V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

VIRGINIA STATE BAR EX REL
THIRD DISTRICT COMMITTEE, SECTION I
VSB Docket Nos. 24-031-130769, 24-031-131415,
24-031-131495, and 24-031-131540
Complainant,

v. **Case No. CL24002065-00**

HENRY W. MCLAUGHLIN, III

Respondent.

AGREED DISPOSITION MEMORANDUM ORDER FOR REVOCATION

This matter came to be heard on June 7, 2024, before a Circuit Court Three-Judge panel, upon the joint request of the parties for the Court to accept the Agreed Disposition endorsed by the parties and offered to the Court as provided by the Rules of the Supreme Court of Virginia. The panel consisted of the Honorable Christie Ann Leary, Judge of the Nineteenth Judicial Circuit, Designated Chief Judge, the Honorable Brenda C. Spry, Judge of the Third Judicial Circuit, and the Honorable Andrew D. Kubovcik, Judge of the First Judicial Circuit. Henry W. McLaughlin, III, Respondent, was present and was represented by counsel Drew D. Sarrett. The Virginia State Bar appeared through its Bar Counsel Renu M. Brennan. The Chief Judge polled the members of the panel as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each judge responded in the negative. Court Reporter Lisa Wright of Chandler and Halasz, Inc., P. O. Box 1975, Mechanicsville, VA 23116, telephone 804-730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition for Revocation, the

arguments of the parties, and after due deliberation,

It is **ORDERED** that the Circuit Court accepts the Agreed Disposition and the Respondent shall receive a sanction of Revocation. The Agreed Disposition is attached to and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective upon entry of this Order.

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 clients. Respondent shall give such notice immediately and in no event later than 14 days of the effective date of this Memorandum Order, 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 this Memorandum Order. The Respondent shall also furnish proof to the Clerk of the Disciplinary System of the Virginia State Bar within 60 days of the effective date of the Revocation that such notices have been timely given and such arrangements have been made for the disposition of matters.

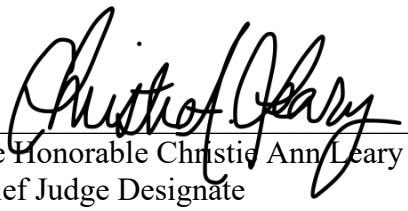
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of this Memorandum Order he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within 60 days of the effective day of this Memorandum Order. The 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.

The Clerk of the Disciplinary System shall assess costs pursuant to ¶13-9 E. of the Rules.

A copy teste of this Order shall be mailed to the Respondent, Henry W. McLaughin, III, Respondent, at his last address of record with the Virginia State Bar, The Law Office of Henry McLaughlin, P.C., 707 E. Main Street, Suite 1050, Richmond, Virginia 23219; with an attested copy to Renu M. Brennan, Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026; to Drew D. Sarrett, Respondent's Counsel, at Consumer Litigation Associates, 626 E Broad St., Ste. 300, Richmond, Virginia 23219; and to the Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED THIS 7th DAY OF JUNE, 2024.



The Honorable Christie Ann Leary
Chief Judge Designate

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HENRY W. MCLAUGHLIN, III

Respondent.

AGREED DISPOSITION FOR REVOCATION

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar, by Renu M. Brennan, Bar Counsel, Henry W. McLaughlin, III, Respondent, and Drew D. Sarrett, Respondent's counsel, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. Respondent was admitted to the Virginia State Bar ("VSB") in 1966. At all relevant times, Respondent was a member of the VSB. Respondent's practice includes prevention of home foreclosures, personal injury cases, credit reporting problems, traffic defense, landlord/tenant disputes, and family law cases.

VIRGINIA STATE BAR/GRAVES/JONES
VSB DOCKET NO. 24-031-130769

Client: Evelyn Graves

2. By retainer agreement dated June 23, 2017, Respondent agreed to substitute as counsel for Evelyn Graves in a personal injury matter.

3. On January 22, 2019, Respondent filed suit on Ms. Graves' behalf in Henrico County Circuit Court.

4. On September 29, 2022, a jury rendered a verdict in the amount of $30,000 in favor of Ms. Graves.

5. By Order entered October 12, 2022, the Henrico County Circuit Court entered judgment on the jury's verdict in favor of Ms. Graves.

6. Ms. Graves requested Respondent note an appeal of the judgment, and Respondent agreed to do so.

7. Respondent did not timely file the Notice of Appeal with the Court of Appeals of Virginia (CAV) on or before November 12, 2022. Respondent filed the Notice of Appeal late, on November 14, 2022. The CAV later dismissed the appeal because it was not timely filed. Respondent does not recall whether he told Ms. Graves that he did not timely file the appeal but states that she did not wish to pursue the appeal anyway.

8. On December 12, 2022, which would have been the deadline for filing a transcript or written statement in lieu of the transcript if Respondent had timely noted the appeal, Respondent e-mailed defense counsel to inform him that he would not file a transcript or written statement because Ms. Graves no longer wished to pursue the appeal.

9. On December 28, 2022, Respondent deposited settlement funds of $27,496.97 in his trust account.

10. At some point, Respondent does not recall the date, he advised Ms. Graves that he had received the settlement funds. Respondent asserts Ms. Graves did not agree with his proposed distribution of the settlement funds. On February 2, Respondent met again with Ms. Graves regarding distribution of the settlement funds.

11. By letter dated February 20, 2023, Respondent represented to Ms. Graves that he had received and deposited in his trust account Ms. Graves' settlement funds of $27,496.97, which constituted the $30,000 jury award minus a $2,503.03 Medicare lien.

    Respondent also:

    - stated that he would forego his fee;
    - identified a total of $6,925.00 in funds that he stated were either legally due or not contested by Ms. Graves ("Legally Due/Uncontested Funds");
        - The Legally Due/Uncontested Funds are as follows:
            - $2,675.00 expert testimony by Advanced Wellness Center ("AWC") (disputed but legally due);
            - $400.00 for Videoworks of Virginia (disputed but legally due);
            - $1,600.00 deposition costs for Respondent's deposition of the defense expert (disputed but legally due); and

- $2,250.00 for medical expert testimony (not disputed).

- identified $13,913.36 in disputed charges ("Disputed Funds") comprised of two bills, a $8,576.36 physical therapy bill and $5,337.00 for treatment by AWC;

- stated that he would pay the Legally Due/Uncontested Funds of $6,925.00;

- stated that he would hold in escrow, and was prepared to try to communicate regarding, the Disputed Funds of $13,913.36; and

- stated that he would write and deliver to Ms. Graves that day $6,658.61.

Respondent's letter states as follows:

Dear Ms. Graves,

This is a follow up on the earlier letter I hand delivered to you with copy to your husband.

In regard to your personal injury case, I received an check placed in escrow for $27,496.97 which was the amount of the jury award minus the lien of $2,503.03 for Medicare. From that $27,496.97 are the following charges: (a) Bill from Advanced Wellness Center for treatment for $5,337.00, which you dispute; (b) Bill from Roberts Physical Therapy for $8,576.36, which you dispute.; (c) bill for $2, 675 expert testimony by Advanced Wellness Center, which you dispute (but legally due); (d) Videoworks of Va, for video work regarding the psychiatrist who testified on your behalf for $400 (which you dispute, but which is legally due) (e) deposition costs for my taking the deposition of the defense expert ($1,600), which you dispute (but which is legally due):, the bill for Dr. Jackson's expert testimony of $2, 250 (which you don't dispute).

By law, I am entitled to 20% of the $30,000 jury award (the written agreement was $25% but I verbally reduced that before trial to 20%. ($6,000) I have since decided to forego my fee entirely and do not seek reimbursement for the considerable expert witness charges I have previously paid (which totaled a large amount of money). After all of the charges (not foregone) recited above, the amount left to pay you is $6,658.61. I am willing to write you an escrow check for that today if you will accept it. I will pay from escrow the amounts stated above that are either stated above as legally due, or not contested by you, which total $6,925. 00, I will keep in escrow for now $13, 913. 36, which are the treatment charges you dispute. Therefore, of the $27,496.97 I received in escrow (recited above) I am ready (a) to write and deliver to you today $6,658.61; (b) to write and mail to experts (as recited herein above) $6, 925 from escrow, retaining in escrow $13,913.36 which are disputed. I'm prepared to try to communicate for you as to the disputed treatment charges.

