STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Paul Kulig
PRB File No. 2020-066

SPECIAL DISCIPLINARY COUNSEL'S POST-HEARING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND SANCTIONS RECOMMENDATION

Now comes, Special Disciplinary Counsel, and hereby submits the following post-hearing findings of fact, conclusions of law, and sanctions recommendation. On June 21, 2021 and July 23, 2021, the Panel heard witness testimony and admitted exhibits in the above-referenced matter. At the conclusion of the hearing, the Panel requested that the parties submit post-hearing briefings no later than September 3, 2021.

FINDINGS OF FACT

1. Respondent is an attorney licensed to practice law in Vermont. Respondent's Answer (Oct. 10, 2020) (hereinafter "Answer").

2. Respondent has been practicing law for 43 years, since 1978. Answer.

3. Respondent represented Louise A. Zygo in connection with estate planning matters until her death on May 19, 2018. Answer.

4. On June 12, 2014, Ms. Zygo executed a "Last Will and Testament of Louise A. Zygo" naming Respondent as the sole beneficiary of her estate and a Quitclaim Deed, with a life estate, transferring title of her real property to Respondent. Respondent prepared these two legal instruments. Answer; DC Ex. 2, 3.

5. Respondent did not obtain informed consent in writing from Ms. Zygo at any time during his representation of her.

6. In 2014 Respondent's law partner at the time, Mr. Sullivan, met with Ms. Zygo and obtained her signature on the 2014 Will and Quitclaim Deed drafted by Respondent. Mr.

Sullivan testified that he met with Ms. Zygo for an hour and explained why Respondent was named on the Will and Deed. Again, no informed consent was obtained in writing.

7. Notably, Mr. Sullivan and Ms. Zygo did not discuss the creation of an oral trust.

8. On February 9, 2015, Ms. Zygo's executed a power of attorney document designating Respondent as her agent. DC Ex. 4. Respondent testified that he met with Ms. Zygo regularly between 2015 and her death in 2018 to pay her monthly bills.

9. On May 19, 2018, Ms. Zygo died in a nursing home.

10. Respondent testified that he believes Ms. Zygo has a Medicaid lien for her nursing home care, Medigap coverage, and medical expenses. He does not have a copy of the Medicaid lien.

11. When Ms. Zygo died her estate passed to Respondent pursuant to the 2014 Will and he became the sole owner of her home located at 146 Easy St. in Rutland, Vermont (no longer subject to the enhanced life estate provision).

12. Respondent testified that he had a divorce client who was looking for a place for his wife to live. Respondent and his client's wife, Marlene Finger, entered into a rental agreement whereby there would be an option to buy the property at the end of the rental term. Pursuant to this agreement, Respondent received a check for $10,000 and deposited it into his personal bank account.

13. On May 27, 2020, Respondent sold the house to Marlene Finger for the sale price of $197,410. DC Ex. 7. Respondent received $143,457.39 at the closing which was deposited into his law firm's trust account where it remains. DC Ex. 8.

14. Soon after Ms. Zygo's death, Michaline Broza (the mother of Ms. Zygo's heirs-at-law and nephews) contacted Respondent's law office to inquire about the existence of a will.

15. When Ms. Broza was unable to obtain a copy of the will she hire a local attorney, Attorney Getty, to assist her in determining the status of Ms. Zygo's estate. DC Ex. 5.

16. Attorney Getty and the Respondent spoke over the phone on October 30, 2019 and Attorney Getty followed up with a letter addressed to Respondent on November 20, 2019. In that letter it was Attorney Getty who first characterizes the deed as a "trust arrangement." Attorney Getty testified that Respondent did not use the term oral trust during the October 30, 2019 phone call.

17. In a response letter dated December 16, 2019, Respondent provided Attorney Getty with a copy of the 2014 Will. Respondent informed Attorney Getty of his plans to have the house sold in the spring of 2020 and for the proceeds to be disbursed to those individuals Ms. Zygo "intended to benefit." DC Ex. 6. The letter does not inform Attorney Getty that his client was not in fact an intended beneficiary. Ms. Broza was a beneficiary of Ms. Zygo's previous 2011 Will and was set to inherit the home and all its contents. DC 1.

