VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JEFFREY MARC SHERMAN VSB Docket No.. 18-041-111137
ATTORNEY AT LAW

CONSENT TO REVOCATION ORDER

On October 7, 2020, came Respondent JEFFREY MARC SHERMAN and presented to the Board an Affidavit Declaring Consent to Revocation (hereinafter "Affidavit") of his license to practice law in the courts of this Commonwealth. By tendering his Consent to Revocation at a time when allegations of Misconduct are pending, the nature of which are specifically set forth in the attached Affidavit, and Certification, Respondent acknowledges that that the material facts upon which the allegations of Misconduct are pending are true.

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

Upon consideration whereof, it is therefore ordered that Jeffrey Marc Sherman's license to practice law in the courts of this Commonwealth be and the same hereby is revoked, and that the name of

JEFFREY MARC SHERMAN be stricken from the Roll of Attorneys of this Commonwealth.

Entered this 7th day of October, 2020

Virginia State Bar Disciplinary Board

By Yvonne S. Gibney Digitally signed by Yvonne S. Gibney Date: 2020.10.07 16:47:25 -04'00'
Yvonne S. Gibney
Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JEFFREY MARC SHERMAN VSB Docket No. 18-041-111137

AFFIDAVIT DECLARING CONSENT TO REVOCATION

Jeffrey Marc Sherman, after being duly sworn, states as follows:

1. That I was licensed to practice law in the Commonwealth of Virginia on 10/05/1982;

2. That I submit this Affidavit Declaring Consent to Revocation pursuant to Rule of Court, Part 6, Section IV, Paragraph 13-28;

3. That my consent to revocation is freely and voluntarily rendered, that I am not being subjected to coercion or duress, and that I am fully aware of the implications of consenting to the revocation of my license to practice law in the Commonwealth of Virginia;

4. I am aware that there is currently pending a complaint, an investigation into, or a proceeding involving, allegations of misconduct, the docket number(s) for which is set forth above, and the specific nature of which is here set forth:

a. On February 26, 2020, the Virginia State Bar filed a Subcommittee Determination (Certification) with the Virginia State Bar Clerk's Office. The material facts upon which the allegations were predicated are set forth in Exhibit A.

5. I acknowledge that the material facts upon which the allegations of misconduct are predicated are true; and

6. I submit this Affidavit and consents to the revocation of my license to practice law in the Commonwealth of Virginia because I know that if the disciplinary proceedings based on the said alleged misconduct were brought or prosecuted to a conclusion, I could not

successfully defend them.

Executed and dated on October 7, 2020.

Jeffrey Marc Sherman
Respondent

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

The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to before me by Jeffrey Marc Sherman on October 7, 2020.

SANDRA KRYZANOWSKY HEINZMAN
Electronic Notary Public
Commonwealth of Virginia
Registration No. 335091
My Commission Expires Jul 31, 2022

Digitally signed by Sandra Heinzman
Date: 2020.10.07 15:15:35 -04'00'

Notary Public

My Commission expires: July 31, 2022.

VIRGINIA:

BEFORE THE FOURTH DISTRICT, SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JEFFREY MARC SHERMAN

VSB Docket No. 18-041-111137

SUBCOMMITTEE DETERMINATION
(CERTIFICATION)

On December 20, 2018; June 18, 2019; and February 3, 2020, meetings in this matter were held before a duly convened Fourth District, Section I Subcommittee consisting of Jason Lee McCandless, Chair presiding; Sudeep Bose, Member; and Sandra K. Bushue, Lay Member. Pursuant to Part 6, § IV, ¶ 13-15.B.3 of the Rules of the Supreme Court of Virginia, the Fourth District, Section I Subcommittee of the Virginia State Bar ("VSB") hereby serves upon Jeffrey Marc Sherman, ("Respondent") the following Certification:

I. ALLEGATIONS OF FACT

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent began practicing as a sole practitioner in July 2013. His office is located at 1600 North Oak Street, Suite 1826, Arlington, VA 22209. He also maintains an office in Washington, D.C. ("D.C."), where he is also licensed to practice law.

3. Due to Respondent's failure to pay dues and report Continuing Legal Education Credits ("CLE"), he was administratively suspended from the practice of law in Virginia from October 10, 2013 through December 30, 2013; October 15, 2014 through March 1, 2017; and March 1, 2017 through March 22, 2018.

4. This bar complaint was filed by Gerard Vetter ("Vetter"), Assistant United States Trustee for the Greenbelt District of Maryland and Joseph Guzinski ("Guzinski"), Assistant United States Trustee for the Eastern District of Virginia ("EDV"), regarding Respondent's representation of five clients in bankruptcy courts in the EDV, Maryland, and D.C.

5. When practicing before the bankruptcy court in all three jurisdictions, Respondent was required to adhere to 11 U.S.C. §329(a), which requires that an attorney representing a debtor in a bankruptcy case file a statement of the compensation he is paid or agreed to be paid in connection with the case. Rule 2016 of the Federal Rules of Bankruptcy Procedure requires that such statements be supplemented each time additional payments are received. The form requires the attorney to "certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtors in this bankruptcy proceeding."

6. Respondent's conduct first came to the attention of Vetter in the case of Daniel Fields, Jr., ("Fields"), *In Re: Daniel Fields, Jr., Case No. 13-27190-WIL* (Bankr. D. Md.), filed, initially as a Chapter 11 bankruptcy, in the United States Bankruptcy Court for the Greenbelt District of Maryland.[1]

7. On October 9, 2013, Respondent filed an initial Disclosure of Compensation Form indicating a $5,000 fee. Respondent had actually received $6,500 from Fields on October 6, 2013 to retain him for representation in the bankruptcy case. Respondent deposited it into his operating account. He then received another $5,000 from Fields, for a total of $11,500. Respondent's initial disclosure was false, and he did not file any amendments indicating receipt of the additional funds.

8. 11 U.S. Code §329 (Debtor's transactions with attorneys) of the Bankruptcy Code authorizes the bankruptcy court to cancel any fee agreement between the debtor and his counsel or order the return of excess compensation. Pursuant to this section, the U.S. Trustee filed a Motion to Examine Debtor's Transactions with Attorney and to Disgorge Fees in the Fields case. The motion addressed Respondent's failure to report his receipt of $11,500 in fees from Fields. Respondent did not respond, and the court granted the motion on February 8, 2017.