Very truly yours,

Henry W. McLaughlin
Attorney-at-Law

12. On February 21, 2023, Respondent disbursed $6,658.61 to Ms. Graves as her portion of the settlement funds.

13. On March 16, 2023, Respondent disbursed $2,675.00 to AWC.

14. Other than the $2,675.00 paid to AWC, Respondent did not, as he represented he would in his February 20, 2023 letter to Ms. Graves, disburse any of the remaining Legally Due/Uncontested Funds to the parties who were entitled to the funds ["I will pay from escrow the amounts stated above that are either stated above as legally due, or not contested by you, which total $6,925.00.....Therefore, of the $27,496.97 I received in escrow (recited above) I am ready ... (b) to write and mail to experts (as recited herein above) $6,925 from escrow...."]

15. Respondent did not, as he stated in his February 20, 2023 letter, communicate for Ms. Graves with the relevant parties as to the Disputed Funds. On May 28, 2024, Respondent asserts he sent a check of $2,250.00 for one of the undisputed liens. Respondent also filed an interpleader in Henrico Circuit Court naming as the main defendant Ms. Graves' deceased son.

16. On April 7, 2023, Ms. Graves passed away. As of the date Ms. Graves passed away, Respondent had not disbursed $4,250 of the Legally Due/Uncontested Funds, nor did Respondent interplead the Disputed Funds or communicate with the relevant parties regarding these funds.

17. Until May 2024, Respondent held $18,663.36 of Ms. Graves' settlement funds in his trust account. On May 28 and 29, 2024, on the eve of the disciplinary hearing, Respondent took the action asserted above in paragraph 15.

FAILURE TO PRODUCE DOCUMENTATION TO SUBSTANTIATE RESPONDENT'S CONSOLIDATED ACCOUNTING AND TO RECONCILE AND MANAGE TRUST ACCOUNT

18. On January 16, 2024, the VSB issued a subpoena *duces tecum* ("VSB SDT") to Respondent for:

> 5) **all trust account and operating account records, including all paper and electronically stored records, including cancelled checks, cash receipts journals, cash disbursements journals, individual client subsidiary ledgers, bank statements, deposit tickets (with copies of supporting deposit items), deposit slips, cash in tickets, withdrawal slips, cash out tickets, wire transfer and transmittal notices, copies of all wire transfer instructions, cashier's checks and money orders, and any instruments used to purchase them, credit and debit memoranda, and evidence of reconciliations; that are in your possession, custody or control, relating to your representation of Evelyn Graves, Letta Hall, and Labarbara Jones**

Respondent only produced the Consolidated Accounting prepared by his son and miscellaneous trust and operating bank account statements. Respondent did not produce any records, journals, ledgers, deposit tickets or slips, withdrawal slips, cash out tickets, wire transfer and transmittal information, or cancelled checks to support the Consolidated Accounting.

19. On February 12, 2024, the VSB Investigator asked Respondent for the ledgers and proof of reconciliations, which Respondent did not produce in response to the SDT.

20. On February 13, 2024, Respondent and his son called the VSB Investigator. The Investigator again noted that Respondent did not produce most of the documentation requested by the SDT, including reconciliations, to which Respondent's son replied that he did not understand what further records existed. Respondent stated he would produce all documents requested by the SDT, but did not produce any other records responsive to the VSB SDT, including any reconciliations.

21. Respondent admitted that he does not reconcile the trust account. He stated that his son reconciles the trust account. Respondent's son, however, only did trust account balance reconciliations. He did not and does not reconcile the client ledger balances or the client balances and trust account balances as required by Virginia Rule of Professional Conduct 1.15(d).

22. Respondent's son did not even do the trust account balance reconciliations after October 2023.

23. Respondent does not review his son's reconciliations of the trust account on a monthly basis as is required by Virginia Rule of Professional Conduct 1.15, or at all.

24. Respondent has delegated, completely, his trust accounting duties under Virginia Rule of Professional Conduct 1.15 to his son in California. Respondent's son transfers funds between Respondent's trust and operating accounts at Respondent's direction. While Respondent states the two talk on a daily basis, Respondent does nothing further to supervise his son's management and transfer of funds from Respondent's trust account.

Client: L. Jones

25. Respondent represented L. Jones, as administrator of her mother's estate, in appeal of an Order entered April 1, 2022 by the Circuit Court of the City of Richmond sustaining a demurrer and dismissing with prejudice Ms. Jones' action to rescind a foreclosure sale. By Order entered February 16, 2023, the Circuit Court of the City of Richmond denied Respondent's motion to reconsider. Respondent represented Ms. Jones before the Circuit Court of the City of Richmond and on appeal to the CAV.

26. Respondent filed three different appeals to the CAV, each of which was dismissed due to Respondent's procedural defaults:

- Respondent noted one of three appeals on March 20, 2023. The CAV received the record May 16, 2023. Respondent did not timely file the opening brief by June 26, 2023. By Order entered July 14, 2023, the CAV dismissed the appeal because Respondent did not timely file the opening brief.

- Respondent noted another appeal on May 31, 2023. The CAV received the record August 21, 2023. By Order entered August 31, 2023, the CAV dismissed the appeal because Respondent did not timely file the Notice of Appeal with the Clerk of the Circuit Court of the City of Richmond. By Order entered September 19, 2023, the CAV denied a Petition for Rehearing.

- Respondent noted another appeal on August 21, 2023. This appeal sought reconsideration of the dismissal of the appeal noted May 31, 2023 on the grounds that the Notice of Appeal was timely filed. The record was filed August 21, 2023. Respondent did not file an opening brief by October 12, 2023. By Order entered October 20, 2023, the CAV dismissed the appeal because Respondent did not timely file the opening brief.

27. According to Respondent, he erred in timely filing the Notice of Appeal with the Clerk of the City of Richmond, "This was malpractice on my part, of which I informed Ms. Jones and told her she has a case to sue me for malpractice. This was negligence on my part."

NATURE OF MISCONDUCT

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

In failing to timely file Ms. Jones' appeal with the Clerk of the Circuit Court of the City of Richmond, and for the other procedural defaults in Ms. Jones' appeals, Respondent violated Rules 1.1 and 1.3(a).

In failing to take the actions that Respondent told Ms. Graves he would take in his February 20, 2023 letter to her, including by failing to pay the Legally Due/Uncontested Funds to the parties entitled to receive the same and by failing to communicate or take any action to address the Disputed Funds, and thereby subjecting her to actions, Respondent violated Rule 1.1 and 1.3(a).

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

In failing to promptly, or ever, pay or make any effort to pay $4,250.00 of the Legally Due/Uncontested Funds to those entitled to receive the funds, notwithstanding his representations in his February 20, 2023 letter to Ms. Graves; and

In failing to make any effort to address or attempt to determine rightful ownership to the Disputed Funds, and/or failing to interplead the Disputed Funds into the Henrico County Circuit Court, Respondent violated Rule 1.15(b)(4).

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive[.]

In failing to reconcile his trust account, monthly or at all, and in failing to review the reconciliations prepared by his son, monthly or at all, Respondent violated Rule 1.15(d)(3). In failing to ensure that the minimum trust accounting procedures were in place and followed, including reconciliations of the client ledger balance for each client (Rule 1.15(d)3)(i)) and reconciliations of the trust account balance and the client ledger balance (Rule 1.15(d)(3)(iii)), and in failing to ensure that any reconciliations as required by Rule 1.15(d)(3)(i)-(iii) were performed from October 2023 to February 2024, Respondent violated Rule 1.15(d)(3)(i) - (iii).

