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KANSAS BOARD FOR
DISCIPLINE OF ATTORNEYS

IN THE SUPREME COURT OF KANSAS
BEFORE
THE KANSAS BOARD FOR DISCIPLINE OF ATTORNEYS

IN THE MATTER OF	)	Case Nos. DA13,907, DA13,909,
	)	DA13,912, DA13,913, DA13,914,
	)	DA13,921, DA13,922, DA13,924,
DEVUE G. TREADWELL,	)	DA13,945, DA13,949, DA13,950,
RESPONDENT.	)	DA13,951, DA13,957, DA13,967,
_____	)	DA13,968, DA13,991, and DA13,992

FINAL HEARING REPORT

1. DeVoe G. Treadwell (hereinafter "the respondent") is an attorney at law, Kansas attorney registration number 18740. His last registration address with the Office of Judicial Administration is in Wichita, Kansas. The Kansas Supreme Court admitted the respondent to the practice of law in the State of Kansas on September 25, 1998.

2. John D. Gatz, Chairman of the Kansas Board for Discipline of Attorneys, appointed a hearing panel to hear the instant disciplinary case. The hearing panel consisted of John M. Duma, presiding officer; Shaye L. Downing; and Stanley E. Oyler, at-large member. The hearing panel scheduled a hearing on the formal complaint for October 25 and 26, 2023.

Procedural History

3. On August 24, 2023, Gayle B. Larkin, disciplinary administrator, filed a formal complaint in the instant disciplinary case. Ms. Larkin also filed a formal complaint that was corrected by interlineation that same day. Further, Ms. Larkin filed a notice of hearing confirming that a hearing on the formal complaint was scheduled for October 25 and 26, 2023.

4. The respondent failed to file an answer to the formal complaint.

5. On September 25, 2023, the hearing panel conducted a prehearing conference by Zoom. The disciplinary administrator appeared through Ms. Larkin and Julia A. Hart, deputy disciplinary administrator. The respondent did not appear.

6. The hearing panel confirmed that the formal hearing would be held October 25 and 26, 2023, at 9:30 a.m. by Zoom. Ms. Larkin informed the panel of the measures that were taken to provide the respondent notice of this disciplinary proceeding. The hearing panel concluded that the respondent had notice of this proceeding, including the prehearing conference.

7. During the prehearing conference, the hearing panel admitted disciplinary administrator's exhibits 1 through 91.

8. The hearing panel filed a prehearing conference order on September 27, 2023.

9. On October 25, 2023, the hearing panel conducted the hearing on the formal complaint. The disciplinary administrator appeared through Ms. Larkin and Ms. Hart. The respondent failed to appear. The presentation of evidence and argument concluded on October 25, 2023.

10. During the formal hearing, Ms. Larkin moved to amend paragraph 28 of the formal complaint to reflect the allegation the respondent violated KRPC 1.15 regarding Count II, the DA13,909 matter. Ms. Larkin stated that the allegations in paragraph 21 support this alleged rule violation. The hearing panel granted the motion to amend the formal complaint. The hearing panel also granted Ms. Larkin's motion to amend the formal complaint by interlineation to reflect the formal complaint was dated August 24, 2023.

11. Ms. Larkin also stated that the disciplinary administrator declined to move forward on its allegation the respondent violated KRPC 8.4(c) in Count II, because the same facts support the allegation the respondent violated KRPC 8.1(a). Further, in Counts 1 and 4 through 17, the disciplinary administrator declined to move forward on its allegation the respondent violated Supreme Court Rule 210 because the same facts support the allegation the respondent violated KRPC 8.1(b) in those matters.

12. Prior to the formal hearing, the hearing panel had admitted disciplinary administrator's exhibits 1 through 91. During the hearing, the hearing panel admitted exhibits 92 through 94, offered by the disciplinary administrator.

Findings of Fact

13. The hearing panel finds the following facts by clear and convincing evidence:

14. In fall 2022, the respondent stopped appearing at scheduled court appearance and generally ceased communicating with his clients. On January 12, 2023, Sedgwick County District Court Chief Judge Jeffrey E. Goering entered Administrative Order 23-01 appointing attorneys Brent I. Anderson and Cristy L. Anderson under Supreme Court Rule 235. Mr. and Ms. Anderson were to review and inventory the respondent's client files and trust account and take such action necessary to protect the interests of the respondent and his clients. (DA Ex. 1.)

15. Chief Judge Goering entered two subsequent orders, Administrative Orders 23-02 and 23-03, supplementing and expanding on the authority granted under the initial order, on January 19 and January 23, 2023. (DA Exs. 2 and 3.)

16. The Supreme Court temporarily suspended the respondent's license to practice law on February 17, 2023, pursuant to Supreme Court Rule 213. (DA Ex. 5.)

Count I - DA13,907

17. B.N., the complainant in DA13,907, hired the respondent to represent her in a Wichita Municipal Court criminal case. B.N. paid the respondent \$1,100.00 to represent her. (DA Ex. 10.)

18. Handwritten notes on B.N.'s representation agreement showed the fees B.N. paid the respondent were not deposited into the respondent's trust account. (DA Ex. 92, BS 0331.) Review of all of the representation agreements the respondent had with his clients shows that the respondent typically specified in his handwritten notes in the upper right hand corner of the agreements when he deposited funds into his trust account. (DA Ex. 92.)

19. Further, attorney trust account auditor Jeffry D. Baker testified that based on his review of the respondent's law practice bank records, when the respondent received \$1,000.00 or less, the respondent typically placed those funds into his operating account as opposed to his attorney trust account.

20. The respondent appeared at B.N.'s July 5, 2022, and August 12, 2022, hearings in Wichita Municipal Court. The respondent told B.N. that her next court hearing would be on October 10, 2022.

21. In September, B.N. called the respondent's office to check if everything was okay with her court case. B.N. was not able to get ahold of the respondent. Instead, B.N.

spoke with the respondent's assistant, Courtney. Courtney told B.N. that the respondent would be out of the office until October 15, 2022.

22. B.N. told Courtney that B.N.'s next court date was October 10, 2022. Courtney told B.N. that Courtney would file the necessary documents to get the October 10, 2022, court date rescheduled and would let B.N. know the new court date.

23. B.N. did not attend the October 10, 2022, court hearing in her case because she believed the respondent's assistant had rescheduled the court date.

24. B.N. tried to reach the respondent by calling his office approximately 17 times, but no one answered and the respondent's voicemail inbox was full and would not accept new messages. B.N. then went to the respondent's office and found the door was locked, the lights were off, and there were notes from UPS and others saying they were trying to reach the respondent. B.N. never heard from the respondent after August 2022.

25. B.N. called the Wichita prosecutor's office and learned that there was a warrant issued for B.N.'s arrest. The prosecutor informed B.N. that if B.N. was pulled over for any reason she would be arrested on the warrant and taken to jail.

26. B.N. hired another lawyer to represent her in the Wichita Municipal Court matter. The new lawyer was able to address the warrant and have it recalled. B.N. testified her case is now resolved with the help of her new lawyer.

27. B.N. testified that she emailed the disciplinary administrator's office primarily because she was concerned about the respondent and hoped someone would check on the respondent's welfare. (DA Ex. 10.)

28. The respondent never refunded B.N. her \$1,100.00 payment. B.N. testified she had recently filed a claim with the Kansas Fund for Client Protection under Supreme Court Rule 241, which is still pending.

Count II - DA13,909

29. Attorney James Pratt filed the complaint docketed as DA13,909. Mr. Pratt represented the respondent's former client, T.J., pro bono in a Sedgwick County District Court criminal probation revocation proceeding after the respondent ceased communicating with T.J. (DA Ex. 15.)

30. T.J. paid the respondent a total of \$3,000.00 to represent him. According to handwritten notes on the respondent's representation agreement with T.J., the respondent deposited \$2,500.00 of T.J.'s payment into his attorney trust account. The remaining \$500.00 was kept by the respondent. (DA Ex. 92, BS 0332.)

31. The respondent entered his appearance in T.J.'s case on June 29, 2022. (DA Ex. 17, BS 0072.)

32. Mr. Pratt testified that through his representation of T.J., he learned the respondent told T.J. that T.J. should admit the probation violation allegations, because contesting the allegations would upset the presiding judge who the respondent claimed was in a bad mood. The respondent advised T.J. that after T.J. admitted the allegations, the respondent would file a motion to reconsider the sentence imposed upon probation revocation.

