arguments of counsel and viewing the evidence presented in the light most favorable to the non-moving party, the Court overruled Respondent's Motion to Strike on all counts.

Respondent testified in his own case in addition to calling VSB Investigator Dave Jackson, Matthew George, and Samantha George (remotely). In the interests of judicial economy, and by agreement of the parties, the Court permitted Respondent to call the following mitigation witnesses prior to the Court having ruled on the issues of Misconduct – John Franklin, Ingraham Pancham, and Paul Kiehn.

After Defendant rested, both parties made closing statements as to both Misconduct and Sanctions.

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

- I. Respondent was admitted to the Virginia State Bar ("VSB") on October 13, 2005. At all relevant times, Respondent was a member of the VSB.

2. Respondent's address of record is in Staunton, Virginia.
3. Respondent's website indicates that Respondent does post-conviction criminal work.
4. Respondent previously employed a person by the name of James Dennis as a paralegal/law clerk.
5. Mr. Dennis does not hold a law degree and has never been a member of the VSB.
6. Respondent testified that Mr. Dennis was no longer employed by his firm after he was incarcerated sometime in 2018.
7. From November of 2020 through July of 2021, Mr. Dennis made approximately 1550 phone calls between himself and Respondent's office.
8. At all times relevant, Mr. Dennis has been incarcerated in the Virginia Department of Corrections after having been convicted of sexually assaulting a minor and possessing child pornography.
9. Complainants Jason Robles, De Andre Gordon, Michael Robinson, and their respective families received emails from the email address jdennis@jensenjustice.com.
10. Respondent at one time also had in his employ another convicted felon, Carl Mitchell. Mr. Mitchell worked as a paralegal and had regular communications with Respondent's post-conviction clients. Mr. Mitchell does not have a law degree nor is he authorized to practice law in the Commonwealth of Virginia.
11. Samantha George was previously employed by Respondent to assist with his criminal and post-conviction law practice. Ms. George does not have a law degree nor was she ever authorized to practice law in the Commonwealth of Virginia.
12. Matthew George is employed by Respondent to assist with his criminal and post-conviction law practice. Mr. George does not have a law degree nor is he authorized to practice law in the Commonwealth of Virginia.
13. Taylor Biggs was previously employed by Respondent to assist with his criminal and post-conviction law practice. Ms. Biggs does not have a law degree nor was she ever authorized to practice law in the Commonwealth of Virginia.
14. While employed by Respondent, Mr. Mitchell, Ms. George, Mr. George and Ms. Biggs all work(ed) from home. Respondent acknowledged that he did not and

does not have any written policies or procedures for how these employees should discharge their duties. Respondent testified that he had unwritten procedures.

15. Ms. George, Mr. George, Mr. Mitchell and Mr. Biggs all use(d) emails with the domain "jensenjustice.com"
16. Each of the four Complainants expressed frustration at the inability to communicate directly with Respondent. Investigator Jackson testified that both Freddie and Jason Robles expressed their frustration when he interviewed them in connection with the investigation of that case, and Ms. Tucker, Ms. Robinson, and Asia Hunt all testified at trial that they were frustrated with their inability to speak directly with Respondent.
17. Respondent stipulated that in each of the matter addressed in the Certification, Respondent did not properly deposit "flat" fees paid by clients into his trust account. Respondent further stipulated and/or admitted that he did not keep required trust account records pursuant to Rule 1.15 (c) and (d) of the Virginia Rules of Professional Conduct.
18. During the investigation of the complaints in the Certification, Investigator Jackson testified that in January of 2021, he provided Respondent with a copy of Virginia Legal Ethics Opinion 1606 concerning advance fees.
19. Respondent's bank statements related to his IOLTA trust account showed that from January of 2021 through the end of May of 2021, he made only one deposit into his trust account (VSB Ex. 46).
20. During the same time period of January of 2021 through May of 2021, bank statements from Respondent's operating account showed that he deposited \$308,271.61 into that account (VSB Ex. 46). However, there was no evidence of what the deposits were for.

VSB Docket Nos. 20-080-118487

Complainant: Brenda Lee Tucker

21. Brenda Lee Tucker's son, Michael Wright, was convicted by the Circuit Court of Allegany County in 2013 and sentenced to a period of incarceration of thirty-three years.
22. Ms. Tucker contacted Respondent's paralegal Mr. Mitchell about representing her son Michael. Mr. Mitchell thereafter provided a flat fee quote of \$3,000.00 to retain Respondent's services.
23. On October 17, 2017, Ms. Tucker paid Respondent a flat fee of \$3,000.00 to perform a "file review" of Michael Wright's case.