RULE 1.15 Safekeeping Property

(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.

(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.

In failing to maintain and produce adequate records, notwithstanding the bar's subpoena duces tecum for the records, Respondent violated Rule1.15(d)(4).

RULE 1.15 Safekeeping Property

(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.

(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.

28. In March 2023, RS filed a warrant in debt against two defendants in general district court for personal injuries RS allegedly sustained from exposure to carpet installed in her home. RS subsequently realized that she had sued the wrong parties.

29. On June 13, 2023, RS consulted with and hired Respondent to nonsuit the lawsuit against the two defendants by June 16, 2023, and to file a lawsuit in circuit court against the manufacturer and seller of the carpet.

30. On June 13, 2023, Respondent prepared a retainer agreement, which provided that Respondent's fixed "fee is $2,500, plus out of pocket expenses ... plus 25% of any amount recovered." Respondent's retainer agreement did not identify an hourly rate. Respondent and RS executed the retainer agreement.

31. On June 13, 2023, RS paid Respondent $2,736.00, $2,500 as an advance legal fee, and $236 as the costs to file the lawsuit in circuit court.

32. On June 14, 2023, Respondent deposited the $2,736.00 from RS in his trust account.

33. On June 14, 2023, prior to nonsuiting the general district court case and filing suit in circuit court against the manufacturer and seller, Respondent transferred $1,250, one-half of the fixed fee, to his operating account.

34. By email dated June 14, 2023, RS informed Respondent that she believed that the statute of limitations to file suit against the manufacturer and seller expired July 6, 2023. The carpet was installed on July 6, 2021. Respondent did not then, or at any time before July 6, 2023, advise RS that he disagreed that the statute of limitations expired on July 6.

35. On June 16, 2023, Respondent filed the motion for nonsuit in general district court.

36. On June 19, 2023, Respondent transferred another $375 to his operating account, for a total of $1,625 of the $2,500.

37. By email dated June 20, 2023, RS asked Respondent when she could drop documents off for him to review. Within a day or two of the email, RS dropped the documents off for Respondent. The two were to meet at that time, but Respondent did not meet with RS as scheduled because he was on a conference call.

38. On June 21, 2023, Respondent transferred another $375 from trust to his operating account. As of June 21, 2023, Respondent had transferred $2,000 of the $2,500 to himself, despite the fact that he had not filed suit in circuit court.

39. By email dated June 23, 2023, RS provided Respondent with a link to relevant documents and attached discovery drafts. She also asked whether Respondent would like to meet the

next week.

40. On June 25, 2023, Respondent transferred another $375 from his trust to operating account. As of June 25, 2023, Respondent had transferred $2,375 of the $2,500 to himself, almost the entire advance legal fee, despite the fact that he had only nonsuited the general district court case and had not filed suit in circuit court.

41. By email dated June 29, 2023, RS reiterated to Respondent that the statute of limitations expired July 6, 2023, and she asked Respondent whether he had filed suit.

42. By email dated June 29, 2023, Respondent responded that he had not filed suit but that he would do so prior to the expiration of the statute of limitations. Respondent did not tell RS that he did not believe that the statute of limitations did not expire July 6, 2023.

43. Respondent did not file suit by July 6, 2023.

44. On July 7, 2023, despite the fact that Respondent did not file suit as set forth in the retainer agreement by that or any deadline, Respondent transferred the final $125 of the advance legal fee from his trust account to his operating account. As of July 7, 2023, Respondent had transferred the entire advance legal fee to himself.

45. On July 7, 2023, for the first time, Respondent told RS that the statute of limitations did not expire on July 6. Respondent stated that the nonsuit of the general district court case against the incorrectly named defendants tolled, by six months, the statute of limitations to file suit against the correct defendants in circuit court.[1] RS questioned Respondent as

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[1] § 8.01-229. Suspension or tolling of statute of limitations; effect of disabilities; effect of death; injunction; prevention of service by defendant; dismissal, nonsuit or abatement; devise for payment of debts; new promises; debts proved in creditors' suits.

E. Dismissal, abatement, or nonsuit.

3. If a plaintiff suffers a voluntary nonsuit as prescribed in § 8.01-380, the statute of limitations with respect to such action shall be tolled by the commencement of the nonsuited action, regardless of whether the statute of limitations is statutory or contractual, and the plaintiff may recommence his action within six months from the date of the order entered by the court, or within the original period of limitation, or within the limitation period as provided by subdivision B 1, whichever period is longer. This tolling provision shall apply irrespective of whether the action is originally filed in a federal or a state court and recommenced in any other court, and shall apply to all actions irrespective of whether they arise under common law or statute.

§ 8.01-380. Dismissal of action by nonsuit; fees and costs.

A. A party shall not be allowed to suffer a nonsuit as to any cause of action or claim, or any other party to the proceeding, unless he does so before a motion to strike the evidence has been sustained or before the jury retires from the bar or before the action has been submitted to the court for decision. After a nonsuit no new proceeding on the same cause of action or against the same party shall be had in any court other than that in which the nonsuit was taken, unless that court is without jurisdiction, or not a proper venue, or other good cause is shown for proceeding in another court, or when such new proceeding is instituted in a federal court. If after a nonsuit an improper venue is chosen, the court shall not dismiss the matter but shall transfer it to the proper venue upon motion of any party.

B. Only one nonsuit may be taken to a cause of action or against the same party to the proceeding, as a matter of right, although the court may allow additional nonsuits upon reasonable notice to counsel of record for all defendants and upon a reasonable attempt to notify any party not represented by counsel, or counsel may stipulate to additional nonsuits. The court, in the event additional nonsuits are allowed, may assess costs and reasonable attorney fees against the nonsuiting party. When suffering a

to whether he was correct regarding the tolling of the statute of limitations since she had nonsuited a case against a different party, and she had not taken a nonsuit against the seller or manufacturer.[2] Respondent assured RS that the statute of limitations expired January 6, 2024 and that he would file suit on or before January 6, 2024.

46. On August 8, 2023, RS spoke to Respondent. He stated he would file suit on or before January 6, 2024.

47. Respondent did not communicate with RS after the August 8, 2023 call.

48. Respondent did not file suit by January 6, 2024.

49. Respondent did not contact RS to tell her that he did not file suit by January 6, 2024.

50. By email dated January 8, 2024, RS stated to Respondent that she had not heard from him regarding her case, and she understood that the statute of limitations had expired. She requested a refund.

51. In a phone call on January 8, 2024, Respondent attempted to persuade RS to allow him to continue to represent her on a breach of contract claim.

52. RS terminated the representation and requested a refund. Respondent and RS agreed that

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nonsuit, a party shall inform the court if the cause of action has been previously nonsuited. Any order effecting a subsequent nonsuit shall reflect all prior nonsuits and shall include language that reflects the date of any previous nonsuit together with the court in which any previous nonsuit was taken.

C. If notice to take a nonsuit of right is given to the opposing party within seven days of trial or during trial, the court in its discretion may assess against the nonsuiting party reasonable witness fees and travel costs of expert witnesses scheduled to appear at trial, which are actually incurred by the opposing party, solely by reason of the failure to give notice at least seven days prior to trial. The court shall have the authority to determine the reasonableness of expert witness fees and travel costs. Invoices, receipts, or confirmation of payment shall be admissible to prove reasonableness without the need to offer testimony to support the authenticity or reasonableness of such documents, and may, in the court's discretion, satisfy the reasonableness requirement under this subsection. Nothing herein shall preclude any party from offering additional evidence or testimony to support or rebut the reasonableness requirement.

D. A party shall not be allowed to nonsuit a cause of action, without the consent of the adverse party who has filed a counterclaim, cross claim or third-party claim which arises out of the same transaction or occurrence as the claim of the party desiring to nonsuit unless the counterclaim, cross claim or third-party claim can remain pending for independent adjudication by the court.