33. T.J.'s probation was revoked, and the district court sentenced T.J. to 18 months in custody. On August 4, 2022, the respondent filed a motion asking the court to reconsider its ruling in T.J.'s case. The motion consisted of two sentences and contained only a simple request to reconsider without further allegations or argument. (DA Ex. 19.)

34. The court's register of activity ("ROA") shows that the motion to reconsider was scheduled for hearing on October 7, 2022. The ROA shows the following entry on October 7, 2022: "20220804 Motion to Reconsider (DEVOE TREADWELL) Hearing result for Criminal Motion held on 10/07/2022 10:00 AM: Continued by Defendant – No Record Taken Pre Converted Hearing Type: Criminal Motion." (DA Ex. 17, BS 0076.)

35. The ROA shows a new hearing was scheduled for the motion to reconsider on October 28, 2022. The ROA shows the following entry on October 28, 2022: "20220804 Motion to Reconsider (DEVOE TREADWELL) Hearing result for Criminal Motion held on

10/28/2022 10:00 AM: Continued by Defendant – No Record Taken Pre Converted
Hearing Type: Criminal Motion.” (DA Ex. 17, BS 0077.)

36. The judge gave T.J. more time to hire new counsel since the respondent did not appear on October 7 or October 28, 2022. Mr. Pratt was hired to represent T.J. on the motion to reconsider. (DA Ex. 21.)

37. Mr. Pratt was aware of Kansas case law providing that a district court loses jurisdiction to reconsider a felony sentence after the sentence is imposed. Mr. Pratt cited *State v. Albright*, 316 Kan. 482, 518 P.3d 415 (2022), as recent case law reaffirming this holding.

38. Mr. Pratt appeared at the hearing on the motion to reconsider filed by the respondent. The district court ultimately denied the motion to reconsider based on lack of jurisdiction. (DA Ex. 20.)

39. The respondent provided a response to Mr. Pratt’s complaint to the disciplinary administrator’s office in a letter dated November 19, 2022. The response stated in part:

Subsequently and after client discussion, it was decided that I would file a Motion to Reconsider which was filed on August 4th, 2022. The hearing date was scheduled for the 7th of October, 2022. The matter was taken off docket by the Court because I was unable to attend the prior hearing which was scheduled. I was out of the office for the months of September and October for business outside of the United States.

(DA Ex. 16.)

40. The respondent never refunded T.J.'s payment. After Mr. and Ms. Anderson were appointed under Rule 235 to protect the respondent's clients' interests, they refunded T.J. \$2,500.00 from the respondent's trust account. (DA Ex. 7.)

Count III - DA13,912

41. J.D., the complainant in DA13,912, hired the respondent to represent him in a Sedgwick County District Court criminal case. J.D. had been arrested and hired the respondent before criminal charges were filed against J.D. (DA Ex. 22.)

42. J.D. paid the respondent \$500.00 on June 3, 2022, and another \$1,000.00 on June 27, 2022. Handwritten notes on J.D.'s representation agreement showed these fees were not deposited into the respondent's trust account. The \$1,000.00 initially deposited into the respondent's operating account was later transferred to the respondent's trust account. (DA Ex. 92, BS 0333.)

43. After criminal charges were filed against J.D., J.D. tried to reach the respondent by email and phone and received no response. J.D. went to the respondent's office and saw that the lights were off and the door was locked in the middle of a business

day. J.D. observed sticky notes on the office door from other clients asking the respondent to call them and asking where the respondent was.

44. On November 7, 2022, J.D. appeared in court for his case. The respondent was supposed to appear as well but did not. The judge told J.D. that the respondent could not be found and directed J.D. to the Wichita Bar Association for assistance. The judge also suggested that J.D. hire another lawyer. J.D. accepted a court-appointed lawyer. After this appearance in court, J.D. never heard from the respondent again. (DA Ex. 24.)

45. On January 30, 2023, the respondent wrote a letter to the disciplinary administrator's office stating that the respondent provided a refund to J.D. (DA Ex. 23.)

46. Unaware that the respondent had already refunded J.D. \$1,000.00, Mr. and Ms. Anderson paid J.D. \$1,000.00 from the respondent's trust account. Once the overpayment was discovered, J.D. returned the \$1,000.00 overpayment to Mr. and Ms. Anderson to put back into the account.

Count IV - DA13,913

47. C.A. hired the respondent in May 2022 to represent him in a Harvey County District Court criminal case. C.A. paid the respondent \$3,800.00.

48. The handwritten notes on C.A.'s representation agreement indicate that the respondent deposited \$2,500.00 of C.A.'s payments into his attorney trust account. The

notes further indicate that the remaining \$1,300.00 was not deposited into his trust account. (DA Ex. 92, BS 0334.)

49. The respondent entered his appearance on behalf of C.A. in C.A.'s case on May 10, 2022. (DA Ex. 28.)

50. C.A. entered a guilty plea, and the matter was set for sentencing on August 30, 2022.

51. DA13,913 was docketed based on a report from Judge Marilyn M. Wilder. Judge Wilder reported that on August 29, 2022, the respondent's office emailed a request for continuance of the sentencing hearing because the respondent would be out of the office until October. (DA Ex. 26.)

52. The court rescheduled the sentencing hearing for October 13, 2022, which was confirmed with the respondent's office. (DA Ex. 26.)

53. On October 13, 2022, C.A. appeared for the sentencing hearing, but the respondent did not appear. C.A. informed the court he had tried to contact the respondent but had been unable to reach him and C.A. did not know why his attorney was not present for the hearing. The court rescheduled the sentencing hearing for November 9, 2022. (DA Exs. 26 and 27.)

54. On November 9, 2022, C.A. again appeared but the respondent did not appear. C.A. told the court he made numerous attempts to reach the respondent and had

stopped by the respondent's office several times, noticing several UPS stickers on the door. C.A. proceeded to sentencing without an attorney present. (DA Ex. 26.)

55. The respondent never refunded C.A.'s payment. After Mr. and Ms. Anderson were appointed under Rule 235 to protect the respondent's clients' interests, they refunded C.A. \$2,500.00 from the respondent's trust account. (DA Ex. 7.)

Count V - DA13,914

56. J.H., the complainant in DA13,914, hired the respondent to represent her in a Colwich Municipal Court criminal case. (DA Ex. 29.)

57. The handwritten notes on J.H.'s representation agreement indicate that the respondent deposited \$2,000.00 of J.H.'s payments into his attorney trust account and that \$1,000.00 was kept by the respondent and not deposited into his trust account. (DA Ex. 92, BS 0335.)

58. The respondent entered his appearance in J.H.'s case on August 16, 2022. (DA Ex. 32.)

59. The respondent told J.H. he would request a continuance in J.H.'s case until December when J.H. would be back in the area on break from school. (DA Ex. 29, BS 0109.)

60. The respondent did not obtain a continuance and also failed to appear at the Colwich Municipal Court for a hearing held on October 3, 2022. (DA Ex. 30.) J.H. also

did not appear because the respondent had told her the hearing would be continued. (DA Ex. 29.)

61. The court issued a Failure to Appear 30 Day notice to J.H. on October 4, 2022. (DA Ex. 33.)

62. The court's bench notes show the court tried to call the respondent's office several times but the mailbox was full. The bench notes further showed that J.H. called the court saying that she had hired the respondent but was unable to contact him. J.H. told the court that the respondent did not respond to her calls, his office was closed, and there were notes taped to his office door. The bench notes show that J.H. was advised to contact the disciplinary administrator's office and that a continuance to January 3, 2023, was granted. (DA Ex. 30.)

63. J.H. eventually hired new counsel and entered into a diversion agreement. (DA Exs. 30 and 31.)

64. J.H. was refunded \$3,000.00 directly from the respondent. (DA Ex. 7.)

Count VI - DA13,921

65. Judge Phyllis K. Webster reported to the disciplinary administrator's office that the respondent had failed to appear in approximately 10 criminal case hearings without calling or explaining in Butler County District Court or Greenwood County District Court between August 22, 2022, and November 21, 2022. (DA Ex. 35.)

66. Judge Webster stated that the respondent contacted her during the week of November 14-18, 2022, and stated that he had been out of the country and would have his legal assistant reschedule all of the matters in Butler and Greenwood Counties that the respondent had failed to appear in. However, on November 21, 2022, and December 2, 2022, the respondent again failed to appear in scheduled matters, leaving his clients without representation. (DA Ex. 35-50.)

