Thank you for your interest in serving as a member of the Virginia State Bar (VSB) Disciplinary Board (Board). As a member or former member of a District Committee you understand the importance of the VSB’s function to protect the public and regulate the profession.

Members of the Board hear the most serious cases of lawyer misconduct. The twenty-member Board, appointed by the Supreme Court of Virginia (Court), is composed of sixteen attorneys and four lay members. When vacancies arise, the Court solicits input from the VSB regarding individuals’ qualifications to serve as members of the Board.

A key responsibility of all lawyer-board-members is to write the Orders the Board issues applying findings-of-fact to the appropriate Rules of Professional Conduct. Any appeals by the Respondents to the findings of the Board are made directly to the Court. If you are appointed to the Board, you will not be assigned Order-writing responsibilities in your first matter; however, you will be expected to assist in reviewing and revising Orders to ensure they conform to the testimony, other evidence, and Board’s findings. Later during your tenure, you will be expected to draft well-written, cogent, and reasoned Orders that will serve as the principal fact-finding foundation for subsequent review. Accordingly, the Order-writing process is critical to Board membership.

To ensure that qualified applicants are presented to the Supreme Court, the Bar asks all applicants to complete the attached writing sample.

**Scenario**

1. Today is September 12, 2023. On September 9, 2023, you participated in a Disciplinary Board hearing as a member of a five-person panel. The Respondent appeared and was represented by counsel— Karolina Novotney. The Bar was represented by Assistant Bar Counsel—Lawrence Lee.
2. The allegations in the Certification provided were proven at the hearing except for those allegations in *italicized* text. If an allegation is *italicized*, there was inconclusive or contradictory evidence presented at the hearing and the fact that formulates the allegation was not found by the Board.

**Instructions**

1. Review and analyze the following hypothetical District Subcommittee Certification and draft an Order applying the proven facts of the Certification to the applicable Rule of Professional Conduct utilizing the appropriate burden of proof.
2. Limit your Order to six pages, inclusive of the text provided in the attached template, double spaced, twelve-point Times New Roman font, with 1” margins all around.
3. You may only use the Certification and the Rules of the Supreme Court of Virginia in drafting your Order.
4. You may not consult with any other person in drafting your Order.
5. You may impose whatever disciplinary sanction you feel is appropriate.
6. You may use the attached template to format your Order.
7. **Sign the Order with your VSB ID No. ONLY, do not include your name anywhere in the submitted materials.**

**VIRGINIA:**

**BEFORE THE TWELFTH DISTRICT SUBCOMMITEE**

**OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF**

**GREGORY HIRSCH VSB Docket No. 98-765-4321**

**SUBCOMMITTEE DETERMINATION**

**(CERTIFICATION)**

On May 5, 2023, a meeting in this matter was held before the duly convened Twelfth District Committee consisting of Willa Ferreya, Chair; Stewart Hosseini, Member; and Francis Vernon, Lay Member. Pursuant to Part 6, Section IV, Paragraph 13-15.B.3. of the Rules of the Supreme Court of Virginia, the Eleventh District Subcommittee of the Virginia State Bar (“VSB”) hereby serves upon Gregory Hirsch, (“Respondent”) the following certification:

1. **ALLEGATIONS OF FACT**
2. At all times relevant hereto, Respondent was licensed to practice law in the Commonwealth of Virginia.
3. Respondent was admitted to practice law in the Commonwealth of Virginia on October 12, 2004.
4. Complainant Thomas Wambsgans (“Wambsgans”) was involved in a prolonged and contested divorce from his wife, Siobhan Roy (“Roy”). Roy was represented by Gerri Kellman (“Kellman”) in their divorce proceedings.
5. On January 12, 2019, Wambsgans signed a retainer agreement and paid the Respondent, in cash, a lump sum of $150,000 to represent him in his divorce proceedings.
6. On January 13, 2019, Respondent deposited $150,000 into his IOLTA Trust Account ending in 1234 at Succession Bank.
7. During the period between January 13, 2019, and May 4, 2021, Respondent attended numerous meetings and depositions; reviewed thousands of pages of documents; and prepared and drafted many motions, briefs, and other filings relating to these proceedings.
8. On May 4, 2021, a settlement agreement was signed by Wambsgans and Roy requiring, among other terms, Roy to make certain payments to Wambsgans by July 19, 2021. On July 20, 2021, Wambsgans’ administrative assistant emailed the Respondent to report nonpayment. *Wambsgans alleges he did not receive a response from the Respondent to this email.* Respondent reported to the VSB investigator that he made a telephone call to and discussed Roy’s alleged breach of the settlement agreement with Wambsgans on July 21, 2021. The responded retained and produced handwritten notes taken contemporaneously with this conversation.
9. On July 27, 2021, Roy paid Wambsgans a sum representing her calculation of the monies due pursuant to the settlement agreement. On July 27, 2021, Wambsgans’ administrative assistant emailed the Respondent and notified him of the payment. *Wambsgans alleges he did not receive a response from the Respondent to this email.* Respondent reported to the VSB investigator that he made a telephone call to and discussed the case with Wambsgans on July 27, 2021. The responded retained and produced handwritten notes taken contemporaneously with this conversation.
10. On August 19, 2021, the Respondent emailed a draft pleading to Wambsgans requesting review and approval. Wambsgans authorized its filing with an email response on that same date with “ok” in the title and no other text.
11. On August 20, 2021, the Respondent filed suit on behalf of Wambsgans against Roy, alleging damages due to the breach of contract resulting from Roy’s purported failure to make timely payments pursuant to the settlement agreement. On August 22, 2021, Roy filed an answer and counterclaim, alleging in the counterclaim that Wambsgans had failed to account for personal property as required by the settlement agreement.
12. On August 23, 2021, Respondent sent Wambsgans an email requesting they schedule a telephone call to discuss the case. *Wambsgans alleges he never received the email, and* a telephone call never took place.
13. On September 5, 2021, the Respondent filed a motion to amend the complaint, which was granted. The amended complaint added Kellman as a defendant and alleged (i) that Roy and Kellman had libeled Wambsgans in “the most salacious way” with the intent to “demean, disgrace, and humiliate” Wambsgans and to damage his business reputation and “prospect for future business and personal relationships” (Count Two) and (ii) that Roy and Kellman had committed the tort of abuse of process by filing the counterclaim with the “sole intent to emasculate Wambsgans and force him to grovel to her for mere subsistence money as she had throughout their sham of a marriage” (Count Three). Roy and Kellman filed demurrers on all counts.
14. On November 27, 2021, the Respondent filed a motion to remove Kellman as Roy’s counsel on the grounds of conflict of interests because she was now a defendant.
15. On December 3, 2021, Respondent sent an email to Wambsgans with the amended complaint and motion to remove Kellman attached with “Roy Case Update” in the title and no other text. *Wambsgans alleges he did not receive this email from Respondent.*
16. Wambsgans alleges that the Respondent filed the September 5th amended complaint and the November 27th motion without his authorization *and that he was only made aware of these filings when contacted by Roy’s brother, sometime before the new year, who, in a profanity laden exchange, told Wambsgans he “has no idea the dirty war he is starting by going up against the Roys.”* Wambsgans stated he *did not hear from and had no direct communications with the Respondent after the initial complaint was filed on August 3rd through “sometime in the new year” and* never discussed the counterclaim, amended complaint, or motion to remove Kellman at any point in 2021. The respondent told the investigator that he believed *he and Wambsgans discussed strategy, via phone, at some point after the counterclaim was filed on August 22nd and before he took any further action on the case*. The Respondent did not retain or produce any documentation supporting that a telephone call took place during the period between August 23rd and November 27, 2021.
17. Respondent reported to the VSB investigator that, when he and Wambsgans discussed representation sometime in the end of 2018 or the beginning of 2019, Wambsgans gave him broad authority to take whatever steps he wantedto draw out “the proceedings” *and cause Roy “emotional and financial anguish*.” Respondent told the investigator that, during the summer and fall of 2021, he was experiencing personal problems including the death of his mother and separation from his spouse of 12 years. He stated he had been very communicative with Wambsgans up to and through the filing of the August 3rd complaint and assumed he had broad authority to take any actions he deemed appropriate in the matter, particularly since the settlement agreement was finalized. He stated he had taken Wambsgans’ failure to set up a meeting with him to discuss the counterclaim as implied consent of broad authority in those matters. Respondent stated that he in no way wanted to start a “war with the Roys” and was very concerned when he learned about the September 5th amended complaint and the November 27th motion.
18. On February 11, 2022, Respondent emailed Wambsgans and his administrative assistant with notice of the motions’ hearing scheduled for February 13, 2022, and requested Wambsgans attend. Wambsgans attended the February 13th hearing.
19. At the motions’ hearing on February 13, 2022, the circuit court dismissed Counts Two and Three and denied the Respondent’s motion to remove Kellman. The court held that the Respondent failed to plead any facts that could serve as the basis for a libel or an abuse of process claim and granted Roy’s motion for attorney’s fees finding, among other things, that the claims against Kellman were brought in bad faith for the purpose of intimidating Kellman and requiring her to withdraw.
20. Wambsgans and the Respondent had an emotionally charged conversation in the courtroom hallway after the February 13th hearing. The Respondent told the VSB investigator that, during this exchange, Wambsgans “berated” him *for “his pea size brain and moronically supercharged ignorance”* and asked why the Respondent had him attend the hearing to “just sit there like a mime *in court jester clothing*.” He stated that Wambsgans questioned, among other things, whether the Respondent was “an actual lawyer and the right one for him” and *told the Respondent that he should consider going to “the reeducation camp for law dummies.*” The Respondent told the VSB investigator that he had never had a client address him in such a manner and assumed, based on that exchange, that Wambsgans had fired him as counsel and the attorney-client relationship was terminated. The Respondent did not recall whether Wambsgans explicitly stated that he was fired. The respondent neither filed a motion to withdraw with the court nor sent a termination of representation letter to Wambsgans.
21. Wambsgans denied firing the Respondent during the February 13th conversation and, despite his frustration with the Respondent, expected him to “continue to do the job for which he has been well compensated.” Wambsgans alleges that, after February 13, 2022, the Respondent, without notice, ceased communicating with him and opposing counsel. *Wambsgans* *attempted to call Respondent on numerous occasions from February 15, 2022, through the end of April 2022*.
22. Respondent never communicated with Wambsgans after February 13, 2022.
23. On or about May 12, 2022, Wambsgans retained new counsel who represented him in the ongoing litigation.
24. **NATURE OF MISCONDUCT**