E. A voluntary nonsuit taken pursuant to this section is subject to the tolling provisions of subdivision E 3 of § 8.01-229.
F. Upon the timely perfection of an appeal from a judgment of a general district court, pursuant to § 16.1-106, a party may suffer a nonsuit as otherwise set forth in this section, and such nonsuit shall annul the judgment of the general district court.

Further if there were a six-month tolling period where a voluntary nonsuit is taken against a different party, the six months would have begun to run from the date of the entry of the order which appears to be June 23 based on the court docket's entry of a contested hearing June 23.

[2] *See Ricketts v. Strange,* 293 Va. 101 (2017) and *Swann v. Marks*, 252 Va. 181 (1996). The relation back provisions of Va. Code Section 8.01-6 [misnomer in any pleading may, on the motion of any party, and on affidavit of the right name, be amended by inserting the right name] do not apply and the statute of limitations is not tolled if the plaintiff did not name the proper party. "Misnomer arises when the right person is incorrectly named, not where the wrong defendant is named." *Rockwell v. Allman*, 211 Va. 560, 561, 179 S.E.2d 471, 472 (1971).

Respondent would refund $2,250 of the $2,500 advance legal fee by January 31, 2024. By follow up email RS also requested a refund of the $236 she advanced in costs to file the suit.

53. Respondent did not refund any money to RS by January 31, 2024.

54. On February 13, 2024, Respondent told RS that he did not have the funds to repay her and that he could repay her in weekly installments of $500.

55. On February 26, 2024, RS received a torn check in the amount of $500.00 to "Romy Dragon," RS's email address. The check was not from Respondent's trust account. It was from his operating account. Respondent did not preserve RS's advance legal fee and costs in his trust account.

56. On March 1, RS filed a bar complaint against Respondent.

57. On March 1, the VSB issued a subpoena *duces tecum* for Respondent's file and trust account records.

58. By letter dated March 4, 2024, RS reiterated to Respondent that she fired him on January 8, 2024 and that she did not want him to file any further claims on her behalf.

59. On March 11, 2024, RS received, and cashed, a check for $1,500 from Respondent. The envelope was postmarked March 6, 2024.

60. In his March 21, 2024 interview with the bar investigator, Respondent was unable to produce any client ledgers to show how he handled RS's advance legal fee. Respondent stated that his son in California, who serves as his bookkeeper, has all his books and ledgers. Respondent's only records, which he did not produce to the Bar pursuant the Bar's subpoena duces tecum, are emails to his son with RS's name and amount of time, which state he worked on the case at the rate of $500 an hour totaling five hours.

61. On March 22, 2024, Respondent's son produced a "Consolidated Accounting" reflecting the transfers of the advance legal fee from June 14 to July 7, 2023.

62. On March 25, 2024, RS received and cashed a check in the amount of $1,236 from Respondent.

63. As set forth, despite the fact that Respondent did not file suit as agreed, and despite the fact that he failed to file suit before the statute of limitations expired, Respondent took the entire advanced legal fee as of July 7, 2023. Respondent did not return the funds until March 2024, during the VSB investigation of this matter.

NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following

provisions of the Rules of Professional Conduct:

By telling RS that the statute of limitations to sue the seller and manufacturer in circuit court was tolled six months because of RS's nonsuit of a warrant in debt against two different defendants in general district court, Respondent violated Rule 1.1.

RULE 1.1 Competence

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

By failing to file suit from June 16, 2023 to January 8, 2024, as Respondent agreed he would do in the retainer agreement and in communications with RS, Respondent violated Rule 1.3(a).

RULE 1.3 Diligence

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

By failing to communicate to RS:

(1) prior to July 6, 2023, the date RS believed that the statute of limitations expired, that Respondent disagreed that the statute of limitations expired on July 6, 2023, and that Respondent believed that the statute of limitations expired on January 6, 2024, as Respondent later asserted when he did not file suit by July 6, 2023, and

(2) that he did not file suit by July 6, 2023, the date that RS believed the statute of limitations expired, and

By instead telling RS that the statute of limitations was tolled for six months because of her nonsuit of a claim against different parties, and

By failing to communicate with RS from August 8, 2023 to January 8, 2024, and

By failing to tell RS that he did not file the lawsuit by January 6, 2024, and

By failing to provide RS with information necessary for her to make an informed decision regarding her case and legal representation, including the decision to request a refund from Respondent and terminate the representation and hire someone else to represent her,

Respondent violated Rule 1.4(a) and 1.4(b).

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.

By transferring the $2,500 advance fee to himself despite the fact that he did not file suit as agreed and failed to file suit before the expiration of the statute of limitations, and by not refunding the unearned advance legal fee to RS until a bar complaint was filed, Respondent violated Rules 1.5(a), 1.15(b)(5), and 1.16(d).

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

(b) Specific Duties. A lawyer shall:

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

RULE 1.16 Declining Or Terminating Representation

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

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64. From 2018 to November 2022, Respondent represented JE in the Circuit Court for Chesterfield County in JE's failed attempt to divest a bona fide purchaser of property that JE previously lost in foreclosure. JE sought to take advantage of a mistake made in a deed of trust following JE's earlier refinancing of the property. At that time, the lender

omitted one of two adjoining lots in the legal description. Several years later, the lender foreclosed on the deed of trust, and JE vacated the house and both lots. JE did not challenge the foreclosure. A bona fide purchaser purchased what she believed was both lots and the house. Months after the bona fide purchaser purchased the property, JE sought compensation from her because JE still, because of the mistake, held legal title to one of the lots. JE sued the bona fide purchaser seeking an order requiring the purchaser to buy the lot from him, or pay fair rental value, or for partition and sale of the property. During the litigation arising from his lawsuit, in which he was represented by Respondent, JE admitted that he was aware of the lender's mistake and that the bona fide purchaser had nothing to do with the error. A Commissioner in Chancery, with the agreement of all parties, was appointed to take evidence and issue a report. The commissioner found in favor of the bona fide purchaser and found that JE had unclean hands and thus recommended reforming the deed to correct the mistake. By order entered November 30, 2022 ("Final Order"), the Circuit Court of Chesterfield confirmed the commissioner's report in part, denied JE's claims, and ordered that the deed be reformed to vest clear title to the whole property to the bona fide purchaser and that JE pay $6,000 for the commissioner's services.

65. Respondent represented JE in his appeals of the Final Order to the Court of Appeals of Virginia (CAV) and the Supreme Court of Virginia (SCV).

66. Respondent, on JE's behalf, asserted seven assignments of error in the appeal to the CAV.

67. In an unpublished, per curiam opinion, three judges unanimously found that oral argument was unnecessary because JE's appeal was "wholly without merit." Va Code § 17.1-403(ii)(a)[3]; Rule 5A:27(a)[4].

68. The CAV found that JE waived five of the seven assignments of error under Rule 5A:20(e)[5] because his opening brief did not contain the necessary argument, including

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[3] § 17.1-403. Rules of practice, procedure, and internal processes; promulgation by Supreme Court; amendments; summary disposition of appeals.

The Supreme Court shall prescribe and publish the initial rules governing practice, procedure, and internal processes for the Court of Appeals designed to achieve the just, speedy, and inexpensive disposition of all litigation in that court consistent with the ends of justice and to maintain uniformity in the law of the Commonwealth. Before amending the rules thereafter, the Supreme Court shall receive and consider recommendations from the Court of Appeals. The rules shall prescribe procedures (i) authorizing the Court of Appeals to prescribe truncated record or appendix preparation and (ii) permitting the Court of Appeals to dispense with oral argument if the parties agree that oral argument is not necessary or if the panel has examined the briefs and record and unanimously agrees that oral argument is unnecessary because (a) the appeal is wholly without merit or (b) the dispositive issue or issues have been authoritatively decided, and the appellant has not argued that the case law should be overturned, extended, modified, or reversed.

[4] Rule 5A:27 - Summary Disposition
The Court of Appeals may dispense with oral argument in any matter if the panel to which the matter is assigned has examined the briefs and record and unanimously agrees that oral argument is unnecessary because (a) the appeal is wholly without merit or (b) the dispositive issue or issues have been authoritatively decided, and the appellant has not argued that the case law should be overturned, extended, modified, or reversed.