67. The respondent had not contacted the court, his clients, or the prosecutor in the cases. The clients informed the court they were unable to reach the respondent to prepare for their hearings. (DA Exs. 35-50.)

68. Judge Webster stated that the respondent failed to appear in hearings in at least six different cases in her court, including the K.M. matter discussed further below in DA13,967 (Count XIV), and the R.M. matter discussed further below in DA13,968 (Count XV). (DA Ex. 35, BS 0126-0129.)

69. The record contains the Butler and Greenwood County District Court ROAs and orders showing the respondent failed to appear in at least 12 hearings in four separate criminal cases, including:

- a. October 7, December 2, 2022, and January 20, 2023, hearings in Greenwood County District Court Case 2022-CR-79 on behalf of J.W.J.;
- b. August 22, October 17, and November 30, 2022, hearings in Butler County District Court Case 2022-CR-199 on behalf of J.L.C.;
- c. October 3, October 17, and November 21, 2022, hearings in Butler County District Court Case 2022-CR-227 on behalf of L.C.M.H.; and
- d. August 22, October 17, 2022, and January 25, 2023, hearings in Butler County District Court Case 2022-TR-884 on behalf of P.K.

(DA Exs. 37-39, 41-45, 47-48, and 50.)

70. Other exhibits show emails from the court and other documents indicating the respondent missed other hearings in two other criminal matters – the K.M. matter discussed further below in DA13,967 (Count XIV) and the R.M. matter in DA13,968 (Count XV). (DA Exs. 35-50.)

71. Of these matters, the respondent handled payments from some of these clients as follows:

- a. J.W.J. paid the respondent \$1,750.00, which was not deposited into the respondent's attorney trust account. (DA Ex. 92, BS 0336.)
- b. P.K. paid the respondent \$500.00, which was not deposited into the respondent's attorney trust account. (DA Ex. 92, BS 0337.)
- c. The manner in which the respondent handled K.M. and R.M.'s payments is discussed in Counts XIV and XV below.

Count VII - DA13,922

72. P.C., the complainant in DA13,922, hired the respondent to represent him in a Butler County District Court traffic case. (DA Ex. 51.)

73. The handwritten notes on P.C.'s representation agreement indicate that the respondent deposited \$1,500.00 of P.C.'s payments into his attorney trust account. Another \$1,500.00 payment from P.C. was not deposited into the respondent's trust account. (DA Ex. 92, BS 0338.)

74. After entering his appearance in P.C.'s case and making several appearances in court, the respondent failed to appear for a hearing on October 11, 2022. P.C. also did not appear at this hearing. The court issued a bench warrant for P.C.'s arrest, and P.C. was arrested. (DA Exs. 51 and 53, BS 0177.) P.C. reported to the disciplinary administrator's

office that the respondent did not notify P.C. about the court hearing date. (DA Ex. 51, BS 0165.)

75. The respondent never refunded P.C.'s payment. After Mr. and Ms. Anderson were appointed under Rule 235 to protect the respondent's clients' interests, they refunded P.C. \$1,500.00 from the respondent's trust account. (DA Ex. 7.)

Count VIII - DA13,924

76. T.C. hired the respondent to represent him in a Sedgwick County District Court criminal case. (DA Ex. 92, BS 0339.)

77. The handwritten notes on T.C.'s representation agreement indicate that the respondent deposited \$4,000.00 of T.C.'s payments into his attorney trust account and that \$1,000.00 was not deposited into his trust account. (DA Ex. 92, BS 0339.)

78. The respondent entered his appearance on T.C.'s behalf in Sedgwick County District Court case number 21-CR-1849 on September 8, 2021. (DA Ex. 58.)

79. On December 8, 2022, Judge Seth L. Rundle reported to the disciplinary administrator's office that the respondent came in before November 28, 2022, and asked to reschedule the 21-CR-1849 matter, which the court set for November 28, 2022. Then, the respondent failed to appear on T.C.'s behalf on November 28, 2022. Further, Judge Rundle stated that his assistant was unable to reach the respondent. (DA Ex. 56.)

80. The respondent never refunded T.C.'s payment. After Mr. and Ms. Anderson were appointed under Rule 235 to protect the respondent's clients' interests, they refunded T.C. \$4,000.00 from the respondent's trust account. (DA Ex. 7.)

Count IX - DA13,945

81. J.C., the complainant in DA13,945, hired the respondent to represent him in a Wichita Municipal Court criminal case. (DA Ex. 59.) According to J.C.'s complaint, J.C. paid the respondent \$1,500.00 to represent him.

82. The respondent entered his appearance in J.C.'s case on June 27, 2022.

83. According to J.C.'s complaint, the respondent did not appear for court dates in the case, including the date the court set for a bench trial, November 28, 2022. J.C. ultimately signed a waiver of court appointed counsel and entered a plea in the case. (DA Exs. 59, 60, 62, and 63.)

84. J.C. did not hear from the respondent, with the exception of one November letter, after September 2022. (DA Ex. 59.)

85. J.C. requested a refund of the \$1,500.00 he paid the respondent in August 2022. (DA Ex. 59.) The respondent never refunded J.C.'s payment.

86. J.C. ultimately received \$1,500.00 from the Kansas Fund for Client protection under Supreme Court Rule 241. (DA Ex. 6.)

Count X - DA13,949

87. K.B., the complainant in DA13,949, hired the respondent to represent her in two Wichita Municipal Court criminal cases. There was also a third potential felony case that K.B. and the respondent discussed. (DA Ex. 64.)

88. The handwritten notes on K.B.'s representation agreement indicate that the respondent accepted \$1,000.00 from K.B. and did not deposit the funds into his trust account. (DA Ex. 92, BS 0340.)

89. According to K.B.'s complaint, she paid the respondent \$3,800.00, half in cash and half by credit card. (DA Ex. 64.)

90. The respondent entered his appearance in the 21-CM-2552 Wichita Municipal Court case on April 27, 2022. The respondent requested several continuances in this case, and the matter was ultimately scheduled for trial on September 27, 2022. The respondent did not appear. (DA Ex. 65.)

91. The trial was rescheduled for November 29, 2022. Neither the respondent nor K.B. appeared. A bench warrant was issued for K.B.'s arrest. The case was rescheduled for trial again to March 1, 2023, and again, neither the respondent nor K.B. appeared. (DA Ex. 65.)

92. The respondent never entered his appearance in the second Wichita Municipal Court case, 21-TM-4078. (DA Ex. 67.)

93. The respondent also never performed any services to K.B. in the Sedgwick County District Court felony case that was eventually filed. (DA Ex. 68.)

94. The respondent never refunded K.B.'s payment. K.B. ultimately received \$1,700.00 from the Kansas Fund for Client protection under Supreme Court Rule 241. (DA Ex. 6.)

Count XI - DA13,950

95. C.W., the complainant in DA13,950, hired the respondent to represent him in a Wichita Municipal Court criminal case. (DA Ex. 69.)

96. The handwritten notes on C.W.'s representation agreement indicate that the respondent accepted \$500.00 from C.W. on July 7, 2022, and did not deposit the funds into his trust account. (DA Ex. 92, BS 0341.) Further, with his complaint, C.W. included receipts from the respondent showing C.W. made the \$500.00 payment on July 7, 2022, and also a \$400.00 payment on August 4, 2022. (DA Ex. 69, BS 0253-0254.)

97. C.W. stated in his complaint that when he hired the respondent in July 2022, the respondent told C.W. that the respondent would give C.W. at least one day notice when it was time to go to court in his case. (DA Ex. 69.)

98. The respondent entered his appearance in C.W.'s case on July 8, 2022. (DA Ex. 70.)

99. C.W. did not hear anything from the respondent for several months. On November 30, 2022, C.W. received a call from the respondent's office telling him to appear at court at 4:00 p.m. When C.W. arrived, he was told there was no court date and that there was a bench warrant for C.W.'s arrest for his failure to appear in court on October 19, 2022. (DA Exs. 69 and 70.)

100. C.W. hired new counsel to handle the case. The respondent never provided C.W. a refund.

Count XII - DA13,951

101. J.G., the complainant in DA13,951, hired the respondent to represent him in a Derby Municipal Court criminal case. (DA Ex. 72.) J.G.'s mother, M.M., testified during the formal hearing that she paid the respondent \$500.00 and that J.G. paid another \$500.00, for a total of \$1,000.00, for J.G.'s representation.

