

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JEAN JEROME DANDY NGANDO EKWALLA

VSB DOCKET NOS.: 15-053-101414
15-053-102415
15-053-101351
15-053-099896
15-053-100656

ORDER OF REVOCATION

THIS MATTER came on to be heard on October 23, 2015, upon the Petition for Expedited Hearing before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Richard J. Colten, Acting Chair, William H. Monroe, Jr., Lisa A. Wilson, Samuel R. Walker, and Robert W. Carter, Lay Member. The Virginia State Bar was represented by Prescott L. Prince, Assistant Bar Counsel. The Respondent, Jean Jerome Dandy Ngando Ekwalla, appeared in person and represented himself initially at the hearing. On the second day to which the hearing was continued, on October 29, 2015, Respondent was represented by Michael L. Rigsby. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Tracy J. Stroh, on October 23, 2015, and Angela N. Sidener, on October 29, 2015, court reporters, of Chandler & Halasz, P. O. Box 9349, 804/730-1222, after being duly sworn, reported the hearing, and transcribed the proceedings.

All required notices with respect to the Expedited Hearing were sent by the Clerk of the Disciplinary System in accordance with the Rules of the Supreme Court of Virginia.

I. FINDINGS OF FACT

Board Exhibit 1 was admitted into evidence without objection. Joint Exhibit 28 was admitted into evidence. VSB Exhibits 1-4, 6, 8, 15-17, 20-23, 25-27, 29, 31-33, 35-38, 42-53, 55,

57-58, 64, 72, and 74-79 were admitted into evidence without objection. VSB Exhibits 5, 7, 9-14, 18-19, 24, 30, 34, 39-41, 56, 59-63, 66-71, 73, and 80-83 were admitted over Respondent's objections. VSB Exhibits 54 and 65 were objected to; those objections were sustained by the Board, and admission of the exhibits was denied. Respondent's Exhibits A-B, E-H and K were admitted without objection. Respondent's Exhibits C-D, I, and J were admitted over objections by the Bar.

The Board makes the following findings of fact on the basis of clear and convincing evidence, the same having been set forth in the Bar's Petition:

1. At all times relevant hereto, Jean Jerome Dandy Ngando Ekwalla, hereinafter the "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar has been Law Office of JD Ngando, PLLC, Suite 202, 4893 Prince William Parkway, Woodbridge, VA 22192, hereafter referred to as the Ngando Law Firm.

2. The Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13-18 D of the Rules of Virginia Supreme Court.

Facts Relating to VSB Docket No. 15-053-101414
(Complainant Dr. Gholam Ali Miamee)

3. Dr. Gholam Miamee retained the Ngando Law Firm in March 2014 to enforce a judgment that had previously been obtained in the State of Maryland (the amount of the judgment being \$5,970 plus \$118 costs.) Britton Wight, Esquire, a Maryland licensed attorney who was then employed as a staff attorney at the Ngando Law Firm was assigned to Dr. Miamee's case.

4. Dr. Miamee signed a Retainer Agreement with the Ngando Law Firm on 27 March 2014. The Agreement provided:

The Client has asked the Firm to assist him in collecting on a Maryland Judgment. The Client has agreed to pay the Firm \$1,000.00 to assist in collecting the judgment. . . . The Client understands and agrees that if the Client wants the Firm to provide additional services beyond the services mentioned above, the Client must discuss such requested services and, if deemed necessary given the additional representation, pay an additional retainer fee before the additional services are rendered by the Firm.

5. The Retainer Agreement did not include any provision for an hourly billing rate.

6. In furtherance of the attempt to enforce the judgment, Mr. Wight propounded interrogatories to the judgment creditor.

7. The judgment creditor failed to respond to the interrogatories. At that time, the Ngando Law Firm requested an additional \$500 for further services, including filing a Motion to Compel.

8. Thereafter, Dr. Miamee informed Mr. Wight that he did not want to invest additional funds to pursue the judgment. He further stated that he wanted to terminate the representation and requested a refund of all money that had not been expended and a copy of his file.

9. At the time Dr. Miamee terminated representation by the Ngando Law Firm, Mr. Wight advised Dr. Miamee that there were \$452.50 of unexpended funds in the escrow account.

10. On 22 August 2014, Dr. Miamee sent an e-mail to Respondent stating that he had previously requested Mr. Wight process a refund and further requesting a final invoice and all documents associated with his file.

11. Dr. Miamee sent e-mails to Respondent on 6 October 2014 and 9 October 2014, again requesting his refund.

12. On 10 October 2014, Respondent replied to Dr. Miamee's repeated requests for a refund of unspent funds with an e-mail to Dr. Miamee, with copy to Mr. Wight, stating that he did not believe a refund was warranted, but he would nevertheless "look over [Dr. Miamee's] file" and get back to him "within a week".

13. Mr. Wight responded to the e-mail, with copy to Dr. Miamee, advising Respondent that he believed that Dr. Miamee was, in fact, entitled to the remainder of the funds in the escrow account.

14. Dr. Miamee responded to Respondent's promise to "look over his file" by reminding Respondent of his ethical obligation to process refund requests in a timely manner. He further advised Respondent that he would file a Bar complaint if he were not provided with a refund and/or a reasonable explanation for the denial of the refund.

15. Respondent and Dr. Miamee exchanged several heated e-mails in which each accused the other of misconduct and threatened to sue the other. In his e-mails to Dr. Miamee, Respondent stated that, "Any unfounded complaint will be slanderous and expose you to liability towards the firm." Respondent further stated, "I will file defamatory action against you and request 1 millions *[sic]* in damages."

16. On 22 December 2014, Respondent sent Dr. Miamee an e-mail in which he definitively stated that he would not receive a refund since the matter was a flat fee case.

17. Respondent, as the owner of the Ngando Law Firm, is the individual ultimately responsible and accountable for the fee agreement, for billing matters, and for the denial of the refund to Dr. Miamee. Respondent further assumed such responsibility and accountability when he stated in his response that, "only the owner can make a final decision to refund a fee".

18. Respondent's actions constitute a violation of Rule 1.5 (b) of the Virginia Rules of Professional Conduct ("RPC") in that the Retainer Agreement provided to Dr. Miamee did not adequately explain how attorney fees were to be assessed.

