The Supreme Court of South Carolina

In the Matter of Edward Allen Backus, Petitioner

Appellate Case No. 2014-002722

ORDER

The records in the office of the Clerk of the Supreme Court show that on September 15, 1986, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Supreme Court of South Carolina, dated December 10, 2014, Petitioner submitted his resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court his certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of his resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that he has fully complied with the provisions of this order. The resignation of Edward Allen Backus shall be effective upon full compliance with this order. His name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

January 15, 2015

The Supreme Court of South Carolina

In the Matter of Angela Hurley Barber, Petitioner

Appellate Case No. 2014-002746

ORDER

The records in the office of the Clerk of the Supreme Court show that on January 8, 2008, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to Clerk of the South Carolina Supreme Court, dated December 29, 2014, Petitioner submitted her resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court her certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of her resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that she has fully complied with the provisions of this order. The resignation of Angela Hurley Barber shall be effective upon full compliance with this order. Her name shall be removed from the roll of attorneys

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

January 15, 2015

The Supreme Court of South Carolina

In the Matter of Don Floyd Briggs, Petitioner.

Appellate Case No. 2015-000052

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 9, 1981, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Supreme Court of South Carolina, dated January 13, 2015, Petitioner submitted his resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court his certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of his resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that he has fully complied with the provisions of this order. The resignation of Don Floyd Briggs shall be effective upon full compliance with this order. His name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

January 15, 2015

The Supreme Court of South Carolina

In the Matter of Karen M. Haselden, Petitioner

Appellate Case No. 2014-002663

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 15, 1984, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Supreme Court of South Carolina, dated December 12, 2014, Petitioner submitted her resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court her certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of her resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that she has fully complied with the provisions of this order. The resignation of Karen M. Haselden shall be effective upon full compliance with this order. Her name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

January 15, 2015

The Supreme Court of South Carolina

In the Matter of Gail Lovell, Petitioner

Appellate Case No. 2014-002723

ORDER

The records in the office of the Clerk of the Supreme Court show that on June 8, 1999, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Clerk of the South Carolina Supreme Court, dated January 6, 2015, Petitioner submitted her resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court her certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of her resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that she has fully complied with the provisions of this order. The resignation of Gail Lovell shall be effective upon full compliance with this order. Her name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

January 15, 2015

The Supreme Court of South Carolina

In the Matter of Miles Sanford Weiss, Petitioner

Appellate Case No. 2014-002685

ORDER

The records in the office of the Clerk of the Supreme Court show that on May 19, 1987, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Clerk of the Supreme Court, dated December 9, 2014, Petitioner submitted his resignation from the South Carolina Bar. Further, Petitioner has asserted that he does not have any clients in South Carolina and does not have access to his certificate of admission to practice law. Petitioner is directed to return his Certificate to the Clerk of this Court if it is located in the future.

We accept Petitioner's resignation and his name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

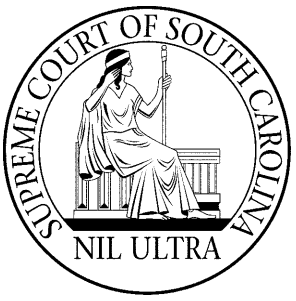
s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

January 15, 2015



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 3
January 21, 2015
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

PETITIONS – UNITED STATES SUPREME COURT

EXTENSION TO FILE PETITION FOR REHEARING

PETITIONS FOR REHEARING

27466 - Abbeville County School District v. The State	Pending
27467 - In the Matter of Cynthia E. Collie	Denied 1/14/2015
2014-MO-049 - Tiffany Sanders v. State	Pending

The South Carolina Court of Appeals

PUBLISHED OPINIONS

None

UNPUBLISHED OPINIONS

2015-UP-039-Brad A. Day

2015-UP-040-State v. Romeo Brown

2015-UP-041-Nathalie Davaut v. USC

PETITIONS FOR REHEARING

5253-Sierra Club v. SCDHEC and Chem-Nuclear Systems, Inc.	Pending
5270-56 Leinbach Investors, LLC v. Magnolia Paradigm	Pending
5272-Cindy Ella Dozier v. American Red Cross	Pending
5279-Stephen Brock v. Town of Mt. Pleasant	Pending
5280-State v. Donna Lynn Phillips	Pending
5281-The Greens of Rock Hill v. Rizon Commercial Contracting	Denied 1/14/15
5282-Joseph D. McMaster v. John H. Dewitt, M.D.	Pending
5283-State v. Arthur Smith	Pending
5284-Fayrell Furr v. Horry County Zoning Board of Appeals	Pending
5287-Jane Srivastava v. Ravindra P. Srivastava	Pending
2014-UP-270-Progressive Northern Ins. v. Stanley Medlock	Denied 12/04/14

2014-UP-387-Alan Sheppard v. William O. Higgins	Pending
2014-UP-402-State v. Jody Lynn Ward	Pending
2014-UP-409-State v. Antonio Miller	Pending
2014-UP-422-Johnson Koola v. Cambridge Two	Pending
2014-UP-435-SCBT, N.A. v. Sand Dollar 31	Pending
2014-UP-438-CACH v. Toby Hoffman	Denied 01/07/15
2014-UP-444-State v. Eric VanCleave	Pending
2014-UP-446-State v. Ubaldo Garcia, Jr.	Pending
2014-UP-458-SCDSS v. Lakisha Dennis and Shonetone Hines	Pending
2014-UP-463-State v. Victor Weldon	Pending
2014-UP-464-Phillip T. Young v. Joy A. Young	Pending
2014-UP-466-John Sherrill v. Gary Moore	Pending
2014-UP-470-State v. Jon Wynn Jarrard, Sr.	Pending
2014-UP-478-State v. Erick E. Hewins	Pending
2014-UP-480-State v. Richard L. Sprinkle	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

4981-State v. Hollie McEachern	Denied 1/15/15
5028-Travis A. Roddey v. Wal-Mart Stores	Granted 1/14/15
5038-State v. Jeremy McMillan	Denied 1/14/15
5077-Kirby L. Bishop et al. v. City of Columbia	Pending
5099-Roosevelt Simmons v. Berkeley Electric	Pending

5140-Bank of America v. Todd Draper	Pending
5152-Effie Turpin v. E. Lowther	Denied 1/15/15
5175-State v. Karl Ryan Lane	Pending
5176-Richard A. Hartzell v. Palmetto Collision, LLC	Granted 1/16/15
5201-Phillip Grimsley v. SLED	Pending
5209-State v. Tyrone Whatley	Pending
5207-Ted E. Abney v. State	Denied 1/15/15
5214-State v. Alton W. Gore, Jr.	Granted 1/16/15
5229-Coleen Mick-Skaggs v. William Skaggs	Pending
5230-State v. Christopher L. Johnson	Pending
5231-Centennial Casualty v. Western Surety	Pending
5232-State v. Clarence W. Jenkins	Pending
5237-Lee C. Palms v. The School District of Greenville Cty.	Pending
5241-Richard A. Fisher v. Shipyard Village Council	Pending
5242-Patricia Fore v. Griffco of Wampee, Inc	Pending
5243-Kerry Levi v. Northern Anderson County EMS	Denied 1/15/15
5244-Clifford Thompson v. State	Granted 1/16/15
5245-Allegro, Inc. v. Emmett Scully	Pending
5247-State v. Henry Haygood	Pending
5248-Demetrius Mack v. Leon Lott	Pending
5250-Precision Walls v. Liberty Mutual Fire Ins.	Pending

5251-State v. Michael Wilson Pearson	Pending
5257-State v. Jefferson Perry	Pending
5258-State v. Wayne S. Curry	Pending
5259-State v. Victor A. White	Pending
5261-State v. Roderick Pope	Pending
5263-Milton P. Demetre Family Ltd. Partnership v. Beckmann	Pending
5264-Prakash Solanki v. Wal-Mart	Pending
5265-State v. Wayne McCombs	Pending
5266-State v. Anthony K. Blakney	Pending
5267-Steve Bagwell v. State	Pending
5271-Richard Stogsdill v. SCDHHS	Pending
5273-Jane Roe v. Daniel Bibby, Sr.	Granted 1/16/15
5274-Duke Energy v. SCDOR	Pending
5275-Mitul Enterprises v. Beaufort Cty. Assessor	Pending
2012-UP-081-Hueble v. Vaughn	Granted 1/16/15
2012-UP-312-State v. Edward Twyman	Denied 1/15/15
2012-UP-351-State v. Kevin J. Gilliard	Granted 1/16/15
2012-UP-433-Jeffrey D. Allen v. S.C. Budget and Control Bd. Employee Insurance Plan et al.	Pending
2012-UP-502-Hurst v. Board of Dentistry	Granted 1/16/15
2012-UP-552-Virginia A. Miles v. Waffle House	Granted 1/16/15
2012-UP-577-State v. Marcus Addison	Denied 1/15/15

2013-UP-066-Dudley Carpenter v. Charles Measter	Denied 1/15/15
2013-UP-071-Maria McGaha v. Honeywell International	Denied 1/15/15
2013-UP-147-State v. Anthony Hackshaw	Pending
2013-UP-251-Betty Jo Floyd v. Ken Baker Used Cars	Pending
2013-UP-297-Place on the Greene v. Eva Berry	Granted 1/16/15
2013-UP-322-A.M. Kelly Grove v. SCDHEC	Pending
2014-UP-013-Roderick Bradley v. The State	Denied 1/15/15
2014-UP-087-Moshtaba Vedad v. SCDOT	Pending
2014-UP-094-Thaddeus Segars v. Fidelity National	Denied 1/15/15
2014-UP-114-Carolyn Powell v. Ashlin Potterfield	Pending
2014-UP-128-3 Chisolm Street v. Chisolm Street	Pending
2014-UP-132-State v. Ricky S. Bowman	Denied 1/15/15
2014-UP-143-State v. Jeffrey Dodd Thomas	Pending
2014-UP-167-State v. David G. Johnson	Pending
2014-UP-187-State v. Mark Peters	Pending
2014-UP-203-Helena P. Tirone v. Thomas Dailey	Pending
2014-UP-210-State v. Steven Kranendonk	Denied 1/15/15
2014-UP-215-Yossi Haina v. Beach Market, LLC	Pending
2014-UP-222-State v. James Curtis Tyner	Denied 1/15/15
2014-UP-224-State v. James E. Wise	Denied 1/15/15
2014-UP-228-State v. Taurus L. Thompson	Pending

2014-UP-235-Rest Assured v. SCDEW	Granted 1/16/15
2014-UP-241-First Citizens Bank v. Charles T. Brooks, III	Denied 1/15/15
2014-UP-266-Mark R. Bolte v. State	Pending
2014-UP-267-Jane Doe v. Charles Smith	Denied 1/15/15
2014-UP-270-Progressive Northern v. Stanley Medlock	Pending
2014-UP-273-Gregory Feldman v. William Casey	Pending
2014-UP-279-Jacqueline Smith v. Horry County Schools	Pending
2014-UP-284-John Musick v. Thomas Dicks	Pending
2014-UP-304-State v. Tawanda Allen	Pending
2014-UP-305-Tobacco Merchant v. City of Columbia Zoning	Pending
2014-UP-306-Yadkin Valley v. Oaktree Homes	Pending
2014-UP-307-Desiree Brown v. Wendell Brown (1)	Pending
2014-UP-317-Cherry Scott v. Heritage Healthcare	Pending
2014-UP-318-Linda Johnson v. Heritage Healthcare	Pending
2014-UP-332-State v. Michael Rogers	Pending
2014-UP-337-State v. Elizabeth M. Dinkins	Pending
2014-UP-343-State v. Derrick A. McIlwain	Pending
2014-UP-361-Russell W. Rice, Jr. v. State	Pending
2014-UP-362-State v. James Harris	Pending
2014-UP-365-Fatima Karriem v. Sumter Cty. Disabilities	Pending
2014-UP-447-State v. Carolyn Poe	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Brian N. Davis, Respondent.