102. The handwritten notes on J.G.'s representation agreement indicate that J.G.'s payments were not placed in the respondent's trust account. (DA Ex. 92, BS 0342.)

103. M.M. testified that she also is the wife of R.M., who is the complainant in the DA13,968 matter (Count XV). After R.M. was arrested on a bench warrant for failure to appear at a hearing at which the respondent also failed to appear to represent him,

M.M. became concerned about whether the respondent was properly handling her son's case.

104. M.M. reached out to her son, J.G. and asked him to check with the Derby Municipal Court about his next court date. J.G. was able to contact the court and have his next court date rescheduled and avoid a warrant being issued.

105. After the respondent appeared for R.M.'s court date following R.M.'s arrest on a bench warrant for failure to appear as described in Count XV below, the respondent told M.M. and R.M. that he would be in touch later the following week. However, the family never heard from the respondent.

106. J.G. did not have enough funds to hire a new lawyer. Ultimately, J.G. entered into a diversion agreement in his case. M.M. testified that J.G. has struggled to navigate the diversion process on his own.

107. M.M. was active in hiring the respondent and entrusted him with her family's legal matters, and she felt the respondent completely let them down. She testified that the respondent's conduct left her husband and son in a worse position than they were in before they hired the respondent. M.M. testified that the respondent's conduct in R.M.'s and J.G.'s criminal cases caused her to lose faith in attorneys in general.

108. The respondent never refunded J.G.'s payment. J.G. later received \$1,000.00 from the Kansas Fund for Client protection under Supreme Court Rule 241. (DA Ex. 6.)

Count XIII - DA13,957

109. S.S., the complainant in DA13,957, hired the respondent to represent him in a Sedgwick County District Court traffic case. (DA Ex. 75.)

110. The handwritten notes on S.S.'s representation agreement indicate that the respondent accepted \$1,000.00 from S.S. on June 30, 2022, and did not deposit the funds into his trust account. (DA Ex. 92, BS 0343.) Further, with his complaint, S.S. included a receipt from the respondent showing S.S. made the \$1,000.00 payment on June 30, 2022. (DA Ex. 75, BS 0276.)

111. The respondent never entered his appearance in S.S.'s case. (DA Ex. 76.)

112. According to S.S., in September 2022, the respondent did not appear at S.S.'s first court appearance. On September 8, 2022, S.S. met with the respondent at his office, where the respondent provided no reason for not appearing.

113. Later, S.S. reached out to the respondent many times by phone and never heard from the respondent. S.S. also went to the respondent's office multiple times, finding it closed and the door locked. (DA Ex. 75.)

114. Eventually, the court appointed another attorney to represent S.S. in his traffic case. (DA Ex. 76.)

115. The respondent never refunded S.S.'s payment. S.S. later received \$1,000.00 from the Kansas Fund for Client protection under Supreme Court Rule 241. (DA Ex. 6.)

Count XIV - DA13,967

116. K.M., the complainant in DA13,967, hired the respondent to represent him in a Butler County District Court criminal case. (DA Ex. 77.)

117. The handwritten notes on K.M.'s representation agreement indicate that the respondent accepted \$1,000.00 from K.M. and possibly another amount that is not readable because the handwriting is cut off. (DA Ex. 92, BS 0344.)

118. According to K.M.'s complaint, he paid the respondent \$10,000.00 to represent him. (DA Ex. 77.)

119. The respondent entered his appearance in K.M.'s case on August 5, 2022. (DA Ex. 80.)

120. K.M. states in his complaint that the respondent never contacted K.M. after their initial meeting on August 3, 2022. On September 9, 2022, K.M. called the

respondent's office, and the respondent's assistant told K.M. that the case was continued. (DA Ex. 77.)

121. The respondent failed to appear at a hearing in K.M.'s case on September 12, 2022. (DA Ex. 79.) K.M. was arrested and taken into custody when the respondent failed to appear at K.M.'s court hearing. (DA Ex. 77.)

122. K.M. received no contact from the respondent's office before mid-November, when K.M. was arrested on a bench warrant for missing a court appearance. (DA Exs. 77 and 81.)

123. K.M. then appeared in court on November 30, 2022, and the respondent was again not present. The bench note indicates that the court was aware of the respondent's being unreachable and continued the hearing. The bench note also indicates that K.M. may look into hiring new counsel. (DA Ex. 79.)

124. The respondent did not refund K.M.'s payment. After Mr. and Ms. Anderson were appointed under Rule 235 to protect the respondent's clients' interests, they refunded K.M. \$8,000.00 from the respondent's trust account. (DA Ex. 7.)

125. K.M. later received \$2,000.00 from the Kansas Fund for Client protection under Supreme Court Rule 241. (DA Ex. 6.)

Count XV - DA13,968

126. R.M., the complainant in DA13,968, was the respondent's client. R.M. hired the respondent to represent R.M. in a Butler County District Court criminal case. (DA Ex. 82.) R.M. paid the respondent \$3,000.00.

127. The respondent placed \$2,000.00 of the \$3,000.00 R.M. paid him into his attorney trust account. The respondent did not deposit the remaining \$1,000.00 into his trust account. (DA Ex. 92, BS0345.)

128. The respondent appeared on two occasions at court hearings in R.M.'s case, and then continued an August hearing to October 17, 2022. (DA Ex. 84.) R.M. testified that he was supposed to meet the respondent at the respondent's office for a Zoom hearing on October 17, 2022. When R.M. arrived at the office, the door was locked and covered with post-it notes from UPS and from other clients asking the respondent to contact them.

129. On October 17, 2022, the respondent failed to appear on behalf of R.M. The Butler County District Court issued a warrant for R.M.'s arrest. R.M. was arrested on the warrant for failure to appear at the October 17, 2022, hearing.

130. A new hearing was scheduled for November 18, 2022. The respondent appeared at that hearing and told R.M. that he would call R.M. the following week, but

never did. R.M. tried calling the respondent several times but received no response. R.M. eventually hired another lawyer to represent him.

131. The respondent did not refund R.M.'s payment. After Mr. and Ms. Anderson were appointed under Rule 235 to protect the respondent's clients' interests, they refunded R.M. \$2,000.00 from the respondent's trust account.

132. R.M. received \$1,000.00 from the Kansas Fund for Client protection under Supreme Court Rule 241. (DA Ex. 6.)

Count XVI - DA13,991

133. A.Y., the complainant in DA13,991, hired the respondent to represent him in a Cheney Municipal Court criminal case. (DA Ex. 86.)

134. The handwritten notes on A.Y.'s representation agreement indicate that the respondent accepted \$5,000.00 from A.Y., \$2,000.00 of which the respondent deposited into his trust account and \$3,000.00 of which was not deposited into the respondent's trust account. (DA Ex. 92, BS 0346.)

135. On May 9, 2022, the respondent entered his appearance in A.Y.'s case. (DA Ex. 88.)

136. The case was continued multiple times at the respondent's request. (DA Ex. 87.) On November 9, 2022, the Cheney Municipal Court Clerk sent a letter to the

respondent stating that the respondent and his client had failed to appear in court on October 19, 2022, and that if he and or A.Y. failed to appear on November 16, 2022, the court would issue a bench warrant for A.Y.'s arrest. (DA Ex. 89.)

137. A.Y. stated in his complaint that the respondent disappeared and A.Y. could not get ahold of him. (DA Ex. 86.)

138. The respondent did not refund A.Y.'s payment. After Mr. and Ms. Anderson were appointed under Rule 235 to protect the respondent's clients' interests, they refunded A.Y. \$2,000.00 from the respondent's trust account.

139. A.Y. received \$3,000.00 from the Kansas Fund for Client protection under Supreme Court Rule 241. (DA Ex. 6.)

Count XVII - DA13,992

140. M.S., the complainant in DA13,992, hired the respondent to represent him in a Derby Municipal Court criminal case. (DA Ex. 90.)

141. The handwritten notes on M.S.'s representation agreement indicate that the respondent accepted \$2,000.00 from M.S., which was initially deposited into the respondent's operating account. The respondent later transferred \$1,000.00 from his operating account to his trust account. (DA Ex. 92, BS 0347.)