24. Respondent did not deposit the \$3,000.00 flat fee into his trust account, nor did he keep records required by Rule 1.15 (c) of the Virginia Rules of Professional Conduct.
25. Respondent further did not reconcile his trust account as required by Rule 1.15(d), nor keep the records required by Rule 1.15 (c) of the Virginia Rules of Professional Conduct.
26. Neither Respondent nor Mr. Mitchell provided Ms. Tucker with a written fee agreement for the case review.
27. After sending in the first check on October 17, 2017, Ms. Tucker spoke again with Mr. Mitchell about the case file review for Ms. Tucker's son.
28. Mr. Mitchell stated he got a second opinion from Respondent and stated that due to Michael Wright's health issues, it would be best to seek a traditional pardon from the Governor.
29. Mr. Mitchell quoted an additional flat fee of \$2,500.00 for the pardon application, which Ms. Tucker paid on March 14, 2018.
30. Respondent did not deposit the \$2,500.00 flat fee into his trust account, nor did he keep records required by Rule 1.15 (c) of the Virginia Rules of Professional Conduct.
31. Neither Respondent nor Mr. Mitchell provided Ms. Tucker with a written fee agreement for the pardon application.
32. Two years later, on March 12, 2020, Ms. Tucker received a call from a woman who identified herself as Jennifer Carter.
33. Ms. Carter advised Ms. Tucker that Ms. Carter's husband, Michael Carter, was an inmate and also one of Respondent's clients.
34. Ms. Carter advised Ms. Tucker that Mr. Mitchell sent Michael Carter a box of legal material that belonged to Ms. Tucker's son, Michael Wright.
35. Mr. Carter previously advised Respondent's office that he had Mr. Wright's file material in his possession.
36. Respondent never advised Ms. Tucker or Mr. Wright of the fact that his legal file had been sent to another inmate.
37. Respondent never met with either Mr. Wright or Ms. Tucker at any time during the course of the representation.

38. Respondent advised Investigator Jackson that Mr. Mitchell had the ability to sign Respondent's name electronically when explicitly granted permission to do so by Respondent.
39. In addition, Respondent told Investigator Jackson during the investigation that Mr. Mitchell's roles and responsibilities with his firm were essentially doing a composite function of what his current employees are doing now; Mr. Mitchell would receive and process mail for the post-conviction relief side of the business, process the mail and scan it, and scan client files and documents into the secure server for Respondent's law practice.
40. Respondent also told Investigator Jackson that Mr. Mitchell would prepare a draft of what Respondent described as "more ministerial" documents for his review and approval and act on the postconviction relief side by answering the telephone and have discussions with clients. Respondent said the telephone number associated with the post-conviction relief side of his practice went directly to Mr. Mitchell, who had a cell phone.
41. Respondent further stated to Investigator Jackson during the investigation that although Mr. Mitchell worked from his home and not Respondent's office, Respondent had no written policies or procedures in place for how Mr. Mitchell was to perform his work.
42. Respondent further told Investigator Jackson that he was unaware what client files Mr. Mitchell had in his possession while Mr. Mitchell was employed by Respondent.
43. Respondent terminated Mr. Mitchell's employment sometime in January of 2020.
44. Respondent requested that Samantha George, the new employee who replaced Mr. Mitchell, obtain all client files and materials that were in Mr. Mitchell's possession.
45. Respondent did not know that Mr. Mitchell did not turn over the file belonging to Michael Carter.
46. Respondent found out that Michael Wright's file had been sent to Michael Carter on March 10, 2020, when Mr. Carter left a message with his answering service.
47. Respondent made no effort to contact either Ms. Tucker or Mr. Wright about the status of Mr. Wright's file.

