

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JOSEPH WILLIAM WRIGHT, III**

VS. DOCKET NO. 20-070-119105

**AGREED DISPOSITION MEMORANDUM ORDER
PUBLIC REPRIMAND WITH TERMS**

On Monday, May 03, 2021 this matter was heard, telephonically, by the Virginia State Bar Disciplinary Board upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by Part 6, Section IV, Paragraph 13-6.H of the Rules of the Supreme Court of Virginia. The panel consisted of Carolyn V. Grady, Chair, Jennifer D. Royer, Member, Robin J. Kegley, Member, John D. Whittington, Member, and Reba H. Davis, Lay Member. The Virginia State Bar was represented by Paulo E. Franco, Jr., Assistant Bar Counsel. Joseph William Wright, III, was present and was represented by counsel, Leslie A.T. Haley. The Chair polled the members of the Board 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 member responded in the negative. Court Reporter, Beverly Lukowsky, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Respondent's Answer, Respondent's Disciplinary Record, the arguments of the parties, and after due deliberation,

It is **ORDERED** that the Disciplinary Board accepts the Agreed Disposition and the Respondent shall receive a Public Reprimand with Terms, as set forth in the Agreed Disposition, which is attached and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective May 3, 2021.

It is further **ORDERED** that:

The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, Section IV, Paragraph 13-9.E. of the Rules.

It is further ORDERED that an attested copy of this Order be mailed to the Respondent by certified, return receipt requested, regular and electronic mail at his last address of record with the Virginia State Bar, Joseph William Wright, III, Esq., Dygert, Wright, Hobbs & Henandez, PLC, 415 4th Street, NE, Charlottesville, VA 22902, and a copy by electronic mail to Leslie A. T. Haley, Respondent's counsel, and a copy by electronic mail to Paulo E. Franco, Jr., Assistant Bar Counsel.

Enter this Order this 3rd day of May, 2021

VIRGINIA STATE BAR DISCIPLINARY BOARD

**Carolyn V.
Grady**

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V. Grady
Date: 2021.05.03 14:29:00
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Carolyn V. Grady, 1st Vice Chair



A COPY TESTE

DaVida M. Davis

DaVida M. Davis

**Clerk of the Disciplinary System
Virginia State Bar**

RECEIVED

Apr 27, 2021

VIRGINIA STATE BAR
CLERK'S OFFICE

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JOSEPH WILLIAM WRIGHT, III**

VS B Docket No. 20-070-119105

**AGREED DISPOSITION
(PUBLIC REPRIMAND WITH TERMS)**

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar, by Paulo E. Franco, Jr., Assistant Bar Counsel, and Joseph William Wright, III, Respondent, and Leslie Ann Takacs Haley, Respondent's counsel, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. At all times during the course of the investigation, Respondent showed genuine remorse for the loss, cooperated fully with the Investigation, and provided unrestricted access to the Firm records and the forensic audit conducted by RFC.
2. Respondent was admitted to the Virginia State Bar ("VSB") on October 12, 1989. At all relevant times, Respondent was a member of the VSB.
3. Respondent is a partner of the law firm of Dygert, Wright, Hobbs & Hernandez, PLC ("the Firm").
4. Respondent joined the Firm in 2002 and the name of the Firm changed to Dygert, Wright & Hobbs, PLC.
5. At all times relevant, the Firm has maintained its trust, real estate, and operating accounts at a Charlottesville, Virginia branch of Atlantic Union Bank ("Atlantic Union") and its predecessor banks, Guaranty Bank and Union First Market Bank.
6. On September 29, 2003, the Firm hired Catherine C. Tyler as a bookkeeper to manage the Firm's books and accounts.
7. Prior to being hired by the Firm as its bookkeeper, Ms. Tyler had previous experience as a bookkeeper with other local businesses.
8. According to Respondent, Ms. Tyler came to the Firm with "glowing professional references."