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

**RULE 1.2 Scope of Representation**

1. A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
2. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

**RULE 1.3 Diligence**

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

**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.

**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

(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).

**Rule 3.1 Meritorious Claims And Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

**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. …

1. **CERTIFICATION**

Accordingly, it is the decision of the Subcommittee to certify the above matters to the Virginia State Bar Disciplinary Board.

TWELFTH DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR

By: . Willa Ferreya .

Willa Ferreya

Subcommittee Chair

**CERTIFICATE OF SERVICE**

I certify that, on May 30, 2023, I sent, by certified mail, a true and correct copy of the foregoing Subcommittee Determination (Certification) to Gregory Hirsch, Esquire, at 963 Media Way, Ewan, Virginia 29811, Respondent’s last address of record with the Virginia State Bar, and, by first class mail, postage prepaid, to Karolina Novotney, counsel for the Respondent, at One Waystar Way, Royco, Virginia 29811.

. Lawrence Yee .

Lawrence Yee

Assistant Bar Counsel

# VIRGINIA:

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

|  |  |
| --- | --- |
| **IN THE MATTER OF**[Respondent’s first and last name] | **VSB Docket No.** [case number] |
|  |  |

**ORDER OF [**discipline imposed, e.g., revocation, suspension, etc.**]**

**THIS MATTER** came to be heard on September 9, 2023, on the District Committee Determination for Certification by the [number of district subcommittee] District Committee, before a panel of the Virginia State Bar Disciplinary Board (“Board”) consisting of [name], Chair, [name], [name], [name], Lay Member, and[name]. The Virginia State Bar (the “VSB”) was represented by Lawrence Yee (“Bar Counsel”). The Respondent [Respondent’s name] (hereinafter “the Respondent”) was present and was represented by Willa Ferreya. Court reporter Huey Dewey of Dewey, Cheatham & Howe Court Reporting, P.O. Box 99999, Richmond, Virginia 23227, (804) 555-1212, after being duly sworn, reported the hearing and transcribed the proceedings.

At the outset of the hearing, the Chair polled the members of the 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.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (“Clerk”) in the manner prescribed by the Rules of Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18 of the Rules of Court.

Prior to the proceedings and at the final Prehearing Conference, VSB Exhibits 1-10 were admitted into evidence by the Chair, without objection from the Respondent. By agreement between the VSB and the Respondent, the Stipulations of Fact was received as Exhibit 10. All the factual findings made by the Board were found to have been proven by [burden of proof].

# FINDINGS OF FACT

# …

# NATURE OF MISCONDUCT

Rule [applicable rule]

The Board finds by [burden of proof] that the Respondent…

Rule [applicable rule]

The Board finds by [burden of proof] that the Respondent…

# SANCTION PHASE OF HEARING

# . . .

# DISPOSITION

# . . .

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 Opinion and Order to [Respondent] at his address of record with the Virginia State Bar, [Respondent’s address], by certified mail, return receipt requested; by regular mail to Respondent’s Counsel, [Name], [Address]; and by hand delivery to [Name], Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

This is Order is final.

ENTERED this \_\_ day of \_\_\_\_\_, 20\_\_.

VIRGINIA STATE BAR DISCIPLINARY BOARD

[VSB ID No. (ONLY, no name)], Chair