Appellate Case No. 2014-002431

Opinion No. 27480
Submitted November 19, 2014 – Filed January 21, 2015

DISBARRED

Lesley M. Coggiola, Disciplinary Counsel, and Barbara M. Seymour, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

J. Steedley Bogan, Esquire, of Bogan Law Firm of Columbia, for respondent.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to disbarment with conditions. Respondent requests that the disbarment be imposed retroactively to August 12, 2013, the date of his interim suspension. In the Matter of Davis, 405 S.C. 65, 747 S.E.2d 434 (2013). We accept the Agreement and disbar respondent from the practice of law in this state with conditions as set forth hereafter in this opinion. The disbarment shall not be imposed retroactively. The facts, as set forth in the Agreement, are as follows.

Facts

A. Fraudulent Title Commitments and Title Insurance Policies

Matter I

Respondent's law practice included conducting residential real estate loan closings. In 2007, Chicago Title Company (Chicago Title) canceled respondent's title agency. From that point, respondent had approved attorney status and issued title commitments and polices through the title agency of his father who is a lawyer. In 2011, when Chicago Title learned of irregularities in some of respondent's closings, it canceled respondent's approved attorney status. From 2011 until his interim suspension in 2013, respondent continued to issue title commitments and policies using the Chicago Title name. Respondent altered Chicago Title's form documents to make it appear as though the company was issuing policies on his closings. At his closings, respondent also collected funds for the purpose of paying title insurance premiums, which he never paid. Respondent's misconduct left lenders and owners without title insurance and some lenders and owners sustained losses as a result of respondent's misappropriation of funds.

In addition to the matters set forth in Part B below, respondent collected money for title insurance that he did not properly pay to Chicago Title in closings for Client AA, Client BB, Client CC, Client DD, Client EE, and Client FF.

Matter II

Respondent's law firm was licensed as a title agency by Commonwealth Land Title Company (Commonwealth). In 2008, respondent issued title commitments to a lender in connection with two closings. At those closings, respondent collected title insurance premiums, but he neither tendered payment to Commonwealth nor issued the policies to the lender.

Commonwealth canceled respondent's title agency in January 2011. After January 2011, respondent continued to issue title commitments to lenders in connection with closings without authority from Commonwealth. At the closings, respondent collected funds for the purposes of paying title insurance premiums which he did not pay. In June 2013, a lender contacted Commonwealth with a demand for final

title policies. After several emails from Commonwealth, respondent delivered the premiums and Commonwealth issued the policies.

B. Misappropriation of Funds from Trust

Matter I

Sometime in December 2012, respondent disbursed funds in connection with a real estate closing prior to receipt of loan proceeds. Ultimately, the loan did not fund. For the next three and a half years, respondent engaged in a pattern of paying off his clients' existing mortgages with proceeds from subsequent, unrelated closings. Because respondent failed to maintain records of financial transactions required by Rule 417, SCACR, ODC is unable to determine the extent of the misappropriation, except as set forth below.

Matter II

On February 23, 2012, respondent conducted a closing on a refinance transaction for Client A. The lender wired the loan proceeds into respondent's trust account for disbursement on February 28, 2012. However, respondent had already negotiated a check payable to his law firm in the amount of $1,353.00 for attorney's fees and title insurance premiums on February 17, 2012, more than a week before closing and receipt of funds. The financial records respondent delivered to the Receiver upon his interim suspension were insufficient to determine whether or not respondent properly disbursed the remainder of the funds. The check payable to the law firm included $803.00 for lender's title insurance, however, respondent did not issue a title policy. Commonwealth issued a policy upon receipt of payment from respondent in June 2013.

Matter III

On February 24, 2012, respondent conducted a closing on a refinance transaction for Client B. The lender wired the loan proceeds into respondent's trust account for disbursement on February 28, 2012. However, respondent had already negotiated a check payable to his law firm in the amount of $1,101.00 for attorney's fees and title insurance premiums on February 16, 2012, more than a week before closing and receipt of funds. The financial records respondent delivered to the Receiver upon his interim suspension were insufficient to determine whether or not

respondent properly disbursed the remainder of the funds. The check payable to the law firm included $551.00 for lender's title insurance, however, respondent did not issue a title policy. Commonwealth issued a policy upon receipt of payment from respondent in June 2013.

Matter IV

On August 6, 2012, respondent conducted a closing on a refinance transaction for Client C. On August 10, 2012, the lender wired the loan proceeds into respondent's trust account. However, respondent had already negotiated a check payable to his law firm in the amount of $1,297.10 for attorney's fees and title insurance premiums on July 12, 2012, one month before closing and receipt of funds. The financial records respondent delivered to the Receiver upon his interim suspension were insufficient to determine whether or not respondent properly disbursed the remainder of the funds. The check payable to the law firm included $747.10 for lender's title insurance, however, respondent did not issue a title policy.

On September 7, 2012, respondent issued a check payable to his law firm from his trust account in the amount of $1,110.00 and deposited it into his operating account. On the memo line, respondent attributed the check to fees for the Client C closing. Respondent was not entitled to any additional funds from the Client C closing at the time he negotiated this check.

Matter V

On August 31, 2012, respondent conducted a closing on a purchase of real estate for Client D. Respondent deposited funds brought to the closing and the lender wired the loan proceeds into respondent's trust account on the day of closing. However, respondent had already negotiated a check payable to his law firm in the amount of $1,549.30 for attorney's fees and title insurance premiums on July 18, 2012, more than one month before closing and receipt of funds. The financial records respondent delivered to the Receiver upon his interim suspension were insufficient to determine whether or not respondent properly disbursed the remainder of the funds. The check payable to the law firm included $679.30 for lender's title insurance, however, respondent did not issue a title policy.

Matter VI

On September 12, 2012, respondent conducted a closing on a refinance transaction for Client E. Respondent deposited funds brought to closing by Client E on the same day. The lender wired the loan proceeds into respondent's trust account on September 14, 2012. However, respondent had already negotiated a check payable to his law firm in the amount of $1,120.00 for attorney's fees and title insurance premiums on August 22, 2012, more than three weeks before closing and receipt of funds. The financial records respondent delivered to the Receiver upon his interim suspension were insufficient to determine whether or not respondent properly disbursed the remainder of the funds. The check payable to the law firm included $231.00 for lender's title insurance, however, respondent did not issue a title policy.

Matter VII

Respondent was retained to conduct a home mortgage loan closing for Client F. The closing was conducted on October 17, 2012. The lender wired the funds into respondent's trust account on October 19, 2012, to be disbursed on October 22, 2012. However, on September 4, 2012, approximately six weeks prior to receipt of the funds for closing, respondent issued a trust account check payable to his law firm in the amount of $1,002.60 which included $442.60 for title insurance. At the time respondent negotiated this check, funds had not been deposited into his trust account or otherwise received for this purpose.

Respondent conducted the closing as scheduled and delivered a trust account check to Client F for the excess cash. Client F was able to negotiate the proceeds check, however, respondent failed to issue the payoff of the existing mortgage of $100,824.12. In response to inquiries about the payoff from Client F and the new lender, respondent repeatedly made false assurances that the check had been sent. The balance in respondent's trust account dropped below the amount necessary to cover the remaining disbursement on approximately forty-nine occasions between December 31, 2012, and August 12, 2013, the date of respondent's interim suspension. Following his interim suspension, there were insufficient funds in respondent's trust accounts to cover the payoff of Client F's existing loan. As a result of respondent's misappropriation of Client F's loan proceeds, the holder of

the existing mortgage filed a foreclosure action against Client F and the new lender on August 22, 2013.

Matter VIII

On October 23, 2012, respondent conducted a closing on a refinance transaction for Client G. The lender wired the loan proceeds into respondent's trust account on October 26, 2012. However, respondent had already negotiated a check payable to his law firm in the amount of $1,263.50 for attorney's fees and title insurance premiums on September 19, 2012, more than one month before closing and receipt of funds. The financial records respondent delivered to the Receiver upon his interim suspension were insufficient to determine whether or not respondent properly disbursed the remainder of the funds. The check payable to the law firm included $713.00 for lender's title insurance, however, respondent did not issue a title policy.

Matter IX

On November 8, 2012, respondent conducted a closing for Client H. On November 14, 2012, the lender wired $48,416.77 into respondent's trust account. Disbursements were to include $39,056.33 to pay off the existing loan and $407.00 for title insurance. Respondent did not obtain title insurance. The financial and file records respondent delivered to the Receiver upon his interim suspension were not sufficient to determine what disbursements were made. The file did contain an original, unnegotiated check written to pay of the existing mortgage.

Matter X

On January 15, 2013, respondent conducted a closing for borrower Client I. The lender wired the loan proceeds into respondent's trust account on the day of the closing. However, respondent had already negotiated a check payable to his law firm in the amount of $1,393.20 for attorney's fees and title insurance premiums on January 14, 2013, the day before closing and receipt of funds. The check payable to the law firm included $833.20 for lender's title insurance and $100.00 for owner's title insurance, however, respondent did not issue a title policy for the lender or the client. Respondent properly disbursed the remainder of the funds.

