STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Norman Watts
PRB File Nos. 2019-102 and 2020-011

SPECIAL DISCIPLINARY COUNSEL'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Special Disciplinary Counsel ("SDC") requests that the Panel make the following findings of fact, conclude that Respondent violated Vermont Rules of Professional Conduct 1.2, 1.4, 1.5, 1.15, 1.15A(a), 1.15(d), 8.1, and 8.4(c), and impose a sanction of disbarment, plus a monetary restitution order as set forth below.

I. FACTS

A. Audits By The Professional Responsibility Program: Rules 1.15 and 1.15A.

1. Respondent was admitted to practice law in Vermont 1987. Ex. 125, Answer to Amended Petition of Misconduct, December 30, 2021, ¶ 1 ("Am. Answer").

2. Michelle Kainen, Esq. ("Ms. Kainen") audited Respondent on behalf of the Professional Responsibility Program in 2018, covering the period from November 1, 2017 to October 31, 2018 ("First Audit"). Am. Answer, ¶ 3; Ex. 1.

3. The First Audit uncovered a number of violations of V.R.Pr.C. 1.15 and 1.15A, including that Respondent failed to keep appropriate records, reconcile client accounts on a monthly basis, and segregate client funds from Respondent's funds. Am. Answer, ¶¶ 3-4; Ex. 1.

4. On December 20, 2018, Respondent acknowledged the deficiencies in his practices, that he had learned from the experience, and that he had corrected his practices. Ex. 2.

5. On February 21, 2019, Respondent signed a Stipulation in which he admitted to various violations of the Rules of Professional Conduct ("2019 Stipulation"). Am. Answer, ¶ 5; Ex. 10. Respondent agreed to change his practices going forward. *Id.* In addition, Respondent acknowledged that he understood his obligations under the Rules as they relate to managing

client trust accounts. Ex. 10 at 4, ¶¶ 1-8. Respondent received a public reprimand. Ex. 11 at 16. Placing great weight on Respondent's experience as a lawyer, the Panel found that Respondent's accounting system for his IOLTA account failed to comply with every fundamental requirement of the trust accounting rules set forth in Rule 1.15A(a)(1)-(4)." *Id.* at 6.

6. In July 2020, Respondent had a check returned for non-sufficient funds, triggering a second audit by Ms. Kainen ("Second Audit"). Tr. of June 7, 2023 H'rg ("June 7 Tr.") at 45:10-13. The Second Audit covered the period from December 1, 2018 to July 31, 2020. Ex. 4. Ms. Kainen concluded that Respondent was still not in compliance with client trust accounting rules. June 7 Tr. at 56:19-57:21. This included continued non-compliance with the same rules covered by his public reprimand. Respondent still did not have appropriate records, like a ledger system to track transactions or running balances and he was not reconciling the trust account. *Id.* Also, individual clients had negative balances in the IOLTA account, meaning one client's funds were being used to pay another's obligations. June 7 Tr. at 70:19-72:19, 90:8-91:9.

7. The evidence showed that Respondent had not returned at least two retainers to his IOLTA account after his public reprimand, G.A.'s and C.V.'s.[1] Jun. 7 Tr. at 62:3-18; Ex. 7. Respondent received a $2,500 retainer from Client C.V. *Id.* Ms. Kainen's Second Audit uncovered that C.V.'s funds had not been returned to the IOLTA account. Jun. 7 Tr. at 59:2-62:18; Ex. 6 at 5. Despite being required by the Rules and the 2019 Stipulation to create client ledger cards for money held in the IOLTA account, there was no transaction ledger card for C.V. Ex. 4 at 4. Respondent has zero client ledger cards he thought "there was so little money in there or few clients involved, that it didn't require a monthly reconciliation." June 8 Tr. at 225:1-20. He thought performing that monthly reconciliation would be "pointless." *Id.*

[1] Client is correctly identified as C.V. Jun. 7 Tr. at 59:2; Ex. 7. However, subsequent transcript entries refer to Client as C.B.

8. During discovery, SDC requested from Respondent "all Documents that show that any retainer You received from 2015 through 2019 was placed in Your trust account and held there for the duration of the litigation." Ex. 126, ¶ 8. Respondent refused to provide documents. SDC eventually sought first to compel and then to impose sanctions due to this failure to produce documents and that request was granted. Ex. 127. The Panel finds that Respondent's failure to turn over these documents also impeded SDC's ability to learn if there were other clients similarly situated to C.V. and G.A.

B. Failure To Return Client G.A.'s Retainer: Rule 1.15(d).

9. Respondent represented G.A., who was a plaintiff alleging employment age discrimination against a multi-national company. Am. Answer, ¶ 7; June 7 Tr. at 103:14-24. On behalf of G.A., Respondent filed a three-count amended complaint in the Rutland Civil Division. Am. Answer, ¶ 7.

10. On August 1, 2017, G.A. signed an engagement letter. Am. Answer, ¶ 7; Ex. 12. G.A.'s engagement letter stated that he would pay a $2,500 retainer that Respondent would hold in a client trust account during the representation, and then return it to G.A. at the end of the representation, minus outstanding fees. Am. Answer, ¶ 8; Ex. 12. In August 2017, G.A. provided Respondent a $2,500 retainer. Am. Answer, ¶ 9; June 7 Tr. at 106:3-17.

11. In violation of Rule 1.15(a) and (c), Respondent did not place and keep the retainer in his IOLTA account during the representation. Am. Answer, ¶ 10. Ms. Kainen testified that "[I]f there were retainers received prior to November 1 [2017 in the IOLTA account] all that would have been remaining of those was $8.[93]." June 7 Tr. at 69:24-70:1. Respondent comingled G.A.'s retainer with Respondent's operating funds. Am. Answer, ¶ 10; Tr. of June 9, 2023 H'rg ("June 9 Tr.") at 20:21-21:15.

12. G.A. lost his case at the summary judgment phase. Am. Answer, ¶ 13. On March 13, 2019, Respondent withdrew as G.A.'s attorney. *Id.* Respondent agrees that he had an obligation to promptly return G.A.'s retainer once the representation concluded. June 9 Tr. at 20:10-14. Respondent did not return the retainer immediately after the case was over. June 9 Tr. at 134:23-24. G.A. and his wife were afraid to request their retainer back from Respondent believing they would "get a mysterious bill that encompassed what he owed us" from the remaining retainer amount. Tr. of June 8, 2023 H'rg ("Jun. 8 Tr.") at 10:10-22.

