

VIRGINIA:

BEFORE THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON

VIRGINIA STATE BAR EX REL
VIRGINIA STATE BAR DISCIPLINARY BOARD
VSB Docket No. 23-041-127923
VSB Docket No. 24-041-129679

v.

Case No. CL24001688-00

MICHAEL ALAN YODER
Respondent

AGREED DISPOSITION MEMORANDUM ORDER
SIX-MONTH SUSPENSION WITH TERMS

This matter came to be heard on September 5, 2024, and September 6, 2024, before a Circuit Court Three-Judge panel, upon the joint request of the parties for the Court to accept the Agreed Disposition endorsed by the parties and offered to the Court as provided by the Rules of the Supreme Court of Virginia.

The panel consisted of the Honorable Manuel A. Capsalis, Judge of the Nineteenth Judicial Circuit, Designated Chief Judge, the Honorable Victoria A.B. Willis, Judge of the Fifteenth Judicial Circuit, and the Honorable Cheryl V. Higgins, Judge of the Sixteenth Judicial Circuit.

Michael A. Yoder ("Respondent") was present and was represented by counsel, Julie S. Palmer, Esquire. The Virginia State Bar appeared through its Assistant Bar Counsel, Richard W. Johnson, Jr. Esquire.

The Chief Judge polled the members of the panel as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each judge responded in the negative. Court Reporter Beverly Horne,

Chandler & 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, the Respondent's Answer, the Respondent's Disciplinary Record, the arguments of the parties, and after due deliberation, it is:

ORDERED that the Circuit Court accepts the Agreed Disposition, and the Respondent shall receive a suspension of six months (6) months with Terms. The Agreed Disposition is attached to and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective September 11, 2024.

It is further **ORDERED** that the Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail of the Suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing Attorneys and presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. The Respondent shall give such notice immediately and in no event later than 14 days of the effective date of the Suspension, and make such arrangements as are required herein as soon as is practicable and in no event later than 45 days of the effective date of the Suspension. The Respondent shall also furnish proof to the Clerk of the Disciplinary System of the Virginia State Bar within 60 days of the effective date of the Suspension that such notices have been timely given and such arrangements have been made for the disposition of matters.

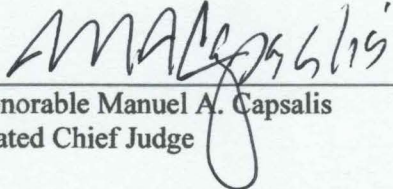
It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the Suspension, he shall submit an affidavit to that effect within 60 days of the

effective date of the Suspension to the Clerk of the Disciplinary System at the Virginia State Bar. The Virginia State Bar Disciplinary Board shall decide all issues concerning the adequacy of the notice and arrangements required herein. The burden of proof shall be on the Respondent to show compliance. If the Respondent fails to show compliance, the Board may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of subparagraph 13-29.

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

It is further **ORDERED** that a certified copy of this Order be mailed to the Respondent, Michael A. Yoder, by regular first-class mail and by certified mail, return receipt requested, at his Virginia State Bar address of record, 2300 Wilson Blvd. Suite 700, Arlington, Virginia 22201 and by electronic mail to michael@yoderesq.com, and that a copy be sent by electronic mail to Julie S. Palmer, Esquire, Counsel for Respondent, and to Richard W. Johnson, Jr., Esquire, Assistant Bar Counsel, and to Joanne Fronfelter, the Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

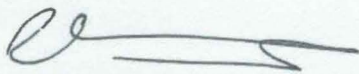
ENTERED THIS 9th DAY OF SEPTEMBER 2024



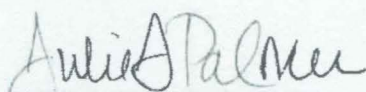
The Honorable Manuel A. Capsalis
Designated Chief Judge

(ENDORSEMENTS BY COUNSEL ON NEXT PAGE)

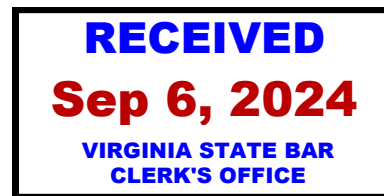
SEEN AND AGREED TO:



Richard W. Johnson, Jr. (#51024)
Assistant Bar Counsel
Virginia State Bar
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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

**VIRGINIA STATE BAR EX REL.
FOURTH DISTRICT, SECTION I COMMITTEE
VSB DOCKET NO. 24-041-129679
VSB DOCKET NO. 23-041-127923**

Complainant,

Case No. CL24001688-00

v.