Matter XI

On February 8, 2013, respondent conducted a closing on a refinance transaction for Client J. The lender wired loan proceeds into respondent's trust account on February 12, 2013. However, respondent had already negotiated a check payable to his law firm in the amount of $1,142.00 for attorney's fees and title insurance premiums on February 5, 2013, before closing and receipt of funds. The financial records respondent delivered to the Receiver upon his interim suspensions were insufficient to determine whether or not respondent properly disbursed the remainder of the funds. The check payable to the law firm included $385.00 for lender's title insurance, however respondent did not issue a title policy.

Matter XII

On February 15, 2013, respondent conducted a closing on a refinance transaction for Client K. The lender wired the loan proceeds into respondent's trust account on February 20, 2013. However, respondent had already negotiated a check payable to his law firm in the amount of $1,009.00 for attorney's fees and title insurance premiums on January 30, 2013, approximately two weeks before closing and receipt of funds. The check payable to the law firm included $349.00 for lender's title insurance, however, respondent did not issue a title policy.

Matter XIII

On February 18, 2013, respondent conducted a second mortgage closing for borrowers Client L and Client M. The lender wired the loan proceeds into respondent's trust account on February 22, 2013. However, respondent had already negotiated a check payable to his law firm in the amount of $1,095.00 for attorney's fees and title insurance premiums on February 7, 2013, more than a week before closing and receipt of funds. The check to the law firm included $280.00 for the lender's title insurance, however, respondent did not issue a title policy for the lender or the clients.

Matter XIV

Respondent was scheduled to conduct a closing on February 22, 2013, for Mr. and Mrs. N (Client N) who were refinancing the first and second mortgages on their home. All three loans (first and second mortgage and the new mortgage) were all from the same lender. Disbursements that were to be made included $74,596.31 for the existing first mortgage, $64,172.23 to pay off the existing second mortgage, $3,259.26 to the lender for closing costs, $16.00 to record the mortgage, $10,663.80 to Client N as excess cash, $560.00 to respondent for fees and costs, and $543.40 for title insurance.

Respondent issued a trust account check payable to his law firm in the amount of $1,103.40 on February 11, 2013, fifteen days prior to receipt of funds for the closing. At the time respondent negotiated this check, funds had not been deposited into his trust account or otherwise received for this purpose.

Respondent conducted the closing as scheduled. On February 26, 2013, respondent received $154,000.00 into his trust account by wire from the lender to fund the closing. Respondent properly disbursed the payoff of the second mortgage and excess funds to close. He did not deliver the funds to the lender to pay off the first mortgage. The balance in respondent's trust account dropped below the amount necessary to cover that payoff on approximately twenty-six occasions between April 1, 2013, and August 12, 2013, the date of respondent's interim suspension. Respondent did not deliver the payoff of the first mortgage of $74,596.31. Following his interim suspension, there were insufficient funds in respondent's trust account to cover the payoff of Client N's existing first mortgage. Respondent did not obtain title insurance as agreed.

In April 2013, Client N contacted respondent upon discovering that their lender was continuing to draw monthly payments from their bank account for the old first mortgage. Respondent falsely informed Client N that he had paid off the mortgage and they would receive a refund of the extra payments. In June 2013, Client N again contacted respondent because payments were still being drafted from their bank account. In reliance on respondent's assurances that the problem was resolved and the drafts were improper, Client N cancelled the monthly drafts. In July 2013, the clients received a past due notice and then a delinquency notice

from the lender. For the next several months, respondent continued to make false assurances to Client N and postponed scheduled meetings with them.

Matter XV

Respondent was retained to conduct a home mortgage loan closing for Client O. The closing was scheduled for May 15, 2013, and included disbursement of $995.00 to respondent for fees and title insurance, $25.00 to the Register of Deeds to record the mortgage, $34,786.22 to pay off Client O's existing mortgage, and $15,466.93 as excess cash to Client O.

Respondent issued a trust account check payable to his law firm in the amount of $955.00 on March 28, 2013, two months prior to receipt of funds for the closing. At the time respondent negotiated this check, funds had not been deposited into his trust account or otherwise received for this purpose.

Loan proceeds related to the closing were wired into respondent's trust account on May 15, 2013. Before disbursement at the closing, the balance in respondent's trust account fell to $37,426.60 as a result of respondent's misappropriation of funds.

Respondent conducted the closing as scheduled and delivered a trust account check to Client O for the excess cash. Client O was able to negotiate the check, however, the balance in respondent's trust account dropped below the amount necessary to cover the remaining disbursements on eight occasions between May 20, 2013, and August 12, 2013, the date of respondent's interim suspension. Respondent did not deliver the payoff to the existing lender. Respondent did not record the new mortgage. Respondent did not obtain title insurance as agreed.

Matter XVI

On May 30, 2013, respondent conducted a refinance closing for Client P. On June 4, 2013, the lender wired the loan proceeds into respondent's trust account. However, on May 2, 2013, a month before closing and receipt of funds, respondent had already negotiated a check payable to his law firm in the amount of $1,647.30 for attorney's fees, including $1,087.30 for the lender's title insurance. Respondent properly disbursed the remainder of the funds, however, he did not issue a title policy for the lender or the clients.

Matter XVII

On July 13, 2013, respondent conducted several real estate closings for Client Q in which Client Q received proceeds in the amount of $469,560.46. Respondent received proceeds for the purpose of holding them for the purchase of new properties. Respondent placed the funds in a 1031 exchange account, with his wife as signing agent for the Qualified Intermediary, an LLC established by his wife for this purpose.[1] On July 18, 2013, one and one-half months after notice of the first grievance was sent to respondent, respondent withdrew $51,810.00 from the 1031 exchange account and deposited it into his law firm trust account. Between July 18, 2013, and August 13, 2013, the date of his interim suspension, the balance in respondent's trust account fell below $51,810.00 on approximately three occasions. As a result of respondent's misappropriation, Client Q did not have sufficient funds to purchase the new property.

C. Neglect of Litigation Matters

Matter I

Respondent represented Mr. and Mrs. R (Client R) in a variety of legal matters. In 2007, Client R consulted with respondent about a dispute over a timeshare in a houseboat. On March 13, 2009, Mrs. R wrote a letter to respondent with information related to the ongoing dispute, enclosed a check for attorney's fees in the amount of $3,000.00, and requested that respondent "start litigation" on their behalf. Respondent did not reduce his fee arrangement regarding the timeshare litigation to writing, nor did he prepare any billing statements or time records. After receipt of the retainer, Client R continued to gather relevant information and documentation and submitted it to respondent. Respondent did not conduct any investigation, research, or settlement negotiations.

In June 2010, Mrs. R filed a disciplinary complaint against respondent alleging he had neglected the timeshare litigation and various other legal matters. Respondent filed a summons and complaint on behalf of Client R on October 8, 2010, after notice of the grievance. After filing suit, respondent took no meaningful action on

[1] Respondent's wife is a lawyer licensed to practice law in South Carolina.

behalf of Client R in connection with the timeshare litigation. He did not serve the summons and complaint or otherwise pursue the matter.

Mrs. R filed a second disciplinary complaint against respondent in August 2013 after her client file was delivered to her by the Receiver appointed upon respondent's interim suspension. Client R ultimately retained other counsel who filed a notice of dismissal of their lawsuit without prejudice pursuant to Rule 40(j), SCACR, on January 13, 2014.

On June 26, 2011, respondent signed an agreement for discipline by consent in which he admitted to neglecting the timeshare litigation to resolve the first disciplinary complaint filed by Mrs. R. Pursuant to the terms of that agreement, the Commission on Lawyer Conduct (the Commission) issued a confidential admonition on the condition respondent complete the South Carolina Bar's Legal Ethics and Practice Program Ethics School no later than September 15, 2012. Respondent did not complete the program in spite of reminder letters from Commission Counsel dated September 28, 2011, April 22, 2013, and June 26, 2013.

Matter II

In 2006, Mr. and Mrs. S (Client S) paid respondent $5,000.00 as a retainer to represent them in connection with an easement dispute with their neighbor. Respondent filed an answer for Client S and engaged in extensive discovery. The master-in-equity ruled against Client S on the plaintiff's motion for summary judgment. On October 17, 2011, respondent filed a notice of appeal on behalf of Client S in the South Carolina Court of Appeals. The Clerk's Office sent letters to respondent on November 7, 2011, December 21, 2011, and February 10, 2012, reminding him of his obligation to request a transcript of the hearing from the court reporter and timely file proof that he had done so. On February 12, 2012, opposing counsel served respondent with a letter addressed to the Clerk of Court asserting respondent had not requested the transcript from the court reporter. On March 7, 2012, the Clerk of Court filed an order dismissing Client S's appeal for failure to order the transcript. Respondent did not file a petition to reinstate the appeal and the Clerk of Court issued a remittitur.

Respondent believed his representation of Client S was limited to defending the lawsuit and he only filed the notice of appeal to preserve his clients' rights;

however, his written fee agreement contained no such limitation. Respondent admits that it was his responsibility to ensure that his written fee agreement specifically set forth the scope of his representation. Further, he admits that he was required to take steps to secure the transcript, comply with court rules, and formerly withdraw from the case.

Matter III

On April 27, 2009, Client T paid respondent a $2,500.00 retainer to negotiate a "short sale" and conduct a closing on her property. On several occasions between April 2009 and February 2010, Client T contacted respondent for information about the status of the negotiations. Respondent made repeated assurances that he was working on getting approval of the short sale and negotiating terms with the lender. After no progress on the matter, Client T contacted her lender in February 2010 and was informed respondent had not contacted the lender about the matter at all. Client T made multiple written demands for the refund of her retainer but respondent did not comply.

Matter IV

On August 7, 2009, Client U paid a retainer of $2,500.00 to respondent for representation in negotiating a modification of his home mortgage loan. The written fee agreement specifically limited the scope of the representation to negotiations with the lender and filing an answer in the event of foreclosure. The fee agreement called for payment of additional fees if Client U wished to retain respondent for court hearings and contested matters. For six months, respondent took no action on behalf of Client U. In October 2009, January 2010, and February 2010, Mr. U received correspondence from his lender attempting to obtain information for consideration of a loan modification. Client U forwarded these letters to respondent. On February 5, 2010, respondent contacted Client U's lender for the first time.