13. As of July 2020, Respondent was unaware that he had not returned G.A.'s retainer. Am. Answer, ¶ 17. This is because after the First Audit, he never returned G.A.'s retainer to his IOLTA account, never created a ledger card for G.A., and did not monthly reconcile his IOLTA account even though he was holding G.A.'s retainer at that time. Jun. 8 Tr. at 223:10-225:8.

14. In response to SDC's questioning on this issue, Respondent stated that all but $954.98 of G.A.'s retainer remained in his IOLTA account. Am. Answer, ¶ 21. However, he now admits this statement was false. *Id.* at ¶ 22; June 8 Tr. at 231:8-22. Respondent never corrected this false statement. June 9 Tr. at 10:4-16. Respondent testified he understands why someone would think it was a knowingly false statement. June 8 Tr. at 231:24-232:1, 233:12-20. Respondent did not review any records to gather a response for SDC's questions on this issue. June 9 Tr. at 11:9-14. The Panel does not find Respondent's testimony that he is not sure whether he knew it was false credible. It is difficult to believe that a lawyer who was already sanctioned by the PRB for failing to keep retainers in his IOLTA account could think he was being truthful when he stated only fifteen months after his public reprimand that he had in fact kept client funds in his IOLTA during that same time period.

15. On July 24, 2020, Respondent stated in a letter that he had returned G.A.'s retainer, minus the balance of $954.98. Am. Answer, ¶ 26; Ex. 58 at 1. However, this

representation to SDC was also false. June 9 Tr. at 27:20-29:5. Respondent knew it was false because he had sole check-writing authority from his financial accounts and he knew as of July 24, 2020 whether he returned the funds since his interview in late June 2020. *Id.* at 28:16-29:2.

16. In late August 2020, Respondent returned G.A.'s retainer, only after SDC asked Respondent about the matter and then followed up with a request for documentation Am. Answer, ¶¶ 19, 20; Ex. 63. G.A. did not receive his outstanding retainer check until August 31, 2020 – almost eighteen months after Respondent stopped representing him. Am. Answer, ¶ 29; June 8 Tr. at 11:6-8. Respondent admitted that the reason he failed to timely return G.A.'s retainer is that he failed to keep the proper IOLTA account records. June 8 Tr. at 227:11-16.

C. Respondent's Collection Efforts For G.A.: Rules 1.4 and 8.4(c).

17. Respondent's office informed G.A. on its invoices that payment was due within ten days. *See, e.g.*, Ex. 65 at 6. G.A. made regular payments, though sometimes payments were delayed or not complete. Am. Answer, ¶ 31. During the representation, G.A. communicated to Respondent and others in his firm that paying the invoices was a significant financial stress on his family, but that he intended to pay in full. *Id.* at ¶ 32; Jun. 7 Tr. at 117:12-118:2.

18. Respondent engaged in a pattern of collection efforts that included threatening to immediately stop representing G.A. at critical junctures in his case if the invoices were not paid in full. Exs. 22, 33-34, 42; June 7 Tr. at 133:14-134:20; Jun. 9 Tr. at 31:3-12. On March 27, 2018, Respondent threatened to withdraw from the case and to stop scheduling depositions if G.A. did not pay in full by April 10, 2018. Am. Answer, ¶¶ 34; Ex. 18. G.A. paid his bill shortly after Respondent's threatening e-mail. Am. Answer, ¶ 35. On May 30, 2018, Respondent threatened that "unless you keep your account current, none of the depositions will occur and we will resign as counsel of record." Ex. 22 at 2; Jun. 9 Tr. at 31:3-12. G.A. paid the

outstanding amount. Ex. 22. Respondent conceded that he was "essentially threatening to stop representing [G.A.] in order to get him to pay his bill." June 9 Tr. at 31:9-12.

19. On October 15, 2018, the defendant in G.A.'s case filed two dispositive motions covering all three counts. Ex. 27. Respondent told G.A. he would not start working on the response until G.A. paid the outstanding $5,021.73 balance, and that his claims would be dismissed if no response was filed. Am. Answer, ¶ 37; Ex. 27. However, the balance amount was incorrect. On October 17, 2018, G.A.'s wife, S.A., advised Respondent's paralegal that as of August 25, 2018 they had sent checks for $500, $1,500, and $2,500. Ex. 32. Respondent had cashed the $2,500 check, but not accounted for it properly. *Id.* Respondent's paralegal then informed S.A. that the outstanding balance was still $2,580.98. *Id.* This amount was also wrong, as only $500 was actually due at that time, because the recent invoice was only two days old. Ex. 65 at 38-47; Ex. 32. S.A. advised that they were selling some cattle in order to pay the balance. *Id.*

20. Five days later, Respondent's paralegal sent an e-mail to G.A. telling him again to "Clear up your account – you currently owe $2,500" and that they would not do any more work on the pending dispositive motions until the account was zeroed out. Ex. 33; Am. Answer, ¶ 39; June 7 Tr. at 132:6-21. The response to defendant's motion for judgment on the pleadings was due on November 1, 2018. Am. Answer, ¶ 40. A response to defendant's motion for summary judgment was due on November 19, 2018. *Id.*

21. On October 25, 2018, Respondent had not yet begun work on the two oppositions to the dispositive motions. Am. Answer, ¶ 41; Jun. 9 Tr. at 40:24-41:4. Respondent e-mailed G.A. to say that Respondent would not spend any more time on G.A.'s case without additional payment. Am. Answer, ¶ 41; June 9 Tr. at 39:6-44:8. Respondent stated that it was appropriate for G.A. and S.A. to believe "for one day" that if they did not pay him their case would be

dismissed. Jun. 9 Tr. at 44:5-8.[2] Respondent's paralegal testified that he followed through on this threat and their office did not start working on the responses until they received payment. Ex. 133W at 122:20-123:16. On October 26, 2018, Respondent reiterated his threat. Ex. 34.

22. These threats caused G.A. and his wife great anxiety about their case and caused them not to trust Respondent. Jun. 7 Tr. at 126:4-14. During this time, G.A. and S.A. were dealing with health issues, and Respondent's communications to them to collect fees were sometimes callous. Ex. 42; Jun. 7 Tr. at 137:7-138:6.