9. On February 23, 2017, Respondent filed a Motion to Vacate the Order, arguing that his failure to respond was due to illness. Respondent also filed a Supplement to Disclosure of Compensation of Attorney for Debtor form, disclosing for the first time that he had in fact received $10,000. He alleged that the additional $1,500 was for payment of a filing fee.

10. In an April 26, 2017 email, Respondent acknowledged that he failed to make disclosures required by Bankruptcy Rule 2016, agreed to disgorge $1,500 and to waive the right to collect additional fees.

11. Respondent provided Vetter with redacted bank statements for two bank accounts. One was for a savings account with a balance of $123.34. He had been using this as a trust account until the bank notified him that the account would not support a large number of transactions. Respondent then converted this account into a checking account that contained $9,839.60.

[1] On September 11, 2014, the Bankruptcy Court granted the U.S. Trustee's Motion to Convert the case from Chapter 11 to Chapter 7.

12. Vetter discovered that fees Respondent had collected in four other cases should still be in his bank account. These fees were collected in connection with Chapter 11 bankruptcy filings in which Respondent's fee had not yet been approved by the bankruptcy court in the relevant jurisdiction. The total amount of retainer fees for these four cases plus the *Fields* case totaled $32,283. However, the balance in Respondent's second account was only $9,839.60. Respondent should have had retainers in trust for the following cases:

    1. *In Re Joaquin Bernard Siler*, Case No. 15-00246 (Bankr. D.D.C.), $5,783.00, received on or about May 1, 2015;

    2. *In Re Panchito Bello*, Case No. 16-00130 (Bankr. D.D.C.), $7,500.00, received on or about March 20, 2016;

    3. *In Re: G Boones at the Boonsboro Event Center. LLC*, Case No. 17-13356 (Bankr. D. Md.), $6,500.00, received on or about March 10, 2017; and

    4. *In Re: Z Lights and Furniture*, Case No. 17-11066 (Bankr. E.D. Va.), $7,500.00, received on or about April 4, 2017.

13. Respondent deposited the money into either his Wells Fargo Money Market savings account ending in 5318 or his Wells Fargo Essential Checking account ending in 6138 (a joint account he held with his wife). He admitted that he had "prematurely and improperly" spent the funds that he should have been holding in trust for the five cases.

14. Respondent further admitted that, prior to January 23, 2018, he did not have an IOLTA account; he did not reconcile any accounts containing client funds; he comingled client funds with earned and personal funds; he accepted fees prior to them being approved by the bankruptcy court; and he knowingly violated the bankruptcy rules by not filing proper Rule 2016 certifications.

15. Respondent handled approximately 18 cases in the bankruptcy court for the EDV while suspended in Virginia. EDV Bankruptcy Rule 5005-1(B), states:

> *Proponent to be Member of Bar*: Any attorney offering a petition, pleading or other document other than a request for notices under FRBP 2002(g), for filing on behalf of a client, must be a member in good standing of the bar of this Court.

16. On at least two bankruptcy petitions filed during the above periods of suspension, Respondent listed his VSB number on the signature page.

17. On April 29, 2019, the EDV Bankruptcy Court approved a Stipulation of Facts and Consent Order on U.S. Trustee's Motion to Examine Debtor's Transactions with Attorney and to Disgorge Fees ("the EDV Consent Order") entered into by Respondent and Guzinski in the *Gowadia* and *Z Lights and Furniture* cases. In the EDV Consent

Order, Respondent stipulated to the unauthorized withdrawals of retainers in both cases, as well as the failure to comply with the qualifications to practice before the court. The EDV Consent Order, which is attached as Exhibit 1, is incorporated for reference.

18. Regarding his practice before the EDV while suspended in Virginia, Respondent stipulated to the following:

> Mr. Sherman filed this case and appeared in the Gowadia, Z Lights and other matters during this period in the mistaken belief that his membership in the bar of this Court was not dependent upon good standing with the Virginia State Bar. By way of explanation, Mr. Sherman understood his membership in the United States District Court for the District of Maryland to be independent of Maryland licensure (which understanding is correct). Further, Mr. Sherman recalled an instance more than two decades ago in which he was investigated upon complaint of an opposing counsel for appearing before this Court while administratively suspended in Virginia; and that investigation resulted in no sanction or penalty by this Court or by the Virginia State Bar.

19. On May 10, 2019, the D.C. Bankruptcy Court entered a Stipulation of Facts and Consent Order on U.S. Trustee's Motion to Examine Debtor's Transactions with Attorney and to Disgorge Fees ("the D.C. Consent Order"). This Order addressed the *Siler* case referenced above, as well as an additional case, *In Re: David J. Brown*, Case No. 16-00466-SMT (Bankr. DDC). In the D.C. Consent Order, Respondent stipulated to the unauthorized withdrawal of retainers in both cases. The D.C. Consent Order, which is attached as Exhibit 2, is incorporated for reference.

20. On September 13, 2012, Respondent, while working for the law firm of Lerch, Early & Brewer ("Lerch Early") filed a Chapter 11 bankruptcy case on behalf of bankruptcy debtor Trigee Foundation, Inc. ("Trigee"), Case No. 12-00624 (Bankr. D.D.C.), in the D.C. Bankruptcy Court. The purpose of the filing was to stay a foreclosure proceeding commenced by Blackburne and Brown Mortgage Fund I ("Blackburne"), which was scheduled to take place on September 14, 2012.

21. Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, Respondent is required to file a Verified Statement stating all of the attorney's "connections with the debtor, creditors, or any other party in interest." While working at a previous firm, Respondent represented Blackburne in 2009 and 2010. This representation involved sending letters to Trigee regarding a default on the debt that was the subject of the pre-bankruptcy foreclosure. Respondent did not disclose this prior representation on the Verified Statement.

22. On December 21, 2016, the D.C. Bankruptcy Court conducted a show cause hearing prompted by Respondent's failure to disclose the prior representation. Respondent

testified at the hearing that he should have disclosed his prior representation of Blackburne in the Verified Statement.

23. At the conclusion of the hearing, the court stated, "a negligent failure to file another verified statement disclosing a connection is misconduct worthy of being sanctioned." In an Order entered December 22, 2016, the D.C. Bankruptcy Court imposed the sanction of an admonishment "that in future cases [Respondent] shall promptly comply with the obligation to amend any verified statement that he has filed under Fed. R. Bankr. P. 2014(a) when he learns of a connection required to be disclosed under Rule 2014(a) that was not disclosed in the original verified statement."