19. There were unexpended retainer funds at the time Dr. Miamee terminated the representation by the Ngando Law Firm. Respondent's failure to provide Dr. Miamee a refund therefore constituted a violation of RPC 1.16 (d).

20. Respondent's spurious threats of legal action against Dr. Miamee constitute a violation of RPCs 3.4 (j) and 8.4 (b).

21. As the result of actions detailed herein, Dr. Miamee filed a complaint with the Virginia State Bar and an investigation was opened.

22. In the course of the investigation, it was determined that whereas the funds paid by Dr. Miamee in furtherance of the representation were initially deposited in Respondent's Attorney Trust Account, they were not maintained in the manner provided by RPC 1.15 in that:

a. On multiple occasions after Dr. Miamee's \$1,000 check was deposited into Respondent's Trust Account (that being on 9 April 2014) and before the date Mr. Wight first claimed payment for work performed on Dr. Miamee's case, the funds in Respondent's Trust Account dropped below \$1,000;

b. On multiple occasions after Dr. Miamee was advised that his escrow balance was \$452.50, the funds in Respondent's Trust Account dropped below \$452.50.

c. On multiple occasions during the course of the representation, Respondent's Trust Account had a negative balance, with funds being deposited into the account through an overdraft protection plan maintained by Respondent.

23. Further violations of Respondent's maintenance of his Attorney Trust Account were also noted and are further detailed below.

Facts Relating to VSB Docket No. 15-053-102415
(Complainant Sandra Medina)

24. Sandra Medina (“Ms. Medina”) retained the Ngando Law Firm on or about 30 September 2013, to represent her in a dispute against Insiders Auto of Manassas, (“the Dealership”) regarding her purchase of a used vehicle.

25. Initially, and in accordance with the Retainer Agreement, Ms. Medina paid \$2,250 via installments for prepayment of services in furtherance of the representation with legal services to be charged at the rate of \$200 an hour. (The Retainer Agreement originally provided that attorney fees were to be charged at \$225 an hour, but in response to Ms. Medina’s request they were reduced to \$200 an hour, with that amount being interlineated on the Retainer Agreement.)¹ Ms. Medina made additional payments for fees and costs during the course of the representation.

26. Ms. Medina initially met with Respondent regarding the representation of her in the matter. Thereafter, she was provided with a succession of attorneys who worked on her case. In addition to Respondent, attorneys assigned to her case included Kristin Burr, Kristen Yurkowski, Whitney Lawrence, Christopher Casey, Saba Pervaiz, Girum Tesfaye and John Sando.

27. Ms. Medina’s dispute with the Dealership related to her attempt to purchase a used automobile from the Dealership, with the transaction to include a \$1,500 down payment and the trade-in of her prior vehicle. When the transaction fell through, the Dealership refused to return Ms. Medina’s down payment and her prior vehicle. The goal of the representation was to gain the return of Ms. Medina’s prior vehicle and the \$1,500

¹ On or about 31 July 2013, that being prior to the instant Retainer Agreement, Ms. Medina had paid the Ngando Law Firm a flat fee of \$400 to prepare and send a demand letter to the Dealership.

down payment, as well as the reimbursement of wages lost by Ms. Medina as the result of the Dealership's alleged improper actions.

28. The Ngando Law Firm prepared and filed a lawsuit in the General District Court of Prince William County. A nonsuit was taken when the Dealership requested arbitration in accordance with the provisions of the "Retail Installment Sale Contract" between Ms. Medina and the Dealership that provided, in pertinent part that, at the request of either party, disputes regarding the purchase of a vehicle, "shall be resolved by binding arbitration" with the arbitration to be provided through The McCammon Group.

29. In accordance with the arbitration process, on 21 August 2014, a representative from The McCammon Group forwarded to Kristin Burr, Esquire (the attorney from the Ngando Law Firm who was then assigned to Ms. Medina's case) a Confirmation Memorandum that provided that a pre-arbitration conference call was scheduled for 9:00 a.m. on Friday, 26 September 2014. The Confirmation Memorandum further provided that a retainer in the amount of \$2,850 needed to be paid to The McCammon Group by or on behalf of Ms. Medina on or before 23 September 2014.

30. Prior to 23 September 2014, Ms. Burr notified Respondent and Ms. Medina that she had resigned her position with the Ngando Law Firm and that she would not be able to represent Ms. Medina in the arbitration.

31. Ms. Medina was not informed by any attorney or staff member of the Ngando Law Firm that in order for the scheduled 26 September 2014 pre-arbitration conference call to go forward, a retainer in the amount of \$2,850 needed to be paid to The McCammon Group by or before 23 September 2014.

32. The 26 September 2014 pre-arbitration conference call was cancelled because the required \$2,850 retainer amount was not submitted by the Ngando Law Firm as required in the Confirmation Memorandum.

33. Ms. Medina was not informed by any attorney or staff member of the Ngando Law Firm that the 26 September 2014 pre-arbitration conference call was cancelled because the required \$2,850 retainer amount was not submitted by the Ngando Law Firm. Thereafter, the pre-arbitration conference call was rescheduled for 12 February 2015.

34. In December 2014, Respondent informed Ms. Medina for the first time that she was required to pay an additional \$2,850 for the arbitration expenses. In prompt compliance with this request, Ms. Medina provided Respondent a check in the amount of \$2,850 made out to "The Law Office of J.D. Ngando" on 12 December 2014. The memorandum line of said check specified that it was for "Arbitration".

35. On or about 9 February 2015, Respondent demanded an additional \$1,125 be paid for matters associated with preparing for the arbitration proceedings including the preparation of the "Statement of the Case". Ms. Medina again promptly complied with this request by providing a check in the amount of \$1,125 made out to "The Law Office of J.D. Ngando" on 11 February 2015. The memorandum line of this check also specified that it was for "Arbitration".²

36. Respondent was aware that the 12 February 2015 pre-arbitration conference would be cancelled and the arbitration process could not proceed if the \$2,850 retainer was not provided to The McCammon Group by close of business on 11 February 2015.

² Both the \$2850 check dated 12 December 2014 and the \$1125 check dated 11 February 2015 were written on behalf of Ms. Medina by Mr. S*** D***.