18. Respondent sold or otherwise disposed of Ms. Zygo's personal property, including a vehicle which he sold for $1,000, furniture, and other household items.

CONCLUSIONS OF LAW

I. Rule Violations.

A. Vermont Rule of Professional Conduct Rule 1.8(c).

Rule 1.8(c) prohibits a lawyer from soliciting substantial gifts from clients and specifically prohibits a lawyer from preparing deeds and wills on behalf of a client giving the lawyer a substantial gift.

> A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child,

> grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

V.R.P.C. 1.8(c). In this case, it is undisputed that Respondent drafted and executed the 2014 Quitclaim Deed and Last Will and Testament on behalf of his client naming himself as the sole beneficiary. A deed and a will are both considered legal instruments. See V.R.P.C. 1.8, Comment [7]. The client's house was a substantial gift as it sold in May, 2020 for $197,410. Respondent owned the home for two years before selling it to his client's soon to be ex-wife. To date, no relative or heir-at-law of the decedent has received any proceeds of the sale of the home. The proceeds now sit in Respondent's law firm's trust account. Respondent deposited into his personal account a $10,000 deposit from the prospective buys of Ms. Zygo's former home.

B. Vermont Rules of Professional Conduct Rule 1.7

Rule 1.7 establishes the following conflict rule: "…A concurrent conflict of interest exists if… there is a significant risk that the representation of one or more clients will be materially limited … by a personal interest of the lawyer." V.R.P.C. 1.7. In this case, a concurrent conflict of interest existed as soon as Respondent agreed to have a personal interest in his client's estate. Respondent did not obtain written informed consent. The oral trust agreement is insufficient to satisfy the *written* consent requirement of this rule.

II. Analysis.

A. Oral Trust.

Respondent argues that he lawfully "conveyed [Ms. Zygo's] assets into an oral trust whereby the net proceeds would be transferred by the respondent to various relatives according to the Decedent's wishes." Respondent's Answer, p. 1. Specifically, Respondent testified that although the legal instruments named him as the sole beneficiary, the express intent of the

Decedent was to convey "the assets into an oral trust whereby the net proceeds would be transferred by the respondent to various relatives." Id.

Respondent argues that an oral trust was created in accordance with Vermont law, which provides the following:

> A trust is created only if:
> (1) the settlor has capacity to create a trust;
> (2) the settlor indicates an intention to create the trust;
> (3) the trust has a definite beneficiary or is:
> (A) a charitable trust;
> (B) a trust for the care of an animal, as provided in section 408 of this title; or
> (C) a trust for a noncharitable purpose, as provided in section 409 of this title;
> (4) the trustee has duties to perform; and
> (5) the same person is not the sole trustee and sole beneficiary of all beneficial interests.

14A V.S.A. § 402. The evidence demonstrated that Ms. Zygo had capacity to create the trust in 2014, that she had an intention to create a trust (based on Respondent legal advice as a means to avoid Medicaid recapture), and that she asked Respondent to act as trustee and liquidate her assets after her death and distribute the proceeds to her heirs at law. According to the terms of the oral agreement, although Respondent was named as the sole beneficiary of the 2014 will and the real property, he was not the intended beneficiary but rather the trustee of the oral trust. Thus, arguably, a permissible oral trust was created in 2014.

Oral trusts are permissible in Vermont as follows: "Except as required by a statute other than this title, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence." 14A V.S.A. § 407. Title 27 of the Vermont Statutes Annotated provides that "A trust concerning lands, excepting such as may arise or result by implication of law, shall not be created or declared, unless by an instrument in writing signed by the party creating or declaring the same, or by his or her attorney." 27 V.S.A. § 303. The Respondent plainly did not create a written trust naming the