[5] Rule 5A:20 - Requirements for Opening Brief of Appellant

principles of law and authority, relating to each assignment of error.

69. Respondent noted an appeal to the SCV.

70. By Order entered and e-mailed to Respondent on February 29, 2024, the SCV dismissed JE's appeal pursuant to Rule 5:17(c)(1)(iii)[6] because Respondent's first five assignments of error did not address the procedural rulings of the CAV nor did they address any failure of the CAV to rule on an issue in the appeal.

71. As of March 14, Respondent had not notified JE that the SCV dismissed his appeal.

72. On March 14, 2024, Respondent filed a petition for rehearing without JE's knowledge.

73. Respondent's petition for rehearing argued that the SCV

> did not give Elliott credit for the fact that the waiver holding of the Court of Appeals, while it reached to Elliott's Assignments of Error Nos. 6 and 7, did not find waiver as to his claim of deprivation of property in violation of his state constitutional rights against such deprivation absent due process of law. Elliott submits that it follows that the February 29, 2024 order of this Court was mistaken in this regard.

74. On March 21, 2024, three weeks after entry and circulation of the SCV's Order dismissing JE's appeal, the bar investigator interviewed Respondent regarding this

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The opening brief of appellant must contain:

(e) The standard of review and the argument (including principles of law and authorities) relating to each assignment of error. When the assignment of error was not preserved in the trial court, counsel must state why the good cause and/or ends of justice exceptions to Rule 5A:18 are applicable. With respect to each assignment of error, the standard of review and the argument-including principles of law and the authorities-must be stated in one place and not scattered through the brief. At the option of counsel, the argument may be preceded by a short summary.

[6] Rule 5:17 - Petition for Appeal

(c)*What the Petition Must Contain.* - A petition for appeal must contain the following:

(1) Assignments of Error. Under a heading entitled "Assignments of Error," the petition must list, clearly and concisely and without extraneous argument, the specific errors in the rulings below-or the issue(s) on which the tribunal or court appealed from failed to rule-upon which the party intends to rely, or the specific existing case law that should be overturned, extended, modified, or reversed. An exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken must be included with each assignment of error. If the error relates to failure of the tribunal or count below to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the record where the issue was preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

(iii) Insufficient Assignments of Error. An assignment of error that does not address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. An assignment of error in an appeal from the Court of Appeals to the Supreme Court which recites that "the trial court erred" and specifies the errors in the trial court, will be sufficient so long as the Court of Appeals ruled upon the specific merits of the alleged trial court error and the error assigned in this Court is identical to that assigned in the Court of Appeals. If the assignments of error are insufficient, the petition for appeal will be dismissed.

matter. As of the interview, Respondent had not informed his client of the dismissal or basis, or of the petition for rehearing.

75. Immediately following the bar investigator's interview, Respondent called JE to advise him of the dismissal and petition for rehearing.

76. In his interview with the bar investigator, JE stated that Respondent did not tell him of the reason that his appeal was dismissed and that Respondent did not inform him that he filed the Petition for Rehearing prior to filing it, but JE said that he approved of the filing because he "has been trying to get this matter resolved for seven years now and is frustrated with the court system as he feels he has not been able to speak anytime he is in court."

NATURE OF MISCONDUCT

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

By failing to include the necessary argument, including principles of law and authority, to support the first five assignments of error in JE's appeal to the CAV, and

By failing to properly assert assignments of error in the subsequent appeal to the SCV, Respondent violated Rules 1.1 and 1.3(a).

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

By failing to timely inform JE of the SCV's dismissal of his appeal and the reason for the dismissal and by failing to tell JE that he was filing a Petition for Rehearing, Respondent violated Rule 1.4(a) and 1.4(b).

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.

77. By the Consent Order in In re: Pauline Gordon, Case No. 23-34253, entered in the United States Bankruptcy Court, E.D. Va., Richmond Division, on March 5, 2024, attached as Exhibit A, Respondent has agreed to not to represent any person filing a petition seeking relief under any chapter of the Bankruptcy Code in the Eastern District of Virginia without first seeking leave of Court. Respondent was permitted to continue to represent clients in cases filed prior to March 5, 2024.

78. The Motion to Examine Debtor's Transactions with Respondent and Return of Attorney's Fees and Imposition of Sanctions ("Motion to Examine"), attached as Exhibit B, details that Respondent had failed to appear at a 341(a) meeting in January 2024, subjecting his client's case to possible dismissal. As set forth at Paragraph 20 of the Motion to Examine, Respondent "continues to display a pattern of failure to comply with Court rules and the Bankruptcy Code."

79. The Motion to Examine outlined Respondent's pattern of failure including the Bankruptcy Court's opening of a Miscellaneous Proceeding, *In re Henry W. McLaughlin, III*, Misc. Pro. No. 23-302, and the issuance of a show cause order on April 20, 2023, attached as Exhibit C, directing Respondent to explain his failure to attend a show cause hearing and the entry of an order holding Respondent in contempt for his "repeated failure to comply with the Rules of Court" and directing Respondent to return and pay to his client attorney's fees of $1,000 and a $100 sanction and directing Respondent to take eight hours of continuing legal education pertaining to bankruptcy by October 12, 2023.

80. The Motion to Examine also discusses *In re Cox*, Case No. 23-32357 filed September 21, 2023, five months after the Miscellaneous Proceeding. The Court again entered an order, attached as Exhibit D, requiring Respondent to return and pay to his client fees of $500 and a sanction of $100. The order further directed Respondent to comply with duties imposed by applicable law, rules, or orders, including, but not limited to the implementation of office procedures to ensure calendaring of case deadlines and creditor's meetings. As stated in the Motion to Examine, Exhibit B, Respondent's failure to attend the 341(a) meeting of creditors in January 2024 violated the bankruptcy court's order in *In re Cox*, Case No. 23-32357.

NATURE OF MISCONDUCT

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

For all the reasons outlined in the Motions to Examine and Orders, and for the conduct which led to the Consent Order by which Respondent agreed not to take on new clients in the Bankruptcy Court in the Eastern District of Virginia, Respondent violated Rules 1.1 and 1.3(a).

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

By failing to attend the 341(a) Meeting on January 9, 2024 as set forth in Exhibits A and B, which constituted a violation of In re Cox, Case No. 23-32357, Exhibit D, Respondent violated Rule 3.4(d).

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

II. PROPOSED DISPOSITION

Accordingly, Bar Counsel and Respondent tender to the Three-Judge Court ("Court") designated to hear this matter for its approval the agreed disposition of revocation of Respondent's license to practice law as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Court. Bar Counsel and Respondent agree that the effective date for the sanction shall be the date of entry of the Court Order approving this Agreed Disposition.

Respondent agrees that if the Court designated to hear this matter accepts this Agreed Disposition, this matter becomes Final and Non-Appealable. Respondent also agrees that in the event the Court designated to hear this matter declines to accept this joint recommendation: i) the same Court shall hear, preside over and conclude the hearing of this matter in accordance with the designation by the Supreme Court of Virginia; and ii) Respondent waives any challenge to the composition of the Court based on its consideration and/or rejection of this joint recommendation.

Any request for Respondent's reinstatement is subject to the procedures and requirements set forth in the Rules of Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-25.E-G.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9.E of the Rules.