37. The Ngando Law Firm did not pay the \$2,850 retainer to The McCammon Group; all funds were retained by the Ngando Firm to pay for attorney fees and costs allegedly owed by Ms. Medina.

38. In fact, no funds were owed by Ms. Medina to the Ngando Law Firm at that approximate time. Ms. Medina's account showed an account balance in excess of \$3,000.

39. The 12 February 2015 pre-arbitration conference call was cancelled because the required \$2,850 retainer amount was not submitted by the Ngando Law Firm as required in the Confirmation Memorandum.

40. Ms. Medina was not informed by any attorney or staff member of the Ngando Law Firm that the scheduled 12 February 2015 pre-arbitration conference call was cancelled because the required \$2,850 retainer amount was not submitted by the Ngando Law Firm as required in the Confirmation Memorandum.

41. The Ngando Law Firm never filed a "Statement of the Case" with The McCammon Group in furtherance of Ms. Medina's arbitration proceeding.³

42. Ms. Medina was not informed by any attorney or staff member of the Ngando Law Firm that the "Statement of the Case" was not filed.

43. On 23 February 2015, Ms. Medina personally contacted The McCammon Group and was informed for the first time that the reason the arbitration was not proceeding was because Respondent had not provided The McCammon Group with the required \$2,850 retainer.

³ Mr. Tesfaye reported that he believed that a "Statement of the Case" was forwarded to opposing counsel, but no such completed document or transmittal letter or e-mail was produced by Respondent pursuant to the subpoena *duces tecum* requiring Respondent to provide copies of all documents "whether in hard (paper) or electronic format" for files including Ms. Medina's file.

44. Thereafter, on 19 April 2015, Ms. Medina informed Respondent that she was terminating her representation by the Ngando Law Firm. Ms. Medina further demanded the immediate return of her retainer, including arbitration fees and her complete file. At that time, Ms. Medina had paid Respondent a total of \$8,423.70.⁴

45. Respondent provided Ms. Medina with certain documents in response to her request for her complete file, but he refused to provide the requested refund and stated to Ms. Medina that she was not entitled to a refund because all money paid had been expended.

46. As a result of the actions described herein, Ms. Medina filed a complaint with the Virginia State Bar and an investigation was opened.

47. In response to the Bar Complaint, Respondent falsely asserted that the scheduled 12 February 2015 pre-arbitration conference call needed to be rescheduled due to the unavailability of the Judge who was to hear the case when, in fact, the pre-arbitration conference call was rescheduled due to Respondent's failure to pay the required \$2,850 retainer.

48. In furtherance of his response to the Bar Complaint, Respondent provided a "Client Activity Report" that purported to show attorney fees and costs charged to Ms. Medina in furtherance of the representation against the Dealership. Said "Client Activity Report" included numerous instances of attorney fees in excess of \$200 an hour despite the fact that the Retainer Agreement provided (and as confirmed by e-mail from Ms. Burr) that attorney fees would be charged at the rate of \$200 an hour. This systematic overcharging of Ms. Medina constitutes a violation of RPC 1.5 (b).

⁴ The \$8,423.70 figure includes the two checks written in behalf of Ms. Medina by Mr. S*** D***

49. Respondent's initial failure to inform Ms. Medina of the need to provide The McCammon Group with a retainer in the amount of \$2,850 prior to the pre-arbitration conference call, and the further failure to inform Ms. Medina that the two pre-arbitration conference calls had been cancelled due the failure of the Ngando Law Firm to pay said retainer constitutes a violation of RPC 1.4 (a) (b) & (c).

50. Respondent's failure to pay the required retainer to The McCammon Group after Ms. Medina provided the Ngando Law Firm with the funds for such payment constitutes a violation of RPC 1.3 (b) and RPC 1.15 (b) (4).

51. Respondent's failure to provide Ms. Medina with a refund of the \$2,850 paid by Ms. Medina for the express purpose of the retainer to be paid to The McCammon Group, the \$1,125 paid by Ms. Medina for the express purpose of drafting the "Statement of the Case", and taking other actions in anticipation of arbitration proceedings or any other funds paid by Ms. Medina in furtherance of the representation by the Ngando Law Firm, constitutes a violation of RPC 1.15 (b) (4) and RPC 1.16 (d).

52. As the individual responsible for approving refunds to clients, Respondent is responsible and accountable for the failure of the Ngando Law Firm to provide Ms. Medina with a refund.

53. As the owner of the Ngando Law Firm and supervising attorney of those attorneys under his employ, Respondent's refusal to provide Ms. Medina with a refund constitutes a ratification of the actions of the attorneys and non-lawyer staff in his employ. RPC 5.1 and RPC 5.3 provide that under such circumstances as detailed above, Respondent may be held accountable for the violations of the Rules of Professional Responsibility committed by Ngando Law Firm attorneys and/or non-lawyer staff.

54. In the course of the investigation conducted as the result of the Bar Complaint it was determined that whereas the funds paid by Ms. Medina in furtherance of the representation were initially deposited in Respondent's Attorney Trust Account, they were not maintained in the manner provided by Virginia Rule of Professional Conduct 1.15. The multiple violations include:

a. On multiple occasions after Ms. Medina provided the Ngando Law Firm with the \$2,850 check for the specified purpose of paying the retainer for the arbitration by The McCammon Group, the funds in Respondent's Trust Account dropped below \$2,850.

b. Similarly, on multiple occasions after Ms. Medina provided the Ngando Law Firm with \$1,125 for the specified purpose of preparing for the arbitration proceedings including the preparation of the "Statement of the Case", the funds in Respondent's Trust Account dropped below \$1,125.

c. On multiple occasions during the course of the representation, Respondent's Trust Account had a negative balance, with fund being deposited into the account through an overdraft protection plan maintained by Respondent.

55. Further violations of Respondent's maintenance of his Attorney Trust Account were also noted and are further detailed below.

Facts Relating to VSB Docket No. 15-053-101351
(Complainant Andrea Rachel Arevalo)

56. Andrea Rachel Arevalo ("Ms. Arevalo") retained the Ngando Law Firm in July 2014 for the purposes of obtaining a Property Settlement Agreement ("PSA") and uncontested divorce.

