VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
BRUCE ALLEN JOHNSON, JR.

VSB DOCKET NO. 25-000-133078

RECIPROCAL MEMORANDUM ORDER

THIS MATTER came to be heard on December 13, 2024, before a panel of the Virginia State Bar Disciplinary Board (the "Board") consisting of David J. Gogal, Chair, Mary Beth Nash, Stephanie G. Cox, Joseph D. Platania, and Theodore Smith, Lay member. The Virginia State Bar (the "VSB") was represented by Renu Brennan, Bar Counsel. Bruce Allen Johnson, Jr., (the "Respondent") appeared in person, *pro se*. The Chair polled the members of the Board Panel as to whether any of them had any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which each member responded in the negative. Sandra Thinnes, court reporter, 10221 Krause Road #3, Chesterfield, Virginia 23832, 804-539-9456, after being duly sworn, reported the hearing and transcribed the proceedings.

All legal notices of the date and place of the hearing were timely sent by the Clerk of the Disciplinary System ("Clerk") in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia (the "*Rules*").

The matter came before the Board on the Rule to Show Cause and Order of Summary Suspension and Hearing entered on November 13, 2024 (the "Rule to Show Cause") to which was appended the District of Columbia Court of Appeals opinion dated August 29, 2024 ordering that the Respondent be disbarred from the practice of law in the District of Columbia. The

Respondent filed a written response to the Rule to Show Cause as required by the Rules.

In accordance with Part 6, Section IV, Paragraph13-24 of the *Rules*, the purpose of the hearing was to provide the Respondent with an opportunity to show cause, if any, by clear and convincing evidence, as to why the same or equivalent discipline that was imposed upon him by the District of Columbia Court of Appeals should not be imposed by the Board. The findings in the proceedings in the District of Columbia are conclusive of all matters except to the extent that the Respondent proves one or more of the following grounds under Paragraph13-24.C of the *Rules*:

> (1) the record of the proceeding in the other jurisdiction would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process;
>
> (2) the imposition by the Board of the same discipline or equivalent discipline upon the same proof would result in an injustice;
>
> (3) the same conduct would not be grounds for disciplinary action or for the same or equivalent discipline in Virginia: or
>
> (4) the misconduct found in the other jurisdiction would warrant the imposition of substantially lesser discipline in the Commonwealth of Virginia.

Respondent, in his written Response to the Rule to Show Cause Order and in his testimony at the reciprocal disciplinary hearing, argues that grounds 2 and 4 of Paragraph 13-24.C should apply to lessen any discipline imposed by the Virginia State Bar Disciplinary Board from that which was imposed by the District of Columbia.

The Board took Judicial Notice of the Rule to Show Cause and Summary Suspension and Notice of Hearing and the attachments thereto, and of the Clerk's notice letter, and received them

into evidence as Board Exhibit 1.

VSB Exhibits1-24 were admitted into evidence by the Chair, without objection from the Respondent. Respondent's Exhibits A through C and E through M (there was no exhibit D proffered) were admitted over VSB's objections as to relevance, timeliness, and being extrinsic evidence. Respondent's Exhibits N through P were admitted without objection. Cummings v. VSB, 233 Va. 363 (1987) (decided before the amendment to Paragraph 13-24 C adding the 4th defense). Respondent testified in his case in chief. The Bar cross examined the Respondent and called Julia L. Porter as a witness. The Board heard closing arguments from each party.

PRODEDURAL BACKGROUND AND FINDINGS OF FACT

1. At all times relevant hereto, the Respondent, has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar has been 950 North Washington Street, Suite 344, Alexandria, Virginia 22314. The Respondent received proper notice of this proceeding as required by Part 6, Section IV, Paragraph 13-12 and 13-24 of the *Rules.*

2. Procedurally, Respondent was originally charged with a number of alleged violations in three separate matters in the District of Columbia. The Professional Responsibility Ad Hoc Hearing Committee held a hearing over eight days with hundreds of exhibits from the Respondent and exhibits from Disciplinary Counsel. The Ad Hoc Committee made findings of fact and recommendations to the Board on Professional Responsibility. (VSB Exhibit 3.) The Board on Professional Responsibility reached a different conclusion as to sanctions and prepared a Report and Recommendation for sanctions for the District of Columbia Court of Appeals. (VSB Exhibit 24.)