24. Respondent testified during the hearing that he disclosed his prior representation of Blackburne to Trigee. However, Trigee's principals testified that Respondent did not make the disclosure. Respondent testified that he did not obtain written consent from his former client, Blackburne.

II. NATURE OF MISCONDUCT

Virginia Rule of Professional Conduct 8.5 provides that a lawyer admitted to practice in Virginia is subject to the disciplinary authority of Virginia, regardless of where the lawyer's conduct occurs. For conduct occurring outside of Virginia, the Rules to be applied are those of the jurisdiction in which the lawyer's conduct occurred. Therefore, such conduct by Respondent constitutes misconduct in violation of the following[2]:

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[2] RULE 8.5 Disciplinary Authority; Choice Of Law

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of Virginia, regardless of where the lawyer's conduct occurs. A lawyer not admitted in Virginia is also subject to the disciplinary authority of Virginia if the lawyer provides, holds himself out as providing, or offers to provide legal services in Virginia. By doing so, such lawyer consents to the appointment of the Clerk of the Supreme Court of Virginia as his or her agent for purposes of notices of any disciplinary action by the Virginia State Bar. A lawyer may be subject for the same conduct to the disciplinary authority of Virginia and any other jurisdiction where the lawyer is admitted.

(b) Choice of Law. In any exercise of the disciplinary authority of Virginia, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a proceeding in a court, agency, or other tribunal before which a lawyer appears, the rules to be applied shall be the rules of the jurisdiction in which the court, agency, or other tribunal sits, unless the rules of the court, agency, or other tribunal provide otherwise;
(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred; and
(3) notwithstanding subparagraphs (b)(1) and (b)(2), for conduct in the course of providing, holding out as providing, or offering to provide legal services in Virginia, the Virginia Rules of Professional Conduct shall apply.

The complete language of all Rules at issue is included at the end of this Certification.

a. Virginia Rules of Professional Conduct: 1.5(a); 1.15(a); 1.15(b)(2); 1.15(b)(3); 1.15(b)(5); 1.15(c); 1.15(d); 3.3(a)(1); 5.5(c); 8.4(b), 8.4(c).

b. Maryland Attorneys' Rules of Professional Conduct: 19-301.5(a); 19-301.15(a); 19-301.15(c); 19-308.4(c); 19-403, 19-407 and 19-408.

c. D.C. Rules of Professional Conduct: 1.5(a); 1.9; 1.15(a); 1.15(b); 3.3(a)(1), 8.4(c)

a. VIRGINIA RULES OF PROFESSIONAL CONDUCT

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

(a) Depositing Funds.

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

(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.

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

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

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

(b) Specific Duties. A lawyer shall:

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(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

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

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(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.

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

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

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

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

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

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

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

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

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

RULE 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

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

RULE 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice of Law

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

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

RULE 8.5 Disciplinary Authority; Choice Of Law

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of Virginia, regardless of where the lawyer's conduct occurs. A lawyer not admitted in Virginia is also subject to the disciplinary authority of Virginia if the lawyer provides, holds himself out as providing, or offers to provide legal services in Virginia. By doing so, such lawyer consents to the appointment of the Clerk of the Supreme Court of Virginia as his or her agent for purposes of notices of any disciplinary action by the Virginia State Bar. A lawyer may be subject for the same conduct to the disciplinary authority of Virginia and any other jurisdiction where the lawyer is admitted.

(b) Choice of Law. In any exercise of the disciplinary authority of Virginia, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a proceeding in a court, agency, or other tribunal before which a lawyer appears, the rules to be applied shall be the rules of the jurisdiction in which the court, agency, or other tribunal sits, unless the rules of the court, agency, or other tribunal provide otherwise;

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred; and

(3) notwithstanding subparagraphs (b)(1) and (b)(2), for conduct in the course of providing, holding out as providing, or offering to provide legal services in Virginia, the Virginia Rules of Professional Conduct shall apply.

b. MARYLAND RULES OF PROFESSIONAL CONDUCT

RULE 19-301.5. FEES (1.5)

(a) An attorney shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. 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 of the attorney;
(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 attorney or attorneys performing the services; and
(8) whether the fee is fixed or contingent.

RULE 19-301.15. SAFEKEEPING PROPERTY (1.15)

(a) An attorney shall hold property of clients or third persons that is in an attorney's possession in connection with a representation separate from the attorney's own property. Funds shall be kept in a separate account maintained pursuant to Title 19, Chapter 400 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the attorney and shall be preserved for a period of at least five years after the date the record was created.

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(c) Unless the client gives informed consent, confirmed in writing, to a different arrangement, an attorney shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the attorney's own benefit only as fees are earned or expenses incurred.

RULE 19-308.4. MISCONDUCT (8.4)

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(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

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RULE 19-403. DUTY TO MAINTAIN ACCOUNT

An attorney or the attorney's law firm shall maintain one or more attorney trust accounts for the deposit of funds received from any source for the intended benefit of clients or third persons. The account or accounts shall be maintained in this State, in the District of Columbia, or in a state contiguous to this State, and shall be with an approved financial institution. Unless an attorney maintains such an account, or is a member of or employed by a law firm that maintains such an account, an attorney may not receive and accept funds as an attorney from any source intended in whole or in part for the benefit of a client or third person.

RULE 19-407. ATTORNEY TRUST ACCOUNT RECORD-KEEPING

(a) Creation of Records. The following records shall be created and maintained for the receipt and disbursement of funds of clients or of third persons:

(1) Attorney Trust Account Identification. An identification of all attorney trust accounts maintained, including the name of the financial institution, account number, account name, date the account was opened, date the account was closed, and an agreement with the financial institution establishing each account and its interest-bearing nature.

(2) Deposits and Disbursements. A record for each account that chronologically shows all deposits and disbursements, as follows:

> (A) for each deposit, a record made at or near the time of the deposit that shows (i) the date of the deposit, (ii) the amount, (iii) the identity of the client or third person for whom the funds were deposited, and (iv) the purpose of the deposit;
>
> (B) for each disbursement, including a disbursement made by electronic transfer, a record made at or near the time of disbursement that shows (i) the date of the disbursement, (ii) the amount, (iii) the payee, (iv) the identity of the client or third person for whom the disbursement was made (if not the payee), and (v) the purpose of the disbursement;

(C) for each disbursement made by electronic transfer, a written memorandum authorizing the transaction and identifying the attorney responsible for the transaction.