MICHAEL ALAN YODER

Respondent.

AGREED DISPOSITION
SIX MONTH SUSPENSION WITH TERMS

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶13-6.H and Va. Code Section 54.1 – 3935, the Virginia State Bar, by Richard W. Johnson, Jr., Assistant Bar Counsel, and Michael Alan Yoder, (“Respondent”), and Julie S. Palmer, Esq., counsel for Respondent, hereby enter in the following Agreed Disposition arising out of the above referenced matter.

STIPULATIONS OF FACT

1. Respondent was admitted to the Virginia State Bar (“VSB”) in 2018. At all relevant times, Respondent was a member of the VSB.

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2. After hearing Respondent on a podcast, Amy Gonzalez (“Complainant”) and Andrea Gross (“Gross”) retained Respondent to represent them in a potential civil claim against their children’s school, Columbus Academy (“CA”), located in Columbus, Ohio.
3. On January 4, 2022, Complainant, Gross, and Respondent entered into an engagement agreement¹ which stated that their deposit would be held “in a client trust account.” The

¹ The engagement agreement stated that Respondent agreed “to represent you in litigation concerning the events, causes, and occurrences giving rise to Columbus Academy’s breach of contract, ADA compliance, academic

engagement agreement further provided that Respondent would send “monthly billing statements.”

4. On January 4, 2022, Complainant and Gross each paid Respondent a \$10,000 advanced legal fee via credit card for a total of \$20,000. Respondent did not deposit the \$20,000 advanced legal fee in his trust account. Instead, he deposited it directly into his operating account.
5. The civil complaint was filed in the Ohio Court of Common Pleas on February 4, 2022.² On March 14, 2022, CA filed a Motion to Dismiss for failure to state a claim upon which relief can be granted. On April 18, 2022, Respondent filed a Notice of Voluntary Dismissal,³ which was granted. Respondent did not immediately explain to Gross or Complainant that he would need to refile the defamation claim on or before April 18, 2023 it would be time barred. *See* Ohio Rev. Code, §2305.11 (West 2021). Respondent maintains that, after receiving CA’s Motion to Dismiss and learning new information stated therein, he told Gross and Gonzalez that the defamation claim was meritless and that he could not, ethically, refile it.
6. After Respondent dismissed the civil suit, Respondent advised Complainant and Gross that the best course of action would be to pursue a federal claim against CA. In May 2022, Respondent told Complainant that he would file a complaint in federal court “within a couple of weeks.”
7. On June 30, 2022, Respondent texted Complainant that “if he had not prepared the complaint by next Friday ... the full amount of the retainer would be returned to them.”
8. Respondent did not prepare the complaint by July 7, 2022. Instead, on July 14, one week after he said he would send them the complaint, Complainant had to follow up with Respondent, which she did by text, reminding him that the goal moving forward was to file a federal complaint.
9. On August 23, 2022, Respondent again stated, as he had almost two months earlier on June 30, that he would have a complaint for them to review.
10. On August 26, 2022, Respondent texted that September 2 would be the new date for a rough draft of the federal complaint.
11. On September 21, Complainant texted Respondent that they needed to “manage expectations.”
12. Respondent never provided Complainant or Gross a draft federal complaint.

curriculum, tax- exempt status, and other whistleblower- related claims, including without limitation, fraud and/or financially related misconduct.”

² Respondent electronically endorsed the Complaint and noted that “Pro Hac Vice forthcoming.”

³ Equivalent of a nonsuit in Virginia.

13. Respondent did not refund Complainant or Gross any portion of the \$10,000 advanced legal fee each paid to Respondent.
14. On January 4, 2023, Complainant and Gross terminated the representation and filed the instant bar complaint.
15. In his interview with the bar investigator, Respondent stated that he did not mean for Complainant and Gross to take seriously his statement that he would return the advanced legal fee to them.