48. Respondent was ultimately able to retrieve Mr. Wright's file and had it in his possession when interviewed by Investigator Jackson.
49. Ms. Tucker testified at trial that her son received a letter from Respondent's law firm addressed to him, purportedly signed by Samantha George dated February 4, 2020.
50. The letter, received into evidence as VSB Exhibit 8 and 8A (the original), over Respondent's objection, introduced Samantha George as Respondent's newest paralegal, and further stated that she had been extensively trained by Mr. Dennis and Mr. Mitchell.
51. At trial, Samantha George testified under oath that the signature on VSB Exhibit 8 and 8A was not hers. She further testified that she had no idea how Ms. Tucker's son could have received such a letter.
52. The Court finds that Respondent did not properly supervise his employees and that he should have known about the provenance of the February 4, 2020 letterhead.
53. Based on the foregoing, the Court finds that the Virginia State Bar proved by clear and convincing evidence the following rules charged in the Certification: Rule 1:15 (a)(1); Rules 1:15 (b)(3) and (5); Rules 1:15 (c)(1-4); Rules 1:15 (d)(1-4); and Rules 5.3(a) (b) and (c)(2).
54. The Court further finds that the Virginia State Bar failed to prove violations of Rules 1.6 (a) and (d) and Rule 5.3 (c)(1) by clear and convincing evidence and dismissed these charges.

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.

* * * *

(b) Specific Duties. A lawyer shall:

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

* * * *

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

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

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

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

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

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

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

(1) Insufficient Fund Reporting. All accounts are subject to the requirements

governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

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

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

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

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

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

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

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

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

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

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

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

* * * *

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person,

and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

* * * *

VS B Docket No. 21-080-121205

Complainant: Jason Robles

55. Jason Robles ("Jason") was convicted on February 13, 2018, of several felonies in the Circuit Court of Newport News in 2013 and was sentenced to a period of incarceration in the Virginia State Penitentiary of more than 40 years.
56. Jason asked his father Freddie Robles ("Freddie") to contact Respondent to conduct a review of his case.
57. Freddie contacted Respondent's office to discuss retaining Respondent.
58. As a result of that communication, Respondent's office advised Freddie that he could retain Respondent to review his son's case for a flat fee of \$3,000.
59. Freddie sent Respondent a check for \$3,000 dated May 4, 2020.
60. Respondent signed a fee agreement letter dated May 6, 2020, that Jason signed on May 15, 2020 ("First Fee Agreement").
61. Respondent did not deposit the \$3,000.00 check into a trust account in accordance with Rule 1.15 (a) of the Virginia Rules of Professional Conduct, nor did he maintain records required to be kept pursuant to Rule 1.15 (c) of the Virginia Rules of Professional Conduct.
62. Respondent stated that he did not deposit the \$3,000.00 into his trust account because the fee was a flat fee.
63. The First Fee Agreement states in part that because the payment was a flat fee, there were no partial refunds once work began on the case.
64. The First Fee Agreement also provides in pertinent part that once a review of the case was complete, Respondent and his staff would set up one or more meetings to discuss the case.
65. Respondent never met with nor spoke to either Jason or Freddie at any time during the representation.
66. Respondent fully refunded the \$3,000 to Freddie Robles.

67. On June 22, 2020, Respondent tendered another fee agreement that was addressed to Jason. The fee agreement quoted a flat fee of \$15,000.00 to file a petition for a writ of *habeas corpus* ("Second Fee Agreement").
68. Like the First Fee Agreement, the Second Fee Agreement contains language stating that there are no partial refunds once work has begun.
69. Investigator Jackson testified at trial that according to both Jason and Freddie, they did not sign the Second Fee Agreement because they were upset at the lack of communication from Respondent.
70. Based on the foregoing, the Court finds that the Virginia State Bar proved by clear and convincing evidence the following rules charged in the Certification: Rule 1.4 (a) and (b); 1:15 (a)(1); Rules 1:15 (b)(3) and (5); Rules 1:15 (c)(1-4).
71. The Court further finds that the Virginia State Bar failed to prove violations of Rules 1.16 (d); Rule 5.3 (a), (b), (c)(1) and (2); and 8.4 (a) by clear and convincing evidence and those charges are therefore dismissed.

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

* * * *

RULE 1.15 Safekeeping Property (Effective March 2020)

(a) Depositing Funds.

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

(b) Specific Duties. A lawyer shall:

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

* * * *

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

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

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

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

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

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

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VSB Docket No. 21-080-122456

Complainant: Michael Alonzo Robinson, Jr.