23. At all times, Respondent knew that he could not immediately withdraw from any active case, pursuant to V.R.C.P. 79.1 and V.R.Pr.C. 1.16. Am. Answer, ¶ 42. Respondent also knew that even if he moved to withdraw from the case, he remained obligated to represent G.A. until the court granted the motion to withdraw. *Id.*

24. Respondent knowingly omitted the following from all his communications related to the outstanding fees: (i) if Respondent filed a request to withdraw as G.A.'s attorney, G.A. would could oppose the motion; (ii) Respondent remained G.A.'s attorney until the court decided the motion to withdraw; and (iii) Respondent had an ethical duty to ensure that his withdrawal did not negatively prejudice G.A.'s case. Am. Answer, ¶ 43; June 9 Tr. at 43:5-44:8.[3]

D. Failure To Respond To Motion For Judgment On The Pleadings: Rules 1.2 and 1.4.

25. The defendants in G.A.'s case filed a motion for judgment on the pleadings on count two of the complaint. Am. Answer, ¶ 44; Ex. 27. Neither Respondent nor anyone else from his office contacted G.A. at any time to discuss whether to respond to the motion for judgement on the pleadings, and the fact that choosing not to respond would result in dismissal

[2] This portion of the hearing transcript is a transcription of a video that was played during the hearing. *See* Ex. 130 at 42:18-43:23.

[3] *See supra* note 2.

of count two. June 7 Tr. at 142:3-144:15; June 9 Tr. at 46:22-47:9. G.A. testified that neither Respondent nor anyone else from his office communicated with G.A. regarding the merits of count two and the motion to dismiss it. *Id.*

26. Neither Respondent nor anyone else from his office informed G.A. that even though G.A. paid his outstanding fees, Respondent would not file an opposition to the motion for judgment on the pleadings. June 9 Tr. at 44:18-47:9. As a result of Respondent's failure to respond, count two was dismissed. Ex. 37. G.A. never consented to allowing count two to be dismissed. Jun 7 Tr. at 143:23-144:15. G.A. only understood that count two was dismissed after the court entered its decision on November 27, 2018. *Id.* at 143:1-12.

27. Respondent claimed in his Amended Answer and his testimony that he spoke to G.A. at one or more depositions about the merits of count two of the complaint. Am. Answer, Resp. to Count I, ¶ 45; June 9 Tr. at 45:6-47:11. Respondent's testimony on this point was inconsistent – first he claimed it happened at G.A.'s deposition, then claimed it was at a different deposition – and not credible. *Id.* Even if credited, Respondent conceded he never spoke to G.A. about count two after the motion for judgment on the pleadings had been filed. *Id.*

E. Fee And Expense Estimates For Client J.H.: Rules 1.4, 1.5 And 8.4(c)

28. Respondent represented J.H., a plaintiff alleging race and national origin discrimination in employment against an educational institution before the United States District Court for the District of Vermont. June 8 Tr. at 79:9-20. On July 3, 2024, Respondent filed a complaint on J.H.'s behalf. Am. Answer, ¶ 53. J.H. alleged that after working for the defendant for eight years, she had been denied a long-term employment contract. *Id.* at ¶ 52.

29. SDC offered Alison Bell ("Ms. Bell") as an expert in the matter of employment law. June 9 Tr. at 84:4-6. She has handled over 500 employment matters, including litigation, with experience in providing estimates for clients. *Id.* at 80:22-81:12.

30. Ms. Bell opined the following: (1) the estimates were not sufficient to keep J.H. reasonably informed about the status of the matter; (2) the estimates did not accurately and adequately inform J.H. about the basis and possible range of fees that could result from the unpredictability of litigation; and (3) the estimates were inherently unreasonable – occasionally contradictory, mathematically impossible, and wildly unrealistic – and therefore misleading. June 9 Tr. at 84:10-85:1.

31. The purpose of providing estimates is "to educate [clients] about what to expect and to make sure they really, really want to do this because it's going to be expensive." June 9 Tr. at 82:5-9. J.H. was concerned about the cost of litigation. June 8 Tr. at 93:7-12. Respondent provided estimates of attorneys' fees and costs for the case on four separate occasions.

32. Respondent provided his first estimate on April 28, 2014, before J.H. signed an engagement letter. Am. Answer, ¶ 56; Ex. 66. Respondent told J.H. that he had pursued discrimination cases for $12,000-$15,000 and expected expenses for the whole case not to exceed $1,000. *Id.* Respondent made this estimate assuming the case would settle early. Jun. 9 Tr. at 48:5-9. J.H. reasonably understood this estimate to be for the whole case. June 8 Tr. at 199:6-8.

33. Ms. Bell opined that the estimate was "misleading" to the layperson because the fee estimate would have only covered early investigation and pre-suit settlement. June 9 Tr. at 89:6-91:3. Ms. Bell's testimony established that at the time, the $1,000 maximum expense was impossible because after paying the filing and service fee, there would barely be enough to cover a single deposition transcript. Jun. 9 Tr. at 85:15-86:8. Multi-hour depositions are common and a single eight-hour deposition could be thousands of dollars. *Id.* at 87:6-88:10.

34. On May 5, 2014, Respondent provided a second, more formal estimate, broken down into five phases of litigation. Am. Answer, ¶ 58; Ex. 68. Respondent estimated that it

would cost $17,900 in fees and expenses to take the case through summary judgment, and a total of $28,150 to litigate through trial. *Id.* The next day, Respondent told J.H. that the estimate he provided was "very likely a maximum and may be high given the 95% mediation settlement rate in VT civil actions." Am. Answer, ¶ 62; Ex. 69.

35. Respondent admits that the costs for each of the phases were significantly and materially underestimated, based on what he already knew about the case. Am. Answer, ¶ 61. Ms. Bell agreed and added that this estimate did not give J.H. enough information to make an informed decision about whether to initiate litigation. Jun. 9 Tr. at 92:11-24. For example, at the summary judgment phase, Respondent estimated $1,500 in legal fees – the equivalent of six hours attorney time. Ex. 68. Defendants in employment cases always file summary judgment motions and they determine the outcome of the case. Jun. 9 Tr. at 98:5-99:13. Ms. Bell could not contemplate an opposition to summary judgement that took less than twenty hours. *Id.*

36. The claims J.H. brought were complex and discovery intensive. *Id.* at 107:18-108:6; 109:14-24. As of February 10, 2015, Respondent was aware that there were thousands of pages of documents, that Respondent had hired an expert, that Respondent intended on taking multiple depositions, and that the defendant was not cooperative. *Id.* at 107:18-108:21.

37. On February 10, 2015, Respondent provided a third estimate. Am. Answer, ¶ 64; Ex. 77. Respondent informed J.H. that it would cost an additional $26,850 to get through trial, on top of the $22,574.41 that J.H. had already spent. *Id.* This included an additional $17,500 was required to get through summary judgement. *Id.* Respondent admits that this estimate was also materially incorrect. Am. Answer, ¶ 66.