142. In his complaint, M.S. stated he paid the respondent \$2,200.00. (DA Ex. 90.)

143. The respondent entered his appearance in M.S.'s case on July 12, 2022. (DA Ex. 91.)

144. Through his investigation, Mr. Schilling learned that the respondent told M.S. that the intersection where M.S. was pulled over had cameras. The respondent told M.S. that if the respondent reviewed the videos from those cameras and saw that M.S. did not make an illegal turn, the respondent could get the criminal charges dismissed. (See also DA Ex. 90.)

145. M.S. stated in his complaint that the respondent did not appear at M.S.'s hearings on October 13, 2022, or on January 12, 2023. (DA Ex. 90.)

146. Mr. Schilling testified that in November 2022, the respondent told M.S. that the respondent had obtained the video evidence they had discussed and that the respondent would give that evidence to the judge to get M.S.'s charges dropped.

147. Mr. Schilling learned that when M.S. appeared in court in March 2023, M.S. learned that no such camera existed at this intersection and the respondent had not provided the video evidence he claimed existed to the judge. (See also, DA Ex. 90.)

148. The respondent did not refund M.S.'s payment. After Mr. and Ms. Anderson were appointed under Rule 235 to protect the respondent's clients' interests, they refunded M.S. \$1,000.00 from the respondent's trust account.

149. M.S. received \$1,200.00 from the Kansas Fund for Client protection under Supreme Court Rule 241. (DA Ex. 6.)

Rule 235 Order and Trust Account Management

150. Attorney Stacy L. Ortega is the Wichita Service to the Bar Committee Chair. The Wichita Service to the Bar Committee works to assist clients who have lost their attorney due to disappearance, disability, death, or other reason. The Committee tries to help those clients transition to new attorneys, acts as a liaison with the courts to obtain continuances, and assists lawyers if they need help wrapping up their law practice.

151. The Committee started hearing from judges in October 2022 that the respondent was not appearing in court at scheduled hearings. The Committee then tried to contact the respondent without success.

152. In December 2022, the Committee started to receive complaints from the respondent's clients. Ms. Ortega sent her office runner to the respondent's office to try to make contact with the respondent and discovered that the respondent's clients had been leaving sticky notes on the respondent's office door asking the respondent to contact them.

153. The office runner took a photo of the sticky notes, and Ms. Ortega got in touch with several of the respondent's clients. Ms. Ortega told them what information

Ms. Ortega knew about the respondent's circumstances and offered the Committee's services to act as a liaison with the court and help the clients find new lawyers.

154. The Committee received an increased number of phone calls in late December 2022 and early January 2023 after the local news aired a story about the respondent's disappearance.

155. Attorney Brent I. Anderson testified that in early January 2023, he and his wife Cristy L. Anderson, who is also an attorney, reached out to the respondent after they learned through news reports that the respondent had purportedly disappeared and abandoned his law practice. Mr. and Ms. Anderson knew the respondent through their nephew and were concerned for the respondent's wellbeing.

156. On January 10, 2023, the respondent responded to Ms. Anderson's text message, said that he did not want to practice law anymore, and asked Mr. and Ms. Anderson to take over his law practice.

157. Mr. and Ms. Anderson told the respondent they were not in a position to take over his law practice but agreed to meet with the respondent to see what they could do to help.

158. Mr. and Ms. Anderson met with the respondent on January 12, 2023, at the respondent's law office. The respondent told Mr. and Ms. Anderson he was done practicing law and needed someone to take over his cases. Mr. and Ms. Anderson agreed

to go through the respondent's files and calendar to see how they could help. The respondent left a key to the office with Mr. and Ms. Anderson and authorized them to look through his files to see what they could do.

159. Mr. Anderson testified that when he and Ms. Anderson met with the respondent, he was not his normal, friendly self, seemed out of sorts, and was very flushed and red in the face.

160. Ms. Ortega learned that Mr. and Ms. Anderson were assisting the respondent with his law practice and reached out to them to see how the Committee could help.

161. The respondent had a large number of pending matters that needed to be addressed. Mr. Anderson testified that there were over 200 open files in 14 to 15 different jurisdictions. The cases were mostly misdemeanor and traffic matters, although there were as many as 10 felony matters. Ms. Ortega testified that the Committee and Mr. and Ms. Anderson did a lot of triage work to mitigate potential damage to both the respondent and his clients. Mr. Anderson said that their first step was to figure out what the most pressing matters were and which matters had hearings coming up the next day, a Friday, and the following week. There were approximately 20 hearings scheduled for the respondent's clients the following week. Mr. and Ms. Anderson contacted those

courts to get the matters continued and to let those jurisdictions know what was going on.

162. On January 12, 2023, Sedgwick County District Court Chief Judge Jeffrey E. Goering issued Administrative Order 23-01 appointing Mr. and Ms. Anderson to perform the duties under Supreme Court Rule 235 for the respondent's law practice. (DA Ex. 1.) Mr. and Ms. Anderson were authorized and asked to take control of the respondent's files, take control of the respondent's trust account, and minimize adverse impact to the respondent's clients. The order allowed Mr. and Ms. Anderson to utilize the assistance of others to perform these duties, including the Wichita Service to the Bar Committee.

163. Chief Judge Goering issued subsequent Administrative Orders to allow Mr. and Ms. Anderson the authorization they needed to perform certain tasks. (DA Exs. 2 and 3.) Mr. Anderson testified that, initially, the respondent was amenable to allowing Mr. and Ms. Anderson to take control over his trust account. However, two days after the January 12, 2023, meeting, the respondent said that he planned to keep control of his trust account. This made Mr. and Ms. Anderson nervous because there was over \$100,000.00 of client funds in the trust account and the respondent had been neglecting his clients' cases for several months. Sedgwick County Administrative Orders 23-02 and 23-03, issued by Chief Judge Goering, gave Mr. and Ms. Anderson complete control over

the respondent's client trust account and authorized them to distribute trust funds to protect the interests of the respondent's clients. (DA Exs. 2 and 3.)

164. Ms. Ortega organized some members of the Committee to go to the respondent's law office with Mr. and Ms. Anderson to organize and inventory the respondent's files. The group scanned 320 files that day. Ms. Ortega testified that each of the files had information sheets with contact information for the clients and handwritten notes about payments made. (See DA Ex. 92.) After the files were scanned, they were placed back into the file cabinets as they had been organized.

165. In mid-January, Ms. Ortega was put in contact with Jeffry Baker, attorney trust account auditor for the disciplinary administrator's office, to assist with sorting through the respondent's trust account. Ms. Ortega testified that she was not sure whether it could be done, because the respondent did not have a traditional trust account log. Mr. Anderson was able to get bank records for the respondent's trust account going back at least three years for Mr. Baker to review.

166. Mr. Baker testified that the respondent had no check register, no trust account reconciliations, no individual client ledgers, no billing statements, and no documents showing how much money was held in trust for each client. Further, most of the trust account checks were written to "cash" with no designation of which client for whom the funds were withdrawn. Mr. Baker utilized the representation agreement

sheets in each of the client files, which had handwritten notations of payments made, to match amounts deposited and withdrawn from the respondent's trust account in the bank records. (See DA Ex. 92.) Mr. Baker testified there were no agreements showing that any portions of flat fees were earned before conclusion of the representation.

167. Mr. and Ms. Anderson were able to return approximately \$87,000.00 to the respondent's clients from the trust account that had not been earned by the respondent. In total, 31 checks were issued by Mr. and Ms. Anderson, delivered to Ms. Ortega's office, and either picked up by the clients at Ms. Ortega's office or mailed to those clients. (DA Ex. 7.)

168. Mr. Anderson testified that the trust account is now closed. In addition to the amounts refunded to the respondent's clients, a \$1,000.00 check was written to the respondent for fees he had earned, and the balance was transferred to the Client Protection Fund pursuant to Supreme Court Rule 241(c)(4). Mr. Baker testified that approximately \$27,000.00 of the trust funds were unidentifiable.

169. Ms. Ortega estimated that she and her legal assistant spent at least 100 volunteer hours investigating the respondent's cases, processing refunds to clients, and speaking with the respondent's clients. Mr. Anderson did not know how many hours he and Ms. Anderson spent triaging, managing, and winding down the respondent's law practice, but he testified that it was many hours.

