

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 125,499

In the Matter of JEFF L. MCVEY,  
*Respondent.*

ORIGINAL PROCEEDING IN DISCIPLINE

Original proceeding in discipline. Opinion filed April 21, 2023. One-year suspension.

*Gayle B. Larkin*, Disciplinary Administrator, argued the cause and was on the formal complaint for the petitioner.

*Thomas J. Berscheidt*, of Berscheidt Law Office, of Great Bend, argued the cause, and *Jeff Lee McVey*, respondent, argued the cause pro se.

PER CURIAM: This is an original proceeding in discipline filed by the Office of the Disciplinary Administrator (ODA) against the respondent, Jeff L. McVey, of Great Bend, an attorney admitted to the practice of law in Kansas in 1993. This matter involves the filing of a formal complaint, a hearing on the complaint, and findings of the hearing panel. The following summarizes the history of this case before the court.

After the ODA filed a formal complaint against respondent alleging violations of the Kansas Rules of Professional Conduct (KRPC), McVey timely responded. In due course, respondent filed a proposed probation plan. An appointed panel held a formal hearing on the complaint, during which respondent personally appeared and was represented by counsel. The hearing panel determined the respondent violated KRPC 1.15 (2023 Kan. S. Ct. R. at 372) (safekeeping property); KRPC 8.4(c) (2023 Kan. S. Ct.

R. at 434) (professional misconduct); and Rule 210 (2023 Kan. S. Ct. R. at 263) (duty to cooperate).

More specifically, the panel made the following findings of fact and conclusions of law, together with its recommendation to this court:

*"Findings of Fact*

....

"20. The hearing panel finds the following facts, by clear and convincing evidence:

"21. From 1993 until May 29, 2020, the respondent practiced with the firm McPherson Law Offices, Chtd. From 1993 to 1997, the respondent was an associate attorney of McPherson Law Offices. In 1997, the respondent became a shareholder of the firm. The respondent paid attorney Brock McPherson \$25,000 for the ownership interest in McPherson Law Offices.

"22. The \$25,000 the respondent paid for his ownership interest in McPherson Law Offices was paid in \$2,500 installments. The respondent received a salary of \$52,500 per year every year from 1998 until he left the firm, and a \$2,500 annual bonus plus accrued interest. After receiving the bonus, the respondent wrote a check back to Mr. McPherson for \$2,500 plus accrued interest to go toward the \$25,000 owed for his ownership interest in the firm. The interest purchased was to be ninety-five percent of the stock.

"23. Mr. McPherson never assigned any stock to respondent. Respondent believed this violated the agreement but never pressed Mr. McPherson on the issue. When the respondent left McPherson Law Offices on May 29, 2020, Mr. McPherson did not buy back the respondent's ownership interest. The respondent's name was removed

from annual filings for McPherson Law Offices with the Kansas Secretary of State in 2019.

"B.G. Domestic Matter

"24. On March 13, 2020, B.G. retained the respondent and paid him \$1,000 in cash as an advanced fee to represent B.G. in Russell County District Court case number 2019-DM-000051.

"25. The respondent placed the \$1,000 cash from B.G. into his desk drawer. The respondent failed to deposit the \$1,000 into the firm's trust account, or give the funds to the firm at all, at any point. The respondent did not note this payment from B.G. in the firm's records.

"26. The respondent memorialized the \$1,000 payment from B.G. on the back of a 'McPherson & McVey Law Offices, Chartered' business card.

"27. The respondent was to bill against the \$1,000 advanced funds from B.G. at a rate of \$200 per hour. The \$1,000 was not earned when the respondent received it from B.G.

"28. The respondent testified that after he put this cash in his desk drawer, 'it got commingled with other funds and deposited somewhere else.' The respondent further testified, 'frankly, I don't know for sure where it went.'

"29. The respondent did not repay the \$1,000 because the firm owed the respondent more than that amount when the respondent left the firm on May 29, 2020. The respondent was owed \$1,009.61 for his last week's wages, the amount of his ownership interest in the firm, and some unreimbursed mileage expenses. The respondent believed that by May 29, 2020, he had earned the full \$1,000.