72. Michael Alonzo Robinson was convicted of murder, and on January 15, 2013, was sentenced to life in prison in the Virginia Department of Corrections.
73. Mr. Robinson filed an unsuccessful appeal of his conviction, which was denied by the Supreme Court of Virginia on March 12, 2015.
74. Thereafter, Mr. Robinson filed two unsuccessful *pro se* petitions for a Writ of Habeas Corpus in the United States District Court for the Eastern District of Virginia on March 15, 2016, and September 13, 2016.
75. On May 19, 2019, Flora Skipwith, Mr. Robinson's mother, called Respondent's office and spoke with a woman whose name Ms. Skipwith was unable to recall.

76. On June 2, 2019, Mr. Robinson received a letter from Respondent's office using Respondent's letterhead quoting a flat fee of \$3,000.00 for an initial review of Mr. Robinson's case.
77. The letter was signed by Ms. George, a non-lawyer employed by Respondent.
78. The June 2, 2019, letter did not identify what role Ms. George had in Respondent's office and did not indicate that she was not licensed to practice law.
79. Sometime in March of 2020, Ms. Skipwith sent Respondent a cashier's check in the amount of \$3,000.00 for the case review.
80. On March 23, 2020, Respondent sent a fee agreement letter that Mr. Robinson signed on April 1, 2020 ("First Fee Agreement").
81. Respondent did not deposit the \$3,000.00 check into a trust account in accordance with Rule 1.15 (a) of the Virginia Rules of Professional Conduct, nor did he maintain records required to be kept pursuant to Rule 1.15 (c) of the Virginia Rules of Professional Conduct.
82. Respondent told Investigator Jackson during the investigation that he did not deposit the \$3,000.00 into his trust account because the fee was a flat fee.
83. The First Fee Agreement states in part that because the payment was a flat fee, there were no partial refunds once work began on the case.
84. The First Fee Agreement also provides in pertinent part that once a review of the case was complete, Respondent and his staff would set up one or more meetings to discuss the case.
85. Investigator Jackson stated that, Mr. Robinson told him that he only spoke with Respondent once by phone during the entire representation. The Respondent testified that he spoke with Mr. Robinson two or three times. They never met in person. Otherwise, all communications were between Mr. Robinson and members of Respondent's staff or between Ms. Skipwith and Respondent's staff.
86. On April 6, 2020, Ms. Skipwith received an email from Ms. George stating that the case review had been completed.
87. That same information was written on a letter dated April 3, 2020, purportedly sent to Mr. Robinson in prison.
88. The April 6, 2020, email did not state who completed the case review.
89. The April 6, 2020, email also stated that for a flat fee of \$25,000.00, Respondent's office would file a motion to vacate the January 15, 2013, sentence

based on violations of Mr. Robinson's due process rights and Eighth Amendment constitutional rights.

90. On April 9, 2020, Ms. George emailed Ms. Skipwith answers to questions that Mr. Robinson had about the next phase of the representation.
91. In pertinent part, Mr. Robinson had previously emailed questions such as "I know you can't guarantee me anything and it's your job to make money, I know how all this works, but do we have a chance to win this motion? How strong of case do we have? Because for my family 25k is a substantial amount" (VSB Ex. 26).
92. Ms. George answered by stating, "We would not suggest filing a motion that did not have a chance of going somewhere, and we do not want people to waste their money" (VSB Ex. 26).
93. Flora Skipwith testified that both she and her son relied upon Ms. George's representations in paying the \$25,000.00 fee to Respondent.
94. On April 20, 2020, Ms. Skipwith sent Respondent a cashier's check in the amount of \$15,000.00 and stated that pursuant to the Second Fee Agreement the balance would be paid before October 2020.
95. On April 27, 2020, Ms. George emailed Ms. Skipwith acknowledging receipt of the \$15,000.00 cashier's check.
96. On May 5, 2020, Mr. Robinson signed a fee agreement executed by Respondent and dated April 27, 2020 ("Second Fee Agreement").
97. Respondent did not deposit the \$15,000.00 cashier's check into a trust account in accordance with Rule 1.15 (a) of the Virginia Rules of Professional Conduct, nor did he maintain records required to be kept pursuant to Rule 1.15 (c) of the Virginia Rules of Professional Conduct.
98. Respondent told Investigator Jackson during the investigation that he did not deposit the \$15,000.00 cashier's check into his trust account due to the fact that the fee was a flat fee.
99. The Second Fee Agreement states in part that because the payment was a flat fee, there were no partial refunds once work began on the case.
100. On June 19, 2020, Ms. George emailed Ms. Skipwith to acknowledge receipt of a \$4,000.00 payment towards the balance due of \$10,000.00.
101. Respondent did not deposit the \$4,000.00 payment into a trust account in accordance with Rule 1.15 (a) of the Virginia Rules of Professional Conduct, nor

did he maintain records required to be kept pursuant to Rule 1.15 (c) of the Virginia Rules of Professional Conduct.