Cross reference: See Rule 19-410 (c), which provides that a disbursement that would create a negative balance with respect to any individual client matter or with respect to all client matters in the aggregate is prohibited.

(3) Client Matter Records. A record for each client matter in which the attorney receives funds in trust, as follows:

(A) for each attorney trust account transaction, a record that shows (i) the date of the deposit or disbursement; (ii) the amount of the deposit or disbursement; (iii) the purpose for which the funds are intended; (iv) for a disbursement, the payee and the check number or other payment identification; and (v) the balance of funds remaining in the account in connection with the matter; and

(B) an identification of the person to whom the unused portion of a fee or expense deposit is to be returned whenever it is to be returned to a person other than the client.

(4) Record of Funds of the Attorney. A record that identifies the funds of the attorney held in each attorney trust account as permitted by Rule 19-408 (b).

(b) Monthly Reconciliation. An attorney shall cause to be created a monthly reconciliation of all attorney trust account records, client matter records, records of funds of the attorney held in an attorney trust account as permitted by Rule 19-408 (b), and the adjusted month-end financial institution statement balance. The adjusted month-end financial institution statement balance is computed by adding subsequent deposits to and subtracting subsequent disbursements from the financial institution's month-end statement balance.

(c) Electronic Records. Whenever the records required by this Rule are created or maintained using electronic means, there must be an ability to print a paper copy of the records upon a reasonable request to do so.

Committee note: Electronic records should be backed up regularly by an appropriate storage device.

(d) Records to be Maintained. Financial institution month-end statements, any canceled checks or copies of canceled checks provided with a financial institution month-end statement, duplicate deposit slips or deposit receipts generated by the financial institution, and records created in accordance with section (a) of this Rule shall be maintained for a period of at least five years after the date the record was created.

Committee note: An attorney or law firm may satisfy the requirements of section (d) of this Rule by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, electronic records, or any other medium that preserves the required data for the required period of time and from which a paper copy can be printed.

Cross reference: Rule 19-301.15 (1.15) (Safekeeping Property) of the Maryland Attorneys' Rules of Professional Conduct.

RULE 19-408. COMMINGLING OF FUNDS

(a) General Prohibition. An attorney or law firm may deposit in an attorney trust account only those funds required to be deposited in that account by Rule 19-404 or permitted to be so deposited by section (b) of this Rule.

(b) Exceptions.

(1) An attorney or law firm shall either (A) deposit into an attorney trust account funds to pay any fees, service charges, or minimum balance required by the financial institution to open or maintain the account, including those fees that cannot be charged against interest due to the Maryland Legal Services Corporation Fund pursuant to Rule 19-411 (b)(1)(D), or (B) enter into an agreement with the financial institution to have any fees or charges deducted from an operating account maintained by the attorney or law firm. The attorney or law firm may deposit into an attorney trust account any funds expected to be advanced on behalf of a client and expected to be reimbursed to the attorney by the client.

(2) An attorney or law firm may deposit into an attorney trust account funds belonging in part to a client and in part presently or potentially to the attorney or law firm. The portion belonging to the attorney or law firm shall be withdrawn promptly when the attorney or law firm becomes entitled to the funds, but any portion disputed by the client shall remain in the account until the dispute is resolved.

(3) Funds of a client or beneficial owner may be pooled and commingled in an attorney trust account with the funds held for other clients or beneficial owners.

Cross reference: See Code, Business Occupations and Professions Article, §§ 10-301 et seq.

c. DISTRICT OF COLUMBIA RULES OF PROFESSIONAL CONDUCT

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 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 1.9--Conflict of Interest: Former Client

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent.

Rule 1.15--Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) All trust funds shall be deposited with an "approved depository" as that term is defined in Rule XI of the Rules Governing the District of Columbia Bar. Trust funds that are nominal in amount or expected to be held for a short period of time, and as such would not be expected to earn income for a client or third-party in excess of the costs incurred to secure such income, shall be held at an approved depository and in compliance with the District of Columbia's Interest on Lawyers Trust Account (DC IOLTA) program. The title on each DC IOLTA account shall include the name of the lawyer or law firm that controls the account, as well as "DC IOLTA Account" or "IOLTA Account." The title on all other trust accounts shall include the name of the lawyer or law firm that controls the account, as well as "Trust Account" or "Escrow Account." The requirements of this paragraph (b) shall not apply when a lawyer is otherwise compliant with the contrary mandates of a tribunal; or when the lawyer is participating in, and compliant with, the trust accounting rules and the IOLTA program of the jurisdiction in which the lawyer is licensed and principally practices.

Rule 3.3--Candor to Tribunal

(a) A lawyer shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6;

Rule 8.4--Misconduct

It is professional misconduct for a lawyer to:

*****

(c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

*****

III. CERTIFICATION

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

FOURTH DISTRICT, SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By _____
Jason Lee McCandless
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that on February 26, 2020, I mailed by certified mail a true and correct copy of the foregoing Subcommittee Determination (Certification) to Jeffrey Marc Sherman, Esquire, Respondent, at Law Offices of Jeffrey M. Sherman, 1600 N Oak St #1826, Arlington, VA 22209, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid, to Daniel Sean Schumack, counsel for Respondent, at Schumack Law Firm PLLC, 3900 Jermantown Rd Ste 300, Fairfax, VA 22030-4900.

Laura Ann Booberg
Assistant Bar Counsel

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re: **VISTASPH F. GOWADIA,** **Debtor.**	 **Case No.: 16-12905-KHK** **Chapter 11**
In re: **Z LIGHTS AND FURNITURE,** **Debtor.**	 **Case No.: 17-11066-KHK** **Chapter 11**

STIPULATION OF FACTS AND CONSENT ORDER ON U.S. TRUSTEE'S MOTION TO EXAMINE DEBTOR'S TRANSACTIONS WITH ATTORNEY AND TO DISGORGE FEES

JOHN P. FITZGERALD, III, UNITED STATES TRUSTEE FOR REGION 4 ("United States Trustee"), and **JEFFREY M. SHERMAN** (Mr. Sherman), by and through their undersigned counsel, hereby enter into and agree to these stipulations regarding Sherman's transactions with the Debtor in this case, and to the relief described below. The parties submit these stipulations in connection with the United States Trustee's Motion to Examine Debtor's Transactions with Attorney, filed herewith.