Respectfully submitted,

Renu M. Brennan (VSB #44529)
Bar Counsel
Virginia State Bar
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Richmond, VA 23219-0026
(804) 775-0576
Email: rbrennan@vsb.org

Henry W. McLaughlin, III (VSB #07105)
Respondent
The Law Office of Henry McLaughlin, P.C.
707 E. Main Street, Suite 1050
Richmond, Virginia 23219
(804) 205-9020
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Drew D. Sarrett (VSB #81658)
Respondent's Counsel
626 E. Broad Street, Suite 300
Richmond, Virginia 23219
(804) 528-5758
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: Pauline Gordon	)	Case No. 23-34253-KRH
	)	
Debtor.	)	Chapter 7
	)	

CONSENT ORDER ON UNITED STATES TRUSTEE'S MOTION TO EXAMINE DEBTOR'S TRANSACTIONS WITH HENRY W. MCLAUGHLIN, III, ESQUIRE, AND RETURN OF ATTORNEY'S FEES AND IMPOSITION OF SANCTIONS

On February 28, 2024, the Court conducted a hearing on the United States Trustee's Motion to Examine Debtor's Transactions with Henry W. McLaughlin, III, Esquire, and Return of Attorney's Fees ("Motion"). (ECF 22). Having considered the Motion, and the statements of Counsel at hearing, particularly the statements of Henry W. McLaughlin, III that he accepts responsibility for his errors and omissions in this case, that he did not charge his client Pauline Gordon ("the Debtor") a legal fee in this case, that is no longer accepting for representation any bankruptcy cases filed under any chapter of the Bankruptcy Code in the Eastern District of Virginia, and that he is winding down his practice, and the Court having found that jurisdiction over this case and matter is proper, venue is proper, this is a core proceeding, that Henry W. McLaughlin, III charged the Debtor no fee in this case, that Henry W. McLaughlin, III last filed a bankruptcy petition for a client in the Eastern District of Virginia on December 13, 2023 and that was for the Debtor in this case, and that it is right and just to do so, it is hereby

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Shannon Pecoraro (VSB 46864)
Nisha R. Patel (VSB 83302)
Office of the United States Trustee
701 East Broad Street - Suite 4304
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Telephone (804) 771-2310
Facsimile (804) 771-2330

ORDERED that as of the date of entry of this Order, Henry W. McLaughlin, III shall not provide legal representation to any person filing a petition seeking relief under any chapter of the Bankruptcy Code in the Eastern District of Virginia without first seeking leave of Court; and[1]

It is **FURTHER ORDERED** that Henry W. McLaughlin, III is sanctioned in the amount of $25.00, which sanction shall be paid to the Debtor within ten (10) days of entry of this Order and which Henry W. McLaughlin, III shall provide proof of payment satisfactory to the United States Trustee within ten (10) days of payment.

The Clerk is directed to docket this Order in this case and in *In re Henry W. McLaughlin, III*, Misc. Proc. 23-00302 and to send electronic notifications of the entry of this Order to all registered users of the CM/ECF System that have appeared in this case and a copy to all parties listed on the Service List below and no further service shall be necessary.

DATED: Mar 1 2024

/s/ Kevin R Huennekens
UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: Mar 5 2024

GERARD R. VETTER
Acting United States Trustee for Region Four

By: */s/ Kathryn R. Montgomery*
Kathryn R. Montgomery (VSB No. 42380)
Office of the United States Trustee
701 E. Broad Street, Suite 4304
Richmond, VA 23219
(804)771-2310
Kathryn.Montgomery@usdoj.gov

[1] For purposes of clarity, Henry W. McLaughlin, III may continue his current representation of clients in any bankruptcy cases filed prior to the date of entry of this Order.

SEEN AND AGREED:

/s/ Henry W. McLaughlin, III (with permission by email dated January 18, 2024)
Henry W. McLaughlin, III (VSB No. 07105)
The Law Office of Henry McLaughlin, P.C.
Eighth and Main Building
707 East Main Street
Suite 1050
Richmond, VA 23219
henry@mclaughlinvalaw.com

CERTIFICATION

I hereby certify that this Order has been either served on or signed by all necessary parties.

/s/ Kathryn R. Montgomery
Kathryn R. Montgomery

SERVICE LIST

Pauline Gordon
3510 Carolina Avenue
Richmond, VA 23222-0000

Henry W. McLaughlin, III, Esq.
The Law Office of Henry McLaughlin, P.C.
Eighth and Main Building
707 East Main Street
Suite 1050
Richmond, VA 23219

William Anthony Broscious, Esq.
P.O. Box 71180
Henrico, VA 23255

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Assistant United States Trustee
Office of the United States Trustee
701 East Broad Street - Suite 4304
Richmond, VA 23219

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: Pauline Gordon	)	Case No. 23-34253-KRH
	)	
Debtor.	)	Chapter 7
	)	

MOTION TO EXAMINE DEBTOR'S TRANSACTIONS WITH HENRY W. MCLAUGHLIN, III, ESQUIRE, AND RETURN OF ATTORNEY'S FEES AND IMPOSITION OF SANCTIONS

The Acting United States Trustee for Region Four, Gerard R. Vetter, ("United States Trustee"), by counsel, moves the Court pursuant to §§ 105 and 329 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), and Federal Rule of Bankruptcy Procedure 2017 to examine the transactions of Pauline Gordon (the "Debtor") with Henry W. McLaughlin, III, Esquire, ("Counsel"), to have Counsel return an appropriate amount of funds paid by the Debtor, and to impose appropriate sanctions as the Court determines. In support of this Motion, the United States Trustee respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157(a) and 1334(a) and (b).

2. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

3. Venue is proper pursuant to 28 U.S.C. § 1409.

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FACTS

4. On December 13, 2023 (the "Petition Date"), the Debtor, with the assistance of Counsel, filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. (ECF 1)

5. On December 13, 2023, the Debtor, with the assistance of Counsel, filed an application to pay filing fee in installments. (ECF 2)

6. On December 14, 2023, William A. Broscious, Esquire (the "Chapter 7 Trustee") was appointed trustee and continues to serve as Chapter 7 Trustee in this bankruptcy case. (ECF 4)

7. The Disclosure of Attorney Compensation indicates that Counsel agreed to represent the Debtor for no fee. (ECF 17 at Disclosure of Compensation)

8. On December 27, 2023, the Debtor, with assistance of Counsel, filed Schedules and/or Statements, Lists, Additional Creditors, Chapter 7 Statement of Your Current Monthly Income Form 122A-1, and Attorney Fee Disclosure. (ECF 17)

9. The initial Chapter 7 Meeting of Creditor (the "Initial § 341 Meeting") was convened by the Chapter 7 Trustee on January 9, 2024.

10. Neither the Debtor nor Counsel appeared at the Initial § 341 Meeting.

11. After receiving no request to reschedule the Initial § 341 Meeting, on January 11, 2024, the United States Trustee filed a certification pursuant to Local Rule 2003-1(B) for failure of the Debtor and Counsel to appear at the Initial § 341 Meeting (the "Certification"). (ECF 19)

12. On January 12, 2024, the Court entered an Order Setting Hearing on the Certification for February 14, 2024. (ECF 20)

13. Counsel advised the United States Trustee that the failure to appear was his mistake and that going forward, he would not accept any new representations for bankruptcy cases, regardless of the chapter.

14. Based on Counsel's failure to appear at the Initial § 341 Meeting, the Debtor's case will possibly be dismissed.

ARGUMENT

15. Bankruptcy Code § 329 authorizes the Court to examine the Debtor's transactions with Counsel. Bankruptcy Code § 329 provides, as follows:

> (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
>
> (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to –
> (1) the estate if the property transferred –
> (A) would have been property of the estate; or
> (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
> (2) the entity that made such payment.

11 U.S.C. § 329

16. Bankruptcy Rule 2017 provides authority for this Court to determine whether payment of money or transfer of property of the debtor, either before or after an order for relief, is excessive.

17. The Court has an obligation to review attorney fees under §329(b) and Rule 2017 and may order fee disgorgement or other relief. *See, In re Molina*, 2009 Bankr. LEXIS 4126

(Bankr. E.D. Va. Dec. 15, 2009); *see also Goodbar v. Beskin*, 2013 U.S. Dist. LEXIS 42675 (W.D. Va.) (Judge Urbanski) ("Section 329(b) reflects a bankruptcy court's duty to carefully review the compensation paid to the debtor's attorney."); *In re Ohpark*, 2010 Bankr. LEXIS 1580 (Bankr. E.D. Va.).