3. By Order dated August 29, 2024, the District of Columbia Court of Appeals disbarred Respondent from the practice of law in the District of Columbia for violation of Rule 1.15(a) of the DC Rules of Profession Conduct (DCRPC) for reckless misappropriation of client funds in his trust account. (VSB Exhibit 4, #0132.) The Court's analysis centered around whether Mr. Johnson acted negligently or recklessly with respect to the misappropriation of entrusted client funds. Upon finding that Respondent acted recklessly, the Court chose not to decide whether Mr. Johnson also committed the other violations alleged. (VSB EXH 4, #0134.) As the District of Columbia Court of Appeals limited its scope of inquiry and its decision to this single violation of misappropriation in disbarring the Respondent, we are bound to limit our inquiry accordingly in this Reciprocal proceeding.

4. Mr. Johnson is the only principal of his law firm and the only signatory on the firm's trust account. From January 2015 through February 2019, Mr. Johnson used a credit-card-payment processing company to facilitate client payments via credit card into the trust account. The company charged the trust account a percentage of each credit-card transaction as well as an annual fee. Mr. Johnson also accepted client fees with American Express credit cards, which charged the trust account a monthly fee as well as a percentage of each transaction processed into the trust account. These fees deducted from Respondent's trust account totaled just under $35,000 between January 2015 through February 2019. (VSB Exhibit 3, #0087.)

5. Respondent was aware that acceptance of credit card payments into the trust account and the processing fees deducted from that account created a deficit that required reimbursement, but he was not aware of the extent of these fees being withdrawn. Mr. Johnson did not look at the monthly trust-account bank statements, instead giving them unopened to his accountant. He did not look at stacks of checks before signing them each month. Respondent

changed bookkeepers in early 2015. In 2016 he became aware that his new accountant was not reconciling the trust account and that there was a deficit in the trust account related to the credit card fees. He sent an email to his accountant in 2016 stating, "I need to cut a check to replenish the trust account for bounced check fees and credit card costs. Please let me know the amount. Thanks." There was no response from the accountant and no follow up from Respondent. (VSB EXH 3, #0135-137.)

6. In mid-2016 Respondent became aware that the amount in his trust account did not match the funds that were being shown on his in-house accounting system. (VSB Exhibit 3, #0086.) Respondent admitted to Disciplinary Counsel that he knew the accountant was not reconciling the trust account, stating: "Much to my chagrin, in 2016 when I checked in with [the accountant] on reconciliation he said he had not been doing it . . . . I verbally told him that reconciliation was required." (VSB EXH 4, #0146.)

7. From approximately March 2015 to December 2018, no checks were deposited to reimburse the trust account for the monthly credit-card fees and bank charges that were being deducted. (VSB EXH 4, #0136.)

8. In November 2018, Mr. Johnson wrote six checks from the trust account that were returned for insufficient funds. On November 21, 2018, the balance in the trust account was less than $5, though he was supposed to be holding tens of thousands of dollars in the account. (VSB EXH 4, #0136.)

9. The Ad Hoc Committee findings of fact number 226 names four clients as examples of some of the many clients whose funds were taken from trust and used without their permission. (VSB EXH 3, #0089.) After the six checks bounced in 2018, Mr. Johnson used

personal funds to replenish the trust account. He also rehired his former accountant to investigate the trust account reconciliation issues. (VSB EXH 4, #0137.)

10. Based on the findings as a whole, and particularly the protracted neglect of the trust account for more than two years after Respondent became aware of problems, and the very substantial shortfall in the trust account that resulted (over $30,000), the District of Columbia Court of Appeals found that Respondent's misappropriation of client funds was reckless. Having so found, and pursuant to *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc), the Court imposed the presumptive sanction of disbarment. "[I]n virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence." *Addams*, 579 A.2d at 191. Respondent had not rebutted the presumption by a showing of "extraordinary circumstances." (VSB EXH 4, #0150.)

11. In his testimony before this Board and in his written Response to the Rule to Show Cause, Mr. Johnson acknowledged his failure to properly supervise his accountant, Mr. Broussard, and monitor his trust account. Mr. Johnson conceded the misappropriation violation, but argued that he did not have a selfish motive. He states that he has made full restitution to impacted clients using his personal funds. Respondent discharged Mr. Broussard, and rehired his former bookkeeper, Ms. Ross, to audit and fully reconcile his accounts since 2015. Respondent changed his office accounting software, now reconciles his accounts monthly and has become actively involved in the reconciliation process. He now has credit card fees taken from his operating account rather than his trust account.

12. Respondent's prior disciplinary record for Virginia was introduced as VSB Exhibit 23, showing three prior violations for misconduct in Virginia which resulted in Private Admonitions.