"30. At the time, the respondent was under extreme stress and was taking medication for depression and anxiety that affected his memory and alertness.

"M.K. Escrow Matter

"31. In addition to practicing law, the respondent ran a rental management business out of the McPherson Law Offices building.

"32. A separate receipt book was provided to the firm's receptionist to utilize for receiving rental management business payments.

"33. The respondent began managing rental properties for M.K. around 2010. The respondent would list the properties, locate tenants, collect rent, address minor repairs, and disburse the rental income to M.K. on a monthly basis.

"34. The respondent opened a checking account with Community Bank to use for the rental management business in 2007. The checking account was a personal checking account in the name of the respondent and the respondent's wife.

"35. The respondent testified that he had a separate written agreement with M.K. for managing M.K.'s rental properties informing M.K. that the respondent was not managing the rentals as part of the firm's law practice. However, when asked during the disciplinary investigation to provide a copy of the written agreement, the respondent did not provide a copy.

"36. The respondent had also at times represented M.K. as her attorney. In 2012, M.K. asked the respondent to draft a buy-sell agreement for real property M.K. owned on Odell Street.

"37. The respondent did not manage the Odell Street property as he had the rental properties.

"38. After drafting the buy-sell agreement for M.K.'s Odell Street property, the respondent served as an escrow agent for payments made by the buyers of the Odell Street property to M.K.

"39. In July 2015, M.K. sold all of her rental properties.

"40. The respondent testified that during the time he managed the escrow for the Odell Street property, M.K. was elderly.

"41. The respondent continued to serve as escrow agent for receiving payments from the buyers of the Odell Street property. The respondent deposited the monthly cash payments from the buyers into the Community Bank personal checking account under his name and his wife's name that was used for his rental management business. The respondent also paid expenses such as real estate taxes and insurance for the Odell Street property from this personal checking account.

"42. M.K. expected to receive monthly disbursements from the respondent for the payments to M.K. from the escrow but would typically wait five to six months before receiving a disbursement from the respondent. M.K. relied in part on these payments to pay her living expenses.

"43. M.K. told law enforcement that she received letters from the respondent on the McPherson law firm letterhead, but the checks she received from the respondent for the escrow disbursements came from a personal checking account in the respondent's name and his wife's name.

"44. In January 2020, February 2020, and March 2020, the respondent received three payments—the January, February, and March payments—from the Odell Street property buyers. At that time, the payments were between \$400 and \$450 per month. These three payments had not yet been disbursed to M.K. Thus, when the April 21, 2020, Community Bank statement was issued, the balance in the account should have been at least \$1,200.

"45. The April 21, 2020, Community Bank statement shows an ending balance of \$138.44.

"46. In April 2020, the respondent received the April payment from the Odell property buyers. By then, four payments for January through April had not yet been disbursed to M.K. Thus, the balance in the Community Bank account should have been at least \$1,600. The May 19, 2020, Community Bank statement shows an ending balance of \$122.36.

"47. The unredacted portions of the bank statements in Exhibit 6 show several debits made from this account to Dillons and Wal-Mart. The respondent testified that the redactions were incomplete and he failed to redact these Dillons and Wal-Mart transactions.

"48. The respondent testified that he used M.K.'s funds to pay for personal expenses.

"49. The respondent did not distribute the January 2020, February 2020, March 2020, or April 2020 payments to M.K. until August 6, 2020, when he gave M.K. a cashier's check for \$1,700, as discussed further below.

"50. The August 6, 2020, payment to M.K. was not made from Community Bank, but via a cashier's check issued from Bank of the West.

"51. The respondent had commingled the Odell Street property buyers' cash payments with other cash and had to deposit other funds in order to cover the \$1,700 payment the respondent made to M.K. on August 6, 2020.