Disciplinary Investigation and Notice to Respondent

170. William T. Schilling, special investigator with the disciplinary administrator's office, testified that he investigated 9 of the 17 docketed complaints listed in the formal complaint. Mr. Schilling tried to contact the respondent by calling the home and office phone numbers the respondent provided to attorney registration. Mr. Schilling was unable to reach the respondent at his office phone number and was unable to leave a voicemail because the inbox was full. Mr. Schilling left a message for the respondent at his home phone number, leaving his name and phone number, reason for the call, and asking the respondent contact the disciplinary administrator's office. Mr. Schilling also said that there was concern for the respondent's wellbeing and advised the respondent contact KALAP if needed.

171. Mr. Schilling also tried to reach the respondent by email at his registered email address. Mr. Schilling received no response from the respondent.

172. Mr. Schilling testified that he mailed written correspondence to the respondent asking for a response to the complaints submitted to the disciplinary administrator's office referenced in Counts 4, 7, 8, 9, 13, 14, 15, 16, and 17 (DA13,913, DA13,922, DA13,924, DA13,945, DA13,957, DA13,967, DA13,968, DA13,991, and DA13,992). The respondent did not provide a written response in any of these matters.

173. Mr. Schilling learned that in the DA13,922 (Count 7) and DA13,967 (Count 14) matters, the respondent's clients were arrested on warrants issued due to the respondent's failure to appear on their behalf at scheduled court hearings.

174. Further, Mr. Schilling learned through his investigation that in the DA13,992 (Count 17) matter, that the respondent promised his client to submit video evidence that did not exist to the court to have the client's criminal charges dropped. The client later learned that no such evidence was provided to the court.

175. Crystalynn Ellis, director of investigations at the disciplinary administrator's office, investigated the docketed matters referenced in Counts 2, 9, 10, and 12 (DA13, 909, DA13,945, DA13,949, and DA13,951). Ms. Ellis testified that the respondent was asked to provide a written response to these four complaints within 20 days and never provided a written response with one exception, a response provided in November 2022.

176. Mitzi Dodds, administrative secretary for the disciplinary administrator's office, testified that she prepared mailings to the respondent notifying the respondent of various actions and hearing dates that have occurred in this disciplinary matter. When Ms. Dodds sent a communication to the respondent, she regularly reviewed the Disciplinary Administrator's Database, which she testified is updated daily with the most up-to-date Kansas attorney information from attorney registration at the Office of Judicial Administration.

177. Ms. Dodds testified that she mailed a copy of the formal complaint and notice of hearing, which notified the respondent that the formal hearing would be held October 25, 2023, via regular mail and certified mail to the office address that the respondent provided to attorney registration. Ms. Dodds testified that copies of the formal complaint and notice of hearing were also sent to the respondent's registered home address and registered email address. These documents were sent the day they were filed.

178. Ms. Dodds said that the formal complaint and notice of hearing mailed to the respondent's registered office address by certified mail was returned as undeliverable. Further, both the regular and certified mailings to the respondent's registered home address were returned to the disciplinary administrator's office.

179. Ms. Dodds utilized delivery confirmation for the emails sent to the respondent's registered email address. Ms. Dodds received confirmation that the email attaching the formal complaint and notice of hearing were delivered to the respondent's email address, but she did not receive confirmation that the email was read.

180. At some point after Chief Judge Goering issued the administrative orders transferring control over the respondent's trust account to Mr. and Ms. Anderson, Mr. Anderson got a call from the Intrust Bank legal department, where the trust account was held. The bank wanted to know how long the trust account would need to be kept open

because the respondent was coming into Intrust bank branches trying to get access to the trust funds. The bank was trying to close all bank accounts belonging to the respondent, because the bank tellers on more than one occasion reported they felt uneasy about the respondent coming in and demanding money out of the trust account.

181. Mr. Anderson reported to the disciplinary administrator's office that the respondent was behaving erratically and also that Mr. Anderson had found a loaded gun in the respondent's office desk drawer. Mr. Anderson asked the respondent to come take the gun away from his office while Mr. and Ms. Anderson worked on inventorying his files. Mr. Anderson testified that he reported this to the disciplinary administrator's office so that the individuals investigating the complaints against the respondent knew to exercise caution.

182. Ms. Dodds testified that in May 2023, the respondent showed up unannounced and without an appointment at the disciplinary administrator's office, adamant that the office provide him with a pleading allowing the respondent to access his trust account. The respondent told Ms. Dodds that the trust account held a sizeable sum of money. Ms. Dodds offered to speak with someone in the office about his request. Ms. Dodds provided the respondent's phone number and his request to the attorneys at the office assigned to this matter.

183. The respondent later left a voicemail message at the office on May 23, 2023, which was transcribed and admitted as Exhibit 8. In the voicemail message, the respondent stated:

Gayle, this is DeVoe Treadwell, 'um, just calling, my understanding is you guys have closed my law practice down because of COVID and there's money left over in the trust account that was earned. 'Um, I can't seem to get Intrust who holds the IOLTA account to confirm or deny they have the pleading. My understanding is they do not have that pleading that would release those funds, so if you would please e-mail those to me, that pleading, as soon as possible, devoetreadwell@gmail.com. D-E-V-O-E-T-R-E-A-D-W-E-L-L at gmail.com. Thank you, Gayle. If you have any questions give me a call, 316-308-0377. Thanks, Gayle.

(DA Ex. 8.)

184. After reviewing the voicemail, Ms. Ellis sent the respondent an email on May 24, 2023, attaching copies of letters the office had sent to him previously as well as Sedgwick County Administrative Orders 23-01, 23-02, and 23-03, issued by Chief Judge Goering. Ms. Ellis told the respondent in the email that the office had received many complaints against him and asked that he contact her to discuss them.

185. The respondent contacted the office, and Ms. Ellis spoke with him on the phone on June 2, 2023. Ms. Ellis recorded the phone conversation, and that recording was transcribed and admitted as Exhibit 9. Ms. Ellis testified that the respondent was clearly agitated during that phone conversation and expressed concern about

approximately \$100,000.00 in his trust account that he believed was owed to him for work performed.

186. Ms. Ellis told the respondent that she had sent him emails explaining what had occurred with his law practice and trust account up to that point. The respondent replied that he had no knowledge of those emails. The respondent further claimed that the disciplinary administrator's office had closed his office due to COVID. Ms. Ellis told the respondent that was not the case and directed him to review the orders entered by Chief Judge Goering. Ms. Ellis further requested the respondent cooperate with the disciplinary investigation. Ms. Ellis had not heard from the respondent since that phone call. (DA Ex. 9.)

Conclusions of Law

Service

187. The respondent failed to appear at the hearing on the formal complaint. It is appropriate to proceed to hearing when a respondent fails to appear only if proper service was obtained. Kansas Supreme Court Rule 215 governs service of process in disciplinary proceedings. Rule 215 (2023 Kan. S. Ct. R. at 267). Rule 215 requires the disciplinary administrator to serve the respondent with a copy of the formal complaint and notice of hearing no later than 45 days before the hearing on the formal complaint.

Rule 215(a)(2). Service on the respondent must be made by either personal service, certified mail to the respondent's most recent registration address with the Office of Judicial Administration, or on the respondent's counsel by personal service, first-class mail, or email. Rule 215(a)(3).

188. In this case, the disciplinary administrator complied with Rule 215 by sending a copy of the formal complaint and the notice of hearing and prehearing conference by certified mail, return receipt requested, to both the respondent's registered office address and residential address that the respondent provided to the Office of Judicial Administration on August 24, 2023, more than 45 days prior to the formal hearing.

189. Additionally, the disciplinary administrator's office made attempts to contact the respondent via phone and email as described in the Findings of Fact section above. The disciplinary administrator's office went to great lengths to obtain the respondent's cooperation and participation in this proceeding.

190. The hearing panel concludes that the respondent was afforded notice of this disciplinary proceeding as required under Rule 215.

Kansas Rules of Professional Conduct and Supreme Court Rules

191. The hearing panel notes that the disciplinary administrator's office declined to move forward on its allegation that the respondent violated Supreme Court Rule 210 because Ms. Larkin stated the respondent's conduct fit more closely with a violation of KRPC 8.1(b). As a result, the hearing panel does not conclude that the respondent violated Supreme Court Rule 210.

192. Also, the disciplinary administrator's office declined to move forward on its allegation that the respondent violated KRPC 8.4(c) in Count II, DA13,909, because Ms. Larkin stated the respondent's conduct fit more closely with a violation of KRPC 8.1(a). As a result, the hearing panel does not conclude that the respondent violated KRPC 8.4(c) in Count II.