38. Ms. Bell opined that there were numerous defects in this estimate. Respondent failed to include the cost of retaining an expert that Respondent had already retained. Ex. 74. At this phase of the case, J.H. had spent $22,574, but no depositions had been taken. Jun. 9 Tr. at

103:2023. This was well beyond the May 5 estimate of $1,850 to get to the deposition phase. Ex. 68. Respondent now proposed taking a total of ten depositions (as opposed to the original four), yet did not increase the amount for legal fees which stayed at $5,000. Jun. 9 Tr. at 107:18-108:6. This would only allow for two hours of work per deposition. Ex. 77. Inexplicably, Respondent cut the mediation fees in half in this estimate. Jun. 9 Tr. at 108:22-109:10. There was "no plausible explanation for it other than perhaps to make the bottom line more palatable to [J.H.]." *Id.* at 109:8-10. The estimate was inherently misleading and prevented J.H. from making an informed decision. *Id.* at 110:21-111:4.

39. On September 19, 2015, Respondent provided a fourth estimate for trial costs. Am. Answer ¶ 70; Ex. 93. Respondent included a housing cost for the first time, even though that was a known, not previously disclosed expense. *Id.*; Jun. 9 Tr. at 113:11-16. In this trial cost estimate, Respondent did not include any trial preparation time, jury selection, pre-trial memoranda, and post-trial filings. Jun. 9 Tr. at 112:14-113:10.

40. Respondent induced J.H. to retain him based on his low-ball estimates. June 8 Tr. at 88:17-91:18; Exs. 69-70. After spending $71,000 prior to the summary judgement phase, J.H. believed Respondent had "grossly under-estimated the cost." June 8 Tr. at 112:4-9.

41. In total, J.H. spent around $110,000 on a case she lost, and the appeal. Ex. 100; June 8 Tr. at 148:1-13.

F. <u>Overcharging Fees And Expenses: Rule 1.5 and 8.4(c).</u>

42. On February 25, 2015, Respondent advised J.H. that he would not charge for travel time. June 8 Tr. at 124:7-18; Ex. 88. However, Respondent charged J.H. for travel time. June 8 Tr. at 124:7-130:23; Ex. 120 at 65, 71. When J.H. reminded Respondent that they had an agreement that Respondent would not charge for travel time, he reduced only some of his time.

Am. Answer, ¶ 75; June 8 Tr. at 124:7-18; Ex. 88. Respondent failed to apply the full fee reduction, shortchanging J.H. $1,375. June 8 Tr. at 124:3-133:9; Ex. 132; Ex. 120 at 65, 71.

43. Respondent agreed in an e-mail to J.H. to apply a 50% refund, totaling $650, for his time spent addressing his own late filed discovery documents. Ex. 97; June 8 Tr. at 132:8-134:4. However, Respondent ultimately refused to apply the reduction. *Id.*

44. Respondent charged J.H. for staying at expensive hotels in Boston and Amherst, Massachusetts, and Rochester, New York. June 8 Tr. at 134:14-145:18; Ex. 120 at 86, 91, 104, 106, 112. On one occasion, Respondent charged J.H. to stay for one more night than was necessary. June 9 Tr. at 56:14-61:7; Ex. 120 at 86. Respondent's explanation that he was unable to return home that night was not credible in light of his purchase, prior to leaving on the trip, of a return bus ticket that included the extra day, and the bus schedule at that time. Exs. 84, 91.

45. Respondent charged J.H. $100 per day for meals on the trip to Boston. June 8 Tr. at 142:7-18. Respondent and J.H. did not have an agreement on a flat fee rate for meals. *Id.* Respondent did not provide J.H. with a receipt to verify the meal expenses, except for an inherently unreasonable charge for $179 for room service at the Taj in Boston. *Id.*; Ex. 120 at 91. This is despite Respondent's general practice not to charge clients for meals. June 9 Tr. at 65:16-66:21.

46. Respondent overcharged J.H. a total of $2,457 in fees and expenses. Ex. 132.

G. <u>Failure To Timely Return J.H. Retainer: Rule 1.15(d).</u>

47. On May 12, 2014, J.H. signed an engagement letter with Respondent where she agreed to provide Respondent with a $5,000 retainer. Am. Answer, ¶ 82; Ex. 71. The engagement letter stated that the retainer would "be maintained as a credit" on her account during the case. *Id.* Also, the letter stated that Respondent would refund the retainer at the conclusion of the case. *Id.*

48. On May 9, 2017, Respondent stopped representing J.H. Am. Answer, ¶ 83. At first, J.H. had been nervous to ask for the retainer back because she believed Respondent would keep the $5,000 retainer. Jun. 8 Tr. at 151:8-152:5. Respondent concedes that over the course of the next three months, J.H. asked for the return of her retainer more than a dozen times. Am. Answer, ¶ 84; June 9 Tr. at 67:15-20. On June 28, Respondent sent an additional invoice to J.H. for $2,280. Am. Answer, ¶ 85; Ex. 104. The invoice covered six months of time, dating back to December 2016, and included block-billed time entries covering multiple days. Ex. 120 at 148-150. J.H. disputed this invoice amount, but she and Respondent did not come to an agreement on the final amount owed. Ex. 104. He refused to arbitrate or negotiate the last invoice. *Id*. at 5. On August 7, J.H. asked Respondent to return whatever part of the retainer they were in agreement about. Am. Answer, ¶ 89. Respondent persistently delayed providing responses to J.H. Ex. 104.

49. On September 19, 2017, Respondent returned the undisputed portion of the retainer to J.H – four months after the representation ended and six weeks after J.H. asked specifically Respondent to remit the undisputed portion of her retainer. Am. Answer, ¶ 90; Ex. 105. Respondent agrees that holding onto a client's funds causes financial harm. Jun. 9 Tr. at 146:2-15.

50. Respondent had a practice of inappropriately placing retainers in his operating account. June 7 Tr. at 41:24-42:7. Based on this and Ms. Kainen's uncontested finding that there was only $8.93 in the trust account on November 1, 2017, Respondent did not have J.H.'s retainer in his accounts at the time he was being asked to return it in summer 2017 and he had to pull the funds from his personal account or operating account. Ex. 1 at 6.

51. J.H. told Respondent on June 2, 2017 that she was obligated under a loan she took out to finance the litigation and was incurring interest. Jun. 9 Tr. at 144:3-146:1; Ex. 102. Respondent conceded that J.H. made extra interest payments because he failed to return J.H.'s retainer in a reasonable amount of time. *Id.* at 145:23-146:1.