actual intended beneficiaries nor does he have any "instrument in writing" creating or declaring the trust. *Savage v. Walker*, 2009 VT 8, ¶¶ 7-8, 185 Vt. 603, 605, 969 A.2d 121, 124 (2009) ("Vermont law plainly prohibits plaintiff from enforcing the terms of his alleged oral 'understanding' with [defendant] concerning this property or 'cancelling' the written deed based on this alleged agreement. See 27 V.S.A. § 303."). Respondent argues that oral trusts concerning land are permissible, citing *Straw et al. v. Mower et al.*, 99 Vt. 56 (1925). That case stands for the following proposition, "an express trust concerning land cannot be created or declared by parol." *Vilas v. Seith*, 108 Vt. 526, 189 A. 862, 863 (1937); *Straw v. Mower*, 99 Vt. 56, 61–63, 130 A. 687. Thus, arguably the transfer of real property, if pursuant to an oral trust, was impermissible.[12]

B. An Oral Trust Does Not Serve to Avoid Medicare Recapture.

If the oral trust was validly created, the question before the Panel is 'was the trust created for the improper purpose of evading Medicaid recapture?' Respondent testified that the trust is a revocable oral trust. Respondent attempts to distinguish a written trust from an oral trust for the purposes of the state Medicaid rules—however there is no such distinction under Vermont law. An oral trust, that complies with the requirement for the creation of a trust, is a trust. See 14A V.S.A. § 407. Respondent erroneously advised his client that if the trust was oral it would not be subject to Medicaid recapture.

There are specific rules that govern an individual's financial eligibility for Medicaid coverage for Long-Term Care Services in Vermont—the Health Benefits Eligibility and

[1] This may depend on whether the trust was created for the fraudulent purpose of avoiding creditors, whether it was an express trust versus a constructive trust, and whether the terms of the trust have been fully performed. *Vilas v. Seith*, 108 Vt. 526, 189 A. 862, 863 (1937). These distinctions are not relevant for this panel's determination as fully explained below.

[2] If the transfer was pursuant to an enhanced life estate it would have been permissible pursuant to the Medicaid eligibility rules but would violate the Rules of Professional Conduct. See Vermont Agency of Human Services Health Benefits Eligibility and Enrollment Rules, Rule 29.08(a)(6).

Enrollment Rules (HBEE Rules). On an overly simplified level, these Rules are designed prevent an individual from transferring all of her assets to a third party before entering into long-term care just to avoid paying for such long-term care out of pocket, and forcing the state and federal government to pay for such care. The Rules establish what is referred to as a 5 year look back period. If funds were transferred for an impermissible purpose 5 years prior to entering long-term care, those funds are subject to Medicaid recapture. In this case, Ms. Zygo transferred her real property to Respondent in June, 2014 (within the aforementioned 5 year look back period). The Rules enumerate transfers that are permissible during the 5-year period as they relate to trusts:

> (d) Allowable transfers involving trusts. A penalty period is not imposed for transfers involving trusts that meet one or more of the following criteria:
>
> (1) The action that constituted the transfer was the establishment of an irrevocable trust that does not under any circumstances allow disbursements to or for the benefit of the individual, and the date of the transfer was more than 60 calendar months prior to the first month in which the individual requests Medicaid coverage of long-term care services and supports.
>
> (2) The action that constituted the transfer was the establishment of a trust solely for the benefit of the individual if the individual was under age 65 when the trust was established and the trust meets all of the criteria at § 29.08(e)(1)(F).
>
> (3) The action that constituted the transfer was the establishment of a pooled trust, as specified at § 29.08(e)(1)(G), unless the individual was age 65 or older when they established the trust. If so, the transfer is not exempted from the imposition of a transfer penalty
> period.
>
> (4) The action that constituted the transfer was the establishment of a revocable trust. However, AHS considers any payment from the revocable trust to anyone other than the individual a transfer for less than fair-market value subject to penalty unless the payment is for their benefit.

None of these permissible transfers apply to the oral trust arrangement created by Respondent (i.e. a revocable trust for the benefit of Ms. Zygo's heirs-at-law).

Whether or not the trust was oral or written, it was still a formal revocable trust. 14A V.S.A. § 402, 407 (a trust is a trust whether oral or written). The stated purpose of drafting the

will and deed naming Respondent as the beneficiary was to avoid a future Medicaid lien. The creation of an oral trust does not met this stated purpose.