"52. During the lunch hour, on May 29, 2020, one of the buyers came to McPherson Law Offices to make the May 2020 payment under the buy-sell agreement. The respondent was away for lunch and an employee of the firm received the payment and provided a receipt.

"53. Later in the day on May 29, 2020, Mr. McPherson terminated the firm's business relationship with the respondent. Mr. McPherson asked the respondent to clean out his desk and leave that day. The respondent did not receive the May 2020 payment

for the Odell Street property, and this payment was apparently provided by McPherson Law Offices to M.K. The record does not reflect respondent asserted any objection to Mr. McPherson's authority to terminate him, even though respondent believed he owned ninety-five percent of the corporation.

"54. On June 9, 2020, R.A., one of the buyers making payments for the Odell Street property, reported to law enforcement that she paid \$450 to the respondent in January, February, March, and April 2020, but that the respondent had not forwarded the payments to M.K. The matter was referred to the Kansas Bureau of Investigation for criminal investigation.

"55. The respondent and M.K. were interviewed by the KBI.

"56. The respondent informed the buyers by letter that he was no longer at McPherson Law Offices. Although M.K. was cc'd on the letter to the buyers, M.K. did not receive a copy of the letter. The buyers were told in the letter to continue making payments for the Odell Street property to the respondent at a new address.

"57. M.K. never received notice from the respondent that he had left the McPherson Law Offices.

"58. M.K. called the respondent's phone number to ask for the four January through April 2020 payments. The respondent's wife answered the phone and told M.K. she would go get the respondent, but after M.K. waited for several minutes the phone would disconnect and M.K. never got to talk to the respondent.

"59. M.K. also drove to the respondent's house and although there were several vehicles at the respondent's home, no one answered the door.

"60. M.K. also wrote the respondent a letter that she sent via registered mail to try to collect the January through April escrow payments the respondent should have been holding on her behalf.

"61. Because she was unable to contact the respondent, M.K. called the respondent's mother B.M. M.K. told B.M. that M.K. could not reach the respondent. At one point, M.K. went to B.M.'s house to speak to B.M. and B.M. slammed the door in her face. B.M. told M.K. that M.K. ruined the respondent's life.

"62. The respondent was not ultimately charged with a criminal offense.

"63. The respondent provided M.K. with a cashier's check from Bank of the West, dated August 6, 2020, for \$1,700. The memo line of the check read 'Paid in Full'.

"64. In an email to disciplinary investigator Gerald O. Schultz dated September 17, 2020, the respondent wrote that the reason he paid M.K. \$1,700 is because that is the amount M.K. stated she was owed.

#### "Disciplinary Investigation

"65. On July 10, 2020, now retired deputy disciplinary administrator Kate F. Baird sent a letter to the respondent notifying the respondent that the complaint in this matter had been docketed for investigation and directing the respondent to provide a written response within 20 days.

"66. The respondent provided a timely response.

"67. Gerald O. Schultz was assigned to investigate the complaint against the respondent. Mr. Schultz requested additional information from the respondent, including a copy of the written agreement between the respondent and M.K. regarding management of the Odell Street property escrow as well as documentation of payments made by the buyers and how those payments were distributed. The respondent did not provide a written agreement or sufficient documentation of the payments and how those payments were distributed.

"68. On October 12, 2020, the respondent sent an email to Mr. Schultz attaching PDF copies of bank statements that the respondent stated reflected the



payments for real estate taxes and insurance for the Odell Street property. The attached bank statements were for a personal checking account at Community Bank, in the respondent's name and the respondent's wife's name.

"69. The bank statements attached to the respondent's emails were for statement dates: May 19, 2020, April 21, 2020, December 17, 2019, April 16, 2019, May 15, 2018, April 17, 2018, March 20, 2018, February 20, 2018, January 16, 2018, October 17, 2017, and March 15, 2016. The bank statements provided had significant redactions done with a dark marker, which did not completely conceal the typed information underneath.

"70. The respondent testified that he made the redactions on these bank statements. He said he did not recall why he made these redactions.