18. Section 105(a) not only enables the bankruptcy court to issue any order needed to enforce violations of other sections of the Bankruptcy Code, but also serves as a separate source for sanctions in its own right. *Weiss v. First Citizens Bank & Trust Co.*, 111 F.3d 1159, 1171-1172 (4th Cir. 1997), cert. denied, 522 U.S. 950 (1997). Bankruptcy courts have the power to sanction parties or counsel for bad faith conduct in bankruptcy proceedings. *See, e.g., Walton v. LaBarge (In re Clark)*, 223 F.3d 859, 864 (8th Cir. 2000)(section 105(a) power "includes the power to sanction counsel"); *In re Babcock*, 258 B.R. 646, 651 (Bankr. E.D. Va. 2001)(among other things, court imposed $2,653.00 in monetary sanctions against counsel for his negligent administration of debtors' chapter 7 case).

19. Bankruptcy Code § 105 "gives to bankruptcy courts the broad power to implement the provisions of the bankruptcy code and to prevent an abuse of the bankruptcy process, which includes the power to sanction counsel." *In re Ulmer*, 363 B.R. 777, 781 (Bankr. D.S.C. 2007) (citations omitted). Attorneys may be held liable for improper or unprofessional conduct in a case. *In re Johnson*, 2008 Bankr. LEXIS 164 (Bankr. E.D. Va. Jan. 18, 2008); *see also In re Computer Dynamics, Inc.*, 252 B.R. 50, 64 (Bankr. E.D. Va. 1997), aff'd, 181 F.3d 87, 1999 WL 350943 (4th Cir. 1999).

20. Counsel continues to display a pattern of failure to comply with Court rules and the Bankruptcy Code. His history includes:

a. On April 19, 2023, this Court opened a Miscellaneous Proceeding, *In re Henry W. McLaughlin, III*, Misc. Pro. No. 23-302, to address Counsel's deficiencies (the "Miscellaneous Proceeding"). On April 19, 2023, the Court issue a show cause order in the Miscellaneous Proceeding directing Counsel to appear before the Court to explain his failure to attend a scheduled Court hearing in the case of Robert Allen, Case Number 23-30577-KRH. (Miscellaneous Proceeding, ECF 3). In the Miscellaneous Proceeding, after conducting a show cause hearing, the Court entered an order holding Counsel in contempt for his "repeated failure to comply with the Rules of Court..." and ordered the return of fees to Robert Allen in the amount of $1,000.00 by April 26, 2023, and the imposition of sanctions of $100.00 to be paid by the same date. The Court also directed counsel to take eight (8) hours of continuing legal education courses pertaining to bankruptcy by October 12, 2023.

b. On September 21, 2023, on the United States Trustee's Motion to Examine Debtor's Transactions with Henry W. McLaughlin, III filed in *In re Cox*, Case No. 23-32357, this Court entered an Order requiring Counsel to return fees of $500 to his client, to pay a sanction of $100 to his client, and to comply with his duties imposed by applicable law, rules, or orders, including, but not limited to: "Mr. McLaughlin shall immediately implement and comply with office procedures to ensure proper calendaring of case deadlines and 341 meeting dates [and] Mr. McLaughlin shall not fail to attend any 341 meetings unless excused by the Office of the United States Trustee. If Mr. McLaughlin and/or his client is unable to attend a 341 meeting, Mr. McLaughlin shall timely request to

reschedule the 341 meeting and shall comply with the decision regarding rescheduling." (*In re Cox*, Case No. 23-32357, ECF 45, paragraph 3.D.)

21. Counsel's failure to calendar, attend, and inform the Debtor of the 341 meeting on January 9, 2024 has caused unnecessary cost and delay to the Debtor, the Debtor's creditors, the Chapter 7 Trustee, the United States Trustee, and this Court.

22. Counsel's failure to calendar, attend, and inform the Debtor of the 341 meeting on January 9, 2024 violates the Court's Order in *In re Cox*, Case No. 23-32357.

23. Based on the allegations described in the foregoing paragraphs, to the extent the Debtor paid any fees to Counsel, Counsel should refund all or a portion of those fees and appropriate sanctions should be imposed on Counsel as determined by the Court.

24. Counsel and the United States Trustee ask that the Court consider a proposed Consent Order, attached as Exhibit 1.

WHEREFORE, the United States Trustee, by counsel, moves the Court to grant his Motion and consider entry of the proposed Consent Order.

Respectfully submitted,

GERARD R. VETTER
Acting United States Trustee
Region Four

Date: January 22, 2024

By: /s/ Kathryn R. Montgomery
Kathryn R. Montgomery
Assistant United States Trustee

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2024, a true copy of the foregoing was served via electronic mail pursuant to the Administrative Procedures of the CM/ECF System for the United States Bankruptcy Court for the Eastern District of Virginia to all necessary parties. In addition, a copy was mailed to the Debtor and mailed and emailed to counsel for the Debtor:

Pauline Gordon
3510 Carolina Avenue
Richmond, VA 23222-0000

Henry W. McLaughlin, III, Esq.
The Law Office of Henry McLaughlin, P.C.
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/s/ Kathryn R. Montgomery
Kathryn R. Montgomery

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re: HENRY W. MCLAUGHLIN, III **Misc. Pro. No. 23-302**

ORDER IMPOSING SANCTIONS

On March 22, 2023, the Court conducted a hearing (the "Motion Hearing") on the *Motion for Extension of Time to File Completion of* [sic] *Schedules and Chapter 13 Plan and Motion for Expedited Hearing* [Case No. 23-30577-KRH, ECF No. 12] (the "Corrected Motion")[1] in *In re Robert Allen*, Case No. 23-30577-KRH (the "Bankruptcy Case"). Although Henry W. McLaughlin, III, counsel for Robert Allen (the "Debtor") in the Bankruptcy Case, filed the Corrected Motion and self-scheduled the Motion Hearing, Mr. McLaughlin failed to appear at the Motion Hearing.[2]

Counsel has the responsibility to appear at all duly scheduled hearings unless the court has otherwise received notification. *See* Local Rule 2090-1(H). Mr. McLaughlin's attendance at the Motion Hearing was particularly important because the Corrected Motion was severely flawed. The Corrected Motion was untimely. The Corrected Motion contained an inaccurate certificate of service. The Corrected Motion recited a misleading instruction that requests for hearing were required to be filed with the Bankruptcy Court in Newport News, Virginia, rather than with this Court where the matter was pending. The Corrected Motion did not satisfy the requirements under Local Bankruptcy Rule 9013-1 for an expedited motion. The Court had raised these and other

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[1] This should not be confused with the *Motion for Extension of Time to File Completion of* [sic] *Schedules and Chapter 13 Plan and Motion for Expedited Hearing* [ECF No. 10] (the "First Motion to Extend Time") previously filed in this case. The Court issued a *Notice of Deficient Filing* for the First Motion to Extend Time because the document did not match the event entry used for docketing in the CM/ECF system.

[2] Mr. McLaughlin also failed to appear at two other hearings scheduled to be heard by the Court on March 22, 2023, in other cases.

similar issues with Mr. McLaughlin previously in other cases. Nonetheless, Mr. McLaughlin did not heed this Court's warnings. Rather, he continued to repeat the same mistakes, in this instance to the detriment of his client.

The Court, by its *Order Denying Motion to Extend Time* [Case No. 23-30577-KRH, ECF No. 17], denied the untimely and deficient Corrected Motion and dismissed the Debtor's Bankruptcy Case. The Court also entered an *Order to Show Cause* [ECF No. 19] (the "Show Cause Order") requiring Mr. McLaughlin to appear before the Court and show cause why he should not be sanctioned for his failure to appear at the Motion Hearing and for his total disregard for the accuracy and propriety of the pleadings he was filing with this Court.