57. Ms. Arevalo met with Edward R. ReBrook, Esquire, who was then employed as an associate attorney by the Ngando Law Firm, and signed a Retainer Agreement that provided for fees and costs being "a onetime flat fee of \$800.00 for the Property

Settlement Agreement, \$1,000.00 for the Uncontested Divorce and \$25.00 for additional administrative fees (\$1,825.00 total)".

58. On 23 July 2015, Ms. Arevalo paid the full amount of said retainer fees by credit card. (As part of the transaction, Ms. Arevalo was assessed an additional \$24.50 by the Ngando Law Firm in credit card costs.) Ms. Arevalo was charged an additional \$56 for the filing fee for the uncontested divorce by the Ngando Law Firm which she paid by credit card on 4 August 2014. (Ms. Arevalo was again assessed a credit card fee in the amount of \$1.54 by the Ngando Law Firm.)

59. Approximately two weeks after Ms. Arevalo retained the Ngando Law Firm, she received a telephone call from Mr. ReBrook stating that he had left the firm and that Kristin Burr, Esquire, another attorney employed by the Ngando Law Firm, would be her attorney.

60. On 8 September 2014, Ms. Burr sent Ms. Arevalo an e-mail advising her that, effective immediately, she would no longer be working for the Ngando Law Firm.

61. At the time Ms. Burr provided notice of termination to Ms. Arevalo, the divorce had not yet been filed and Ms. Burr had provided Ms. Arevalo with only an initial draft of a Property Settlement Agreement (PSA).

62. On 15 September 2014, Ms. Arevalo sent the Ngando Law Firm an e-mail terminating her representation by the firm and requested a refund for whatever funds remained from her retainer, plus the \$56 for the filing fee. She further requested a statement detailing what she had been charged up to that point.

63. In an e-mail exchange between Ms. Arevalo and Respondent dated 17 September 2014, Respondent stated, "I am out of the country until Monday. Our firm's policy is two week [sic] to review file, do a final invoice and process a refund."

64. Ms. Arevalo did not receive the final invoice and refund within two weeks as promised by Respondent.

65. On at least three separate occasions, between 5 October 2014 and 18 October 2014, Ms. Arevalo called the Ngando Law Firm to inquire about the status of the billing statement and the requested refund. On each occasion she was advised by various Ngando Law Firm employees that the billing statement and refund was not ready, but that Respondent would return her call.

66. On 18 October 2014, Ms. Arevalo sent a letter to Respondent demanding that she be provided with the requested refund and billing statement prior to 31 October 2014.

67. Ms. Arevalo did not receive a refund or billing statement prior to 31 October 2014, nor did she receive an explanation as to why the requested action continued to be delayed.

68. On 1 November 2014, Ms. Arevalo contacted her credit card company and executed a charge back through the credit card company for all fees and costs paid to the Ngando Law Firm (a total of \$1,907.04).

69. On or about 13 November 2014, subsequent to having effected the chargeback through her credit card company, Ms. Arevalo was provided with a billing statement that provided for a charge in the amount of \$800 for the preparation of the PSA and \$50 for administrative fees.

70. In an e-mail exchange between Ms. Arevalo and the Ngando Law Firm staff members, with copies of all communication forwarded to Respondent, Ms. Arevalo was advised that she was to be charged for the full amount of the “onetime flat fee of \$800” for the preparation of the PSA, notwithstanding the fact that she was not provided a final PSA and the fact that only two hours of attorney time were spent in preparing the draft document.

71. On 17 November 2014, Respondent sent Ms. Arevalo an e-mail that stated, “The retainer agreement provides that \$800 was for a PSA. We drafted the PSA and sent it to you, thus the entire \$800 is owed to the firm. Please make arrangements so this firm can receive payment of \$800.”

72. Ms. Arevalo responded to Respondent’s e-mail by again pointing out that she was being charged for uncompleted work, and suggesting that the parties utilized the Virginia State Bar’s Fee Dispute Resolution process to resolve the matter.

73. Respondent replied with an e-mail sent at 6:31 p.m. the same evening stating, “Please remember that we do have rights too. Therefore, if the bill is not settled by tomorrow 12pm, we will file a warrant in debt with the Prince William County Courthouse.”

74. In order to avoid litigation, Ms. Arevalo paid the \$800 as demanded by Respondent.

75. Respondent, as the owner of the Ngando Law Firm is the individual ultimately responsible and accountable for the fee agreement, for billing matters and for the denial of the refund to Ms. Arevalo. Respondent’s actions constitute a violation of RPC 1.5 (b) of the Virginia Rules of Professional Conduct (“RPC”) in that the Retainer

Agreement provided to Ms. Arevalo did not adequately explain how attorney fees were to be assessed.

76. Respondent's failure to provide Ms. Arevalo with a final billing statement and refund of unearned fees in a timely manner constitutes a violation of RPC 1.15 (b) (4) and RPC 1.16 (d).

77. On 7 December 2014, several weeks after Ms. Arevalo paid the Ngando Law Firm the \$800, Respondent sent Ms. Arevalo an e-mail accusing her of filing a review on "Yelp"⁵ which he claimed included inaccurate information about Respondent and his law firm. Respondent demanded that Ms. Arevalo take down the review and further stated, "If your post is still on Yelp tomorrow morning at 9 am, my lawyers who are copied on this email will file a defamation lawsuit against you on tomorrow Monday and request \$1,000,000 in monetary damages. Even if we lose the defamation action which we won't, be prepared to spend at least \$30,000 in legal fees because it will be a very long legal battle."

78. Ms. Arevalo denied having anything to do with the posting and provided Respondent with a complete copy of her Yelp profile, which included copies of every posting ever made by Ms. Arevalo on Yelp.

79. Notwithstanding Ms. Arevalo's denial with evidence supporting her denial, Respondent sent Ms. Arevalo several additional e-mails in which he continued to accuse her of being responsible for the post and continued to threaten to file the lawsuit.

⁵ "Yelp" is a social networking site and business directory that allows individuals to search for, rate and review businesses, including professional business such as law firms.

80. Respondent's spurious threats of legal action against Ms. Arevalo constitute violation of RPCs 3.4 (j) and 8.4 (b) in that it constituted harassment as well as an improper attempt to infringe on her right of free speech.