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16. On August 3, 2023, JP Morgan Chase notified the Bar that Respondent's Trust account had insufficient funds for payment.
17. The payment that led to the overdraft was a refund to Howard Travers ("Travers"). On May 9, 2023, Travers retained Respondent to represent him in an employment matter. Travers made two credit card payments of \$2,500 on May 29 and May 31, 2023. Respondent transferred the money into his operating account one day after receipt. Respondent told Foley that "all the money in IOLTA was already earned at the time it was deposited."
18. Cheryl Torpey ("Torpey") was a former colleague of Travers who retained Respondent in a wrongful termination matter. Respondent received Torpey's advanced legal fee of \$10,000 in two increments on May 30 and June 26, 2023.
19. Respondent told Foley he had earned the advanced legal fee paid by Torpey by the time he received it. Respondent later refunded Torpey's entire fee from his Trust account.
20. On December 7, 2022, the parents of Y. Hicks ("Hicks") retained Respondent to file suit on Hicks' behalf against Duke University. On December 12, 2022, Respondent filed a complaint on Hicks' behalf against Duke University. On December 19, 2022, Hicks' parents paid Respondent a \$20,000 advanced legal fee. Respondent received the fee on December 21, 2022, and deposited it in his operating account. Respondent told Foley the entire fee was earned by the time he received the fee.
21. Hicks told Foley that Respondent filed a lawsuit against Duke University but withdrew it without their permission. Hicks told Foley that Respondent told them the suit had been incorrectly filed. Respondent maintains the suit was withdrawn because Hicks no longer had standing and that he explained that to Hicks.
22. Hicks advised they have demanded a refund of their \$20,000 fee, but Respondent has "ghosted" them.
23. Respondent told Foley that Hicks was still his client. Respondent stated that "this happens a lot like if I don't respond to someone or I'm not in constant communication

with them on a weekly basis, they like think that I'm that they're like not a client anymore or something." Respondent told Foley he had had multiple discussions with Hicks concerning the status of "Yulia's Law," which remained active but had not yet passed with the legislature.

24. Respondent provided the Bar with a "2022 client payments record" which reflects that Jeffrey T. Hanson ("Hanson") made a \$5,000 payment which Respondent deposited directly into his operating account. Respondent stated to Foley that the fee was "technically, all earned."
25. On March 13, 2023, Respondent sent a letter to Hanson that enclosed a refund check of \$740 from his Trust account. The letter advised Respondent was "returning the monies owed to you that remain in trust pursuant to the terms of the Engagement Agreement."
26. On August 29, 2023, Respondent produced a document titled "Attorney's Fees & Hours," which appear to be invoices for each of his clients during 2022. Respondent prepared the document as an internal document and did not distribute it to his clients.
27. Respondent stated that he did not record his hours for work performed after the advanced legal fee was earned. To prepare the "Attorney's Fees & Hours" document, he used the Excel spreadsheets, emails, bank statements, and other records in the clients' files to compile the year end itemization.
28. Respondent did not maintain any receipt journals, disbursement journals, monthly reconciliations, or client ledgers for 2022 and 2023.

JURISDICTION

Respondent is subject to the disciplinary authority of the Virginia State Bar under the following provision of the Virginia Rules of Professional Conduct:

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.

Because Respondent was engaged in the practice of law before Franklin County, Ohio Court of

Common Pleas when portions of the alleged misconduct occurred, the Ohio Rules of Professional Conduct apply to a portion of the misconduct and, and because Respondent was engaged in the practice of law before the Middle District of North Carolina when parts of the alleged misconduct occurred, the North Carolina Rules of Professional Conduct apply to a portion of the misconduct pursuant the following provision of the Virginia Rules of Professional Conduct:

RULE 8.5 Disciplinary Authority; Choice Of Law

(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.

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

NATURE OF MISCONDUCT

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

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By failing to prepare and draft a federal complaint after agreeing to do so, and giving assurances from May 2022 until September 2022 that he would provide a draft complaint to Complainant and Gross, Respondent violated Ohio Rule 1.3(a), as set forth below:

RULE 1.3 Diligence

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

By accepting \$20,000 advanced legal fee from Complainant and Gross and failing to

deposit them into a trust account, Respondent violated Rule 1.15(a)(1) as set forth below:

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.