52. Additionally, J.H. was financially harmed in that the cost of the litigation negatively impacted her retirement. June 8 Tr. at 163:1-6. She paid higher than planned litigation fees to Respondent. *Id.* Had Respondent told J.H. that litigation could cost $100,000 to get through summary judgement, she would not have pursued the case. Jun. 8 Tr. at 123:19-25. J.H. relied on Respondent's low estimates – despite her concerns – because Respondent "seemed sincerely confident that he could do it for that low amount." Jun. 8 Tr. at 84:17-22.

II. LEGAL ARGUMENT.

The purpose of 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 PRB Docket No. 2016-042*, 203 Vt. 635, 639 (2016). Disciplinary Counsel bears the burden of proof in proceedings that seek discipline. Administrative Order No. 9 (A.O. 9), Rule 20(D). The standard of proof for each element of misconduct is clear and convincing evidence. A.O. 9, Rule 20(C); *In re PRB Docket No. 2016-042*, 203 Vt. at 639.

If the Panel finds a violation of the rules by clear and convincing evidence, one or more sanctions may be imposed. A.O. 9, Rule 15; *In re PRB Docket No. 2016-042*, 203 Vt. at 639. "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 re PRB Docket No. 2016-042*, 203 Vt. at 639 (internal quotation and citation omitted).

A. Count I: V.R.Pr.C. 1.2, 1.4.

Under Rule 1.2, a lawyer is bound to a client's decisions regarding the objectives of a representation and must consult with a client as to the means to achieve those objectives. V.R.Pr.C. 1.2(a). "With respect to the means by which the client's objectives are pursued, the

lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation." *Id.*, cmt. 1.

Whether to settle a case is a decision that belongs to a client: "A lawyer shall abide by a client's decision whether to settle a matter." V.R.Pr.C. 1.2; *see also* Restatement (Third) of the Law Governing Lawyers, § 22 ("As between client and lawyer . . . the following and comparable decisions are reserved to the client . . . : whether and on what terms to settle a claim."). "The rule of this Section also applies to decisions that are substantially equivalent to those specifically described," including a consent judgement or stipulation. *Id.*, cmt. (e). Attorneys have an obligation to attempt to bring credible issues before a court based on their client's objectives regardless of whether those claims will ultimately prevail. *In re Andres*, 2004 VT 71, ¶ 12 (attorney suspended from practicing law after failing to attend a pre-trial conference and failing to respond to a summary judgement motion).

Under Rule 1.4, an attorney is required to communicate with their client to keep them reasonably informed about their case, the means to achieve the client's objectives, and sufficiently explain matters to the extent necessary to permit a client to make an informed decision about the representation. V.R.Pr.C. 1.4(a). If a client is required to make a decision about the representation, the attorney must promptly consult with and obtain the client's consent before taking action. V.R.Pr.C. 1.4(a)(1), cmt. 2.

Here, the record shows that Respondent never responded to the motion for judgment on the pleadings and did not consult with G.A. about this. G.A. filed three counts against his employer. The defendant moved for judgement on the pleadings on count two – breach of the implied covenant of good faith. Respondent's unilateral decision not to respond to the motion for judgment on the pleadings on count two, effectively dismissed it from the case. Respondent never discussed the merits of this motion with G.A. Nor did Respondent inform G.A. he did not

plan on responding to the motion – even after G.A. paid his bill. Allowing a count to be dismissed is akin to settling a claim. Therefore, Respondent essentially settled count two of the complaint without communicating with G.A., in violation of Rule 1.2(a).

Respondent failed to keep G.A. reasonably informed about the merits of the claims, the motion, and whether to respond – a decision that belonged to G.A. – in violation of Rule 1.4(a).

B. Count II: V.R.Pr.C. 1.15(d).

Clients place enormous trust in lawyers by giving them money and expecting them to appropriately care for it and return it, when appropriate. Rule 1.15(d) sets out a lawyer's duty in this regard by requiring a lawyer to "promptly deliver to the client . . . any funds or other property that the client . . . is entitle to receive and, upon request by the client . . . shall promptly render a full accounting regarding such property." When a representation ends, an attorney must therefore promptly return the retainer to the client. When there is a dispute as to how much of the retainer must be refunded, the attorney is required to return the undisputed portion of the retainer to the client. V.R.Pr.C. 1.15, cmt. 3. Specifically, comment 3 stats: "the lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention." The lawyer is obligated to propose a "means for prompt resolution" and the "undisputed portion of the funds shall be promptly distributed." *Id.*

Regarding G.A., Respondent failed to promptly return G.A.'s $2,500 retainer. Under the engagement letter, Respondent agreed to return the retainer at the conclusion of the representation, minus any outstanding fees or expenses. The retainer was therefore client property. V.R.Pr.C. 1.15. On March 13, 2019, Respondent withdrew from representing G.A., and the representation ended. It is undisputed that Respondent should have promptly returned the remaining retainer, but he did not. Respondent concedes he did not return G.A.'s retainer

until August 2020 – seventeen months after the representation ended. As discussed in more detail below, this failure is directly attributable to his failure to keep proper IOLTA account records and harmed G.A.

Regarding J.H., Respondent failed to promptly return J.H.'s retainer despite being asked to do so more than a dozen times. There were no outstanding fees pending when J.H. asked for her retainer, and Respondent should have immediately returned it. V.R.Pr.C. 1.15, cmt 3. Instead, Respondent sent an additional invoice to J.H. for $2,280 on June 27, 2017. J.H. disputed this last invoice, but $2,720 of the retainer was undisputed. On August 7, 2017, J.H. specifically asked Respondent to return the undisputed part of the retainer. He waited six weeks to do so, which was four months after the representation ended. All the while J.H. was paying interest on a loan she took to finance her case with Respondent.

Respondent's four-month delay in returning J.H.'s retainer and 17-month delay in returning G.A.'s retainer violated Rule 1.15(d). It directly harmed both clients, while Respondent had actual use of the funds since they were not in his IOLTA account. In addition, by keeping possession of the undisputed portion of J.H.'s funds, Respondent stripped her of the ability to contest the June 27, 2017 invoice because she needed at least some of the retainer returned. The Panel finds that Respondent will be required to pay restitution to G.A. and J.H. for the handling of their retainers as set forth below.