On May 13, 2010, Client U's lender filed a foreclosure action. On June 14, 2010, respondent filed an answer and counterclaim on behalf of Client U and his wife. Respondent took no further action on behalf of Client U.

On March 14, 2013, Client U forwarded respondent by fax the notice of rights regarding foreclosure intervention he received from his lender. That notice

advised Client U that he had thirty days to voluntary elect to participate in foreclosure intervention. Respondent did not contact the lender or Client U regarding intervention.

On April 15, 2013, Client U was served with the lender's certification of compliance confirming that it had issued notice to him, but that he failed to voluntarily elect to participate in foreclosure intervention. Client U forwarded the correspondence to respondent via fax. Respondent took no action and did not communicate with Client U about it.

The master-in-equity held a foreclosure hearing after notice to respondent as counsel of record for Client U and his wife. Respondent did not attend because Client U did not pay him any additional fees. Respondent did not move to withdraw as counsel. Respondent did not inform Client U or his wife of the hearing date or advise them about proceeding pro se.

On August 12, 2013, the Court placed respondent on interim suspension. Id. Respondent failed to notify the court or opposing counsel that he was suspended from the practice of law. On August 16, 2013, respondent was served with a copy of the order from the master-in-equity entering judgment in favor of the lender and setting a sale date for the property. On August 18, 2013, Client U learned for the first time that his house was going to be sold as a result of the foreclosure.

Matter V

On September 12, 2008, Client V paid a retainer of $2,500.00 and $325.00 in advance costs to respondent for representation in a quiet title action regarding her deceased grandfather's house. Client V's ex-boyfriend had been arrested for fraudulently selling the property by forging Client V's deceased grandfather's name to a deed. Respondent attended the hearings in the criminal matter. For nearly three years, respondent continued to assure Client V that he was pursing the quiet title action. On April 2011, Client V wrote a letter to respondent imploring him to take some action to protect her interests and provide her with an update on the status of the matter. In fact, respondent took no action to secure the title for Client V until June 2011 when he filed a quiet title action and lis pendens. After attempting service of the lawsuit on the heirs, respondent took no further action on Client V's behalf. The court sent roster notices to respondent in April and June 2013, but respondent did not take steps to move the case to a hearing.

On August 12, 2013, the Court placed respondent on interim suspension. Id. Respondent failed to notify the court or move to withdraw as counsel in this matter.

Matter VI

On December 7, 2009, respondent conducted a closing on a second mortgage for Mr. and Mrs. W (Client W). From the proceeds of that loan, Client W paid respondent a retainer of $2,500.00 to assist them in obtaining the satisfaction of an old mortgage from a defunct Georgia mortgage company. In the written fee agreement, respondent agreed to obtain satisfaction of the mortgage by "making a demand for satisfaction through the State of South Carolina and the State of Georgia administrative processes and, if necessary, filing a civil action in South Carolina to satisfy the mortgage."

In February 2011, respondent conducted a closing on a second home purchased by Client W. Respondent did not provide the clients with their deed. On September 1, 2011, after multiple phone calls, Mr. W sent an email message to respondent asking about the status of the mortgage satisfaction and his original deed. Respondent did not respond.

Between December 2009 and August 2013, respondent took no meaningful action to secure satisfaction of Client W's mortgage. Respondent neither made a demand through any state administrative processes nor filed a civil action on Client W's behalf.

After respondent's interim suspension in August 2013, Mr. W retained the services of new counsel who obtained the satisfaction of the old mortgage and the deed for the second home.

Matter VII

Respondent represented Client X in defense of a foreclosure action. On February 13, 2013, the master-in-equity issued an order in favor of the plaintiff. On February 22, 2013, plaintiff's counsel served respondent with a copy of the order by mail, fax, and email. On April 9, 2013, respondent filed a notice of appeal with the South Carolina Court of Appeals claiming he had "never received written

notice" of the order. The plaintiff filed a motion to dismiss on the grounds that the notice of appeal was not timely. Respondent did not file a return.

When respondent was placed on interim suspension on August 13, 2013, the Supreme Court advised him in writing of his obligations to comply with Rule 30, RLDE, Rule 413, SCACR, which included notifying his clients and opposing counsel in pending matters of his suspension. On August 28, 2013, respondent sent a written notice of his suspension to Client X; he did not advise them of the status of the appeal. Respondent received no response from Client X and he was not contacted by substitute counsel. Respondent failed to notify the Court of Appeals of his suspension or formally move to withdraw from representation after ten days as required by Rule 30.

On October 9, 2013, the Court of Appeals dismissed Client X's appeal and, on October 20, 2013, the Court of Appeals sent the remittitur. Client X learned their appeal was dismissed when they received notice of the sale of their home.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation); Rule 1.2 (lawyer shall abide by client's decisions concerning objectives of representation and shall consult with client as to means by which they are pursued); Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client); Rule 1.4 (lawyer shall keep client reasonably informed about status of matter); Rule 1.5 (lawyer shall not charge or collect unreasonable fee; scope of representation and basis or rate of fee and expenses for which client will be responsible shall be communicated to client, preferably in writing); Rule 1.15 (lawyer shall safekeep client funds; lawyer shall deposit into client trust account unearned legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred; lawyer shall not disburse funds from an account containing funds of more than one client or third person unless funds to be disbursed have been deposited in account and are collected); Rule 1.16 (lawyer shall comply with applicable law requiring notice to or permission of tribunal when terminating representation; upon termination of representation, lawyer shall take steps to protect client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which client is entitled and

refunding any advance payment of fee or expense not been earned or incurred); Rule 3.2 (lawyer shall make reasonable efforts to expedite litigation consistent with interests of client); Rule 4.1 (in connection with representation of client, lawyer shall not knowingly make false statement of material fact to third persons); Rule 8.4(b) (it is professional misconduct for lawyer to commit criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); Rule 8.4 (d) (it is professional misconduct for lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct that is prejudicial to the administration of justice). Respondent further admits he has violated the recordkeeping provisions of Rule 417, SCACR. In addition, respondent admits he did not comply with Rule 30, RLDE, Rule 413, SCACR.

Respondent also admits he has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers); Rule 7(a)(5) (it shall be ground for discipline for lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law); Rule 7(a)(6) (it shall be ground for discipline for lawyer to violate oath of office taken upon admission); and Rule 7(a)(9) (it shall be ground for discipline for lawyer to willfully fail to comply with terms of finally accepted agreement for discipline by consent).

Conclusion

We accept the Agreement for Discipline by Consent and disbar respondent from the practice of law in this state. The disbarment shall not be imposed retroactively to the date of respondent's interim suspension. The disbarment is subject to the following conditions:

1. within one (1) year of the date of this opinion, respondent shall pay restitution to clients or on behalf of clients as specified in Appendix A;

2. within two (2) years of the date of this opinion, respondent shall pay restitution as specified in Appendix B;

3. within three (3) years of the date of this opinion, respondent shall reimburse all funds paid to clients or third parties by the Lawyers' Fund for Client Protection;

4. within three (3) years of the date of this opinion, respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission; and

5. respondent shall complete the South Carolina Bar's Legal Ethics and Practice Program Ethics School, Trust Account School, and Law Office Management School prior to filing any petition for readmission.

Within fifteen (15) days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30 of Rule 413, SCACR, and shall also surrender his Certificate of Admission to the Practice of Law to the Clerk of Court.

DISBARRED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

Appendix A

Client or Other Party	Amount Owed/Explanation
Client AA	$309.40 refund of owner's title insurance premium
South Carolina Federal Credit Union	$74,596.31 plus interest and penalties to satisfy Client N's mortgage (minus payments made by Client N after closing)
Lawyers' Fund for Client Protection	$1,110.00 overpayment of Client C closing
Client D	$201.00 refund of title

	insurance premium
Client F	attorney's fees for defense of foreclosure action
Bank of America/Green Tree Servicing, LLC	$100,824.12 plus penalties, interest, and attorney's fees related to payoff of Client F's mortgage
Client H	refund of attorney's fees; refund of recording fees, taxes, and hazard insurance premium if not already paid
Wells Fargo (or successor in interest)	$39,056.33 plus interest for Client H closing if not already paid
Client I	$100 refund for title insurance premium
Client N	$16.00 to record mortgage; $560.00 refund of attorney's fees; $2,308.26 for mortgage payments and late fees paid after closing
Client O	$25.00 to record mortgage; $660.00 refund of attorney's fees
Citimortgage Inc. (or successor in interest)	$37,426.60 plus interest and penalties to satisfy Client O's mortgage
Client Q	$51,810.00 plus interest

Client R	$3,000.00 refund of attorney's fees
Client T	$2,500.00 refund of attorney's fees
Client U	$2,500.00 refund of attorney's fees
Client V	$2,825.00 refund of attorney's fees
Mr. W	$2,500.00 refund of attorney's fees

Appendix B

Client or Other Party	Amount Owed/Explanation
Chicago Title Company	attorney's fees, claims paid, and costs related to issuance of unauthorized title commitments and title insurance policies
Network Funding L.P.	$957.60 for title insurance - Client AA closing
South Carolina Federal Credit Union	$747.10 refund for title insurance - Client C closing
South Carolina Federal Credit Union	$478.30 refund for title insurance - Client D closing
South Carolina Federal Credit Union	$231.00 refund for title insurance - Client E closing
South Carolina Federal Credit Union	attorney's fees for defense of

	foreclosure action - Client F
South Carolina Federal Credit Union	$713.00 refund for title insurance - Client G closing
South Carolina Federal Credit Union	$385.00 refund for title insurance - Client J closing
South Carolina Federal Credit Union	$349.00 refund for title insurance - Client K closing
South Carolina Federal Credit Union	$543.40 refund for title insurance - Client N closing
South Carolina Federal Credit Union	$1,087.30 refund for title insurance - Client P closing
South Carolina Federal Credit Union	$467.80 refund for title insurance - Client FF closing
South Carolina Federal Credit Union	$430.00 refund for title insurance - Client BB closing
South Carolina Federal Credit Union	$931.10 refund for title insurance - Client CC closing
South Carolina Federal Credit Union	$437.00 refund for title insurance - Client DD closing
South Carolina Federal Credit Union	$488.00 refund for title insurance - Client EE closing
First Federal Bank	$407.00 refund for title insurance - Client H closing
Network Funding L.P.	$833.20 refund for title insurance - Client I closing

First Reliance Bank	$280.00 refund for title insurance - Client L and Client M closing
Citimortgage Inc. (or successor in interest)	$37,426.60 plus interest and penalties to satisfy Client O's mortgage
Southcoast Community Bank	$295.00 refund for title Insurance - Client O closing

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of John W. Howard, III, Respondent.