102. On July 13, 2020, Ms. Skipwith advised that she would be making a payment of the balance owed.
103. On July 23, 2020, Ms. George sent Ms. Skipwith a letter stating that they had received payment in full pursuant to the terms of the Second Fee Agreement.
104. Respondent did not deposit the additional payments into a trust account in accordance with Rule 1.15 (a) of the Virginia Rules of Professional Conduct, nor did he maintain records required to be kept pursuant to Rule 1.15 (c) of the Virginia Rules of Professional Conduct.
105. On July 6, 2020, Respondent's office filed a Motion to Vacate Sentence and Memorandum in Support thereof on behalf of Mr. Robinson with the Circuit Court for the City of Richmond, Criminal Division ("Motion to Vacate").
106. On July 20, 2020, Ms. Skipwith received an email from j.dennis@jensenjustice.com enclosing copies of the filings on behalf of Mr. Robinson (VSB Ex. 31).
107. The email was signed, "J. Dennis, Chief Law Clerk."
108. At the time referenced e-mail was sent, Mr. Dennis was incarcerated in the Virginia Department of Corrections on convictions of sexual abuse of a minor and possession of child pornography, among other convictions;
109. Investigator Jackson testified that while in prison, Mr. Dennis would not be able to send or receive emails using the jensenjustice.com domain.
110. Ms. Skipwith testified at trial that she did not know that at the time she was receiving emails from the James Dennis account that he was incarcerated in the Virginia Department of Corrections.
111. On November 16, 2020, an e-mail from j.dennis@jensenjustice.com was sent to Ms. Skipwith to advise that the hearing on Mr. Robinson's Motion to Vacate had been continued (VSB Ex. 32).
112. The email was sent from the same "jensenjustice.com" domain and was sent while Mr. Dennis was incarcerated in the Virginia Department of Corrections. That domain name was used by Respondent and staff at his firm.
113. Respondent told Investigator Jackson during the investigation he had no idea why an email was being sent from j.dennis@jensenjustice.com. He referred to it as a legacy address.

114. Respondent further stated to Investigator Jackson during the investigation that he does not know whether the James Dennis email account has been used with other clients.
115. On December 9, 2020, the Circuit Court for the City of Richmond denied the Motion to Vacate.
116. On December 10, 2020, Respondent's employee Mr. George wrote a letter to Ms. Skipwith advising of the denial of the Motion to Vacate.
117. Ms. Skipwith contacted Respondent's office and attempted to set up a meeting between Mr. Robinson and Respondent.
118. Ms. Skipwith testified that rather than speaking with Respondent, Mr. Robinson was told to speak with Mr. Dennis.
119. On February 1, 2021, Ms. Skipwith sent an email to Respondent's employee, Ms. Biggs, demanding a meeting with Respondent.
120. On February 2, 2021, Respondent sent Ms. Skipwith an email using the domain "jensenjustice.com" confirming a meeting the following Friday at 10:00 a.m.
121. Respondent failed to attend that meeting.
122. On February 4, 2021, Respondent filed a Motion for a Delayed Appeal with the Virginia Court of Appeals.
123. The Commonwealth of Virginia filed an opposition stating that a delayed appeal was not proper for a motion to vacate, and further that the issues had already been litigated on appeal.
124. On March 4, 2021, Ms. Skipwith wrote to Respondent demanding a Zoom meeting so that Respondent could speak with his client, Mr. Robinson.
125. Ms. Skipwith received an email response from Ms. Biggs later that day saying that the case was being appealed to the Court of Appeals of Virginia and that there was no other update.
126. Respondent acknowledged to Investigator Jackson during the investigation and testified at trial that he failed to properly docket the date for appealing the denial of the Motion to Vacate and did not timely file a proper notice of appeal.
127. On April 20, 2021, the Court of Appeals of Virginia issued an order denying the Motion for Delayed Appeal without prejudice to seek a delayed appeal by means of a petition for a writ of habeas corpus.