SUMMARY

It appears that Counsel withdrew a significant portion of the retainer that he received

Office of United States Trustee
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VSB Exhibit 1

from the Debtor without Court authorization. It also appears that Mr. Sherman undertook to represent the Debtor during a period in which Mr. Sherman's membership in the Virginia State Bar was administratively suspended.[1]

STIPULATIONS OF FACT

Unauthorized Withdrawal of Retainer: Vistasph F. Gowadia

1. On April 23, 2016, Vistasph F. Gowadia ("Gowadia") filed a voluntary petition for bankruptcy relief under Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code").

2. On June 28, 2017, an order was entered granting the Gowadia's Motion to Convert the Case from Chapter 13 to Chapter 11.

3. On August 23, 2016, prior to the conversion to chapter 11, Mr. Sherman filed a Disclosure of Compensation of Attorney for Debtor ("Gowadia Rule 2016 Statement"), Dkt. 3. The Rule 2016 Statement shows that Mr. Sherman received a $2,000 retainer.

4. On February 18, 2017, Mr. Sherman filed an application for his employment as counsel to Gowadia in the chapter 11 case. In support of the application of the application, Mr. Sherman filed a verified statement. Dkt 61, 62-1. In neither the application nor the verified statement did Mr. Sherman disclose any changes to his agreed to compensation or describe any payments other than the retainer identified in the Gowadia Rule 2016 statement.

5. However, Counsel has informed the United States Trustee that, although a fee application has not been filed and approved by the Court, he has withdrawn a significant

[1] Although the records of this Court listed Mr. Sherman as a member of the bar of this Court during the representation of the Debtor, Mr. Sherman was not actually in good standing with the Virginia State Bar. Mr. Sherman was, at all times germane, a member in good standing of the District of Columbia Bar (state court system) and the United States District Court and Bankruptcy Court for the District of Columbia.

portion of the $2,000 retainer.

Unauthorized Withdrawal of Retainer: Z Lights and Furniture

6. On March 30, 2017, Z Lights and Furniture (the "Z Lights") filed a voluntary petition for bankruptcy relief under Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code").

7. On August 23, 2016, Mr. Sherman filed a Disclosure of Compensation of Attorney for Debtor ("Z Light Rule 2016 Statement"), Dkt. 5. The Rule 2016 Statement shows that Mr. Sherman received a $7,500 retainer.

8. On April 17, 2017, Mr. Sherman filed an application for his employment as counsel to the Debtor in the chapter 11 case. In support of the application of the application, Mr. Sherman filed a verified statement. Dkt 15, 15-1. In neither the application nor the verified statement did Mr. Sherman disclose any changes to his agreed to compensation or describe any payments other than the retainer identified in the Z Lights Rule 2016 statement.

9. However, Counsel has informed the United States Trustee that, although a fee application has not been filed and approved by the Court, he has withdrawn a significant portion of the $7,500 retainer.

Failure to Comply with Qualifications to Practice before the Court

10. The records of the United States Bankruptcy Court show that Mr. Sherman was admitted to practice before the Court on November 23, 1982.

11. The version of Local Bankruptcy Rule 2090-1(B), effective as of December 18, 2015 and in effect at the time this case was filed, provided that for an attorney to qualify for practice before this Court, the attorney "shall be and at all times must remain a member in good standing of the Bar of the Commonwealth of Virginia." This requirement remains in

applicable.

12. On March 12, 2014, Mr. Sherman was suspended from the Virginia State Bar because of his failure to comply with the with the Mandatory Continuing Legal Education requirement.

13. The Virginia State Bar did not reinstate Mr. Sherman's license to practice until March 22, 2018.

14. Because the suspension of his license by the Virginia State Bar from March 12, 2014 through March 22, 2018, Mr. Sherman was not qualified to practice before this Court during this period under the provisions of Local Bankruptcy Rule 2090-1(B).

15. Mr. Sherman filed this case and appeared in the Gowadia, Z Lights and other matters[2] during this period in the mistaken belief that his membership in the Bar of this Court was not dependent upon continued good standing with the Virginia State Bar. By way of explanation, Mr. Sherman understood his membership in the United States District Court for the District of Maryland to be independent of Maryland licensure (which understanding is correct). Further, Mr. Sherman recalled an instance more than two decades ago in which he was investigated upon complaint of an opposing counsel for appearing before this Court while administratively suspended in Virginia; and that investigation resulted in no sanction or penalty by this Court or by the Virginia State Bar.

Cooperation with U.S. Trustee's Investigation

16. This matter was brought to the undersigned's attention by the United States Trustee for Maryland, who detected patently obvious inconsistencies between Chapter 11 debtor disbursement reports and Mr. Sherman's failure to file required fee applications. Mr.

[2] The relief sought in this Motion is intended to cover all dockets in which Mr. Sherman appeared while administratively suspended by the Virginia State Bar.

Sherman's participation in the Maryland investigation revealed related problems on Mr. Sherman's case in this Court and in the United States Bankruptcy Court for the District of Columbia.

17. Mr. Sherman cooperated with the undersigned's investigation of matters before this Court and in the District of Columbia. Mr. Sherman was candid, sincere, remorseful, and accepting of responsibility.

18. In the course of the undersigned's investigation, Mr. Sherman disclosed the existence of healthcare issues that the undersigned has reason to believe substantially impacted Mr. Sherman's administrative suspension, mismanagement of his fee petitions, and mismanagement of his banking and bookkeeping obligations. Mr. Sherman also disclosed the treatment and steps he has taken to manage those healthcare issues, culminating ultimately in lifting of his administrative suspension in Virginia and adoption of compliant protocols for fee petitions, banking, and bookkeeping. The undersigned will share details of the healthcare issues in camera, if the Court so desires.

AGREED RELIEF

19. Given Counsel's withdrawal of fees without Court authorization, and his failure to comply with Local Bankruptcy Rule 2090-1(B) during much of the pendency of this case, the United States Trustee believes that sanctions are in order.