Appellate Case No. 2014-002460

Opinion No. 27481
Submitted November 20, 2014 - Filed January 21, 2015

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and Ericka M. Williams, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

John W. Howard, III, of Greenville, pro se.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the imposition of a confidential admonition or public reprimand with conditions. We accept the Agreement and issue a public reprimand with conditions as set forth hereafter in this opinion. The facts, as set forth in the Agreement, are as follows.

Facts

Matter I

Complainant A retained respondent to bring a contempt action against his ex-wife for violation of a family court order. A family court judge signed the contempt

order on February 20, 2009, and the order was filed on March 18, 2009. Following the hearing, respondent prepared a bench warrant that was signed by the judge on July 9, 2009. In October 2009, after receiving documentation which respondent thought satisfied the conditions of the contempt order, respondent prepared a proposed order recalling the July 9, 2009, bench warrant which the judge signed on October 7, 2009. Respondent failed to consult with Complainant A prior to preparing the proposed order recalling the bench warrant. Complainant A disagreed with respondent's decision to voluntarily submit a proposed order recalling the bench warrant to the judge.

Matter II

Respondent represented Complainant B's wife in a domestic matter. Respondent drafted a separation and property settlement agreement which was signed by both Complainant B and his wife. Under the agreement, respondent was to receive the net proceeds from the sale of the marital home in escrow to be divided equally between the parties after paying all mortgage and marital indebtedness. Complainant B made several request to respondent for an accounting of the funds. Respondent failed to comply with Complainant B's request for an accounting of the funds in escrow. Respondent represents he did not release a copy of the accounting to Complainant B because his client instructed him not to do so.

Matter III

On the morning of March 24, 2010, respondent conducted a cash closing. Respondent disbursed the net proceeds of the closing to the seller prior to depositing the funds from the buyer. The proceeds check was disbursed to the seller on the morning of March 24, 2010, and the deposit of the proceeds was made during the afternoon on the same day.

Matter IV

Respondent was retained to represent Client C in a domestic action. Respondent failed to keep Client C reasonably informed regarding the status of Complainant C's case. Respondent represents he had difficulty reaching Complainant C from time to time.

Matter V

Respondent was retained to represent Client D in an action for divorce. Following negotiations with opposing counsel, respondent informed Complainant D that he would move to set the matter for trial. Respondent represents that his paralegal failed to request a final hearing and, as a result, Complainant D's case was stricken from the roster.

Matter VI

In 2009, respondent performed a real estate closing for Complainant E. In late December 2010 or early January 2011, Complainant E contacted respondent after learning that the property was still in the name of the original owners. It was discovered that the deed transferring the property to Complainant E had never been filed. Respondent was unable to locate the deed in his office. Respondent represents that his paralegal was responsible for the recording of the closing documents, but respondent had discharged the paralegal by the time he learned of the missing deed. Respondent had to locate the original sellers and have a new deed executed. Complainant E's deed was finally recorded on February 15, 2012.

Matter VII

Respondent conducted a cash closing on July 26, 2012. A check was disbursed to the realtor who was representing the seller on the same day of the closing. Respondent represents that the closing concluded at 4:50 p.m. and that the realtor was able to deposit the check prior to the close of the day. Respondent was not able to deposit the funds from the closing until the following day and this caused an overdraft in respondent's trust account.

Matter VIII

On November 8, 2013, respondent conducted a real estate closing where his wife was the seller. Respondent disbursed the net proceeds check to his wife at closing. Respondent represents he instructed his wife not to deposit the funds until he had received the wire transfer into his account. Respondent's wife deposited the check

late in the afternoon on November 8, 2013, prior to the receipt of the incoming wire transfer. This caused an overdraft in respondent's trust account.

Matter IX

On November 23, 2013, respondent conducted a real estate closing. Due to a calculation error on the closing statement, the check given to the seller was $2,475.04 more than it should have been. When respondent was notified by the bank that there was an incoming item for which there were insufficient funds in trust, respondent transferred personal funds sufficient to cover the check. The bank honored the incoming check. After notifying the seller of the error, the seller wrote a check for the overage and respondent deposited those funds into his real estate trust account.

Matter X

Respondent conducted a real estate closing on February 14, 2014. In addition to the wire transfer that respondent received for the closing, the purchasers needed $36,434.36 to close. The purchasers brought certified funds in the amount of $38,400 to the closing. Because the purchasers brought excess funds, respondent deposited the funds into his regular trust account, wrote the purchasers a check for the overage, and completed the closing. Respondent failed to transfer the $36,434.36 from his regular trust account to his real estate trust account until February 20, 2014, after receiving a call from his bank. Respondent immediately made the transfer to correct the error.

ODC acknowledges respondent has been very cooperative in its investigation of these matters.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.2 (lawyer shall abide by client's decisions concerning the objectives of representation and shall consult with client as to means by which they are to be pursued); Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client); Rule 1.4 (lawyer shall promptly inform client of any decision or circumstance with respect to which the client's informed consent is required; shall reasonably consult with

client about means by which client's objectives are to be accomplished; shall keep client reasonably informed about the status of matter; and shall promptly comply with reasonable requests for information); Rule 1.15 (lawyer shall safekeep client property); Rule 1.15(d) (lawyer shall promptly deliver to third person any funds that third person is entitled to receive and, upon request by third person, shall promptly render full accounting regarding the funds); Rule 1.15(f) (lawyer shall not disburse funds from account containing the funds of more than one client or third person unless funds to be disbursed have been deposited in the account and are collected funds); and Rule 5.3 (lawyer having direct supervisory authority over non-lawyer shall make reasonable efforts to ensure that person's conduct is compatible with professional obligations of lawyer).

Respondent also admits he has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct).

Conclusion

We find respondent's misconduct warrants a public reprimand.[1] Accordingly, we accept the Agreement and publicly reprimand respondent for his misconduct. In addition, we order respondent to pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission) within thirty (30) days of the date of this opinion.[2]

---

[1] Respondent's disciplinary history includes a public reprimand, two admonitions, and three letters of caution warning him to be cautious about complying with most of the same Rules of Professional Conduct he admits he violated in the current Agreement. See In the Matter of Howard, 303 S.C. 278, 400 S.E.2d 138 (1991); Rule 7(b)(4), RLDE (Court can consider admonition in subsequent proceeding as evidence of prior misconduct solely upon issue of sanction to be imposed); Rule 2(r), RLDE ("[t]he fact that a letter of caution has been issued shall not be considered in a subsequent disciplinary proceeding against the lawyer unless the caution or warning contained in the letter of caution is relevant to the misconduct alleged in the proceedings.").

[2] The Court recognizes respondent completed the Legal Ethics and Practice Program Ethics School and Trust Account School on June 11, 2014.

PUBLIC REPRIMAND.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of William D. Rhoad, IV, Respondent.

Appellate Case No. 2014-002478

Opinion No. 27482
Submitted December 1, 2014 – Filed January 21, 2015

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and Ericka M. Williams, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

William D. Rhoad, IV, Esquire, of Bamberg, pro se.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel and respondent have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the imposition of a confidential admonition or public reprimand with conditions. We accept the Agreement and issue a public reprimand with conditions as stated hereafter in this opinion. The facts, as set forth in the Agreement, are as follows.

Facts

Matter I

Client A retained respondent to represent him in a case against an insurance company. Respondent was also retained to represent Client A's wife in a personal

injury case. Respondent failed to keep Client A and his wife reasonably informed regarding the status of their cases. When Client A and his wife became dissatisfied with respondent's services, they terminated respondent's representation and requested a return of their files.

Respondent has not returned the files to Client A or his wife. Respondent asserts that the files have not been returned because, in spite of his best efforts and the efforts of his staff, neither the file for Client A nor his wife can be located.

Matter II

Complainant B retained respondent for representation in a slip and fall case. On behalf of Complainant B, respondent signed a consent motion to strike the case from the active court docket pursuant to Rule 40(j), SCRCP. The consent order to strike the case was signed by the trial judge on October 30, 2008. At respondent's request, opposing counsel consented to and signed a consent order to restore the case to the active docket just prior to the expiration of the one year deadline. Respondent failed to file the consent order and the case was not restored within the one year period. Complainant B's case eventually settled for far less than the original offer of settlement.

Matter III

Respondent represented Client C in a domestic matter. A final hearing was held in Family Court on February 4, 2013. Respondent was instructed by the Family Court judge to prepare the divorce decree. On June 25, 2013, the Clerk of Court sent a notice to respondent and opposing counsel notifying them that the case was more than 365 days old and would be dismissed if a request for a final hearing was not made within thirty days. Respondent did not advise the Clerk of Court or the Family Court that a final hearing had been held in February and respondent did not submit a final order to the judge as instructed. An order of dismissal was signed by the Chief Administrative Judge on July 31, 2013. Client A learned of the dismissal when she attempted to get a copy of her divorce decree from the Clerk of Court's office.

Respondent represented Client D in a domestic matter. A final hearing was scheduled in Family Court for October 22, 2013. Client D appeared for the hearing, but respondent failed to appear despite notice of the hearing from the

Court, the scheduling clerk, and email correspondence from opposing counsel. Client D proceeded with the hearing pro se. At the conclusion of the hearing, Client D informed the Family Court that he was unable to make contact with respondent and his telephone messages to respondent had not been returned. Respondent acknowledges that he was notified of the correct date and time for the hearing but mistakenly believed the hearing was scheduled for 2:00 in the afternoon, instead of the correct time in the morning.

On October 29, 2013, the Notice of Investigation was mailed to respondent requesting a response within fifteen days. When no response was received, ODC sent respondent a letter by certified mail on December 2, 2013, reminding respondent of his obligation to respond and citing In the Matter of Treacy, 277 S.C. 514, 290 S.E.2d 240 (1982). Respondent's response was received on December 3, 2013.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation to client); Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client); Rule 1.4 (lawyer shall keep client reasonably informed about status of matter and promptly comply with reasonable requests for information); Rule 1.16(c) (lawyer must comply with applicable law requiring notice to or permission of tribunal when terminating a representation); Rule 1.16(d) (upon termination of representation, lawyer shall take steps as reasonably practicable to protect client's interests such as surrendering papers to which client entitled); Rule 3.4(c) (lawyer shall not knowingly disobey obligation under rules of tribunal); Rule 8.1(b) (lawyer shall not knowingly fail to respond to lawful demand for information from disciplinary authority); Rule 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct); and Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct prejudicial to administration of justice).