By not updating Complainant and Gross, through monthly invoices as agreed upon or another form of communication, Respondent violated Rule 1.15(b)(3) and Ohio Rule 1.4(a)(3) as set forth below:

RULE 1.15 Safekeeping Property

(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.

RULE 1.4 Communication

(a) A lawyer shall do all of the following:

(3) keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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By accepting tens of thousands of dollars in advanced legal fees from Travers, Torpey, Hicks, and Hanson and failing to deposit them into a trust account, Respondent violated Rule 1.15(a)(1), as set forth below:

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.

By maintaining earned funds in his Trust account, as Respondent acknowledged in the Travers, Hanson, and Torpey matters, Respondent violated Rule 1.15(a)(3), as set forth below:

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

(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.

By failing to communicate with Hicks the reasons for withdrawing the complaint against Duke University, and failing to update Hicks on the status of the matter to the extent that Hicks believes Respondent no longer represents them, when Respondent believes he still does, Respondent violated North Carolina Rule 1.4(a)(3) and North Carolina Rule 1.4(b), as set forth below:

RULE 1.4 Communication

(a)(3) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

By failing to maintain client ledgers, Respondent violated Rule 1.15(c)(2) and (4), as set

forth below:

RULE 1.15 Safekeeping Property

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

(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.

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

Because Respondent did not maintain client ledgers, he could not reconcile the ledger balances for his clients or reconcile the trust account balance with the client ledger balance, and therefore he violated Rule 1.15(d)(3)(i) and (iii) as set forth below.

RULE 1.15 Safekeeping Property

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

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

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

(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.

PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to the Three-Judge Panel for

its approval the Agreed Disposition of a Six Month Suspension with Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Three-Judge Panel. The terms are as follows:

- 1) For a period of two year(s) following the termination of Respondent's suspension, Respondent will not engage in any conduct that violates any provisions of the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which Respondent may be admitted to practice law. The terms contained in this paragraph will be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the Rules of Professional Conduct, *provided, however*, that the conduct upon which such finding was based occurred within the period referred to above, and provided, further, that such ruling has become final.
- 2) On or before December 11, 2024, Respondent will complete six hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of trust accounting and law office management. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph will not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law. Respondent will certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance form (Form 2) to Bar Counsel, promptly following his attendance of each such CLE program(s).
- 3) Respondent will read in its entirety *Lawyers and Other People's Money*, 5th Edition, and Legal Ethics Opinion 1606 and Legal Ethics Opinion 1819 and will certify compliance in writing to Bar Counsel not later than 90 days following the date of entry of this Order.
- 4) Within thirty (30) days from the date of the Three-Judge Panel approving this Agreed Disposition, Respondent must engage the services of an accountant who is familiar with the requirements of Rule 1.15 of the Rules of Professional Conduct to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. Respondent is obligated to pay when due the accountant's fees and costs for services. Upon completion of the accountant's review of Respondent's trust account record-keeping, accounting, and reconciliation methods and procedures, but no later than December 11, 2024, Respondent shall certify to Bar Counsel that he has engaged an accountant and has revised his trust accounting methods and procedures based on the accountant's recommendations and the requirements of Rule 1.15 of the Rules of Professional Conduct.
- 5) The six-month suspension shall commence on September 11, 2024.

If any of the terms are not fully and timely met by the deadlines set forth above, Respondent agrees that the alternative disposition shall be a suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of two years. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to ¶ 13-9.E of the Rules of the Supreme Court of Virginia.

The Virginia State Bar and Respondent agree that, should the Three-Judge Panel reject this Agreed Disposition, the Three-Judge Panel retains jurisdiction to hear this matter on September 11, 2024 and September 12, 2024 or anytime thereafter.

If the Agreed Disposition is approved, the Clerk of the Disciplinary system shall assess costs.

Pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of the Supreme Court of Virginia, Respondent's prior disciplinary record shall be furnished to the Three-Judge Panel considering this Agreed Disposition.



Richard W. Johnson Jr.
Assistant Bar Counsel
Virginia State Bar



Michael Alan Yoder
Respondent



Julie S. Palmer
Respondent's Counsel