20. Mr. Sherman has agreed to the United States Trustee requests request that he disgorge and pay to the Debtor all fees that Counsel has received to represent the Debtor in this matter as sanctions.

21. Mr. Sherman and the United States Trustee agree and request that this order be without prejudice to Mr. Sherman's rights to file and seek approval of an application for

compensation for work he performed in the chapter 11 case of Vistasph F. Gowadia after the date on which the Virginia State Bar lifted his administrative suspension.

Based on the foregoing and the Court's review of the record in this case, it is hereby

(1) ORDERED that the United States Trustee's Motion to Examine Debtor's Transactions is granted; and it is further

(2) ORDERED that Jeffrey M. Sherman shall disgorge to the Debtor all fees that Counsel has received to represent the Debtor in this case; and it is further

(3) ORDERED the United States Trustee and Jeffrey M. Sherman shall negotiate a payment plan to satisfy the order of disgorgement; and it is further

(4) ORDERED that the United States Trustee shall file a notice with this Court upon Jeffrey M. Sherman's satisfaction of the order of disgorgement; and it is further

(5) ORDERED that this order shall ***be without prejudice*** to Mr. Sherman's rights to file and seek approval of an application for compensation for work he performed in the chapter 11 case of Vistasph F. Gowadia after the date on which the Virginia State Bar lifted his administrative suspension.

SO ORDERED:

Date: Apr 26 2019

/s/ Klinette Kindred

KLINETTE H. KINDRED
United States Bankruptcy Judge

Entered on Docket: April 29, 2019

[Endorsements on Next Page]

I ask for this:

JOHN P. FITZGERALD, III
Acting United States Trustee, Region 4

BY: */s/ Joseph A. Guzinski*
Joseph A. Guzinski, Asst. U.S. Trustee
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Counsel for the U.S. Trustee

Seen, agreed, and stipulated to:

JEFFREY M. SHERMAN

/s/ Jeffrey M. Sherman (with permission)
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703-855-7394
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cc:
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Lovettsville, VA 20180

Jeffrey M. Sherman, Esq.

Office of the United States Trustee

Z Lights and Furniture
5620 General Washington Drive
Alexandria, VA 22312
ALEXANDRIA (CITY)-VA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re: **VISTASPH F. GOWADIA,** **Debtor.**	 **Case No.: 16-12905-KHK** **Chapter 11**
In re: **Z LIGHTS AND FURNITURE,** **Debtor.**	 **Case No.: 17-11066-KHK** **Chapter 11**

STIPULATION OF FACTS AND CONSENT ORDER ON U.S. TRUSTEE'S MOTION TO EXAMINE DEBTOR'S TRANSACTIONS WITH ATTORNEY AND TO DISGORGE FEES

JOHN P. FITZGERALD, III, UNITED STATES TRUSTEE FOR REGION 4 ("United States Trustee"), and **JEFFREY M. SHERMAN** (Mr. Sherman), by and through their undersigned counsel, hereby enter into and agree to these stipulations regarding Sherman's transactions with the Debtor in this case, and to the relief described below. The parties submit these stipulations in connection with the United States Trustee's Motion to Examine Debtor's Transactions with Attorney, filed herewith.

SUMMARY

It appears that Counsel withdrew a significant portion of the retainer that he received

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from the Debtor without Court authorization. It also appears that Mr. Sherman undertook to represent the Debtor during a period in which Mr. Sherman's membership in the Virginia State Bar was administratively suspended.[1]

STIPULATIONS OF FACT

Unauthorized Withdrawal of Retainer: Vistasph F. Gowadia

1. On April 23, 2016, Vistasph F. Gowadia ("Gowadia") filed a voluntary petition for bankruptcy relief under Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code").

2. On June 28, 2017, an order was entered granting the Gowadia's Motion to Convert the Case from Chapter 13 to Chapter 11.

3. On August 23, 2016, prior to the conversion to chapter 11, Mr. Sherman filed a Disclosure of Compensation of Attorney for Debtor ("Gowadia Rule 2016 Statement"), Dkt. 3. The Rule 2016 Statement shows that Mr. Sherman received a $2,000 retainer.

4. On February 18, 2017, Mr. Sherman filed an application for his employment as counsel to Gowadia in the chapter 11 case. In support of the application of the application, Mr. Sherman filed a verified statement. Dkt 61, 62-1. In neither the application nor the verified statement did Mr. Sherman disclose any changes to his agreed to compensation or describe any payments other than the retainer identified in the Gowadia Rule 2016 statement.

5. However, Counsel has informed the United States Trustee that, although a fee application has not been filed and approved by the Court, he has withdrawn a significant

[1] Although the records of this Court listed Mr. Sherman as a member of the bar of this Court during the representation of the Debtor, Mr. Sherman was not actually in good standing with the Virginia State Bar. Mr. Sherman was, at all times germane, a member in good standing of the District of Columbia Bar (state court system) and the United States District Court and Bankruptcy Court for the District of Columbia.

portion of the $2,000 retainer.

Unauthorized Withdrawal of Retainer: Z Lights and Furniture

6. On March 30, 2017, Z Lights and Furniture (the "Z Lights") filed a voluntary petition for bankruptcy relief under Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code").

7. On August 23, 2016, Mr. Sherman filed a Disclosure of Compensation of Attorney for Debtor ("Z Light Rule 2016 Statement"), Dkt. 5. The Rule 2016 Statement shows that Mr. Sherman received a $7,500 retainer.

8. On April 17, 2017, Mr. Sherman filed an application for his employment as counsel to the Debtor in the chapter 11 case. In support of the application of the application, Mr. Sherman filed a verified statement. Dkt 15, 15-1. In neither the application nor the verified statement did Mr. Sherman disclose any changes to his agreed to compensation or describe any payments other than the retainer identified in the Z Lights Rule 2016 statement.

9. However, Counsel has informed the United States Trustee that, although a fee application has not been filed and approved by the Court, he has withdrawn a significant portion of the $7,500 retainer.

Failure to Comply with Qualifications to Practice before the Court

10. The records of the United States Bankruptcy Court show that Mr. Sherman was admitted to practice before the Court on November 23, 1982.

11. The version of Local Bankruptcy Rule 2090-1(B), effective as of December 18, 2015 and in effect at the time this case was filed, provided that for an attorney to qualify for practice before this Court, the attorney "shall be and at all times must remain a member in good standing of the Bar of the Commonwealth of Virginia." This requirement remains in

applicable.