"71. The unredacted portions of the bank statements in Exhibit 6 show several debits made from this account to Dillons and Wal-Mart. The respondent testified that the redactions were incomplete and he failed to redact these Dillons and Wal-Mart transactions.

"72. The respondent did not provide a full accounting of the income and disbursements for the Odell Street property escrow account to Mr. Schultz, even though Mr. Schultz asked for them two or three times.

"73. The respondent obtained the bank statements that he did provide through the Community Bank website. The respondent testified that he did not print off all of the statements because he 'printed off what [he] believed was relevant at the time.'

"74. In addition, retired disciplinary administrator Stanton Hazlett contacted counsel for the respondent requesting an accounting of the buyers' payments and how those payments were distributed. The respondent did not provide an accounting.

"75. On August 2, 2021, the respondent wrote a letter to Mr. Hazlett providing some peripheral information about the Odell Property escrow arrangement and

his leaving McPherson Law Offices. However, the respondent did not provide an accounting as requested by Mr. Hazlett.

"76. The respondent told the disciplinary investigators and also asserted during the formal hearing that Mr. McPherson kept the respondent's file containing the Odell Street property escrow management. The respondent admitted that he took no action to request or obtain those records from Mr. McPherson.

*"Conclusions of Law*

"77. Based upon the findings of fact, the hearing panel concludes as a matter of law that the respondent violated KRPC 1.15 (safekeeping property), KRPC 8.4(c) (professional misconduct), and Rule 210 (duty to cooperate).

"78. During the formal hearing, the disciplinary administrator argued that the evidence presented during the hearing showed that the respondent also violated KRPC 1.16 (declining or terminating representation) by failing to take proper steps to withdraw from representing B.G. The amended formal complaint did not specify KRPC 1.16 as a rule violated by the respondent.

"79. When the formal complaint alleges facts that would support findings of violations of additional rules, the hearing panel is allowed to consider additional violations. *See State v. Caenen*, 235 Kan. 451, 681 P.2d 639 (1984) ('It is not incumbent on the board to notify the respondent of charges of specific acts of misconduct as long as proper notice is given of the basic factual situation out of which the charges might result.' [Internal citations omitted.]).

"80. However, even if the hearing panel determined that proper notice was given of the basic facts supporting a KRPC 1.16 violation, the hearing panel concludes there was not clear and convincing evidence of a KRPC 1.16 violation.

"81. On July 27, 2022, the parties filed a joint stipulation to the following fact: 'After the respondent's employment was terminated by Brock McPherson on May

29, 2020, Mr. McPherson represented [B.G.] in case number 2019-DM-000051 in Russell County District Court.'

"82. The parties' stipulation establishes that McPherson Law Offices continued to represent B.G. in the Russell County District Court matter, which negated the need to allow time for employment of other counsel or surrendering B.G.'s papers and other property (which McPherson Law Offices still held). Further, the respondent testified that by May 29, 2020, the \$1,000 advanced fee paid by B.G. had been earned, and clear and convincing evidence was not presented to contradict this assertion.

"83. Accordingly, the hearing panel does not conclude that the respondent violated KRPC 1.16 (declining or terminating representation).

"84. The hearing panel does, however, conclude that the respondent violated KRPC 1.15 (safekeeping property), KRPC 8.4(c) (professional misconduct), and Rule 210 (duty to cooperate), as detailed below.

"KRPC 1.15(a)

"85. 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) specifically provides, in part, that lawyers 'shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state of Kansas. Other property shall be identified as such and appropriately safeguarded.'

"86. The respondent failed to utilize an attorney trust account to deposit the \$1,000 advance fee paid by B.G. Instead, the respondent placed the \$1,000 cash payment into his desk drawer where it became commingled with other cash placed in the drawer and eventually was lost or spent. As a result, the respondent failed to adequately safeguard B.G.'s \$1,000 advanced fee.

"87. Further, the respondent received the four January through April 2020 payments belonging to M.K. from the buyers of the Odell Street property and failed to properly safeguard those funds or keep them separate from the respondent's own property.