9. Ms. Tyler primarily worked with Respondent and another attorney at the Firm in the Firm's real estate closing practice. She worked with all Firm attorneys in performing her bookkeeping and accounting functions. According to Respondent, the supervision of Ms. Tyler was informal.
10. According to Respondent, the Firm did not have written policies or protocols in place governing the duties, responsibilities, or expectations of Ms. Tyler.
11. Ms. Tyler's responsibilities included generally managing the law firm's financial and accounting functions including its trust and operating accounts. Among other things, Ms. Tyler's duties included receiving money, making bank deposits, applying client payments to outstanding invoices, accounting for cost advances and reimbursement, and paying firm bills.
12. In 2004, within approximately one year of her hire, Ms. Tyler also became the Firm's real estate paralegal and assumed the additional responsibilities of preparing real estate transactions for closing, communicating with lenders and title insurance companies, making post-closing monetary disbursements, and performing account reconciliations.
13. In her capacity as bookkeeper and real estate paralegal, Ms. Tyler was very familiar with the Firm's accounting practices and bank accounts during her entire tenure with the Firm.
14. In Ms. Tyler's first years with the Firm, the Firm disbursed the proceeds of real estate transactions with certified or cashier's checks, and Ms. Tyler was responsible for preparing real estate trust account checks, taking them to the bank to obtain cashier's checks, and delivering them to the proper recipients.
15. Ms. Tyler routinely prepared checks from the Firm's accounts for an attorney's signature. She never had signatory authority on any of the accounts.
16. In 2014, Respondent became the Firm's managing partner when George Dygert retired and assumed responsibility for maintaining the Accounts in accordance with Rule 1.15.
17. Beginning in 2015, Respondent granted Ms. Tyler electronic access to the trust and operating accounts, but he told her that she did not have the authority to make electronic transfers between Firm accounts or to disburse funds except as necessary for the conduct of Firm business. She made accounting entries into QuickBooks and Quicken for monies received by the Firm and payments made either to pay Firm expenses or to advance funds on behalf of clients.
18. In 2016, Respondent gave Ms. Tyler the authority both to initiate and approve wire transfers for real estate transactions.

19. Although did reconcile the Firm's operating account with Ms. Tyler's assistance, he did not perform the accountings, audits, reconciliations, or other responsibilities of client trust accounts required to keep such accounts in conformance with Rule 1.15 (c) and (d) of the Virginia Rules of Professional Conduct, as amended from time to time. Respondent alleges that another member of the Firm had that specific ongoing responsibility.
20. During the time period in which Respondent was the Firm's managing partner, he failed to realize that funds were moved from the real estate trust account into Ms. Tyler's personal account, and the records did not reflect these transactions.
21. On January 24, 2020, Marshall Ellett, a fraud investigator with Atlantic Union, was alerted to suspicious activity concerning the Firm's accounts by one of the bank's auditors running a routine audit.
22. The auditor made Mr. Ellett aware of certain "charge back checks" due to insufficient funds in the Firm's accounts.
23. Mr. Ellett reported the suspicious activity to Brenda Mawyer, the branch manager at Atlantic Union who handled law firm accounts for the bank.
24. Ms. Mawyer met with Respondent on the afternoon of January 24, 2020 to review Mr. Ellett's findings.
25. Mr. Ellett advised the VSB's Investigator that with better "checks and balances" the missing funds would have been caught within a month or two of it beginning.
26. Thereafter, Respondent conferred with other partners in the Firm, and on January 25, 2020, Respondent and the other partners terminated Ms. Tyler's employment by email.
27. The Firm immediately contacted the City of Charlottesville Police Department and Commonwealth's Attorney.
28. On August 10, 2020, Ms. Tyler was indicted by a grand jury. She is currently awaiting trial on criminal charges relating to the transfer of funds outlined above.
29. On April 3, 2020, the Firm retained Scott Wickham, a Certified Public Accountant and a Certified Fraud Examiner in Virginia, and the accounting firm of Robinson, Farmer, Cox Associates, PLLC ("RFC") to perform a forensic audit of the Firm's trust, real estate, and operating accounts.
30. Mr. Wickham prepared a detailed report of his forensic audit for the Firm