C. Count III: V.R.Pr.C. 1.15 and 1.15A(a).

Protecting client money is a fundamental principle of the Rules. *In re Farrar*, 2008 VT 31, ¶ 2. "Commingling personal property with client property is a serious offense because of the likely negative consequences that may result to an attorney's clients." *Id*. The rule against commingling serves three objectives: (1) to preserve the identity of client funds; (2) to eliminate

the risk that client funds may be taken by an attorney's creditors; and (3) to prevent attorneys from misusing client funds intentionally or inadvertently. *Id.*

There are special rules governing how an attorney should keep track of client funds and to keep them separate from attorney money. As relevant to this case, the Rules impose the following obligations on attorneys when they are holding funds in connection with a representation:

a. A lawyer must hold a client's property separate from his own and maintain complete records. V.R.Pr.C. 1.15(a)(1).

b. Refundable retainers must be held in a trust account and only withdrawn as permitted under the engagement letter. V.R.Pr.C. 1.15(c).

c. Client funds must be held in a clearly identified trust account. V.R.Pr.C. 1.15A(a).

d. A lawyer must maintain an accounting system for client trust accounts that includes: (1) a system showing receipts into the account and their sources and disbursements from the account and the nature of the disbursement; (2) a record for each client showing receipts, disbursements and a running account balance; (3) "records documenting timely notice to each client or person of all receipts and disbursements from the account"; and (4) records documenting monthly reconciliation of all accounts maintained and a "single source for identification of all accounts maintained." *Id.*

Respondent violated each of these rules, first in 2018-19 and then here again. In the Second Audit Ms. Kainen performed, she determined that Respondent was not complying with most of these requirements: some client accounts were in the negative (violation of 1.15(f)), he lacked detailed documentation of all transactions (violation of 1.15A(a)(1)-(3)), he did not have

client ledger cards (violation of 1.15A(a)(1)-(3)), and he did not perform monthly reconciliations of his trust account (violation of Rule 1.15A(a)(4)).

In addition, he still held client funds outside of his IOLTA account because Respondent never returned to his IOLTA account the retainers he was still holding as of February 2019. This includes the retainer of G.A. and C.V., both in violation of 1.15(a) and (c). There are no records of where the retainers from G.A., C.V., or J.H. were deposited or how they were spent, a violation of 1.15A(a). Since Respondent was still holding retainers for G.A. and C.V. after February 2019, this could not have been encompassed by the public reprimand.

Although Respondent was aware of his trust account obligations after he was publicly reprimanded in 2019, he still failed to meet them. In fact, he deliberately chose not to create client ledger cards because he thought it was "pointless." Had he appropriately complied with his IOLTA account obligations after his public reprimand, he would not have been unaware he was holding G.A.'s retainer as late as July 2020.

D. Count IV: V.R.Pr.C. 1.4 and 8.4(c).

Rule 1.4 provides, in part, that an attorney shall "keep the client reasonably informed about the status of the matter" and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." V.R.Pr.C. 1.4(a)(3), (b). In order for an attorney to discharge this duty, they must honestly relay to the client the facts necessary for the client to make an informed decision. An attorney who speaks dishonestly or uses threats to withdraw to move his client to take a certain action violates Rule 1.4. *See Iowa Supreme Court Atty. Disciplinary Bd. v. Vandel,* 889 N.W.2d 659, 665 (Iowa 2017) (attorney violated Iowa's analog to Rule 1.4 "when she repeatedly told [client] she was going to withdraw if [client] did not make an additional payment to her. [Attorney] did not explain to [client] that in order to withdraw she would have to make a motion to the court to do so.").

Rule 8.4(c) prohibits an attorney from engaging "in conduct involving dishonestly, fraud, deceit or misrepresentation." The Vermont Supreme Court has held that "Rule 8.4(c) prohibits conduct 'involving dishonesty, fraud, deceit or misrepresentation' that reflects on an attorney's fitness to practice law, whether that conduct occurs in an attorney's personal or professional life." *In re PRB Docket No. 2007-046*, 2009 VT 115, ¶ 12. Misrepresentation includes the failure to disclose material information when obligated to do so. *In re Strouse*, 2011 VT 77, ¶¶ 14-15.

Respondent engaged in a course of conduct in collecting fees from G.A. that violated both of these rules. On multiple occasions, Respondent told G.A. that he would essentially lose his case because he was not paying his invoices in a timely manner. He threatened not to schedule additional depositions, attend scheduled deposition and respond to pending dispositive motions unless bills were paid. The client believed these threats and this caused G.A. and his family great distress. Respondent testified these threats were acceptable to attempt to force G.A. to pay his invoice.

At no time did Respondent inform G.A. that he could not withdraw from G.A.'s case immediately and had a continuing ethical obligation to represent G.A. until the relationship was terminated by a court order . *See* V.R.C.P. 79.1; V.R.Pr.C. 1.16. Respondent never told G.A. that Respondent was prohibited from withdrawing in a manner that would have "material adverse effect on the interests of" G.A. V.R.Pr.C. 1.16(b)(1); *see also* V.R.Pr.C. 1.3, cmt. 4 ("Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client.").

Respondent had a duty to communicate this information under Rule 1.4 because it was material to the representation. His failure to do so misrepresented the situation to his client and operated as a deceit on him. *In re Strouse*, 2011 VT at ¶¶ 14-15; V.R.Pr.C. 8.4(c). This conduct

destroyed the attorney-client relationship with G.A. in a number of ways, including making G.A. too afraid to contact Respondent to return his retainer at the end of the representation.

E. Count V: V.R.Pr.C. 1.5.

Rule 1.5 provides that a lawyer may not charge or collect an unreasonable fee or an unreasonable amount for expenses. V.R.Pr.C. 1.5(a). In a new lawyer-client relationship, the rules advise establishing an understanding regarding fees and expenses early on. V.R.Pr.C. 1.5, cmt. 2. Fees must be reasonable under the circumstances and the enumerated examples in Rule 1.5 is not exhaustive. V.R.Pr.C. 1.5, cmt. 1. Where there is an agreement not to charge a particular amount, a reasonably prudent and competent attorney will abide by that agreement. *See* V.R.Pr.C. 1(h).

Respondent charged unreasonable fees and violated his agreements with J.H. regarding certain expenses and fees. Additionally, Respondent charged J.H. expenses she did not understand she would be responsible for. *See* V.R.Pr.C. 1.5, cmt. 1. J.H. and Respondent agreed that Respondent would not charge for his travel time. Yet, Respondent charged for some of his travel time, even after J.H. pointed it out. Respondent stayed an additional night in an expensive hotel in Boston. He stayed at above market lodgings in Amherst and Rochester. Respondent unilaterally charged J.H. a flat rate of $100 per day for meals. Additionally, after charging J.H. full freight for the motion practice required by his delays, Respondent initially agreed to discount the time due to his own missed deadlines, but never applied the discount – even when J.H. pointed it out. In total, J.H. incurred additional expenses and fees of $2,457 that she was not required to pay in violation of Rule 1.5. The Panel finds that she should be reimbursed for these amounts.