81. As the result of actions detailed herein, Ms. Arevalo filed a complaint with the Virginia State Bar and an investigation was opened.

82. In the course of the investigation it was determined that whereas the funds paid by Ms. Arevalo in furtherance of the representation were initially deposited in Respondent's Attorney Trust Account, they were not maintained in the manner provided by Virginia Rule of Professional Conduct 1.15 in that:

a. Prior to 5 August 2014, that being the date Ms. Arevalo was provided with a draft copy of the PSA, the funds in Respondent's Trust Account dropped below \$1,856 on multiple occasions (\$1,856 being the amount paid by Ms. Arevalo for the preparation of the PSA and filing and completion of the divorce proceeding, less the \$25 service charge);

b. On multiple occasions after 5 August 2014, that being the earliest date that Respondent could reasonably claim that \$800 of had been "earned", the funds maintained in Respondent's Trust Account dropped below the \$1,056 (that being the amount of the original retainer less \$800 reportedly "earned");

c. On multiple occasions during the course of the representation, Respondent's Trust Account had a negative balance, with fund being deposited into the account through an overdraft protection plan maintained by Respondent.

83. Further violations of Respondent's maintenance of his Attorney Trust Account were also noted and are further detailed below.

Facts Relating to VSB Docket No. 15-053-099896
(Complainant Talifa Yvonne Bailey)

84. Talifa Yvonne Bailey ("Ms. Bailey") retained the Ngando Law Firm in December 2013 to represent her in a then-pending custody matter and paid \$3,000 for

prepayment of services in furtherance of the representation with legal services to be charged at the rate of \$225 an hour.

85. In May of 2014, Ms. Bailey terminated her representation by the Ngando Law Firm, and on 14 May 2014 she requested a refund of unspent funds.

86. Respondent did not promptly refund the funds that had not been earned. Ms. Bailey engaged in several telephone and/or e-mail conversations with employees of the Ngando Law Firm in which she was given various inaccurate representations regarding the status of her requested refund. Eventually, she was advised that the check would be ready for pickup on Friday, 23 May 2014. When Ms. Bailey came to the office to pick up the check on that date she was informed that it was not available.

87. On 3 June 2014, Ms. Bailey was informed by Gertrude Ngamga, who represented herself as the assistant to Mr. Ngando, that Mr. Ngando needed to review the file before issuing the refund. She was further advised that this process would take approximately two weeks. Thereafter, Ms. Bailey called the Ngando Law Firm on a weekly basis, asking when she would receive the check.

88. On 2 July 2014, Ms. Bailey received a check dated 19 June 2014 in the amount of \$1,972.50 (Law Office of J D Ngando, PLLC Trust Account Check No. 1566).

89. On three separate occasions, Ms. Bailey attempted to cash the check at SunTrust Bank and on each occasion, she was advised by bank staff that she could not do so due to insufficient funds in the account.

90. Checking account statements for the months of June and July 2014 for SunTrust Checking Account No. 100050711620 (the account number identified as

relating to Respondent's "Client Trust Account") provided by SunTrust Bank pursuant to a subpoena *duces tecum* issued by the Virginia State Bar show that:

- a. On 13 June 2014, the date on which the check was written, Respondent's Trust Account had a balance of \$0.87.
- b. On 18 July 2014, the date on which the check was accepted by SunTrust Bank for payment, the account balance was \$-171.19.
- c. Payment of said check caused an overdraft which was covered by an overdraft protection transfer.

91. Respondent's overdraft was not reported to the Virginia State Bar by SunTrust.

92. Respondent's failure to promptly refund Ms. Bailey's unspent funds constitutes a violation of RPCs 1.15 (b) (4) and 1.16 (d).

93. Respondent's failure to maintain sufficient funds in the Trust Account to cover the amount of Ms. Bailey's unspent funds constitutes a further violation of RPCs 1.15 (2) (4) & (5).

94. Respondent's failure to ensure that his Trust Account was subject to Insufficient Funds Reporting constitutes a violation of RPC 1.15 (d) (1).

95. Further violations of Respondent's maintenance of his Attorney Trust Account were also noted and are further detailed below.

Facts Relating to VSB Docket No. 15-053-100656
(Complainant Tonya Diamond)

96. Complainant Tonya Diamond ("Ms. Diamond") retained the Ngando Law Firm on or about 19 December 2013 to represent her for filing of a personal bankruptcy.

97. Ms. Diamond's bankruptcy was complicated by her ownership of several properties which she desired to surrender to the mortgage company. Ms. Diamond was

charged \$2,250 for representation which she paid in two installments, the final installment being paid on or about 30 December 2014.

98. Ms. Diamond was first assigned attorney Chad Howell, a Ngando Law Firm staff attorney, to represent her. In preparation for the filing of the bankruptcy petition, Ms. Diamond took the required credit counseling course.⁶

99. Notwithstanding Respondent's clear representation to said attorney that she desired prompt filing of bankruptcy, Mr. Howell performed no significant work on the case.

100. On 6 March 2014, Ms. Diamond received an e-mail from Mr. Howell advising her that he was leaving the Ngando Law Firm and that her case would be assigned to Aaron Cheatham, another Ngando Law Firm staff attorney.

101. Ms. Diamond promptly met with Mr. Cheatham who advised her that he would file a Chapter 7 bankruptcy petition on her behalf. Ms. Diamond promptly completed the Ngando Law Firm Bankruptcy Questionnaire provided to her by Mr. Cheatham and provided copies of all requested documents.

102. On one or more occasions, Ms. Diamond attempted to schedule meetings with Mr. Cheatham, but when she arrived at the Ngando Law Firm office, she was informed that Mr. Cheatham was not present.

103. On 7 July 2014 and again on 21 July 2014, Ms. Diamond sent e-mails addressed to Mr. Cheatham and Gertrude Ngamga (who identified herself to Ms. Diamond as the office manager), with copy to Respondent expressing her frustration at the slow pace of the preparation of her bankruptcy petition.

⁶ Individuals filing for bankruptcy under Chapter 7 or Chapter 13 are first required to participate in a pre-bankruptcy filing counseling session with an approved financial counseling agency, to be completed within six months of filing.