Respondent also admits he has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct).

Conclusion

We find respondent's misconduct warrants a public reprimand.[1] Accordingly, we accept the Agreement and publicly reprimand respondent for his misconduct. In addition, respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission) within thirty (30) days of the date of this opinion. Further, he shall complete the Legal Ethics and Practice Program Ethics School within nine (9) months of the date of his opinion and provide certification of completion of the program to the Commission no later than ten (10) days after the conclusion of the program.

PUBLIC REPRIMAND.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

[1] Respondent's disciplinary history includes a deferred disciplinary agreement in 2011 which cites some of the same Rules of Professional Conduct contained in the current Agreement. In the Matter of Toney, 396 S.C. 303, 721 S.E.2d 437 (2012) (Court can consider prior deferred disciplinary agreement involving similar misconduct in concluding lawyer's disciplinary history demonstrates pattern of misconduct).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of David Weldon Gantt, Respondent.

Appellate Case No. 2014-002495

Opinion No. 27483
Submitted December 1, 2014 – Filed January 21, 2015

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and Barbara M. Seymour, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Frank L. Eppes, Esquire, of Eppes & Plumblee, PA, of Greenville, for respondent.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel and respondent have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the imposition of a confidential admonition or public reprimand with conditions. We accept the Agreement and issue a public reprimand with conditions as set forth hereafter in this opinion. The facts, as set forth in the Agreement, are as follows.

Facts

In 1999, respondent began practicing law with Fredrick Scott Pfeiffer. Over the years, Mr. Pfeiffer began to enter into various business ventures with clients, some of which involved real estate investment and development. Respondent developed a fairly extensive real estate practice and, from time to time, closed loans for entities with which Mr. Pfeiffer was involved, either as an investor or owner.

Respondent represented a company (Client A) owned by three clients in connection with the development of a tract of property (Development 1). ABC Company, a company owned by Mr. Pfeiffer and his client, Client X, assisted Client A in financing the Development 1 project.

In April 2006, Mr. Pfeiffer approached respondent regarding a new development project (Development 2) with the three firm clients who owned Client A. Mr. Pfeiffer and the three clients told respondent that they needed someone with good credit to guarantee a loan in order to obtain financing for the Development 2 project. The clients agreed to give respondent an interest in the new development company, called Development 2 Company, as payment for legal fees incurred in connection with the Development 1 closings and other work performed for them. In exchange, respondent agreed to personally guarantee the loan obtained by Development 2 Company.

Mr. Pfeiffer prepared the corporate formation documents for Development 2 Company on behalf of respondent and the three clients. Although respondent believed that his interest in Development 2 Company was only ten percent, the corporate documents show respondent as a fifty percent shareholder. In any event, Development 2 Company was owned by respondent and the three clients from March 2006 until January 2007 when respondent relinquished his ownership interest.

Respondent acknowledges that it was a conflict of interest for him to engage in a business transaction with law firm clients. See Rule 1.8(a), RPC, Rule 407, SCACR. He acknowledges he failed to ensure that the terms of the transaction were fully disclosed and transmitted in writing in a manner that could be easily understood by the clients. He further admits that he failed to advise his clients in writing of the desirability of seeking the advice of independent legal counsel regarding the formation of Development 2 Company. Further, respondent acknowledges that he failed to communicate to the clients reasonably adequate information and an explanation about the material risks and reasonably available alternatives to entering into a partnership with their attorney. Respondent admits he failed to obtain his clients' informed consent, in writing signed by the clients, to proceeding with the formation of the partnership and waiving the conflict of interest.

During the time respondent held an ownership interest in Development 2 Company, the company borrowed the initial funds to purchase the Development 2 property with plans to subdivide it for development and sale. Respondent assisted

with the closings on the loans to finance the initial purchase of the property by Development 2 Company, including preparing mortgages to secure those loans.

Development 2 Company obtained loans of approximately two million dollars from ABC Company to make the initial purchase of Development 2. At various times during respondent's representation of Development 2 Company in connection with the funding and sales of Development 2, Mr. Pfeiffer transferred partial ownership of ABC Company to various companies in which respondent had an ownership interest, including the law firm.

To cover the remaining purchase price of Development 2, Development 2 Company obtained a loan of approximately four million dollars from Client B, a company owned by Client C. Respondent had represented both Client B and Client C in unrelated business litigation prior to assisting Development 2 Company with the financing from Client B.

Respondent acknowledges that it was a conflict of interest for him to engage in business transactions between law firm clients and companies in which he and/or his law partner held an interest. See Rule 1.8(a), RPC, Rule 407, SCACR. He acknowledges he failed to ensure the terms of the transactions were fully disclosed and transmitted in writing in a manner that could be easily understood by the clients. He further admits that he failed to advise his clients in writing of the desirability of seeking the advice of independent legal counsel regarding Development 2 Company borrowing funds to finance the purchase of Development 2 from companies owned or represented by respondent and/or his law partner. Further, respondent acknowledges that he failed to communicate to the clients reasonably adequate information and an explanation about the material risks and reasonably available alternatives to entering into transactions in which respondent and/or his law partner held an interest in the other contracting party. Respondent further admits that he failed to obtain his clients' informed consent, in writing signed by the clients, to proceeding with the financing transactions and waiving the conflicts of interest.

The terms of the purchase money loan from Client B required Development 2 Company to repay two million dollars within ninety days, then refinance the remaining amount of approximately two million dollars. There were two existing homes on the property that were not encumbered. Development 2 Company planned to sell those two parcels, then recruit several "investors" to purchase undeveloped lots and use those proceeds to pay off the loan balances to both Client

B and ABC Company. Most of the individual investors borrowed money from traditional banks to fund their investments in Development 2.

There were three parties in these transactions: 1) the investor who was the borrower; 2) Development 2 Company which was the seller; and 3) the bank which was the lender. Essentially, the investor borrowed money from the bank and paid that money to Development 2 Company at the closing. The bank received a mortgage and promissory note from the investor. The investor entered into a "buy-back" agreement with Development 2 Company in which Development 2 Company would make the monthly payments on the investor's mortgage during construction and would then buy the property back from the investor once the house was built. Development 2 Company agreed to "buy-back" the property from the investor by paying off the mortgage balance and paying the investor a "fee" of between ten and fifty thousand dollars within one year.

In conducting these closings, respondent used a document entitled "Conflict of Interest Disclosure" (Disclosure) in which the investor/purchaser and Development 2 Company/seller acknowledged respondent's dual representation of the parties in the closing and his limited obligations to the lender. Respondent added a sentence to the Disclosure that stated, "Finally, the closing attorney has a limited equity interest in the Seller." Approximately half of the closing files did not contain a signed Disclosure. Of those that did, many of the Disclosures were undated. Respondent did not disclose to the banks or the investor/purchasers the extent of his interest in Development 2 Company. Further, he did not disclose to the banks or the investor/purchasers that the funds were being used to repay Development 2 Company's obligations to ABC Company (respondent's partner's company) and to Client B (respondent's client's company) instead of for the construction of homes on the property.

Respondent conducted the closings on the sale of the two existing homes. He disbursed the sales proceeds to Development 2 Company. In addition, respondent conducted all of the closings on the "sale" parcels of Development 2 from Development 2 Company to individual investors. Respondent paid the funds from the investor closings to Development 2 Company. Respondent did not know how those funds were spent and had no control over the management of Development 2 Company's accounts. Although he was a part owner of Development 2 Company, respondent did not examine any Development 2 Company financial records to confirm that the company had the financial ability to feasibly make the loan payments or buy back the properties as agreed.

In the course of trying to obtain commercial financing to restructure Development 2 Company and pay off the high interest loans from Client B and ABC Company, one traditional bank would not permit respondent to close the loan because of his conflict of interest. In January 2007, respondent transferred his interest back to Development 2 Company to allow the other members to restructure the company and refinance the project. This transfer of ownership did not release respondent's personal guarantees.

Ultimately, Development 2 Company defaulted on ABC Company's and Client B's loans. Further, the investors defaulted on many of the bank loans because Development 2 Company failed to make the required monthly payments to pay off the mortgages. Various lawsuits, bankruptcies, and receiverships followed. At least one bank alleged that it was not aware of the buy-back/investor arrangements and believed it was making construction loans and that the investors were in fact buyers.

Respondent acknowledges it was a conflict of interest for him to conduct closings on loans to which his company was a party. See Rule 1.7 and 1.8(a), RPC, Rule 413, SCACR. He further admits that his Disclosure form was insufficient because it failed to advise the parties in writing of the desirability of seeking the advice of independent legal counsel regarding the transactions. He further acknowledges that the Disclosure form was insufficient because he failed to communicate to the parties reasonably adequate information and an explanation about the material risks and reasonably available alternatives to going forward with a closing attorney who had an interest in the transactions. Respondent further admits that he failed to obtain the parties' informed consent, in writing signed by the parties, to proceeding with the closings and a waiver of the conflict of interest in each case.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.7 (notwithstanding conflict of interest, lawyer may represent client if: (1) lawyer reasonably believes lawyer will be able to provide competent and diligent representation to affected client; (2) representation is not prohibited by law; (3) representation does not involve the assertion of a claim by one client against another client represented by lawyer in the same litigation or other proceeding before a tribunal; and (4) affected client gives informed consent, confirmed in writing) and Rule 1.8(a) (lawyer shall not enter into a business transaction with client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to client unless:

(1) transaction and terms on which lawyer acquires interest are fair and reasonable to client and are fully disclosed and transmitted in writing in manner that can be reasonably understood by client; (2) client is advised in writing of desirability of seeking and is given reasonable opportunity to seek advice of independent legal counsel on transaction; and (3) client gives informed consent, in writing signed by client, to essential terms of transaction and lawyer's role in the transaction, including whether lawyer is representing client in transaction).

Respondent also admits he has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct).

Conclusion

We find respondent's misconduct warrants a public reprimand.[1] Accordingly, we accept the Agreement and publicly reprimand respondent for his misconduct. Respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission) within thirty (30) days of the date of this opinion. Further, respondent shall complete the Ethics School portion of the South Carolina Bar's Legal Ethics and Practice Program within one (1) year of the date of this opinion and provide certification of completion of the program to the Commission no later than ten (10) days after the conclusion of the program.