128. On April 27, 2021, Respondent filed a civil complaint in the Circuit Court for the City of Richmond seeking a declaration that Mr. Robinson's conviction order was void *ab initio* on the same grounds as that set forth in the Motion to Vacate that was previously denied ("Complaint").
129. As of the date of the disciplinary hearing in June 2022, over one year later, no hearing has been scheduled for a ruling on the Complaint. Respondent testified that he had requested a hearing but the Clerk required consent from the Commonwealth Attorney to set such a hearing. Respondent further testified that he had subsequently contacted the Commonwealth Attorney and was advised that a hearing would not be scheduled until the Virginia Attorney General had been formally served with a copy of the pleadings. Respondent further testified that the Virginia Attorney General had been served with a summons and a copy of the complaint of the case and that a hearing would be forthcoming if Respondent is allowed to continue to pursue the case.
130. The Court found that the Respondent knew or should have known that his staff, or Mr. Dennis through an intermediary, was sending unreviewed legal communications on Respondent's behalf purportedly from Mr. Dennis to clients and others while Dennis was incarcerated.
131. Based on the foregoing, the Court finds that the Virginia State Bar proved by clear and convincing evidence the following rules charged in the Certification: Rule 1.4 (a) and (b); 1.5 (a); 1:15 (a)(1); Rules 1:15 (b)(3) and (5); Rules 1:15 (c)(1-4) (March of 2020); Rules 5.3 (a) and (b), and (c)(2).
132. The Court further finds that the Virginia State Bar failed to prove violations of Rules 1.1; 1.3 (a) 1.16 (d); Rule 5.3 (c)(1); and 8.4 (a) by clear and convincing evidence and those charges are therefore dismissed.

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.

* * * *

Rule 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

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

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

* * * *

RULE 1.15 Safekeeping Property (Effective March 2020)

(a) Depositing Funds.

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

* * * *

(b) Specific Duties. A lawyer shall:

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

* * * *

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third

party, except as directed by a tribunal.

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

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

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

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

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

* * * *

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

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

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

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

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

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

* * * *

VSB Docket No. 21-080-122790

Complainant: DeAndre Gordon

133. In 2011, DeAndre Gordon was convicted of various felony charges in the City of Virginia Beach and sentenced to a period of incarceration in the Virginia Department of Corrections.
134. Asia Hunt is the fiancé of Mr. Gordon. She testified that she communicated with Mr. Gordon and Respondent's office at all relevant times.
135. Ms. Hunt spoke to Mr. Mitchell and received emails from Mr. Mitchell on June 5, June 20, and July 12, 2019.
136. After several other conversations with various persons in Respondent's office, a proposal was sent to Mr. Gordon and Ms. Hunt for Respondent to file a petition for writ of actual innocence for a flat fee of \$10,000.00.
137. On July 15, 2020, Respondent's employee, Ms. Biggs, sent Mr. Gordon a fee agreement dated June 15, 2020, that Mr. Gordon signed on July 23, 2020 ("Fee Agreement").
138. On August 5, 2020, Ms. Hunt sent Respondent a cashier's check in the amount of \$10,000.00.
139. Respondent did not deposit the \$10,000.00 payment into a trust account in accordance with Rule 1.15 (a) of the Virginia Rules of Professional Conduct, nor did he maintain records required to be kept pursuant to Rule 1.15 (c) of the Virginia Rules of Professional Conduct.
140. Respondent stated that he did not deposit the \$10,000.00 cashier's check into his trust account because the fee was a flat fee.
141. The Fee Agreement states in part that because the payment was a flat fee, there were no partial refunds once work began on the case.
142. On August 11, 2020, Ms. Hunt emailed Ms. Biggs requesting a meeting with Respondent by video or phone.
143. Respondent did not set up such a meeting.
144. On September 4, 2020, Ms. Hunt received an email from j.dennis@jensenjustice.com, an email address once used by Respondent's former chief law clerk, Mr. Dennis, requesting that she call his office to set up a time to discuss Mr. Gordon's case (VSB Ex. 49).