F. Count VI: V.R.Pr.C. 1.4, 1.5, And 8.4(c).

Another duty under Rule 1.4 is to sufficiently and accurately inform a client about the costs of litigation so as to allow a client the opportunity "to make informed decisions regarding

the representation." V.R.Pr.C. 1.4(b); *see also Atty. Grief. Comm'n of Md. v. Rand*, 445 Md. 581, 607-608 (Md. Ct. App. 2015). "The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests . . . ." V.R.Pr.C. 1.4, cmt. 5.

Rule 1.5 requires a lawyer to provide their client with the rate and basis of their fee. The requirement to communicate truthfully about those fees comes from Rules 1.4, 1.5 and Rule 8.4(c). Rules 1.4 and 8.4(c) have been discussed above. As relevant here, "Rule 8.4(c) is violated by making misrepresentations to the client, which includes the concealment of material information from the client." *Atty. Griev. Comm'n of Md. v. Rand*, 128 A.3d 107, 142 (Md. 2015).

Respondent's estimates violated these three rules by being inherently unreasonable and misleading. Respondent provided J.H. four estimates during the course of the litigation that failed to materially inform and assist J.H. in deciding whether to initiate and then continue with the litigation. None of the estimates were the result of careful consideration of the particular facts and details in J.H.'s case. Instead, they were estimates given for the purpose of encouraging J.H. to continue to pay fees that ultimately totaled more than $110,000. They were each inherently misleading to a typical client.

More importantly, Respondent's estimates caused J.H. to instigate in a litigation she would not have started had the estimates been reasonable. She paid respondent more than three times his detailed estimate of $28,900 at the beginning of the case, thus causing harm to J.H. and in violation of rules 1.4, 1.5, and 8.4(c). Respondent gave low-ball estimates because he understood J.H. was cost sensitive and wanted to keep her as a client. This benefited Respondent financially. The Panel finds it appropriate to order Respondent to refund to J.H. $80,000, the amount she paid beyond the estimate, with a 10% contingency allowed.

G. Count VII: Lying To Special Disciplinary Counsel: Rule 8.1.

Lawyers are prohibited from "knowingly mak[ing] a false statement of material fact" in the course of disciplinary investigations. V.R.Pr.C. 8.1(a). "Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation." *Id*., cmt. 1. Rule 8.1 also requires an attorney to correct previous misstatements of fact or misunderstanding on the part of disciplinary counsel. V.R.Pr.C. 8.1(b).

Respondent made two knowingly false statements to SDC. First, in June 2020, during the course of the investigation, Respondent stated that G.A.'s retainer was presently in his IOLTA account. Respondent knew this was not true based on Ms. Kainen's First Audit and his resulting decision not to return other retainers to his IOLTA account. There is no record that he ever corrected that statement prior to the hearing.

Second, on July 24, 2020, Respondent told SDC in a letter that he had already returned G.A.'s retainer to him when Respondent knew he had not done so. Respondent was the only person with check-writing authority on his accounts and therefore knew that in the prior three weeks – since first learning that he had G.A.'s retainer in late June 2020 – he had not returned the retainer. Respondent subsequently returned the retainer to G.A. in late August 2020.

These lies were material to the investigation and in violation of Rule 8.1.

III. SANCTION: DISBARMENT AND MONETARY RESTITUTION ARE THE APPROPRIATE SANCTIONS.

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). In determining a sanction for misconduct, the panel looks to the ABA Standards for Imposing Lawyer Sanctions and prior case law. *In re Andres*, 2004 VT 71, ¶ 14. Under the

ABA Standards, the panel considers: (1) the duty violated; (2) the lawyer's mental state; and (3) the extent of the injury caused by the violation. Based upon these considerations, the ABA Standards indicate a "presumptive sanction," which then may be modified by aggravating or mitigating factors. *See* ABA Standards, Theoretical Framework at xviii; § 3.0 at 125 (2019).

Here, disbarment and monetary restitution to J.H. and G.A. are the appropriate sanctions under the ABA Standards for Imposing Lawyer Sanctions.

A. ABA Standards.

1. Duty Violated.

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. Here, all of the duties except those found in Count VII were owed to these specific clients. In addition, the IOLTA account duties found in Rules 1.15 and 1.15A are also owed to the public and the profession. The duties in Count VII are owed to the profession.

2. 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, there is clear and convincing evidence that Respondent's acts and omissions were almost all knowing.

Respondent had previously been through an audit and disciplinary process that identified gross and severe deficiencies with his trust accounting practices that required remediation. He stated in writing that he understood the deficiencies outlined in the First Audit. He conceded at the hearing that he deliberately chose not to comply with some obligations because they did not involve a lot of money and seemed pointless. Respondent failed to correct many deficiencies and he repeated them, this time harming his clients.

Respondent knowingly provided grossly undervalued estimates to J.H. The magnitude by which the estimates were wrong throughout the litigation and the unrebutted testimony from Ms. Bell leaves no other explanation than that these were knowing low-ball estimates. Respondent knowingly refused to provide discounts to J.H. that he had agreed to. Respondent knowingly threatened to withdraw from representing G.A. to get him to pay invoices. Respondent knowingly declined to explain the process of withdrawal as he is required to. Respondent knowingly lied to SDC during the course of the her investigation, as described in more detail above.

Respondent's violations related to overcharging J.H. for expenses and failing to consult with G.A. related to his motion for judgment on the pleadings were negligent.

3. 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. There are several injuries. G.A. and his family were distressed by the threats to withdraw from the case. Also, Respondent's repeated demands for payment caused further distress. In addition, Respondent allowed one of G.A.'s claims to be dismissed without obtaining G.A.'s informed consent, causing actual harm to G.A.'s case. Respondent held on to G.A.'s retainer for over seventeen months causing financial harm.

Similarly, Respondent caused J.H. great financial harm by enticing her to initiate a litigation that she would not have initiated absent his low-ball estimates. Respondent also held on to J.H.'s retainer knowing that J.H. had taken a loan to help finance the litigation, causing her financial harm. He further cost J.H. more money by overcharging for expenses and fees, and refusing to provide agreed upon discounts

Additionally, Respondent's lack of any appropriate trust accounting system endangered the security of all client funds. Respondent used one client's funds to pay another client – prohibited conducted expressly aimed at protecting the public and preserving confidence in the legal system. He held the G.A., C.V., and possibly other client retainers in personal or operating accounts after his public reprimand. Thus, the violations caused a high degree of potential harm.