The HBEE Rules allow for transfers of real property subject to an enhanced life estate and an exclusion for an individual's home. See HBEE Rule 29.08(a)(1); 29.08(a)(6). All of the cash (see Ms. Zygo's bank account balance, DC Ex. 9) and personal property would be subject to Medicaid recapture if and when a probate estate is opened. Thus, creating an oral trust for the transfer of the home instead of the traditional enhanced life estate deed actually constituted an impermissible transfer for the purposes of Medicaid eligibility. Had Respondent simply named the intended beneficiaries as the grantees on the enhanced life estate deed, and no will was prepared naming Respondent as the sole beneficiary, then there would be no ethical violation of Rule 1.7 or 1.8. The oral trust served no benefit to Ms. Zygo. It is evident that Respondent constructed the theory of the oral trust for the sole purpose of avoiding accepting responsibility for his violation of the Rules of Professional Conduct.

C. Respondent Failed to Comply with his Statutory Duties as Trustee.

If an oral trust was property created, Respondent had a duty to comply with his statutory obligations as trustee. Respondent testified that his duties were to liquate the assets and distribute the proceeds to the intended beneficiaries. Respondent later testified that he has a duty pursuant to 14A V.S.A. § 817 to notify the trust beneficiaries of the proposed trust distribution. What he was omitted from his testimony was the other enumerated duties pursuant to 14A V.S.A. §§ 801-17. These duties include the duty to inform and report. 14A V.S.A. § 813.

> A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust. Notice does not need to be provided to the Attorney General by the trustee of a charitable trust

> under this section except upon request by the Attorney General or as provided in subsection (f) of this section.
>
> (b) A trustee:
>
> (1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;
>
> (2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;
>
> (3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c) of this section; and
>
> (4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.
>
> (c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values.

14A V.S.A. § 813. If in fact an oral trust was created in 2014, Respondent had an obligation to notify the beneficiaries of its existence. At the very least, at the time of Ms. Zygo's death when the heirs-at-law were definite, Respondent had a duty to inform the beneficiaries of his administration of the trust. Remarkably, the beneficiaries were not informed of the existence of the trust let alone the administration or their respective interests. Presumably, the beneficiaries could have objected to Respondent's decision to sell the home to a client's wife pursuant to a rent-to-own agreement (it is unclear whether it was sold for fair market value or to the highest bidder as it was not sold on the open market). This raises additional questions of how Respondent could have acted in the beneficiaries' best interests when he did not notify them of the existence of the trust. See 14A V.S.A. § 802 ("A trustee shall administer the trust solely in the interests of the beneficiaries."). This again gives rise to the inference that the theory of the oral trust was manufactured as a defense to the Petition of Misconduct and not in fact formally created in 2014.

D. Respondent Nonetheless drafted two Legal Instruments naming him as the Sole Beneficiary.

The Panel need not reach the issue of whether there is a valid oral trust given that the clear and convincing evidence is such that Respondent drafted a deed naming himself as the sole beneficiary. At least one similar case supports that an attorney who prepares a legal instrument naming himself as a beneficiary alone can substantiate a violation of Rule 1.8 regardless of subsequent actions (i.e. subsequent transfers). In Oregon, a respondent argued that the testamentary gift was not intended to be a gift to him personally, the court still found a violation of Rule 1.8(c).

> we are mindful that the accused does not appear consciously to have considered the transaction a gift. Indeed, after the gift was made, the accused placed the funds that he received on the trust deed into Benston's trust account, once he was sure that Medicaid would not take those funds. But the accused's subsequent acts, while perhaps relevant to the question of sanction, cannot change the legal effect of the preparation of the assignment.
> We find that the accused violated DR 5–101(B) when he prepared the assignment of the trust deed.

In re Gildea, 325 Or. 281, 292, 936 P.2d 975, 981 (1997).