145. At the time that Ms. Hunt received the email, Mr. Dennis was incarcerated in the Virginia Department of Corrections on convictions of sexual abuse of a minor and possession of child pornography, among other convictions. At the time, Mr. Dennis could not personally access the jensenjustice.com domain.
146. Neither Mr. Gordon nor Ms. Hunt were aware that at any time they were receiving emails from the James Dennis address while he was incarcerated in the Virginia Department of Corrections.
147. On September 9, 2020, Ms. Hunt received an email from the James Dennis email address advising her how to schedule a phone call between him and Mr. Gordon.
148. On September 10, 2020, Ms. Biggs wrote to Ms. Hunt stating that, if Mr. Gordon did not sign the Petition for Writ of Actual Innocence that Mr. Dennis was advising he sign, the deadline for filing the petition would be missed.
149. Mr. Gordon did not want to sign the petition without first speaking with Respondent and felt like he was being pressured to sign before he was ready based on the advice that Mr. Dennis was providing.
150. On September 11, 2020, Ms. Hunt received an email from the James Dennis email address as follows:

I would like to assure you that nobody is giving Deandre the run around. The moment we got the confession, the clock started ticking on the filing deadline on the Writ of Actual Innocence. Nobody is trying to rush anything, however, being that everything must be done through the US mail due to Covid-19 and the mail system is running slow it is imperative that Dandre signs the Writ and gets it back to us. Lastly, I don't know where he is getting his legal information, but a Writ is not a one shot chance. Him and I discussed that at length, however, missing the filing deadline will eliminate the Writ all together. I am trying to force Red Onion to allow us to have an attorney call like the DOC used to do. However, there is a memo from March from the director of Department of Corrections stating that all attorney client communications be handled over the phones in the POD. We really want to see him exonerated and freed (VSB Ex. 49).

151. On September 16, 2020, Ms. Hunt wrote to j.dennis@jensenjustice.com expressing Mr. Gordon's frustration that he had not been able to get through to either Respondent or his chief law clerk, Mr. Dennis.

152. An e-mail was sent from the j.dennis@jensenjustice.com email address later that day stating that Mr. Gordon had participated in a telephone conversation thirteen days prior and that every question that Mr. Gordon had was answered.
153. On September 17, 2020, Ms. Hunt wrote to the j.dennis@jensenjustice.com email address formerly used by Mr. Dennis advising that Mr. Gordon had signed the Writ of Actual Innocence and returned it to Respondent for filing.

Respondent testified that prior to November 24, 2020, that he personally had advised Mr. Gordon that there was no deadline and that the information about a deadline previously conveyed to Mr. Gordon was incorrect.

154. Respondent filed the Writ of Actual Innocence on November 24, 2020, after having spoken with Mr. Gordon. It was only after that filing had been made that Mr. Gordon indicated that he thought that it might be possible to obtain additional affidavits in support of his Writ of Actual Innocence.
 155. On December 3, 2020, Ms. Hunt wrote to Respondent passing along an email written by Mr. Gordon expressing his frustration that Respondent would not return his calls or answer his letters. She further relayed Mr. Gordon's frustration at Mr. Dennis insisting that Mr. Gordon sign the Writ of Actual Innocence before speaking with Respondent.
 156. On December 9, 2020, Respondent emailed Ms. Hunt stating that he had set up a telephone appointment with Mr. Gordon on December 14, 2020.
 157. Respondent failed to call or otherwise meet with Mr. Gordon on December 14, 2020.
 158. On January 11, 2021, Ms. Hunt emailed Respondent requesting another phone appointment after the first one Respondent missed. Ms. Hunt received no response from Respondent.
 159. Respondent later received additional information from Mr. Gordon and filed a Motion to Amend the Writ of Actual Innocence on June 3, 2021.
 160. That motion was granted on June 24, 2021, and an Amended Writ was filed containing the information that Mr. Gordon requested be included.
 161. Respondent scheduled a call with Mr. Gordon for June 24, 2021, to discuss the case.
 162. Mr. Gordon was moved to a room in prison for him to receive the scheduled call from Respondent.
-
163. Mr. Gordon waited for the phone call, but Respondent never called Mr. Gordon.

164. Respondent testified that two days of evidentiary hearings were held to hear testimony concerning the Amended Writ on April 6, 2022, and April 8, 2022. Respondent testified that he attended both days of the evidentiary hearings in representation of Mr. Gordon.
165. Based on the foregoing, the Court finds that the Virginia State Bar proved by clear and convincing evidence the following rules charged in the Certification: Rule 1.4 (a) and (b); 1.5 (a); 1:15 (a)(1); Rules 1:15 (b)(3) and (5); Rules 1:15 (c)(1-4); Rules 5.3 (a) and (b), and (c)(2).
166. The Court further finds that the Virginia State Bar failed to prove violations of 1.16 (d); Rule 5.3 (c)(1); 5.5 (c) and 8.4 (a) by clear and convincing evidence and those charges are therefore dismissed.