31. Mr. Wickham's review of the Firm's bank statements from 2012 to 2020 revealed transfers from the Firm accounts directly into Ms. Tyler's personal account.
32. Mr. Wickham's review of the bank statements and Firm account ledgers also revealed unauthorized transfers made by Ms. Tyler beginning in 2015 that covered shortfalls in the various accounts caused by the transfers to her personal accounts.
33. Mr. Wickham's review concluded that Ms. Tyler misappropriated Firm and client funds in the net total amount of \$560,069.59.
34. After calculating the amounts on hand against what the balances should have been in the Firm accounts, Mr. Wickham determined that \$517,144.15 in client and fiduciary funds were missing from the trust account and real estate accounts as of January 24, 2020. He determined that the difference in total net funds misappropriated and missing client funds is due to Ms. Tyler's theft of fees from the Firm's operating account that were earned by the Firm.
35. During the course of the forensic audit, the Firm was not able to provide to Mr. Wickham all of the records it was required to keep pursuant to Rule 1.15 (c) of the Virginia Rules of Professional Conduct because the Firm's receipts books only went back to 2016.
36. Mr. Wickham's review concluded that neither the Firm or its principals oversaw or reconciled the accounts.
37. The Firm was able to mitigate losses to clients by using earned fees still in trust and other sources of funds to ensure that all but two clients were made whole, but those two Firm clients sustained significant losses.
38. One of those clients (Client A) filed a claim against the Firm's real estate settlement agent bond in the amount of \$72,656.54 for proceeds from a real estate transaction in 2017. Mr. Wickham's audit determined that these funds were misappropriated by Ms. Tyler. The insurance company underwriting that bond filed suit against the Firm and Respondent in federal court after Respondent and the Firm allegedly failed to grant the surety an interest in collateral sufficient to cover the anticipated losses resulting from the misappropriations as required pursuant to their indemnification obligations.
39. The Firm reached a settlement with Client A by way of a promissory note ("Note") in the total amount of \$72,656.54 payable by the Firm that provided for payments through August of 2020 totaling \$32,500.00 that were made in accordance with the terms of the Note. The Firm continued making timely payments on the Note.

40. As a result of this settlement, Client A withdrew the claim against the bond, and the insurance company dismissed the lawsuit.
41. In April of 2021, the Firm accelerated payment and paid the Note in full. Client A has signed and endorsed the Note "paid in full" and executed a release of all claims in favor of the Firm.
42. On January 10, 2020, the Firm represented Client B in a real estate transaction that required the Firm to pay to Atlantic Union the sum of \$300,000.00 held on behalf of Client B to release a deed of trust that that the bank held on property owned by Client B. Although the funds necessary to pay off the deed of trust had been wired into the Firm's real estate account, Mr. Wickham's audit revealed that the funds were missing. Mr. Wickham discovered that because the funds had been transferred out of the real estate account, the Firm did not pay off the deed of trust, and Atlantic Union did not release the deed of trust on Client B's property when it should have.
43. When the Firm advised Client B of the missing funds sometime in early February of 2020, Client B filed suit against the Firm in state court.
44. The Firm has reached a resolution of Client B's claims such that Atlantic Union has been paid in full and has released the deed of trust encumbering the property owned by Client B.

