STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

IN RE: Carolyn Adams
PRB File No. 2020-064

REPLY TO DISCIPLINARY COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO CONSOLIDATE OR STAY

NOW COMES the Respondent, Carolyn Adams, and hereby submits this reply to Disciplinary Counsel's opposition to consolidate or stay the matter.

Disciplinary Counsel does not appear to dispute that this board should not consider the Motion for Relief as well, but simply that the motion is not related to the counts here. Disciplinary Counsel does not go far as to say that Count I—which requires that DC prove that Respondent was suspended and then failed to timely notify clients—is not related to whether or not the respondent was lawfully suspended. That would equate to arguing that an illegal deportation is not relevant to alleged illegal reentry. *Contra United States v. Mendoza–Lopez*, 481 U.S. 828, 837–38 (1987). The IOLTA issues are obliquely alleged, but a 2018 to 2019 time frame is alleged. The unlawful probation and suspension occurred during this time and may have impaired Respondent's ability for flawless bookkeeping—or at least a flawless presentation of that bookkeeping. As to count III, the issue is not that Respondent charged too much.[1] It is that Respondent provided many hours to prepare MS for bankruptcy and to prepare bankruptcy filings. By the time that MS had completed her requirements for bankruptcy, including a financial education course, Respondent was suspended.[2] If that suspension was an unlawful result of an unlawful probation, that is relevant to the consideration of Count III.

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[1] Disciplinary Counsel raises the need to reimburse MS from the Vermont Bar Association compensation fund and that this requires this case to move forward now. During April, 2021, in effort to arrange *immediate* reimbursement, Ms. Adams's attorney, Jacob Durell, attempted to contact MS through her prior counsel who was unable to reach her. Attorney Durell has since submitted a request to the VBA for compensation under a provision that does not require this matter to be complete. **Exhibit A**. The VBA Executive Director then contacted Attorney Durell to indicate that the submission was helpful but that MS needed to file a claim. Attorney Durell then forwarded that information to two of MS's prior attorneys and to MS directly, but has not yet received a reply. Compensation appears to be available as soon as MS is ready to receive it.

[2] Disciplinary Counsel has represented to Respondent's Counsel that it is not DC's position that the $1,500 that Todd Taylor charged MS does not set the maximum that can reasonably be charged for a bankruptcy. Respondent charged roughly $565 more due to a range of collateral matters that arose in MS's case from when representation started in May 2018 until MS was

None of the counts involve intentional or malicious conduct, but Respondent's mental health relates to each alleged count. The board must consider that mental disabilities can be a complete defense—particularly when they are aggravated by the improper disciplinary actions. *See, e.g., In Re Driscoll*, 423 N.E.2d 873 (Ill. 1983) (providing a six-month suspension for converting funds from two clients where a treated alcoholism condition was offered as a defense) ("Perhaps in rare cases alcoholism might so change the character of the misconduct or so distort the attorney's state of mind as to provide a *complete excuse*.") (emphasis added). *De minimis* dismissals have long been a tool in a number of jurisdictions to prevent unnecessary or overreaching misconduct sanctions. *See, e.g., In re Dalton*, 09-B-1288 (La. Oct. 2, 2009) ("Not every violation of the Rules of Professional Conduct warrants the imposition of formal discipline. Given the limited resources of the disciplinary system, the ODC should act wisely to ensure that the charges it chooses to file will satisfy the overarching goals of the disciplinary process, namely, maintaining high standards of conduct, protecting the public, preserving the integrity of the profession, and deterring future misconduct."). In the unlikely event that any violation can be established, when looked at in the context of what has been determined to be an unlawful probation and suspension, a *de minimis* dismissal would be quite appropriate. If there is a judgment on these counts and the Motion for Relief is then granted, then Respondent's lawyers will be obligated to advise a motion to vacate on the three counts above. The inability to previously argue the case properly, due to violations of Rule 21(b), is explained in detail throughout the Motion for Relief.

In addition to the efficiencies of deferring consideration of the Counts, it is important to consider that Respondent is relying on *pro bono* attorneys. With the filings relating to the Motion for Relief that came due this week (including this reply), along with the obligations coming due in this matter[3], *pro*

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nearly ready to file at the end of 2019. Respondent was well aware that fees collected "in connection with" a bankruptcy proceeding must be disclosed to the Bankruptcy Court, and that excessive fees will be disgorged. *See* 11 U.S.C. § 329 (2021).