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

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

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

(2) the lawyer is a partner or has managerial authority in the law firm in

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

* * * *

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 **SIXTY-DAY SUSPENSION with TERMS** of Respondent's license, effective August 1, 2022. The terms with which Respondent shall comply are as follows:

1. Respondent shall provide the Virginia State Bar with proof satisfactory to the Bar that Respondent is in compliance with Rule 1.15 of the Virginia Rules of Professional Conduct, every 60 days.
2. By November 1, 2022, Respondent shall provide to the office of Bar Counsel written policies for compliance and conformance with the Virginia Rules of Professional Conduct to ensure compliance with Rule 5.3 of the Virginia Rules of Professional Conduct. Such written policies shall be provided to current staff and all staff Respondent subsequently hires.
3. Respondent shall certify compliance with the terms herein in writing by the deadlines specified. The responsibilities herein are Respondent's. If it appears that Respondent is not in compliance with the terms specified herein, the Office of Bar Counsel shall issue a Rule to Show with the Virginia State Bar Disciplinary Board pursuant to Part 6, Section IV, Paragraph 13-18.0 requiring Respondent to prove by clear and convincing evidence that he is compliance with the terms. If Respondent is found to not be in compliance with any of the terms referenced herein the Disciplinary Board shall impose an alternative sanction of **SUSPENSION** of Respondent's license to practice law for a period of **SIX (6) MONTHS**.

Accordingly, it is hereby **ORDERED** that Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of **SIXTY-DAYS (60) with TERMS**, effective on August 1, 2022.

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 all clients for whom he is currently handling matters or was handling matters as of August 1, 2022, 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 practicable and in no event later than 45 days of 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.

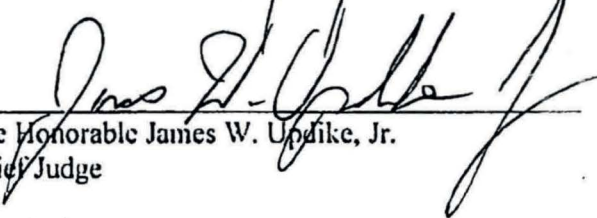
It is further **ORDERED** that if Respondent is not handling any client matters on the effective date of the Suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System of the VSB. All issues concerning the adequacy of the notice and arrangements required by Paragraph 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, Dale Reese Jensen, by certified mail, return receipt requested, to Law of Office of Dale Jensen, 606 Bull Run, Staunton Virginia 20191; to JoAnne Fronfelter, Clerk of the Disciplinary System, Virginia State Bar, 1111 E. Main Street, Suite 700, Richmond, VA 23219; Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, 1111 E. Main Street, Suite 700, Richmond, VA 23219; and to H.

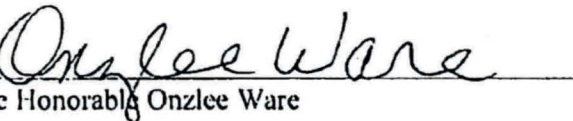
Robert Yates, III, O'Hagan Meyers, 411 East Franklin Street, Suite 500, Richmond,
Virginia 23219. The hearing was recorded by Cynthia Styles of Evans & Company Court
Reporters, P.O. Box 11822, Lynchburg, Virginia 24506 on June 22 and 23, 2022,
telephone: (434) 239-2552.

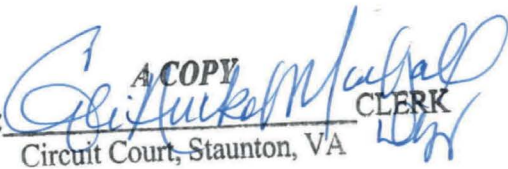
Endorsements are waived per Rule 1:13. All objections of the parties articulated on the
record and in post-hearing correspondence concerning the contents of this order are noted
and preserved.

ENTERED: 5/2/2022


The Honorable James W. Updike, Jr.
Chief Judge


The Honorable William D. Broadhurst


The Honorable Onzlee Ware

TESTE:  CLERK
A COPY
Circuit Court, Staunton, VA