193. The hearing panel concludes that there is not clear and convincing evidence of a violation of KRPC 8.1(a). The disciplinary administrator's office alleged the respondent violated KRPC 8.1(a) by making a false statement in his response to the complaint of attorney James Pratt. (DA Ex. 16.) In this response, the respondent stated in part:

Subsequently and after client discussion, it was decided that I would file a Motion to Reconsider which was filed on August 4th, 2022. **The hearing date was scheduled for the 7th of October, 2022. The matter was taken off docket by the Court because I was unable to attend the prior hearing which was scheduled.** I was out of the office for the months of September and October for business outside of the United States.

(DA Ex. 16, BS 0056.) (Emphasis added.)

194. The disciplinary administrator's office argued that this statement was materially false because the October 7, 2022, hearing was not taken off the docket. Instead, the hearing was held, but the respondent failed to appear, so the court continued the hearing so T.J. could find new counsel. Further, the disciplinary administrator's office argued that the respondent knew this statement was false.

195. The record is not clear whether the respondent knew that the October 7, 2022, motion to reconsider hearing had not been taken off the docket. There is no evidence about what the respondent knew or did not know about the October 7, 2022, hearing.

196. To conclude the respondent violated KRPC 8.1(a), the hearing panel must find there is clear and convincing evidence that the respondent knew that the statement in his response letter was false. The hearing panel concludes there is insufficient evidence

to conclude that the respondent knowingly violated KRPC 8.1(a) when he made this statement.

197. Based upon the findings of fact, the hearing panel concludes as a matter of law that the respondent violated KRPC 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property), 1.16 (withdrawing from or terminating representation), 8.1(b) (disciplinary matters), 8.4(c) (misconduct involving dishonesty, fraud, deceit or misrepresentation), and 8.4(d) (misconduct prejudicial to the administration of justice), as detailed below.

KRPC 1.1

198. Lawyers must provide competent representation to their clients. KRPC 1.1. "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

199. The respondent failed to represent T.J., whose case is the subject of DA13,909 (Count II), with the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

200. The respondent told his client T.J. that T.J. should admit all alleged violations at his probation revocation hearing because contesting the allegations would upset the judge, who the respondent claimed was in a bad mood. The respondent told T.J. that the

respondent planned to file a motion to reconsider after T.J.'s probation was revoked and T.J. was sentenced.

201. However, Kansas case law is clear that a district court loses jurisdiction over a felony matter after sentence is imposed. This includes lack of jurisdiction to hear a motion to reconsider unless there is a statute authorizing the requested relief. *See State v. Albright*, 316 Kan. 482, 518 P.3d 415 (2022).

202. In his motion to reconsider, the respondent did not provide any other argument why the district court would not lack jurisdiction. The motion consisted of two sentences and contained only a simple request to reconsider without further allegations or argument. (DA Ex. 19.) The district court ultimately denied the motion to reconsider for lack of jurisdiction. (DA Ex. 20.)

203. Accordingly, the hearing panel concludes that the respondent violated KRPC 1.1 in DA13,909.

KRPC 1.3

204. Attorneys must act with reasonable diligence and promptness in representing their clients. *See* KRPC 1.3.

205. The respondent clearly failed to diligently and promptly represent each of his clients in the docketed matters at issue here. The respondent repeatedly missed court

hearings in every client's case, failed to respond to communications from clients and courts regarding his cases, and failed to file pleadings or engage in negotiations as he agreed to do on behalf of his clients. It is clear the respondent abandoned his law practice altogether in fall 2022.

206. The respondent's lack of diligence caused negative consequences for all of his clients, including lost money, the need to hire new counsel without funds to do so in some cases, lost advantages in their cases, and, for some, arrest on outstanding bench warrants for failure to appear when the respondent's appearance in court would have prevented such.

207. Accordingly, the hearing panel concludes that the respondent violated KRPC 1.3 in all of the docketed disciplinary matters.

KRPC 1.4

208. KRPC 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

209. In this case, the respondent violated KRPC 1.4(a) with every client in every docketed disciplinary matter. The respondent failed to return numerous telephone calls

from clients, failed to respond to email messages from clients, and failed to notify clients of important events in their cases, including court hearings.

210. The respondent also was unavailable at his law office, which was closed with the lights off and door locked each time his clients tried to contact him in person there in late 2022 and early 2023. The respondent's clients left sticky notes for the respondent on the locked door asking him to contact them and for updates on their cases. It is clear that the respondent abandoned his law practice altogether in fall 2022.

211. Accordingly, the hearing panel concludes that the respondent violated KRPC 1.4(a) in all of the docketed disciplinary matters.

KRPC 1.15

212. Lawyers must properly safeguard the property of their clients and third persons. Properly safeguarding the property of others necessarily requires lawyers to deposit unearned fees into an attorney trust account. KRPC 1.15(a).

213. "A lawyer may charge a flat fee to a client for a specific task to be undertaken. When the flat fee is paid to the lawyer, it must be deposited into the lawyer's trust account and the fee cannot be withdrawn until it is earned." *In re Thurston*, 304 Kan. 146, 149, 371 P.3d 879 (2016). A flat fee is not earned until the agreed task is completed. *Id.*

214. The respondent systematically failed to utilize his trust account. The respondent's own records (see DA Ex. 92) show that he failed to deposit fees paid by clients into his trust account in every docketed disciplinary matter. Rather, the respondent deposited these clients' unearned fees into his operating account or otherwise kept the funds for himself when he received them.

215. The flat fees the respondent charged his clients were not his to keep upon receipt. Flat fees are not earned until the agreed upon representation has concluded. The respondent failed to perform legal services for his clients to completion in all of the docketed disciplinary matters.

216. The respondent also violated KRPC 1.15(d) by commingling his funds with his clients' funds and third persons' funds. Specifically, the respondent deposited client funds into his operating account. Some of those deposits stayed in his operating account for a period of time and then were moved back to his trust account. Other client funds were permanently commingled with his own funds.

217. Accordingly, the hearing panel concludes that the respondent violated KRPC 1.15(a) and 15(d) by failing to deposit unearned fees, thus, the property of others, into his trust account and commingling trust funds with his own funds in all of the docketed disciplinary matters.

KRPC 1.16(d)

218. KRPC 1.16 requires lawyers to take certain steps to protect clients after the representation has been terminated. Specifically, KRPC 1.16(d) provides the requirement in this regard:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

219. The respondent repeatedly violated KRPC 1.16(d) when he failed to return unearned fees to his clients in all docketed disciplinary matters, with two exceptions: The respondent did return funds to J.D. (Count III, DA13,912) and J.H. (Count V, DA13,914). In all other matters, the respondent did not refund his clients. In some cases, the respondent's clients were refunded from his trust account by Mr. and Ms. Anderson under Rule 235. In other cases, the respondent's clients received reimbursement by the Kansas Client Protection Fund under Rule 241. Some clients were never given their money back.

220. Further, the respondent violated KRPC 1.16 by failing to give his clients reasonable notice that he would no longer perform legal services for them. In many cases,

the respondent did not appear for court hearings and did not advise his clients that he had failed to appear. Several of the respondent's clients were issued bench warrants for failure to appear when they understood the respondent would appear for them. In at least three cases, DA13,922 (Count VII), DA13,967 (Count XIV), and DA13,968 (Count XV), the respondent's clients were arrested because no one appeared at their court hearings.

221. The hearing panel concludes that the respondent violated KRPC 1.16(d) in all of the docketed disciplinary matters.

KRPC 8.1(b)

222. Lawyers must cooperate in disciplinary investigations. KRPC 8.1(b) provides that "a lawyer in connection with a . . . disciplinary matter, shall not: . . . knowingly fail to respond to a lawful demand for information from [a] . . . disciplinary authority . . ."

223. During the disciplinary investigation, the respondent repeatedly failed to provide responses to requests for information from the disciplinary investigators. The respondent was asked to provide responses to the complaints in all of the docketed disciplinary matters and provided responses in only two of those matters – DA13,909 (Count II) and DA13,912 (Count III).

224. Because the respondent knowingly failed to provide a response to the complaints or otherwise respond to requests for information in 15 out of the 17 docketed disciplinary matters, the hearing panel concludes that the respondent failed to fully cooperate in the investigation in violation of KRPC 8.1(b) in all of the docketed disciplinary matters except for DA13,909 and DA13,912.