PUBLIC REPRIMAND.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

[1] Respondent's disciplinary history includes an admonition issued in 2010. See Rule 7(b)(4), RLDE (Court can consider admonition in subsequent proceeding as evidence of prior misconduct solely upon issue of the sanction to be imposed).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Columbia/CSA-HS Greater Columbia Healthcare System, LP d/b/a Providence Hospital, Petitioner,

v.

The South Carolina Medical Malpractice Liability Joint Underwriting Association and Michael P. Taillon, Respondents.

Appellate Case No. 2011-197986

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
Alison Renee Lee, Circuit Court Judge

Opinion No. 27484
Heard April 1, 2014 – Filed January 21, 2015

AFFIRMED

C. Mitchell Brown and Michael J. Anzelmo, both of Nelson Mullins Riley & Scarborough LLP, of Columbia, and Monteith P. Todd, of Sowell Gray Stepp & Laffitte LLC, of Columbia, for Petitioner.

James Edward Bradley, of Moore, Taylor & Thomas, P.A., of Columbia, and Andrew F. Lindemann, of

Davidson & Lindemann, P.A., of Columbia, for Respondents.

JUSTICE KITTREDGE: At issue in this case is whether the medical malpractice statute of repose[1] applies to the indemnity claim of Petitioner Columbia/CSA-HS Greater Columbia Healthcare System, LP (Providence Hospital). The trial court and the court of appeals held that it does and thus bars the indemnity action brought by Providence Hospital. Because we conclude that Providence Hospital's indemnity action is barred by the statute of repose, we affirm.

I.

On May 31, 1997, Dr. Michael Hayes and Dr. Michael Taillon were working as emergency room physicians at Providence Hospital, presumably as independent contractors.[2] Arthur Sharpe came to the Providence Hospital emergency room on the same date, complaining of chest pain. Dr. Hayes and Dr. Taillon evaluated Sharpe and diagnosed him as suffering from reflux. Sharpe was discharged. Sharpe had actually suffered a heart attack, which was determined a few days later when he sought further medical care elsewhere.

Because of the misdiagnosis, on May 25, 1999, Sharpe and his wife filed a medical malpractice and loss of consortium action against Providence Hospital and Dr. Hayes. The Sharpes did not name Dr. Taillon as a defendant. Providence Hospital settled with the Sharpes on June 10, 2004.

On June 7, 2007, Providence Hospital filed this equitable indemnification action against Dr. Taillon and his medical malpractice insurer, The South Carolina Medical Malpractice Liability Joint Underwriting Association (collectively Respondents). Respondents moved for summary judgment on the ground that the

---

[1] S.C. Code Ann. § 15-3-545 (2005).

[2] *Cf. Simmons v. Tuomey Reg'l Med. Ctr.*, 341 S.C. 32, 53, 533 S.E.2d 312, 323 (2000) (affirming as modified the court of appeals imposing "a nondelegable duty on hospitals with regard to the physicians who practice in their emergency rooms" and adopting the Restatement (Second) of Torts § 429).

medical malpractice statute of repose bars Providence Hospital's claim and the circuit court granted the motion on that basis. Providence Hospital appealed, and the court of appeals affirmed. *Columbia/CSA-HS Greater Columbia Healthcare Sys. v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 394 S.C. 68, 75, 713 S.E.2d 639, 642 (Ct. App. 2011). We granted certiorari to review the court of appeals' decision.

II.

An appellate court reviews the grant of summary judgment using the same standard employed by the circuit court. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). Summary judgment is proper where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). "'Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below.'" *Grier v. Amisub of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (quoting *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)).

III.

The General Assembly has enacted a six-year statute of repose for medical malpractice actions. S.C. Code Ann. § 15-3-545. "A statute of repose creates a substantive right in those protected to be free from liability after a legislatively determined period of time." *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (citing *Langley v. Pierce*, 313 S.C. 401, 403–04, 438 S.E.2d 242, 243 (1993)). "A statute of repose is typically an *absolute time limit* beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." *Id*. (emphasis added) (citing *Langley*, 313 S.C. at 404, 438 S.E.2d at 243). Thus, "'[s]tatutes of repose by their nature impose on some plaintiffs the hardship of having a claim extinguished before it is discovered, or perhaps before it even exists.'" *Id*. (quoting *Camacho v. Todd & Leiser Homes*, 706 N.W.2d 49, 54 n.6 (Minn. 2005)).

The question before us is whether Providence Hospital's claim for equitable indemnification is subject to the six-year statute of repose in section 15-3-545. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (quoting *Charleston Cnty. Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993)).

Section 15-3-545(A) provides:

> In any action . . . to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider . . . acting within the scope of his profession must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section.

The statute of repose applies to an action "to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation." Under any construction of the statute, the language must include the claim against Dr. Taillon to establish medical malpractice, which has never been determined. As the court of appeals noted:

> In order to prove it is entitled to equitable indemnification, Providence Hospital must show (1) [Dr.] Taillon was liable for causing Sharpe's damages, (2) it was exonerated from any liability for those damages, and (3) it suffered damages as a result of Sharpe's medical malpractice action which was eventually proven to be the fault of [Dr.] Taillon.

Columbia, 394 S.C. at 72, 713 S.E.2d at 641 (citation omitted). As the court of appeals correctly concluded, "[b]ecause Providence Hospital must establish [Dr.] Taillon's liability for Sharpe's damages in order to show it is entitled to equitable indemnification, we find Providence Hospital's action is an action to recover damages for injury to the person." *Id*. at 73, 713 S.E.2d at 641. Thus, Providence Hospital may not prevail on its equitable indemnification claim *unless* it proves that Dr. Taillon is liable to Sharpe for damages for injury to the person, which falls

squarely within the language of the statute of repose.[3] Under these circumstances, we believe the legislature intended section 15-3-545(A) to bar Providence Hospital's indemnity action.

The dissent attempts to minimize this essential element of Providence Hospital's claim, referring to it as "but one element" and that "proof of the underlying tortfeasor's liability is only one element that the hospital must prove." But it is an element that is unquestionably part of section 15-3-545(A) and therefore is controlled by the statute of repose.

While the dissent would construe Providence Hospital's claim for indemnification as beyond the reach of section 15-3-545, we observe that the General Assembly has limited the reach of the statute of repose by setting forth exceptions. Section 15-3-545(B) excludes from the operation of the statute of repose actions where a foreign object, such as a surgical instrument, is left in the "body or person of any one" and permits these actions to "be commenced within two years from date of discovery or when it reasonably ought to have been discovered." Section 15-3-545(C) excludes actions that arose "prior to June 10, 1977[,]" and section 15-3-545(D) contains a tolling provision for persons under the age of majority. If the General Assembly desires to expand those exceptions to include the situation presented here, that decision lies exclusively in the Legislative Branch.

Finally, Providence Hospital argues that its view of legislative intent concerning the medical malpractice statute of repose is supported by reference to the construction statute of repose,[4] which expressly includes a reference to indemnity actions. We disagree, for we view the language and structure of the medical malpractice and construction statutes of repose differently. The medical malpractice statute of repose expressly *excludes* several categories of claims from its reach, as noted above. S.C. Code Ann. § 15-3-545(B)–(D). Indemnity actions are not excluded. *Id.* In contrast, the construction statute of repose expressly defines what types of actions are *included*, listing nine discrete categories of actions. *Id*. § 15-3-640(1)–(9) (2013). Included among these are "action[s] for contribution or indemnification for damages sustained on account of an action described in this section." *Id*. § 15-3-640(6).

---

[3] We agree with the court of appeals that, in this context, there is no distinction between seeking settlement costs or damages for injury to the person, for both require proving Dr. Taillon's liability for Sharpe's damages.

[4] S.C. Code Ann. § 15-3-640 (2013).

We agree with Providence Hospital that the language of the construction statute of repose demonstrates that the General Assembly *can* expressly include indemnity claims in a statute of repose, yet the General Assembly is free to structure a statute of repose as it sees fit. The medical malpractice statute of repose and the construction statute of repose are drafted in entirely different ways. The former includes broad and expansive language and then lists what claims *are not* included in the statute of repose, while the latter lists the types of claims that *are* included in the statute of repose. Because the General Assembly structured the medical malpractice statute of repose and the construction statute of repose in different ways, we do not believe Providence Hospital's syncretistic approach to statutory construction is an effective approach to discerning legislative intent.

In this case, Sharpe walked into Providence Hospital's emergency room over seventeen years ago. There was no allegation of medical malpractice against Dr. Taillon, much less any adjudication, within the statute of repose. Permitting Providence Hospital's indemnity claim to proceed at this juncture would "allow Providence Hospital to subject [Dr.] Taillon to liability for medical malpractice after the legislatively proscribed six-year statute of repose expired." *Columbia*, 394 S.C. at 75, 713 S.E.2d at 642. Such a result would be fundamentally at odds with the language and manifest purpose of the statute of repose.

IV.

We find that the medical malpractice statute of repose bars Providence Hospital's indemnity claim. We affirm.

AFFIRMED.

PLEICONES and BEATTY, JJ., concur. TOAL, C.J., dissenting in a separate opinion in which HEARN, J., concurs.

CHIEF JUSTICE TOAL: I respectfully dissent because I read section 15-3-545(A) more narrowly than the majority. In my view, the plain language of section 15-3-545(A) applies to all lawsuits arising from the underlying tortious conduct of the medical professional. However, indemnification actions such as this one are legally distinct from the underlying tort. Accordingly, it is my opinion that the statute does not apply to indemnification actions.

I. Underlying Facts and the Majority's Holding

This appeal is predicated upon two related cases. The first case involves the Sharpes' medical malpractice and loss of consortium claims against Dr. Hayes and Providence Hospital for a misdiagnosis made by Drs. Hayes and Taillon seventeen years ago. Providence Hospital settled the first case with the Sharpes ten years ago.

The second case, which is the subject of this appeal, is an equitable indemnification action brought by Providence Hospital against Dr. Taillon and his medical malpractice insurer, who were not named as defendants in the first case. The hospital filed its suit seven years ago.[5]

South Carolina's medical malpractice statute of repose provides, in relevant part:

> [A]ny action . . . to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider . . . acting within the scope of his profession must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from the date of occurrence, or as tolled by this section [because the person is under the age of majority].

---

[5] In other words, Providence Hospital filed its suit three years after its indemnity claim accrued, upon the payment of its settlement with the Sharpes. *Cf. First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 444, 445 S.E.2d 446, 449 (1994) ("As to indemnity, the statute of limitations generally runs from the time judgment is entered against the defendant.").