"88. The respondent either held onto the January through April 2020 payments in cash and commingled it with other cash belonging to himself or third persons, or the respondent deposited the funds into the Community Bank personal checking account in the name of himself and his wife and spent it on personal expenditures.

"89. The Community Bank statements show that on more than one occasion the account dropped below the amount that the respondent should have been holding at the time on M.K.'s behalf for the Odell Street property escrow.

"90. Further, the bank statements in Exhibit 6 show many redacted entries plus several unredacted debits made from the Community Bank checking account to Dillons and Wal-Mart. The respondent testified that he used M.K.'s funds to pay for personal expenses.

"91. Further, it is clear that the respondent held the funds in connection with his representation of M.K. First, M.K. hired the respondent to draft the buy-sell contract between M.K. and the buyers of the Odell Street property. Second, while he stated he had a separate written agreement with M.K. to manage her rental properties, the respondent did not produce a copy of the agreement when requested during the disciplinary investigation. The respondent's assertion that a separate agreement existed lacks credibility. Also, there was no evidence that the respondent had any agreement with M.K. establishing a relationship that was not an attorney-client relationship for the escrow management under the buy-sell contract. Third, when the respondent communicated with M.K. about the Odell Street escrow, he wrote to her from the McPherson law office. Finally, M.K. told law enforcement that it was because the respondent was an attorney that she elected to have the respondent manage the escrow as opposed to having a bank manage the escrow. Respondent admitted that M.K. could have rightfully believed

respondent was acting as her attorney in providing the escrow-like services, and that the situation blurred the lines between legal representation and property management. Even if respondent was an escrow agent he had a fiduciary duty to safeguard M.K.'s funds.

"92. It is clear that without the respondent's attorney-client relationship with M.K., M.K. would not have selected the respondent to manage the escrow for the transaction.

"93. The hearing panel concludes that the respondent managed the Odell Street escrow for M.K. in connection with his representation of M.K.

"94. In his answer to the amended formal complaint, the respondent admitted he violated KRPC 1.15.

"95. Accordingly, the hearing panel concludes that the respondent violated KRPC 1.15(a) by failing to properly safeguard funds belonging to B.G. and M.K. and keep their property separate from the respondent's own property.

"KRPC 1.15(b)

"96. Lawyers must deal properly with the property of their clients. Specifically, KRPC 1.15(b) provides: 'Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person.' Further, 'a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.' KRPC 1.15(b).

"97. The respondent violated KRPC 1.15(b) when he failed to promptly notify M.K. that he had received payments from the Odell Street property buyers for January, February, March, and April 2020 and failed to promptly deliver those funds to M.K. that M.K. was entitled to receive.

"98. In his answer to the amended formal complaint, the respondent admitted he violated KRPC 1.15.

"99. Accordingly, the hearing panel concludes that the respondent violated KRPC 1.15(b) by failing to promptly notify M.K. of funds he held on her behalf and by failing to promptly distribute those funds to M.K.

"KRPC 1.15(d)

"100. KRPC 1.15(d) requires an attorney to preserve 'the identity of funds and property of a client.'

"101. The respondent violated KRPC 1.15(d) by placing the \$1,000 cash advanced fee paid by B.G. into his desk drawer where other cash was kept by the respondent. The respondent testified that after he put this cash in his desk drawer, 'it got commingled with other funds and deposited somewhere else.' The respondent further testified, 'frankly, I don't know for sure where it went.'

"102. The respondent also violated KRPC 1.15(d) by failing to deposit and/or failing to properly account for the January through April 2020 payments from the Odell Street property buyers that belonged to M.K. The respondent was unable to recall whether he deposited all of the buyers' cash payments into the Community Bank account, and even if he had, acknowledged that he failed to properly account for those deposits and spent M.K.'s money on the respondent's personal expenditures.