Lying to SDC made the investigation longer and more complex than it needed to be, ultimately harming the system, the complaining witnesses and the profession. It also increased the cost to the State of Vermont.

4. Presumptive Sanction.

In sum, Respondent violated duties to clients, acted knowingly in doing so, and caused actual injury to clients. He also created a high degree of potential harm to all of his clients. Section 4.1 of the ABA Standards addresses sanctions for attorneys who mishandle client funds. "Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client." ABA Standard § 4.12. Here, Respondent's knowing mishandling of his IOLTA account – after being subject to a prior reprimand for the same issues – supports the presumptive sanction of Suspension.

Section 6.1 of the ABA Standards addresses sanctions for attorneys who fail in their duty of honesty. "Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being

withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding." ABA Standard § 6.12. Here, Respondent knowingly misled J.H. in starting a complex litigation that exceeded all of Respondent's estimates. He misled G.A. about the withdrawal process. Additionally, Respondent attempted to mislead SDC on two separate occasions.

Section 8.0 of the ABA Standards addresses sanctions for previously sanctioned attorneys. "Disbarment is generally appropriate when a lawyer . . . intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession." ABA Standard § 8.1(a).

As set forth above, Respondent's knowing, repeat violations of Rules 1.15 and 1.15A, which directly resulted in the mishandling of G.A.'s and C.V.'s client funds, are reason enough to justify the presumptive sanction of disbarment. *See The Florida Bar v. Mims*, 532 So.2d 671 (Oct. 20, 1988) (misappropriating client funds, commingling, violation of trust accounting rules, past disciplinary violations, and presence of aggravating factors warranted disbarment).

The presumptive sanction for most of the rule violations here warrant suspension or disbarment.

5. 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. A list of factors which may be considered in aggravation and mitigation are set out at ABA Standards §§ 9.22 and 9.32.

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.

i. *Prior disciplinary offenses*: This factor applies. It should be afforded significant weight where the prior offenses were the same and very recent in time.

ii. *Dishonest or selfish motive*: This factor applies. Respondent benefited financially by using client retainer funds personally instead of holding them apart, and by inducing J.H. to file litigation she otherwise would not have pursued with him. Respondent's use of threats to collect on outstanding fees was similarly for his own financial benefit.

iii. *Pattern of misconduct*: Respondent's conduct supports the inference of a pattern of disregard and disrespect for the structure and institution of the lawyer regulation system. C.V. is only one example of this.

iv. *Multiple offenses*: Respondent's conduct involves multiple offenses, as set forth above.

v. *Bad faith obstruction of the disciplinary proceeding*: This factor applies in lack of compliance with discovery and lying to the SDC. *See* Ex. 127 at 4 (Ordering Sanctions and stating "In the event that it is ultimately determined that Respondent committed one or more violations of the Code of Professional Conduct, Respondent's non-compliance with the August 9, 2021 Order will considered, in connection with the Panel's sanctions determination, to be some evidence supporting the aggravating factor of "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency."); *Id.* at 3 ("His conduct [in failing to comply with discovery] is delaying the resolution of an important proceeding – one that is designed to evaluate the fitness of a lawyer to practice.").

vi. *Submission of false evidence, false statements, or other deceptive practices during the disciplinary process*: This factor applies, as set forth in Count VII.

vii. *Refusal to acknowledge wrongful nature of conduct*: This factor applies.

viii. *Vulnerability of victim*: This factor does not apply.

ix. *Substantial experience in the practice of law*: This factor applies. *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 misconduct).

x. *Indifference to making restitution*: This factor applies. Respondent was unwilling to arbitrate or negotiate the outstanding invoices with J.H. or provide promised discounts.

xi. *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. None of the mitigating factors apply in this case.

B. Prior Cases.

When considering sanctions, panels also look to prior cases to compare the sanctions and violations in those cases to the case before it with the objective of achieving proportionality and consistency. *See In re Neisner*, 2010 VT 102, ¶ 26. Disbarment is *the* appropriate sanction where almost every aggravating factor is present. *See In re Karpin*, 162 Vt. 163, 173 (1993).

In *In re Wysolmerski*, the Court upheld a three (3) year suspension where there extent of the misconduct over a period of time is serious – and narrowly avoided disbarment because of serious mitigating circumstances. 167 Vt. 562, 562 (1997). Respondent acted without client approval. *Id*. He failed to keep in contact with clients and inform them about their obligations. *Id*. His conduct harmed clients. *Id*. But for respondent's painful divorce and other mitigating circumstances, disbarment would have been the preferred sanction. *Id.* at 562-563.

Respondent's conduct involves one of the most serious offenses an attorney may commit – mishandling client funds. *See In re Mitiguy*, 161 Vt. 626, 627 (1994). The principle reason for attorney discipline is to preserve public confidence in the integrity and trustworthiness of

lawyers. *Matter of Wilson*, 409 A.2d 1153, 1155 (1979). This is Respondent's second time mishandling and comingling client funds, this time with direct harm to clients. *See Mitiguy*, 161 Vt. at 627 ("There are few more egregious acts of professional misconduct of which an attorney can be guilty than the misappropriation of client's funds held in trust [r]ecognition of the nature and gravity of the offense suggests only one result – disbarment.") (internal quotations omitted) (quoting *Matter of Wilson*, 409 A.2d 1153, 1155 (1979)). In addition to the IOLTA account violations, Respondent knowingly violated Rules 1.2, 1.4, 1.5, 8.1 and 8.4(c). With perhaps an exception of Rule 1.2, each of these rule violations on their own call for a suspension under the ABA standards.

When added together, the only appropriate sanction here is disbarment and an order of restitution to refund to (1) J.H. $2,457 for improperly charged fees and expenses, the $2,080 withheld from the return of her retainer, $80,000 in excessively charged fees, with 12% prejudgment interest and (2) G.A. 12% interest on his retainer amount for the 17 months it was improperly held by Respondent.

Dated: July 24, 2023

/s/ Navah C. Spero

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STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Norman Watts
PRB File Nos. 2019-102 and 2020-011

CERTIFICATE OF SERVICE

I, Navah C. Spero, certify that, on July 24, 2023, I caused to be served Specially Assigned Disciplinary Counsel's Proposed Findings of Fact and Conclusions of Law as follows:

Via E-mail

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Dated: July 24, 2023

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