13. Paragraph 13-24(C) sets forth the four grounds under which the Board may decline to impose reciprocal discipline or may impose lesser discipline than that which was imposed by the original jurisdiction; one of the grounds must be shown by clear and convincing evidence to allow the Board to decline to impose reciprocal discipline:

1) The record of the proceedings in the District of Columbia would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process;

2) The imposition by the Board of the same or equivalent discipline upon the same proof would result in an injustice;

3) The same conduct would not be grounds for disciplinary action or for the same or equivalent discipline in Virginia; or

4) The misconduct found in the District of Columbia would warrant the imposition of substantially lesser discipline in the Commonwealth of Virginia.

Respondent argued that under Paragraph 13-24.C. 2 and 4, the Board should impose a lesser sanction than revocation of his license, the equivalent of disbarment imposed by the District of Columbia Court of Appeals. He relies on the fact that he had a trust account established, he did not comingle personal funds, he had hired an accountant to assist with bookkeeping, he had in-office accounting software in place, and after six checks were returned for insufficient funds and the matter was reported in the District of Columbia, he replenished the

trust account with personal funds. Respondent points out that *In re Addams*, 579 A.2d 190 (D.C. 1990) (en banc), carried a presumption of disbarment in the District of Columbia for "reckless misappropriation" of entrusted funds. He maintains that there are mitigating factors to be considered that the District of Columbia Court of Appeals did not or could not consider in determining sanctions because of that presumption. Since the Commonwealth of Virginia does not have a presumption of disbarment (or revocation) for "reckless misappropriation" of client property, a lesser sanction should be considered under Paragraph 13-24(C) 4.

The VSB argues that Respondent has not proved by clear and convincing evidence that any of the exceptions enumerated in Paragraph 13-24(C) exist, therefore the Board must impose the same or similar sanction as the foreign Jurisdiction, that is revocation. Bar Counsel argues that clients were harmed by Respondent's gross mismanagement of his trust account as the misappropriation of funds went on for nearly four years, from January of 2015 until November of 2018. Bar Counsel notes that in 2016 Respondent knew there was a problem with the reconciliation of the trust account and did nothing to rectify it for over two years, and then only after checks were returned for insufficient funds. Bar Counsel points not only to the protracted nature of the misappropriation, but to the amount of funds involved, over $34,000. Simply having a trust account in place and an accountant on staff are meaningless if Respondent recklessly abdicates his responsibility to manage them.

RULING OF THE BOARD

The Board considered the exhibits introduced and the testimony of witnesses; heard arguments of counsel; and recessed to deliberate and determine whether the Respondent had proven by clear and convincing evidence grounds set forth in Paragraph 13-24.C.2 and 4 for not

imposing a reciprocal sanction. After due deliberation, the Board reconvened and stated its findings that the Respondent had proved by clear and convincing evidence that the misconduct found in the District of Columbia would warrant the imposition of substantially lesser discipline in the Commonwealth of Virginia under Paragraph 13-24.C.4.

In considering an appropriate sanction, the Board found as aggravating factors the Respondent's prior disciplinary record and his substantial experience in the practice of law. In mitigation, the Board found an absence of a dishonest or selfish motive and a good faith effort to make restitution. The Board looked to the American Bar Association Standards for Imposing Lawyer Sanctions. Rule 4.12 of the ABA Standards states: Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia, is suspended for three (3) years as of December 13, 2024.

It is further ORDERED that Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, of the revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing Attorneys and presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. Respondent shall give such notice immediately and in no event later than 14 days of the effective date of the revocation, and make such arrangements as are required herein as soon as is practicable and in no event later than 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Clerk of the Disciplinary

System of the Virginia State Bar within 60 days of the effective date of the Revocation or Suspension that such notices have been timely given and such arrangements have been made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within 60 days of the effective day of the revocation. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein. The burden of proof shall be on the Respondent to show compliance. If the Respondent fails to show compliance, the Board may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of subparagraph 13-29.

It is further ORDERED that pursuant to Part 6, Section IV, Paragraph 13-9.E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent by certified mail, return receipt requested, and by regular first-class mail and to his address of record with the Virginia State Bar, being Law Offices of Bruce A. Johnson, Jr., 950 North Washington Street, Suite 344, Alexandria, Virginia 22314, and a copy by electronic mail to Renu Brennan, Bar Counsel.

ENTERED this 27th day of December, 2024.

VIRGINIA STATE BAR DISCIPLINARY BOARD

David J. Gogal , Chair