S.C. Code Ann. § 15-3-545(A), (D).

The majority affirms the lower courts' rulings that Providence Hospital's indemnity claim is time-barred. In doing so, the majority tacitly admits that the medical malpractice statute of repose does not define what constitutes an action "to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation." Then, without providing a statutory basis for its conclusion, the majority broadly interprets section 15-3-545 to encompass both claims for injury to the person *and* equitable indemnification. In doing so, it places great importance on the fact that Providence Hospital "may not prevail on its equitable indemnification claim *unless* it proves that Dr. Taillon is liable to Sharpe for damages for injury to the person."

I believe the majority errs in its interpretation of section 15-3-545 because it fails to recognize that proof of the underlying tortfeasor's liability is but one element in an equitable indemnification claim. Accordingly, I would not read the medical malpractice statute of repose to encompass indemnification claims.

II. Analysis

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.*

I am persuaded that the General Assembly did not intend section 15-3-545(A) to apply to indemnification actions based on: (1) the plain language of the statute; (2) the nature of an indemnification action; and (3) the broader statutory scheme encompassing section 15-3-545.

A. Nature of Indemnification Actions

A claim for equitable indemnification allows an innocent party to recover "the amount the innocent party must pay to a third party because of the at-fault party's breach of contract or negligence as well as attorney fees and costs which proximately result from the at-fault party's breach of contract or negligence." *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 307 S.C. 128, 130–31, 414 S.E.2d 118, 120 (1992). Thus, damages in an equitable indemnification suit include: (1) the damages caused due to the underlying tort; and (2) the innocent

party's attorneys' fees incurred in defending itself in the underlying tort suit. *See, e.g.*, *Rhett v. Gray*, 401 S.C. 478, 497–98, 736 S.E.2d 873, 883–84 (Ct. App. 2012) (quoting *Addy v. Bolton*, 257 S.C. 28, 33, 183 S.E.2d 708, 709–10 (1971)).[6]

Moreover, unlike the underlying tort claim, an equitable indemnification claim does not arise at the time the underlying tort plaintiff suffered the tortious damage. Rather, an indemnity claim "accrues at the time the indemnity claimant suffers loss or damage, that is, at the time of payment of the underlying claim, payment of a judgment thereon, or payment of a settlement thereof by the party seeking indemnity." Maurice T. Brunner, Annotation, *When Statute of Limitations Commences to Run Against Claim for Contribution or Indemnity Based on Tort*, 57 A.L.R.3d 867 (1974); *accord First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 444, 445 S.E.2d 446, 449 (1994).

Therefore, an indemnification action is separate and distinct from the underlying tort action, as the damages suffered by the parties involved in each suit are distinct, and the two causes of action accrue at different times. *See, e.g.*, *Canal Ins. Co. v. Leb. Ins. Agency, Inc.*, 504 F. Supp. 2d 113, 117 (W.D. Va. 2007) ("An indemnity claim does not seek recovery for any direct harm caused by the defendant to the plaintiff—it is clearly distinct from a direct cause of action."); *McDermott v. City of New York*, 406 N.E.2d 460, 462–63 (N.Y. 1980) ("[T]he indemnity claim is a separate substantive cause of action, independent of the underlying wrong . . . ."); *Cent. Wash. Refrigeration, Inc. v. Barbee*, 946 P.2d 760, 764 (Wash. 1997) ("Indemnity actions are distinct, separate causes of action from the underlying wrong and are governed by separate statutes of limitations."); Brunner, *supra* ("The cause of action for indemnity of one whose liability for a tort is secondary or constructive, against one whose liability for the tort is primary, is separate and distinct from the injured person's cause of action for the tort, and is generally recognized not to be a mere species of subrogation to the tort cause of action.").[7]

---

[6] In contrast, in the underlying tort suit, the injured party may only recover damages caused by the tort itself, and may not recover attorneys' fees.

[7] I note that the majority cites no authority beyond the court of appeals' opinion in this case for its conclusion that "Providence Hospital's [equitable indemnification] action is an action to recover damages for injury to the person." (Citation omitted) (quotation marks omitted). While I agree that the indemnification action is closely

The majority essentially equates Providence Hospital's indemnity action with the underlying tort action. However, proof of the underlying tortfeasor's liability is only one element that the hospital must prove to prevail on its equitable indemnification claim. That element is not, *by itself*, "an action . . . to recover damages for injury to the person," but instead is a component of an action to reimburse an innocent party who has paid damages on behalf of the underlying tortfeasor. Therefore, I disagree with the majority that the medical malpractice statute of repose applies so broadly as to encompass any action even tangentially related to "an action . . . to recover damages for injury to the person."

Further, under the majority's reading of section 15-3-545, an innocent party named in the underlying tort suit would rarely be able to bring an equitable indemnification claim. For example, if "a lawsuit is filed on the eve of the running of the statute of repose, but is not resolved until after the statute has run, the [indemnification] action will be barred *before the right has even accrued*." *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 144, 628 S.E.2d 38, 42 (2006) (emphasis added). I believe this is an unduly harsh consequence of the majority's interpretation of section 15-3-545, and one that was not intended by the General Assembly.

The majority's holding represents a fundamental misunderstanding of the nature of indemnification actions which I fear will have far-reaching effects on the ability to seek indemnification. Specifically, it imposes several new "requirements" to bring timely indemnification actions.

For example, the majority states that the underlying action must establish the fault of the underlying tortfeasor, whether or not he is a named party in that action. Indeed, the majority goes so far as to require, prior to the running of the statute of repose, either an allegation of medical malpractice against the underlying tortfeasor, *or possibly even an adjudication by the innocent party against the tortfeasor*.

I find this new "requirement" to bring timely indemnification actions patently at odds with the doctrines of standing and ripeness. As explained, *supra*, the innocent party's right to sue for indemnification does not accrue until it actually

---

entwined with the merits of the underlying tort action, there is no authority in the law of this State for the conclusion that the two causes of action are wholly interdependent.

sustains damages through either paying an injured party on behalf of the tortfeasor, or incurring attorneys' fees from defending itself in the underlying tort suit. Therefore, there is no justiciable case or controversy until the conclusion of the underlying tort action, regardless of its outcome. *See, e.g.*, *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 227–28, 467 S.E.2d 913, 917–18 (1996) ("A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute . . . . It is not enough that a threat of *possible* injury currently exists; the mere threat of a potential injury is too contingent or remote to support present adjudication." (citations omitted) (internal quotation marks omitted)).

The plain language of section 15-3-545(A) explicitly applies to "damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider . . . acting within the scope of his profession." In contrast, an indemnification claim seeks to recover for the loss of a judgment or settlement an innocent third party is obligated to pay, rather than for medical injury.

Here, Providence Hospital's damages arose due to its vicarious liability for a third-party tortfeasor's misdiagnosis. Thus, Providence Hospital's equitable indemnification suit does not directly seek to recover for any harm caused by the tort defendant to the underlying tort plaintiff. Accordingly, it is my view that section 15-3-545 does not bar Providence Hospital's equitable indemnification claim.[8]

---

[8] Medical malpractice statutes of repose vary from state to state. However, I find persuasive the reasoning of the Missouri Supreme Court in considering a statute similar to section 15-3-545. The Missouri Supreme Court found that Missouri's medical malpractice statute of repose "encompasses those actions where the consumer of health services seeks damages for injuries resulting from some improper, wrongful or careless acts or omissions on the part of the healthcare provider in the delivery of health care to the consumer." *Rowland v. Skaggs Cos.*, 666 S.W.2d 770, 772–73 (Mo. 1984). Therefore, the court concluded that there is no reason to subject a contribution action to the medical malpractice statute of repose because "an action for contribution is neither grounded in tort nor reasonably related to the types of actions enumerated" in the statute of repose; rather, a contribution action "accrues from the existence of a joint obligation on a

B. Statutory Scheme

Additionally, I believe other provisions from the surrounding statutory scheme evidence the General Assembly's intent to exclude indemnification actions from the reach of section 15-3-545.

"[S]tatutes are to be construed with reference to the whole system of law of which they form a part." *Roche v. Young Bros., Inc. of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). The medical malpractice statute of repose is part of Title 15, Chapter 3 of the South Carolina Code, which governs "Limitations of Civil Actions." Title 15, Chapter 3 likewise contains a statute of repose for improvements to real property, which provides in relevant part:

> No actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than eight years after substantial completion of the improvement. For purposes of this section an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:
>
> . . .
>
> (6) an action for contribution or indemnification for damages sustained on account of an action described in this section; . . .

See S.C. Code Ann. § 15-3-640 (2005 & Supp. 2013).

In my opinion, this section demonstrates that the General Assembly is capable of and will expressly include indemnification claims within a statute of repose when it so desires. The express inclusion of indemnification claims in section 15-3-640—and the absence of any mention of indemnity claims within section 15-3-545—indicates to me that the General Assembly did not intend to bring such claims within section 15-3-545. *See Berkeley Cnty. Sch. Dist. v. S.C. Dep't of Revenue*, 383 S.C. 334 n.15, 679 S.E.2d 913, 925 n.15 (2009) (considering related statutes as relevant because they indicate the "General Assembly knows how to" include a provision when it so desires); *Doe v. Brown*, 331 S.C. 491, 496, 489 S.E.2d 917, 920 (1997) (considering related statutes and concluding that "[t]he

---

liability shared by tortfeasors." *Id.* at 773. I would adopt this reasoning with respect to our own medical malpractice statute of repose.

clear and unambiguous language of [] these statutes indicates that when the Legislature intended to exclude 'criminal parents' from the adoption process, it did so"); 82 C.J.S. *Statutes* § 478 (2014) ("[W]here a statute contains a given provision, the omission of such a provision from a similar statute concerning a related subject is significant to show that a different intention has existed.").

Conclusion

The majority makes a somewhat emotional argument that Providence Hospital should not prevail because the underlying tortious conduct by Drs. Hayes and Taillon occurred "over seventeen years ago." However, the equitable indemnification action at issue here began only three years after Providence Hospital's indemnity claim accrued, upon its settlement with the Sharpes.

For the foregoing reasons, I would hold that section 15-3-545 does not bar an indemnity claim that arises from an underlying medical malpractice action and which commences more than six years after the date of the occurrence. Therefore, I would reverse and remand for further proceedings.

HEARN, J., concurs.