III. Proposed Conclusions of Law.

A. Aggravating factors under ABA Standard 9.22.

The panel may consider eleven enumerated factors in aggravation when determining an appropriate sanction. The evidence supports the following conclusions relevant to these factors.

a. Prior disciplinary offenses: This factor does not apply.

b. Dishonest or selfish motive: This factor does not apply.

c. Pattern of misconduct: This factor does not apply.

d. Multiple offenses: This factor does not apply.

e. Bad faith obstruction of the disciplinary proceeding: This factor does not apply.

f. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process: This factor does not apply.

g. Refusal to acknowledge wrongful nature of conduct: The panel may draw the inference that Respondent does not acknowledge that there is anything wrongful about his conduct.

h. Vulnerability of victim: The "victims" in this case could be considered Ms. Zygo, the intended beneficiaries of her estate, or her heirs at law. Ms. Zygo was elderly and in declining physical health at the time the 2014 Will and Quitclaim Deed were executed. There was no evidence that Ms. Zygo was in declining mental health or diminished capacity. If the proceeds are now subject to Medicaid recapture, there is clear financial harm to the beneficiaries.

i. Substantial experience in the practice of law: Respondent has been a licensed attorney practicing law in Vermont since 1978. It is fair to conclude that Respondent has substantial experience in the practice of law. *In re Disciplinary Proceeding Against Ferguson*, 246 P.3d 1236, 1250 (Wash. 2011) (concluding that "substantial experience" means 10 or more years of practice at the time of the misconduct).

j. Indifference to making restitution: The proceeds from the sale of Ms. Zygo's residence remain in Respondent's law firm's trust account. The Respondent argued at the hearing that he was holding the funds in his trust account until a decision is reached in the pending matter given that this Panel could issue a decision that the funds were obtained in violation of law or that no oral trust existed.

k. Illegal conduct, including that involving the use of controlled substances: This factor does not apply.

B. Mitigating factors under ABA Standard 9.32.

The panel may consider thirteen enumerated factors in mitigation when determining an appropriate sanction. The evidence supports the following conclusions relevant to these factors.

a. Absence of a prior disciplinary record: This factor applies.

b. Absence of a dishonest or selfish motive: This factor applies.

c. Personal or emotional problems: Respondent presented no evidence of any personal or emotional problems.

d. Timely good faith effort to make restitution or to rectify consequences of misconduct: Respondent failed to timely notify the beneficiaries of their interest in Ms. Zygo's estate. Respondent has not made any efforts to rectify the consequences of his misconduct.

e. Full and free disclosure to disciplinary authority or cooperative attitude toward proceedings: Respondent fully participated in the disciplinary process and was cooperative throughout.

f. Inexperience in the practice of law: Respondent has been practicing law in Vermont since 1978, therefore this factor does not apply.

g. Character or reputation: Respondent presented no evidence of his character or reputation.

h. Physical disability: This factor does not apply to the circumstances of Respondent's matter.

i. Mental disability or chemical dependency: This factor does not apply to the circumstances of Respondent's matter.

j. Delay in disciplinary proceedings: This factor does not apply to the circumstances of Respondent's matter.

k. Imposition of other penalties or sanctions: This factor does not apply to the circumstances of Respondent's matter.

l. Remorse: Respondent presented no evidence of remorse, other than to say that he probably should not have agreed to Ms. Zygo's request.

m. Remoteness of prior offenses: This factor does not apply to the circumstances of Respondent's matter.

C. Sanction Analysis.

The purpose of sanctions imposed under the Rules of Professional Conduct is "to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar." *In re Berk*, 157 Vt. 524, 532 (1991); *see also In Re PRB*, Docket No. 2016-042, 154 A.3d 949, 955 (Vt. 2016) ("The purpose of sanctions is not to punish attorneys, but rather to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct.").