104. On 22 July 2014, Mr. Cheatham contacted Ms. Diamond by telephone and informed her, for the first time, that he believed that Ms. Diamond would not qualify for a Chapter 7 under the Chapter 7 “means test” guidelines.

105. When Ms. Diamond learned that the Ngando Law Firm could not file a Chapter 7 bankruptcy on her behalf, Ms. Diamond informed Mr. Cheatham that she wanted to terminate the representation, wanted a refund, and wanted her file returned to her. On 28 July 2014, Ms. Diamond spoke with Ms. Ngamga and again requested a refund and the return of her file. Ms. Ngamga informed Ms. Diamond that it would take two weeks to receive the file and the refund because Respondent had to review the file. That same day, she sent an e-mail to Ms. Ngamga with copy to Respondent confirming the conversation. Ms. Diamond did not receive any response contradicting or contesting the facts of this confirmatory e-mail.

106. Ms. Diamond called the Ngando Law Firm two weeks later and was at that time informed that Respondent was out of the country, but that her file along with the invoice was on Respondent’s desk for him to review and that she should call again the following Monday.

107. On 21 August 2014, Ms. Diamond sent another e-mail to Respondent, with copy to Ms. Ngamga, checking on the status of the promised refund and the return of her file, noting that on several occasions in the intervening period, she had been promised that she would receive the full refund and the file within two weeks.

108. Ms. Diamond called and/or e-mailed the Ngando Law Firm on multiple occasions thereafter and was informed that only Respondent could write a refund check and that he would not be able to address the issue until he returned.

109. On 16 September 2014, Ms. Diamond received an e-mail from Ms. Nganga stating that Respondent was (still) out of town, but would be returning to the office the following Monday and would, at that time, contact her to advise when she could pick up her file and her refund check.

110. Ms. Diamond did not receive a refund check until on or about 6 November 2014.

111. As a result the actions described herein, Ms. Diamond filed a complaint with the Virginia State Bar and an investigation was opened.

112. In his response to the Bar Complaint, Respondent provided a copy of a check in the amount of \$1,225 drawn on the Ngando Law Firm Trust Account dated 5 August 2014 payable to the order of Tonya Diamond.

113. Respondent's failure to provide a prompt refund and a copy of her file as requested constitutes a violation of RPC 1.15 (b) (4) and RPC 1.16 (d) and (e).

114. The failure of attorneys employed by the Ngando Law Firm to take prompt action on Ms. Diamond's bankruptcy case caused her significant emotional distress and exposed her to possible financial harm. Pursuant to RPC 5.1 and RPC 5.3, Respondent may be held accountable for violations of the Rules of Professional Responsibility committed by Ngando Law Firm attorneys and/or non-lawyer staff. Respondent was made aware that Ngando staff attorneys failed to take action in Ms. Diamond's case. Respondent's failure to take action therefore constitutes a violation of RPC 1.3 (a).

115. Since no attorney fees or other costs or fees (other than a \$25 administrative fee) were assessed during the course of the representation of Ms. Diamond, Respondent's

failure to provide Ms. Diamond with a full refund (less the \$25 administrative fee) constitutes further violations of RPCs 1.15 (b) (4) and 1.16 (d).

116. The Response submitted by Respondent dated 14 October 2014 contained material misrepresentations of fact that constitute violations of RPC 8.1 (a) and (d) and RPC 8.4 (c) in that:

a. Respondent falsely represented that a refund check had been sent out to Ms. Diamond. Said check was not sent out until well after the date of said Response and was not received by Ms. Diamond until on or about 6 November 2014.

b. Said Response further constitutes a material misrepresentation of fact in that it wrongfully asserts that Respondent was not aware of Ms. Diamond's complaints due to his being out of the country for a period of months. In fact, Respondent has acknowledged that during the period that he was out of the country, he was in daily contact with his office by telephone and e-mail and received updates on all pending cases from his associates.

117. In the course of the investigation conducted as the result of the Bar complaint it was determined that even if the funds paid by Ms. Diamond in furtherance of the representation were initially deposited in Respondent's Attorney Trust Account, they were not maintained in the manner provided by Virginia Rule of Professional Conduct 1.15. The multiple violations include:

a. On multiple occasions after Ms. Diamond provided the Ngando Law Firm with the retainer in the amount of \$2,250 the funds in Respondent's Trust Account dropped below \$2,250.

b. On multiple occasions during the course of the representation, Respondent's Trust Account had a negative balance, with funds being deposited into the account through an overdraft protection plan maintained by Respondent.

118. Further violations of Respondent's maintenance of his Attorney Trust Account were also noted and are further detailed below.

Facts Common to All Complaints

Failure to respond to subpoenas *duces tecum*

119. On 21 January 2015, the Fifth District Committee-Section III of the Virginia State Bar issued a subpoena *duces tecum*, demanding that Respondent produce the following documents to the Virginia State Bar on or before 11 February 2015:

Copies of all trust account and operating account records, including but not limited to cancelled checks, cash receipts journals, cash disbursements journals, subsidiary ledgers, bank statements, deposit tickets and evidence of reconciliations for the period from July 1, 2013 to the present; which are in your possession, custody or control or the possession, custody or control of the Law Office of J.D. Ngando, PLLC.

120. The subpoena *duces tecum* was served at Respondent's last address of record with the Virginia State Bar, in accordance with Paragraph 13-12.C.

121. In response to a request from Respondent, an extension of time was granted until 16 February 2015.

122. Notwithstanding the extension of time, Respondent failed to comply with the subpoena *duces tecum* in a timely manner.

123. After Respondent failed to respond to the subpoena, Bar Counsel wrote Respondent advising that failure to produce the subpoenaed documents would result in Bar Counsel's filing a Notice of Noncompliance and Request for Interim Suspension.

124. Thereafter Respondent did produce some documents, but he remained in substantial non-compliance with the requirements of said subpoena *duces tecum*.

125. On 19 March 2015, Bar Counsel forwarded to Respondent and to his counsel a Notice of Noncompliance and Request for Interim Suspension that stated, in pertinent part, that if Respondent did not comply with the subpoena *duces tecum* by or

before 30 March 2015, that Bar Counsel would request an interim suspension until Respondent did comply with the subpoena *duces tecum*.