12. On March 12, 2014, Mr. Sherman was suspended from the Virginia State Bar because of his failure to comply with the with the Mandatory Continuing Legal Education requirement.

13. The Virginia State Bar did not reinstate Mr. Sherman's license to practice until March 22, 2018.

14. Because the suspension of his license by the Virginia State Bar from March 12, 2014 through March 22, 2018, Mr. Sherman was not qualified to practice before this Court during this period under the provisions of Local Bankruptcy Rule 2090-1(B).

15. Mr. Sherman filed this case and appeared in the Gowadia, Z Lights and other matters[2] during this period in the mistaken belief that his membership in the Bar of this Court was not dependent upon continued good standing with the Virginia State Bar. By way of explanation, Mr. Sherman understood his membership in the United States District Court for the District of Maryland to be independent of Maryland licensure (which understanding is correct). Further, Mr. Sherman recalled an instance more than two decades ago in which he was investigated upon complaint of an opposing counsel for appearing before this Court while administratively suspended in Virginia; and that investigation resulted in no sanction or penalty by this Court or by the Virginia State Bar.

Cooperation with U.S. Trustee's Investigation

16. This matter was brought to the undersigned's attention by the United States Trustee for Maryland, who detected patently obvious inconsistencies between Chapter 11 debtor disbursement reports and Mr. Sherman's failure to file required fee applications. Mr.

[2] The relief sought in this Motion is intended to cover all dockets in which Mr. Sherman appeared while administratively suspended by the Virginia State Bar.

Sherman's participation in the Maryland investigation revealed related problems on Mr. Sherman's case in this Court and in the United States Bankruptcy Court for the District of Columbia.

17. Mr. Sherman cooperated with the undersigned's investigation of matters before this Court and in the District of Columbia. Mr. Sherman was candid, sincere, remorseful, and accepting of responsibility.

18. In the course of the undersigned's investigation, Mr. Sherman disclosed the existence of healthcare issues that the undersigned has reason to believe substantially impacted Mr. Sherman's administrative suspension, mismanagement of his fee petitions, and mismanagement of his banking and bookkeeping obligations. Mr. Sherman also disclosed the treatment and steps he has taken to manage those healthcare issues, culminating ultimately in lifting of his administrative suspension in Virginia and adoption of compliant protocols for fee petitions, banking, and bookkeeping. The undersigned will share details of the healthcare issues in camera, if the Court so desires.

AGREED RELIEF

19. Given Counsel's withdrawal of fees without Court authorization, and his failure to comply with Local Bankruptcy Rule 2090-1(B) during much of the pendency of this case, the United States Trustee believes that sanctions are in order.

20. Mr. Sherman has agreed to the United States Trustee requests request that he disgorge and pay to the Debtor all fees that Counsel has received to represent the Debtor in this matter as sanctions.

21. Mr. Sherman and the United States Trustee agree and request that this order be without prejudice to Mr. Sherman's rights to file and seek approval of an application for

compensation for work he performed in the chapter 11 case of Vistasph F. Gowadia after the date on which the Virginia State Bar lifted his administrative suspension.

Based on the foregoing and the Court's review of the record in this case, it is hereby

(1) ORDERED that the United States Trustee's Motion to Examine Debtor's Transactions is granted; and it is further

(2) ORDERED that Jeffrey M. Sherman shall disgorge to the Debtor all fees that Counsel has received to represent the Debtor in this case; and it is further

(3) ORDERED the United States Trustee and Jeffrey M. Sherman shall negotiate a payment plan to satisfy the order of disgorgement; and it is further

(4) ORDERED that the United States Trustee shall file a notice with this Court upon Jeffrey M. Sherman's satisfaction of the order of disgorgement; and it is further

(5) ORDERED that this order shall ***be without prejudice*** to Mr. Sherman's rights to file and seek approval of an application for compensation for work he performed in the chapter 11 case of Vistasph F. Gowadia after the date on which the Virginia State Bar lifted his administrative suspension.

SO ORDERED:

Date: Apr 26 2019

/s/ Klinette Kindred

KLINETTE H. KINDRED
United States Bankruptcy Judge

Entered on Docket: April 29, 2019

[Endorsements on Next Page]

I ask for this:

JOHN P. FITZGERALD, III
Acting United States Trustee, Region 4

BY: */s/ Joseph A. Guzinski*
Joseph A. Guzinski, Asst. U.S. Trustee
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Counsel for the U.S. Trustee

Seen, agreed, and stipulated to:

JEFFREY M. SHERMAN

/s/ Jeffrey M. Sherman (with permission)
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cc:
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Pervez V. Gowadia
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Lovettsville, VA 20180

Jeffrey M. Sherman, Esq.

Office of the United States Trustee

Z Lights and Furniture
5620 General Washington Drive
Alexandria, VA 22312
ALEXANDRIA (CITY)-VA

The order below is hereby signed.

Signed: May 10 2019

S. Martin Teel, Jr.
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re:	
DAVID J. BROWN,	**Case No.: 16-00466-SMT**
Debtor.	**Chapter 7**
In re:	
JOAQUIN SILER,	**Case No.: 15-00246-SMT**
Debtor.	**Chapter 11**

Joseph A. Guzinski
Assistant U.S. Trustee
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VSB Exhibit 2

STIPULATION OF FACTS AND CONSENT ORDER ON U.S. TRUSTEE'S MOTION TO EXAMINE DEBTOR'S TRANSACTIONS WITH ATTORNEY AND TO DISGORGE FEES

JOHN P. FITZGERALD, III, UNITED STATES TRUSTEE FOR REGION 4 ("United States Trustee"), and **JEFFREY M. SHERMAN** ("Mr. Sherman"), by and through their undersigned counsel, hereby enter into and agree to these stipulations regarding Sherman's transactions with the Debtor in this case, and to the relief described below. The parties submit these stipulations in connection with the United States Trustee's Motion to Examine Debtor's Transactions with Attorney, filed herewith.

SUMMARY

It appears that Mr. Sherman withdrew a significant portion of the retainer that he received from the Debtors without Court authorization. The United States Trustee and Mr. Sherman have agreed that Mr. Sherman will disgorge the withdrawn retainers to the chapter 7 estate of David J. Brown and to Joaquin Siler in his chapter 11 case, subject to Mr. Sherman's right to submit and seek approval of fee services performed in the Siler case after the dates of the withdrawal of the retainer.