II. NATURE OF MISCONDUCT

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

Rule 1.15 Safekeeping Property (Effective June 2011)

(b) Specific Duties. A lawyer shall:

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

(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; and

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

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

(1) 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 1.15 Safekeeping Property (Effective November 2013)

(b) Specific Duties. A lawyer shall:

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

(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; and

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

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

(1) 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 1.15 Safekeeping Property (Effective March 2020)

(b) Specific Duties. A lawyer shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * *

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

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

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

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

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

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

* * * *

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and the Respondent tender to the Disciplinary Board for its approval the agreed disposition of **PUBLIC REPRIMAND with TERMS** as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. Assistant Bar Counsel and the Respondent agree that the effective date for the sanction shall be the date of entry of the Disciplinary Board Order approving this Agreed Disposition. The terms with which the Respondent must comply are as follows:

1. Respondent and the Firm have engaged the services of the accounting firm of Robinson, Farmer, Cox Associates, PLLC (“RFC”) to conduct periodic audits of the trust, IOLTA, real estate, and any other fiduciary accounts where the Firm holds client funds (collectively “Accounts”) for the purposes of certifying compliance with Rule 1.15 of the Virginia Rules of Professional Conduct.

2. On or before July 1, 2021, RFC shall review the Accounts to ensure compliance with all provisions of 1.15 of the Virginia Rules of Professional Conduct.

3. On or before August 1, 2021, RFC shall provide to Respondent and to the Office of Bar Counsel its written report either certifying compliance with Rule 1.15 of the Rules of Professional Conduct or identifying the measures that Respondent and/or the Firm must take to bring themselves into compliance. The Accounting Firm shall thereafter provide such reports every six months from August 1, 2021 through August 1, 2023.

4. In the event the Respondent and/or the Firm are determined by the Accounting Firm to be not in compliance, he/it shall have thirty (30) days following the date the Accounting Firm issues its written report to bring themselves into compliance. The Accounting Firm shall be granted access to the Firm’s office, books, records, and files following the passage of the thirty (30) day period to determine whether Respondent and or the Firm have brought themselves into compliance. The Accounting Firm shall thereafter certify in writing to the Virginia State Bar and to Respondent either that Respondent and/or the Firm have brought themselves into compliance within the thirty-day (30) period, or that he/they have failed to do so. Respondent’s or the Firm’s failure to bring themselves into compliance with the said Rules as of the conclusion

of the aforesaid thirty (30) day period shall be considered a violation of the Terms set forth herein.

5. Respondent shall at all times provide his complete cooperation in providing the Accounting Firm access to the books, accounts and other financial records as may be necessary. The Accounting Firm shall certify in writing to the Virginia State if Respondent fails to provide full and complete cooperation.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, any of the terms and conditions is not met by the deadlines imposed above, the Respondent agrees that the Disciplinary Board shall impose a suspension of Respondent's license to practice law for a period of one year, pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

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

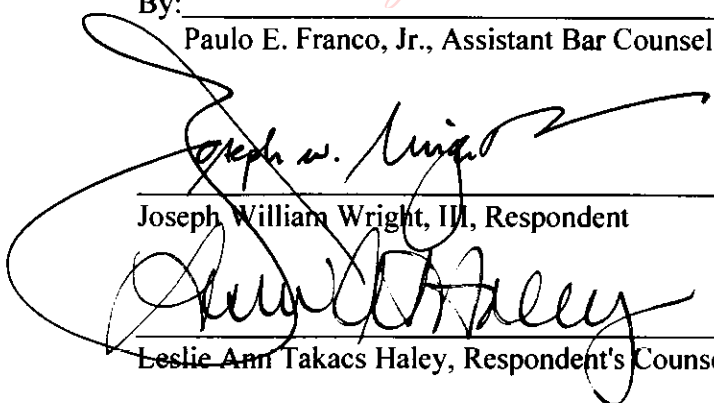
THE VIRGINIA STATE BAR

Paulo E.
Franco, Jr.

Digitally signed by Paulo E. Franco, Jr.
Date: 2021.04.27 15:10:32 -04'00'

By:

Paulo E. Franco, Jr., Assistant Bar Counsel


Joseph William Wright, III, Respondent

Leslie Ann Takacs Haley, Respondent's Counsel