On April 12, 2023, the Court conducted a hearing on the Show Cause Order (the "Show Cause Hearing"). Mr. McLaughlin and counsel for the Office of the United States Trustee for Region 4 (the "U.S. Trustee") appeared. Mr. McLaughlin apologized to the Court. He made a brief statement on his own behalf, and noted that he was seeking to attend continuing legal education courses. Counsel for the U.S. Trustee requested disgorgement of the $1,000.00 in legal fees paid by the Debtor to Mr. McLaughlin for the Bankruptcy Case (the "Fees") as unreasonable, as the Debtor had received no benefit from Mr. McLaughlin's services.

In consideration of the foregoing, and for the reasons stated on the record in open court, it is therefore

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Court finds Henry W. McLaughlin, III in contempt of Court for his repeated failure to comply with the Rules of Court and for repeatedly filing improper, inaccurate, and frivolous pleadings for unwarranted claims or purposes after receiving multiple admonitions from the Court.

2. The Court finds Henry W. McLaughlin, III failed to show any cause why he should not be sanctioned for his conduct.

3. Henry W. McLaughlin, III shall take eight (8) hours of continuing legal education courses pertaining to bankruptcy. Mr. McLaughlin must certify his completion of the foregoing by a written notice that he shall submit to the U.S. Trustee on or before **October 12, 2023**.

4. Mr. McLaughlin must disgorge to Robert Allen the Fees in the amount of one thousand dollars ($1,000.00). Mr. McLaughlin must certify his completion of the disgorgement by written notice to the U.S. Trustee on or before **April 26, 2023**.

5. Mr. McLaughlin is sanctioned in the amount of one hundred dollars ($100.00), which he must pay to the Clerk of Court on or before **April 26, 2023**.

6. To the extent that Mr. McLaughlin does not comply with the terms of this Order, the U.S. Trustee may file a statement of default and notice of hearing with this Court, and may seek further sanctions, including but not limited to, further monetary sanctions, contempt, and disciplinary proceedings; provided, however, that nothing herein shall constrain the Court's inherent authority to impose additional sanctions, to discipline attorneys appearing before it, and to enforce the terms of its Orders.

7. Upon timely receipt of both certifications as provided in paragraphs 3 and 4, as well as timely payment of the fine contained in paragraph 5, the U.S. Trustee shall then certify compliance by filing a certification with this court in this Miscellaneous Proceeding.

DATED: April 20, 2023

/s/ Kevin R. Huennekens
UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: Apr 20, 2023

Copies to:

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9936 Brandywine Ave
Richmond, VA 23237

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John P. Fitzgerald, III
Office of the US Trustee - Region 4 -R
701 E. Broad Street, Ste. 4304
Richmond, VA 23219

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: Crystal Christina Cox	)	Case No. 23-32357-KRH
	)	
Debtor.	)	Chapter 7
	)	

ORDER ON UNITED STATES TRUSTEE'S MOTION TO EXAMINE DEBTOR'S TRANSACTIONS WITH HENRY W. MCLAUGHLIN, III, ESQUIRE, AND RETURN OF ATTORNEY'S FEES

On September 13, 2023, the Court conducted a hearing on the United States Trustee's Motion to Examine Debtor's Transactions with Henry W. McLaughlin, III, Esquire, and Return of Attorney's Fees ("Motion"). (ECF 32). Having considered the Motion, the Response filed by Henry W. McLaughlin, III (ECF 41), and the statements of Counsel at hearing, and the Court having found that that jurisdiction over this case and matter is proper, venue is proper, this is a core proceeding, and that it is right and just to do so, the Court hereby grants the Motion and, in consideration of the foregoing, and for the reasons stated on the record in open court, it is therefore

ORDERED, ADJUDGED, AND DECREED THAT:

1. Within fourteen (14) days of entry of this Order, Mr. McLaughlin shall refund $500.00 in fees to the debtor, Crystal Christina Cox ("Debtor"), and shall provide the United States Trustee with documentation of the refund satisfactory to the United States Trustee.

Kathryn R. Montgomery, AUST (VSB 42380)
Shannon Pecoraro, Esq. (VSB 46864)
Office of the United States Trustee
701 East Broad Street - Suite 4304
Richmond, VA 23219
Telephone (804) 771-2310
Facsimile (804) 771-2330

2. Mr. McLaughlin is sanctioned in the amount of one hundred dollars ($100.00), which, within fourteen (14) days of entry of this Order, he must pay to Debtor and must provide the United States Trustee with documentation of the payment satisfactory to the United States Trustee.

3. For all pending and future cases in which Mr. McLaughlin appears as counsel in the Bankruptcy Court for the Eastern District of Virginia, Mr. McLaughlin shall, among any other duties imposed by applicable law, rules, or orders, comply with the following terms and conditions:

A. Prior to filing any bankruptcy case, Mr. McLaughlin shall review all documentation ordinarily required by the chapter 7 panel and/or chapter 13 standing trustees, and, upon filing, timely forward such information to the case trustee.

B. Prior to filing any bankruptcy case, Mr. McLaughlin shall review all documentation ordinarily required to conduct due diligence and provide legal analysis and legal advice to clients to enable the client to make important legal choices regarding seeking relief under the Bankruptcy Code and to comply with the Bankruptcy Code and Bankruptcy Rules.

C. Mr. McLaughlin shall immediately implement and comply with office procedures to ensure that he provides reasonable communication to his clients throughout the course of the representation.

D. Mr. McLaughlin shall immediately implement and comply with office procedures to ensure proper calendaring of case deadlines and 341 meeting dates.

Mr. McLaughlin shall not fail to attend any 341 meeting unless excused by the Office of the United States Trustee. If Mr. McLaughlin and/or his client is unable to attend a 341 meeting, Mr. Mclaughlin shall timely request to reschedule the 341 meeting and shall comply with the decision regarding rescheduling.

E. Mr. McLaughlin shall immediately implement and comply with office procedures to ensure that he complies with all noticing requirements.

F. Mr. McLaughlin shall immediately implement and comply with office procedures to ensure that court filings are correct in all material respects, including, but not limited to, the caption containing the correct jurisdiction and division.

G. Mr. McLaughlin will personally review with the client the version of the schedules, statements, and any other documents to be filed with the Court.

4. Within 30 (thirty) days of the entry of this Order, Mr. McLaughlin shall create written procedures for how his staff should proceed in the event of his incapacitation or death and shall provide such procedures to the United States Trustee.

5. Within fourteen (14) days of entry of this Order, Mr. McLaughlin shall provide a copy of this Order to his secretary and his son in California, who are referenced in his Response (ECF 41), and shall certify to the United States Trustee that he has done so.

6. Nothing in this Order shall limit the United States Trustee from taking action in this or any case filed in the Bankruptcy Court for the Eastern District of Virginia.

7. To the extent that Mr. McLaughlin does not comply with the terms of this Order,

the United States Trustee may file a statement of default and notice of hearing with this Court, and may seek further sanctions, including but not limited to, further monetary sanctions, contempt, and disciplinary proceedings; provided, however, that nothing herein shall constrain the Court's inherent authority to impose additional sanctions, to discipline attorneys appearing before it, and to enforce the terms of its Orders.

8. The Clerk is directed to docket this Order in this case and in *In re Henry W. McLaughlin, III*, Misc. Proc. 23-00302 and to send electronic notifications of the entry of this Order to all registered users of the CM/ECF System that have appeared in this case and a copy to the Debtor and no further service shall be necessary.

DATED: Sep 21 2023

/s/ Kevin R Huennekens
UNITED STATES BANKRUPTCY JUDGE
Entered on Docket: Sep 21 2023

WE ASK FOR THIS:

GERARD R. VETTER
Acting United States Trustee for Region Four

By: */s/ Kathryn R. Montgomery*
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SEEN:

/s/ Henry W. McLaughlin (with permission by email dated 9/14/23)
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CERTIFICATION

I hereby certify that this Order has been either served on or signed by all necessary parties.

/s/ Kathryn R. Montgomery
Kathryn R. Montgomery

SERVICE LIST

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