In determining a sanction for misconduct, the panel looks to the "ABA Standards for Imposing Lawyer Discipline which requires us to weigh the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors." *In re Andres*, 2004 VT 71, ¶ 14 (internal citations omitted); see also ABA Standards, Theoretical Framework at xviii; § 3.0 at 125 (2019). Here, a six-month suspension is an appropriate sanction for the violation of Rule 1.8 and 1.7.

i. <u>Duty violated</u>

Under the ABA Sanctions, the panel must first identify whether the duty breached was owed to a client, the public, the legal system, or the profession. ABA Standards, § 3.0 at 130. Rules 1.7 and 1.8 of the Vermont Rules of Professional Conduct involve Respondent's duty to

the client. ABA Standards, Theoretical Framework. Respondent owed his client, Ms. Zygo, a duty not to have a conflict of interest.

ii. Mental state

Next, the panel evaluates whether, at the time of misconduct, the lawyer acted intentionally, knowingly, or negligently. Intentional or knowing conduct is sanctioned more severely than negligent conduct. ABA Standards § 3.0 at 133. In the context of sanctions, "knowledge" is "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." ABA Standards at xxi. "Negligence" is "the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." Id. Here, Respondent knowingly drafted and executed a Will and Quitclaim Deed bequeathing and devising Ms. Zygo's entire estate to himself. The evidence demonstrated that Respondent did this knowingly but that it was Respondent's intention to hold the assets/funds and distribute to her heirs at law in furtherance of Ms. Zygo's wishes.

iii. Extent of injury

The extent of injury is defined by "the type of duty violated and the extent of actual or potential harm." ABA Standards § 3.0 at 138. In this case, the extent of the potential harm is that Respondent was bequeathed the entirety of Ms. Zygo's estate, including her home by way of written legal documents he drafted and no other person knew the terms of the agreement or Ms. Zygo's specific wishes. If Respondent becomes incapacitated prior to distributing the proceeds there is no protection in place for Ms. Zygo's heirs-at-law. Had Respondent prepared a written

trust or included all intended beneficiaries on the deed, there would not be a similar risk of potential harm.

iv. Presumptive sanction

"Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client." ABA Standards, § 4.32.

v. Aggravating and mitigating factors

The final step in analysis under the ABA Sanctions is to consider aggravating and mitigating factors that justify a departure from the presumptive sanction. ABA Standards §§ 3.0 at 141; 9.1 at 444.

As set forth above, this case involves several mitigating and aggravating factors therefore a departure from the presumptive sanction is not appropriate. The ABA Standards do not require that each and every mitigating and aggravating factor be considered in deciding what sanction to impose. The language in Standards 9.1, 9.22, and 9.23 is permissive and advises that factors "may" be considered.

It is reasonable for this Panel to draw the inference that Respondent constructed the theory of the oral trust for the sole purpose of avoiding accepting responsibility for his violation of the Rules of Professional Conduct. It is clear that he had knowledge that there was a conflict of interest when he was named as the beneficiary of the will and the grantee of her real property. He told no one of the creation of the oral trust prior to this pending action, and put no protections in place for Ms. Zygo or her beneficiaries in the event he himself became incapacitated and unable to communicate the terms of the oral trust. He had full knowledge that his actions were intended to avoid a lawful creditor from seeking compensation. In fact, his actions may not have

served to avoid Medicaid recapture at all. Finally, Respondent failed to comply with his duties as trustee of the oral trust—or simply his duty to Ms. Zygo by at the very least formally notifying all beneficiaries of their interest in the proceeds of the sale of her home.

vi. Prior Cases.

When considering the issue of sanctions, panels also generally look to prior cases to compare the sanction and violations in those cases to the case before it, with the objective of achieving proportionality and consistency within the body of attorney discipline law. *In re Neisner*, 2010 VT 102, ¶ 26. The undersigned counsel could not find any comparable Vermont cases and defers to the ABA guidance on presumptive sanctions and requests the minimum recommended length for a suspension.

D. Recommended Sanctions.

In sum, the ABA Standards indicate suspension is warranted. A six-month suspension would reflect the seriousness of the violations, mitigating factors, deter future misconduct, preserve the public's confidence in the bar and fall in line with applicable standards.

Dated at Burlington, Vermont on this 3rd day of September, 2021.

By: */s/ Samantha Lednicky*
Samantha V. Lednicky, Esq.
Special Disciplinary Counsel