126. Thereafter, Respondent did substantially comply with the subpoena *duces tecum* and represented, through counsel that he provided all requested documents that were in his possession, custody, and control. The requested documents did not include cash receipts journals, cash disbursements journals, or subsidiary ledgers as are required to be maintained for all Trust Accounts pursuant to Virginia Rules of Professional Conduct 1.15.

127. On 8 June 2015, the Fifth District Committee-Section III of the Virginia State Bar issued a subpoena *duces tecum*, demanding that Respondent produce the following documents to the Virginia State Bar on or before 29 June 2015:

Copies of all documents, whether in hard (paper) or electronic format, which are in your care, custody, or control, being the complete and entire file for the referenced cases, omitting nothing, and including, but not limited to: 1) all original or copies of client-furnished documents and any originals of legal instruments or official documents; 2) lawyer/client and lawyer/third-party communications including notes, telephone slips, e-mails, office notes and correspondence; 3) orders, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared for the client in the course of the representation; 4) research materials; 5) billing records/notes, timesheets, memoranda, and invoices including but not limited to printouts of information maintained on the Ngando Law Firm "CLIO" electronic time/billing software; and 6) any and all trust account records including portions of the general ledger and the subsidiary ledger for said cases.

The cases for which said documents were demanded included:

MIAMEE, Gholam	VSB Docket No: 15-053-101414
MEDINA, Sandra	VSB Docket No: 15-053-102415
BAILEY, Talifa	VSB Docket No: 15-053-099896
AREVALO, Andrea	VSB Docket No: 15-053-101351
DIAMOND, Tonya	VSB Docket No: 15-053-100656

128. Respondent did produce some documents, but he remained in substantial non-compliance with the requirements of said subpoena *duces tecum*.

129. On 8 June 2015, the Fifth District Committee-Section III of the Virginia State Bar issued also issued a subpoena *duces tecum*, demanding that Respondent produce the following additional documents to the Virginia State Bar on or before 29 June 2015:

Copies of all documents, whether in hard (paper) or electronic format, which are in your care, custody, or control, being the complete and entire file for the referenced cases, omitting nothing, and including, but not limited to: Copies of any and all emails and/or any other communications for the period of July 1, 2014 through September 30, 2014 between any and all of the following individuals: Jean Jerome Dandy Ngando Ekwalla, Jalaine Cabell, Angel Ngando, and Gertrude Ngamga Kamtchoum; which are associated with the notification, discussion, and/or approval of the issuance of employee payroll checks.

The cases for which said documents were demanded included Sandra Medina, VSB Docket No.: 15-053-102415.

130. Each of said subpoenas *duces tecum* were served at Respondent's last address of record with the Virginia State Bar, in accordance with Paragraph 13-12.C.

131. Respondent failed to comply with said subpoenas *duces tecum* in a timely manner.

132. Respondent requested an extension of time until 10 July 2015, to comply with the subpoenas. An extension of time was not formally granted, but the Bar withheld enforcement action until after July 10, 2015.

133. On 15 July 2015, Bar Counsel forwarded to Respondent and to his counsel a Notice of Noncompliance and Request for Interim Suspension that stated, in pertinent part, that if Respondent did not comply with the two subpoenas *duces tecum* by or before

25 July 2015, Bar Counsel would request an interim suspension until Respondent did comply with the subpoenas *duces tecum*.

134. Respondent requested a hearing on said matter and the hearing was set for 28 August 2015.

135. On 24 August 2015, four days before the hearing, Respondent did finally provide documents in partial compliance with said subpoenas *duces tecum*.

136. Respondent's failure, as detailed above, to respond to the three subpoenas *duces tecum* in a timely manner constitutes a violation of RPC 8.1 (c) and (d).

Failure to properly maintain Trust Account

137. Respondent established SunTrust Checking Account No. 100050711620 and identified it as "Law Office of JD Ngando, PLLC Client's Trust Account." Respondent further identified said account as his attorney's Trust Account by identifying it as such on the IOLTA Notice of Election (Exemption/Opt-Out) Form submitted to the Legal Services Corporation of Virginia.

138. As noted above, on 21 January 2015, the Fifth District Committee-Section III of the Virginia State Bar issued a subpoena *duces tecum*, demanding that Respondent produce the following documents to the Virginia State Bar on or before 11 February 2015:

Copies of all trust account and operating account records, including but not limited to cancelled checks, cash receipts journals, cash disbursements journals, subsidiary ledgers, bank statements, deposit tickets and evidence of reconciliations for the period from July 1, 2013 to the present; which are in your possession, custody or control or the possession, custody or control of the Law Office of J.D. Ngando, PLLC.

139. Documents produced by Respondent pursuant to said subpoena *duces tecum* did not include cash receipts journals, cash disbursement journals, or subsidiary ledgers.

140. Documents provided by Respondent regarding the cases detailed above included documents that purported to be "Escrow Account Statements" for the respective cases, but said statements bore no significant relationship to actual deposits to and/or withdrawal from Respondent's Trust Account.

141. Failure to properly maintain such documentation constitutes a violation of RPC 1.15 (b) (3), (c), (d) (3-4).

142. In furtherance of said Investigation, on 9 March 2015 the Fifth District Committee-Section III of the Virginia State Bar also issued a subpoena *duces tecum* to SunTrust Bank to produce:

Copies of all statements, checks and related documents pertaining to any and all accounts held or controlled by or in the name of "JEAN JEROME D NGANDO EKWALLA" and/or LAW OFFICE OF J D NGANDO PLLC" from 1 July 2013 through 28 February 2015.

143. Account statements provided by SunTrust Bank pursuant to the subpoena *duces tecum* revealed that there were numerous incidences of overdrafts on the account identified as "Law Office of J D Ngando PLLC Client's Trust Account" (Checking Account No. 100050711620) with said overdrafts having been paid through an "overdraft protection". In fact, between the months of July 2013 and February 2015 there were over 75 instances on which the daily Trust Account "Collected Balance" showed a negative balance, meaning that there was an effective overdraft of said Trust Account on each of those days.

144. The statements from said account further showed that, between numerous occasions, the daily Trust Account balance was below zero.