[3] Disciplinary Counsel graciously agreed to an extension on filing an exhibit and witness list which is due on Monday assuming the motion to enlarge is granted. In the interests of efficiency and avoiding duplicative work, Respondent and her Counsel would prefer to gather all exhibits and relevant witnesses after consideration of the Motion for Relief.

bono attorneys on this matter will likely spend cumulatively in excess of a total of twenty (20) hours this week serving important issues which are worthy of litigation. That has been the case in many recent weeks. *Pro bono* counsel has not yet been able to commit to more than a limited appearance on the counts here due to the risk of concurrent obligations becoming too much for counsel's caseload. If the matters here can be consolidated, counsel can be more available to contribute to an informed and just consideration of the matter.

WHEREFORE, Respondent respectfully requests that the matter be consolidated or stayed, and that an appropriate scheduling order is entered as set forth herein.

DATED at South Ryegate, Vermont this **9th** day of **June 2021**.

/s/ Carolyn Adams
PO Box 151
South Ryegate, VT 05069

Jacob O. Durell, Esq.
Attorney at Law

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Vermont Bar Association
Client Security Fund Committee
P.O. Box 100
Montpelier, VT 05601-0100

Exhibit A

Wednesday, June 2, 2021

Re: MS Client Compensation

To Whom It May Concern:

I am writing on behalf of Carolyn Adams regarding the potential use of the compensation fund for a former client of hers, [redacted] (formerly [redacted] or "MS"). I do not represent MS. I represent Ms. Adams and her interest that MS find relief here. Attorney Adams represented MS from on or around May 30, 2018 until Attorney Adams's suspension on December 31, 2019.

Disciplinary Counsel, Attorney Katz, mentioned in a motion filed last week that she was seeking compensation for MS from the VBA fund. I believe that Rule 8(C) of the compensation terms requires dishonest conduct. Dishonesty will never be established against Ms. Adams—an attorney who has been twice recognized by the VBA for her pro bono work. Nonetheless, we would like to lend our support for prompt compensation under rule 8(E). Carolyn wants to ensure that MS does not feel aggrieved and comes out of this matter with greater regard for the legal profession.

The attached Motion for Relief was filed recently in the matter that led to Ms. Adams's suspension—prior to the initial complaint from MS. The motion explains how Ms. Adams was suspended only because the proceedings underlying suspension were carried out in violation of Admin. Order 9, Rule 21(b) (now Rule 25(b))—which required proceedings to stop when Ms. Adams had asserted an inability to defend due to a disability. Ms. Adams could then no longer serve MS, and MS had to obtain other counsel to file the bankruptcy she had been preparing with Ms. Adams. These issues will take time to litigate.

Ms. Adams provided value to MS that was not lost when MS had to find a new lawyer. Nonetheless, Ms. Adams is prepared to offer $500 to MS, and will stipulate to the standard VBA subrogation agreement to alleviate any concerns that excessive compensation will be found. We are asking if the VBA fund can provide the remainder of the original fee paid (**approx. $1,565**).

To the extent there is a loss here, it is the result of the disciplinary system's failure to apply rules intended in part to protect attorneys facing mental health issues. In Ms. Adams's pending matters, we are trying to promote a system where attorneys and their colleagues can feel comfortable bringing mental health issues forward. Ideally, the compensation fund can one day be used to ensure that clients can have a smooth transition when attorneys need to take leave to address their health. Compensation in the matter here would be a step in that direction.

I understand that Attorney Katz has a different position on the matter. These issues do not need to be settled to ensure that MS feels whole now.

Please let me know if we can discuss this further. If MS has not yet filed a claim, and that is needed in addition to this letter, I can suggest that she do so through one of her last known attorneys or perhaps Attorney Katz can facilitate that communication.

Thank you for your consideration.

Respectfully,

/s/ Jacob O. Durell, Esq.

CC: Sarah Katz, Esq. (Disciplinary Counsel)
Jason Sawyer, Esq (Ms. Adams's counsel on motion for relief)
Jen Nelson, Esq. (MS's former attorney)

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CERTIFICATE OF SERVICE

I, Carolyn Adams, hereby certify that on the **9th** day of **June 2021**, I served **Respondent's Motion to Consolidate or Stay** via e-mail to the following attorney of record:

Sarah Katz, Esq.
Sarah.Katz@vermont.gov

DATED at **South Ryegate**, Vermont this **9th** day of **June 2021**.

/s/ Carolyn Adams
PO Box 151
South Ryegate, VT 05069
carri757@gmail.com