STIPULATIONS OF FACT

Unauthorized Withdrawal of Retainer: David J. Brown

1. On September 8, 2016, David J. Brown ("Brown") filed a voluntary petition for bankruptcy relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

2. On January 11, 2017, an order was entered converting case Chapter 7.

3. Mr. Sherman failed to Disclosure of Compensation of Attorney for Debtor.

4. On November 30, 2016, prior to the conversion of the case to chapter 7, Mr. Sherman filed an "Application for Employment of the Law Offices of Jeffrey M. Sherman as Debtor's Counsel," Dkt. No. 55, along with a "Verified Statement in Support of Application for Approval of Retention of Debtor's Counsel." Dkt. 55-1.

5. Mr. Sherman has disclosed to counsel for the United States Trustee that he received a retainer from Brown on November 29, 2016 in the amount of $2,000 (Two Thousand Dollars).

6. Mr. Sherman has not filed a fee application nor has the Court approved any fees or expenses for Mr. Sherman.

7. Mr. Sherman has informed counsel for the U.S. Trustee that he has deposited the $2,000 retainer into his personal bank account.

Unauthorized Withdrawal of Retainer: Joaquin Bernard Siler

8. On May 1, 2015, Joaquin Bernard Siler ("Siler") filed a voluntary petition for bankruptcy relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

9. Also on May 1 2015, Mr. Sherman filed a Disclosure of Compensation of Attorney for Debtor ("Siler Rule 2016 Statement"), Dkt. 4. The Rule 2016 Statement shows that Mr. Sherman received a fee retainer of $5,783 (Five Thousand Seven Hundred and Eighty-Three Dollars). The Siler Rule 2016 Statement represents that:

> All services rendered based upon time spent at applicable hourly rates (Jeffrey M. Sherman $325 per hour as date of filing; subject periodic adjustment), plus reimbursement of expenses incurred; subject to Court approval on notice and opportunity to object.

10. On May 7 2015, Mr. Sherman filed an application for his employment as counsel to the Debtor in the chapter 11 case. In support of the application of the application, Mr. Sherman filed a verified statement. Dkt 13, 13-1. In neither the application nor the verified statement did Mr. Sherman disclose any changes to his agreed to compensation or describe any payments other than the retainer identified in the Siler Rule 2016 statement.

11. Mr. Sherman has not filed a fee application nor has the Court approved any fees or expenses for Mr. Sherman.

12. Mr. Sherman has informed counsel for the U.S. Trustee that he has deposited the $5,783 (Five Thousand Seven Hundred Eighty Three Dollars) retainer into his personal bank account Between July 16, and July 20, 2015.

13. In addition, on or about December 5, 2016, Mr. Siler paid Mr. Sherman $11,000 (Eleven Thousand Dollars) for services in connection with his bankruptcy case. Mr. Sherman deposited these funds into his personal bank account without filing an application for compensation as required under 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016(a).

Cooperation with U.S. Trustee's Investigation

14. This matter was brought to the undersigned's attention by the Assistant United States Trustee for Maryland, who detected patently obvious inconsistencies between Chapter 11 debtor disbursement reports and Mr. Sherman's failure to file required fee applications. Mr. Sherman's participation in the Maryland investigation revealed related problems in Mr. Sherman's case in this Court and in the United States Bankruptcy Court for the Eastern

District of Virginia.

15. Mr. Sherman cooperated with the undersigned's investigation of matters before this Court and in the Eastern District of Virginia. Mr. Sherman was candid, sincere, remorseful, and accepting of responsibility.

16. In the course of the undersigned's investigation, Mr. Sherman disclosed the existence of healthcare issues that the undersigned has reason to believe substantially impacted Mr. Sherman's mismanagement of his fee petitions, and mismanagement of his banking and bookkeeping obligations. Mr. Sherman also disclosed the treatment and steps he has taken to manage those healthcare issues, culminating ultimately in adoption of compliant protocols for fee petitions, banking, and bookkeeping. The undersigned will share details of the healthcare issues in camera, if the Court so desires.

AGREED RELIEF

17. Given Counsel's withdrawal of fees without Court authorization, the United States Trustee believes that sanctions are in order.

18. Mr. Sherman has agreed to the United States Trustee's request that he disgorge and pay to (a) to the chapter 7 estate of David Brown; and (b) to the Debtor in the case of Joaquin Siler, all fees that Counsel has received to represent the Debtors in these matters as sanctions.

19. Mr. Sherman and the United States Trustee agree and request that this order be without prejudice to Mr. Sherman's rights to file and seek approval of an application for compensation for work he performed in the chapter 11 case of Joaquin Siler since December 5, 2016.

Based on the foregoing and the Court's review of the record in this case, it is hereby

(1) ORDERED that the United States Trustee's Motion to Examine Debtor's Transactions is granted; and it is further

(2) ORDERED that Jeffrey M. Sherman shall disgorge to (a) the chapter 7 estate of David Brown; and (b) to the Debtor in the case of Joaquin Siler, all fees that Counsel has received to represent the Debtors in these matters as sanctions; and it is further

(3) ORDERED the United States Trustee and Jeffrey M. Sherman shall negotiate a payment plan to satisfy the order of disgorgement; and it is further

(4) ORDERED that the United States Trustee shall file a notice with this Court upon Jeffrey M. Sherman's satisfaction of the order of disgorgement; and it is further

(5) ORDERED that this order shall ***be without prejudice*** to Mr. Sherman's rights to file and seek approval of an application for compensation for work he performed in the chapter 11 case of Joaquin Siler since December 5, 2016.

[Signed and Dated Above.]

I ask for this:

JOHN P. FITZGERALD, III
Acting United States Trustee, Region 4

BY: */s/ Joseph A. Guzinski*
Joseph A. Guzinski, Asst. U.S. Trustee
1725 Duke St, Suite 650
Alexandria, VA 22314
(703) 557-7176
joseph.a.guzinski@usdoj.gov

Counsel for the U.S. Trustee

Seen, agreed, and stipulated to:

JEFFREY M. SHERMAN

/s/ Jeffrey M. Sherman (by permission)
Jeffrey M. Sherman
Law Offices of Jeffrey M. Sherman
1600 N. Oak Street
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