145. On no occasion were the overdrafts reported to the Virginia State Bar.

146. Respondent has an obligation to maintain his Trust Account in accordance with the provisions of Rule 1.15 and Respondent's failure to ensure that his client Trust Account provided for insufficient fund reporting is a violation of Rule 1.15 (d) (1).

147. A review of the Trust Account further revealed multiple circumstances where checks and/or credit card purchases were made using Trust Account funds for any number of personal expenses including, but not limited to, payment of office rent (October 2013) purchase of theatre tickets through Broadway.com (April 2014), a purchase at a liquor store in Miami (January 2014), a Miami Night Club (January 2014), and frequent hotel and restaurant purchases.

148. Respondent's failure to attend to even the most basic provisions of the Rules of Professional Conduct regarding the maintenance of his Trust Account demonstrates a reckless attitude regarding the protection of client funds and thereby creates substantial risk of financial damage to said clients.

149. The Respondent admitted in his testimony that he opened various accounts at several financial institutions, some operating accounts and some intended to be, but not qualifying as, trust accounts; and moved money among the accounts, specifically for the purpose of evading overdue tax obligations and potential IRS liens.

II. MISCONDUCT

The Petition for Expedited Hearing charged violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.3 **Diligence**

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

- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 1.5 Fees

- (b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

- (1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.
- (2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.
- (3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:
 - (i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

(b) Specific Duties. A lawyer shall:

- (2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;
- (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;
- (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and
- (5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

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

- (1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.
- (2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

- (i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and
- (ii) any unexpended balance.
- (iii) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting

that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

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

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

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

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

(3) Reconciliations.

(i) At least quarterly reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

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

RULE 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:
- (1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is illegal or unjust;
 - (2) the client has used the lawyer's services to perpetrate a crime or fraud;
 - (3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
 - (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
 - (5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (6) other good cause for withdrawal exists.
- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).
- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the

following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (j) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 5.1 Responsibilities Of Partners And Supervisory Lawyers

- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

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

- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or the lawyer is a partner or has managerial authority in the law firm in which the person is employed; or
 - (2) has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact;
- (d) obstruct a lawful investigation by an admissions or disciplinary authority.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;
- (d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official[.]

III. DISPOSITION

Upon the commencement of the second day of the hearing, the Respondent, by his counsel, conceded that the Respondent did not properly maintain his trust account and trust records in conformance with the Rules, and was in violation of those Rules related to his trust accounts, as charged by the Bar. Thereafter, upon that concession and a review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB as

Exhibits 1-53, 55-64, and 66-83, upon evidence from numerous witnesses presented on behalf of the VSB, and upon evidence presented by the Respondent in the form of his own testimony and witnesses on his behalf, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its findings as follows:

I. The Board determined that the Bar failed to prove by clear and convincing evidence a violation of the following Rules:

a. VSB Docket No. 15-053-101414 (Miamee):

Rule 3.4(j). However, the Board notes its displeasure with the Respondent's *modus operandi* of repeatedly threatening suit against clients when he was unhappy with them.

b. VSB Docket No. 15-053-102415 (Medina):

Rule 5.1(c). While this Rule was not proven to have been violated by clear and convincing evidence, the Board notes a woeful lack of supervision of the subordinates by the Respondent.

Rule 5.3(c) and Rule 8.4(d).

c. VSB Docket No. 15-053-101351 (Arevalo):

Rule 3.4(j).

d. Common to All

Rule 8.1(d).

II. The Board determined that the Bar proved by clear and convincing evidence a violation of the following Rules in the respective cases:

a. VSB Docket No. 15-053-101414 (Miamee):

Safekeeping Property. Rule 1.15(b) (2), (3), (4), and (5);

Declining or Terminating Representation. Rule 1.16(d); and

Misconduct. Rule 8.4(b).

b. VSB Docket No. 15-053-102415 (Medina):

Diligence. Rule 1.3(b);

Communication. Rule 1.4(a), (b), and (c);

Safekeeping Property. Rule 1.15(b) (2), (3), (4), and (5);

Declining or Terminating Representation. Rule 1.16(d); and

Misconduct. Rule 8.4(a).

c. VSB Docket No. 15-053-101351 (Arevalo):

Fees. Rule 1:5;

Safekeeping Property. Rule 1.15(b) (2), (3), (4), and (5);

Declining or Terminating Representation. Rule 1.16(d); and

Misconduct. Rule 8.4(b).

d. VSB Docket No. 15-053-099896 (Bailey):

Safekeeping Property. Rule 1.15(b) (2), (3), (4), and (5);

Safekeeping Property. Rule 1.15(d)(1); and

Declining or Terminating Representation. Rule 1.16(d).

e. VSB Docket No. 15-053-100656 (Diamond):

Diligence. Rule 1.3(a);

Safekeeping Property. Rule 1.15(b) (4);

Declining or Terminating Representation. Rule 1.16(d) and (e);

Bar Admission and Disciplinary Matters. Rule 8.1(a) and (d); and

Misconduct. Rule 8.4(c).

f. Rule Violations Common To All Above Complaints:

Bar Admission and Disciplinary Matters. Rule 8.1(c); and

Safekeeping Property. Rule 1.15(a), (b) (2), (b) (3), (b) (4), and (b) (5), (c) and (d).

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and Respondent, including Respondent's absence of a prior disciplinary record. The Board

recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent.

After due deliberation, the Board reconvened to announce its sanction. The Chair announced the sanction as REVOCATION of the Respondent's license to practice law in the Commonwealth of Virginia.

Accordingly, it is ORDERED that the Respondent, Jean Jerome Dandy Ngando Ekwalla, shall have his license to practice law in the Commonwealth of Virginia REVOKED, effective October 29, 2015. Respondent was present in person and represented by counsel and was advised of the sanction.

It is further ORDERED that, as directed in the Board's October 29, 2015, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the October 29, 2015, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of October 29, 2015, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent, Jean Jerome Dandy Ngando Ekwalla, at his address of record with the Virginia State Bar, being Suite 202, 4893 Prince William Parkway, Woodbridge, VA 22192, by certified mail and by regular mail to Michael L. Rigsby at P. O. Box 29328, Henrico, VA 23242, and by hand delivery to Prescott L. Prince, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219.

ENTERED this 11 day of December, 2015.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Richard J. Colten, Acting Chair