KRPC 8.4(c)

225. "It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation." KRPC 8.4(c).

226. The respondent engaged in conduct that involved dishonesty when he told his client M.S. in Count XVII (DA13,992) that the intersection where M.S. was pulled over had video cameras, that the respondent had obtained video footage from those cameras that showed M.S. did not make an illegal turn, and that the respondent would provide that video footage to the court to get the charges against M.S. dropped.

227. When M.S. attended court in March 2023, M.S. learned that there were no cameras at that intersection and the respondent had provided no such video footage to the judge in his case.

228. Accordingly, the hearing panel concludes that the respondent violated KRPC 8.4(c) in DA13,992 (Count XVII).

KRPC 8.4(d)

229. "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." KRPC 8.4(d).

230. The respondent engaged in conduct that was prejudicial to the administration of justice in all of the docketed disciplinary matters. The respondent's abandonment of his law practice, failure to appear at court hearings, dishonest acts, and failure to participate in the disciplinary investigation or the winding down of his law practice caused significant prejudice to the administration of justice. Court proceedings were delayed, clients' cases were stalled and adversely impacted, clients were subject to bench warrants and arrested when they would not have been had respondent appeared, and time and resources were unnecessarily wasted due to the respondent's conduct.

231. Accordingly, the hearing panel concludes that the respondent violated KRPC 8.4(d) in all docketed disciplinary matters.

*American Bar Association
Standards for Imposing Lawyer Sanctions*

232. In making this recommendation for discipline, the hearing panel considered the factors outlined by the American Bar Association in its Standards for Imposing Lawyer Sanctions (hereinafter "Standards"). Pursuant to Standard 3, the factors to be considered are the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors.

233. *Duty Violated.* The respondent violated his duty to his clients to provide competent and diligent representation, his duty to the public to maintain his personal integrity, his duty to the legal system to appear in court as scheduled, and his duty to the legal profession to cooperate in the disciplinary investigation and winding down of his law practice.

234. *Mental State.* The respondent knowingly and intentionally violated his duties.

235. *Injury.* As a result of the respondent's misconduct, the respondent caused injury to his clients by leaving them entirely without counsel with some not knowing when their court hearings were set for and some even being arrested for failure to appear. Further, the respondent's clients were left without funds to hire new counsel in many cases because the respondent did not provide a refund; the refunds came much later

through Mr. and Ms. Anderson and the Kansas Client Protection Fund. The courts in jurisdictions where the respondent did not appear expended additional resources trying to contact the respondent, notifying the respondent's clients, rescheduling court hearings, and appointing counsel to the respondent's abandoned clients. The Wichita Service to the Bar Committee, Ms. Ortega, Mr. and Ms. Anderson, and employees of the disciplinary administrator's office all expended extraordinary time and resources triaging and managing the fallout of the respondent's abandonment of his practice. The Rule 235 management of the respondent's practice required the review of 320 files, with trust account refunds issued by Mr. and Ms. Anderson to 29 of the respondent's clients and payments to 13 of the respondent's clients from the Kansas Client Protection Fund under Rule 241, with additional claims pending.

Aggravating and Mitigating Factors

236. Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. In reaching its recommendation for discipline, the hearing panel, in this case, found the following aggravating factors present:

237. *Prior Disciplinary Offenses.* The respondent has been previously disciplined on two occasions. The respondent participated in diversion in 2005 for his violation of KRPC 1.5 and 7.3. The respondent successfully completed this diversion, and the matter

was dismissed on August 18, 2005; however, this diversion is still considered prior discipline under Supreme Court Rule 212(h)(2). The respondent received an informal admonition on November 4, 2008, for violation of KRPC 4.1 and 8.4(c). (DA Exs. 93 and 94.)

238. *A Pattern of Misconduct.* The respondent has engaged in a clear pattern of misconduct within each docketed matter and across all docketed disciplinary matters. The respondent repeatedly mishandled trust funds, failed to appear in court, failed to communicate with his clients, and failed to participate in the disciplinary process.

239. *Multiple Offenses.* The respondent committed multiple rule violations. The respondent violated KRPC 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property), 1.16 (terminating representation), 8.1(b) (bar admission and disciplinary matters), 8.4(c) (misconduct involving dishonesty, fraud, deceit or misrepresentation), and 8.4(d) (misconduct prejudicial to the administration of justice). Accordingly, the hearing panel concludes that the respondent committed multiple offenses.

240. *Bad Faith Obstruction of the Disciplinary Proceeding by Intentionally Failing to Comply with Rules or Orders of the Disciplinary Process.* The respondent failed to provide written responses to 15 of the 17 complaints in this case despite instruction by the disciplinary administrator's office that he do so. Further, one of the two responses he

did provide did not actually respond to the allegations. The respondent's repeated failure to provide written responses to the complaints amounts to bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules and orders of the disciplinary process. Further, while the respondent contacted the disciplinary administrator's office to contest Judge Goering's Rule 235 court order and demand what he believed was his money in his trust account back, he did not participate in the investigation.

241. *Vulnerability of Victim.* The respondent's clients were vulnerable to the respondent's misconduct. All of them were defendants in criminal cases and faced potential incarceration. The respondent's clients relied on the respondent to appear in court on their behalf as he said he would. Several of the respondent's were issued bench warrants and three of those were actually arrested and taken into custody.

242. *Substantial Experience in the Practice of Law.* The Kansas Supreme Court admitted the respondent to practice law in the State of Kansas on September 25, 1998. At the time of the misconduct, the respondent has been practicing law for approximately 24 years.

243. Mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. In reaching its recommendation for

discipline, the hearing panel, in this case, found the following mitigating circumstances present:

244. *Personal or Emotional Problems if Such Misfortunes Have Contributed to Violation of the Kansas Rules of Professional Conduct.* The hearing panel agrees with the disciplinary administrator's office that while there was no specific evidence of any personal or emotional problems, the unusual circumstances here indicate that something significant happened in the respondent's life to cause him to abandon what appeared to be an otherwise established law practice.

245. *Timely Good Faith Effort to Make Restitution or to Rectify Consequences of Misconduct.* The respondent refunded fees paid to him by J.D. in DA13,912 (Count III) and J.H. in DA13,914 (Count V).

246. *Remoteness of Prior Offenses.* The misconduct which gave rise to the respondent's 2005 diversion and 2008 informal admonition are remote in time and character to the misconduct in this case.

247. In addition to the above-cited factors, the hearing panel has thoroughly examined and considered the following Standards:

4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Recommendation of the Parties

248. The disciplinary administrator recommended that the respondent be disbarred.

249. The respondent was not present to provide a recommendation.

Discussion

250. The hearing panel agrees with the disciplinary administrator that, while three Standards were considered, the most relevant ABA Standard is Standard 4.41(a). The respondent's abandonment of his law practice is apparent and caused serious injury to his clients and the court system.

251. Further, the hearing panel notes that the respondent's failure to participate in the disciplinary investigations here negatively impacted the legal profession, caused significant waste of investigatory resources to try to obtain the respondent's participation, and placed an unnecessary burden on the Wichita Service to the Bar Committee and on Mr. and Ms. Anderson to wind down the respondent's law practice without his assistance. The respondent's failure to participate may also have negatively impacted the respondent, as the hearing panel did not have a full understanding of what caused the respondent to abandon what appeared to be an established law practice.

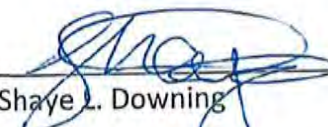
Recommendation of the Hearing Panel

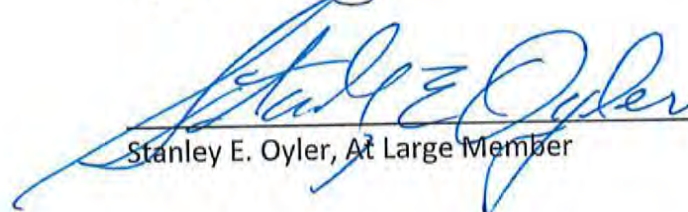
252. Accordingly, based upon the findings of fact, conclusions of law, and the Standards listed above, the hearing panel unanimously recommends that the respondent be disbarred.

253. Costs are assessed against the respondent in an amount to be certified by the Office of the Disciplinary Administrator.

Dated this 29th day of November, 2023.


John M. Duma, Presiding Officer


Shaye L. Downing


Stanley E. Oyler, At Large Member