"103. The respondent was responsible for properly accounting for and identifying M.K.'s funds. However, the respondent was not certain how much of M.K.'s money he was supposed to be holding. The respondent paid \$1,700 to M.K. on August 6, 2020, simply because that was the amount M.K. said she was owed.

"104. In his answer to the amended formal complaint, the respondent admitted he violated KRPC 1.15.

"105. The respondent violated KRPC 1.15(d) by comingling B.G.'s funds with his own and/or third person's funds by placing the \$1,000 cash advanced fee into his desk drawer, not depositing the cash into the firm's trust account, failing to account for the cash, and eventually not being aware of where the cash went. The respondent also violated KRPC 1.15(d) by commingling M.K.'s funds with his own funds, not depositing and/or accounting for M.K.'s funds, and eventually spending M.K.'s funds on his own personal expenditures. As such, the hearing panel concludes that the respondent violated KRPC 1.15(d).

"KRPC 8.4(c)

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

"107. The respondent also engaged in conduct that involved dishonesty, deceit, and misrepresentation when he represented to M.K. that he was managing the escrow funds for the Odell Street property as a professional fiduciary but instead was spending M.K.'s escrow funds on his own personal expenditures.

"108. Further, M.K. had to go to great efforts to find the respondent to get her funds back from him.

"109. When the respondent finally provided M.K. a cashier's check on August 6, 2020, the amount paid was not based on a proper accounting by the respondent of what M.K. was owed but instead was based on the amount M.K. demanded.

"110. The respondent converted M.K.'s funds to his own use, and it is not clear whether M.K. has been fully paid what she is owed.

"111. Finally, the respondent redacted bank statements he provided to the disciplinary administrator without any legitimate explanation. The respondent stated he intended to redact several Dillons and Wal-Mart transactions on one of the pages, but

missed them. These transactions show the respondent spent funds deposited into the account he used to manage rental businesses for his own personal expenditures.

"112. As such, the hearing panel concludes that the respondent violated KRPC 8.4(c).

"[Rule] 210

"113. Lawyers must cooperate in disciplinary investigations. Rule 210 provides the requirements in this regard:

'(b) Duty to Respond. An attorney must timely respond to a request from the disciplinary administrator for information during an investigation and prosecution of an initial complaint or a report, a docketed complaint, and a formal complaint.'

"114. The respondent was asked two or three times by investigator Schultz and on at least one occasion by Mr. Hazlett to provide an accounting of the Odell Street property escrow funds. The respondent provided a few bank statements, but what was provided was heavily redacted, covered only two months of the most relevant time period, and did not contain enough information to provide an accounting.

"115. The respondent failed to request or do anything to try to obtain the Odell Street property escrow file from McPherson Law Offices, where the respondent claimed the file remained after he left in May 2020.

"116. The Community Bank statements the respondent did provide were obtained from the Community Bank website, which the respondent testified contained additional statements that he did not print and provide to the disciplinary investigator.

"117. Because the respondent knowingly failed to provide bank statements available to him, failed to provide an accounting with the information available to him,



and failed to make any attempt to request or obtain his Odell Street property file from Mr. McPherson, the hearing panel concludes that the respondent violated Rule 210.

*"American Bar Association  
Standards for Imposing Lawyer Sanctions*

"118. 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.

"119. *Duty Violated.* The respondent violated his duty to his clients and to the public.

"120. *Mental State.* The respondent knowingly violated his duties.

"121. *Injury.* As a result of the respondent's misconduct, the respondent caused potential injury to M.K. and B.G. Evidence presented at the hearing indicated that the respondent may have earned the \$1,000 advanced fee paid by B.G. soon after it was accepted, however, the best practice to protect an advanced fee is to deposit it into a trust account as soon as reasonably practicable. Further, the respondent caused actual injury to the public by failing to maintain his personal honesty and integrity.

*"Aggravating and Mitigating Factors*

"122. 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:

"123. *Dishonest or Selfish Motive.* The respondent's conduct exhibited dishonest and selfish motive. The respondent was dishonest in his handling of M.K.'s funds by not depositing them in an appropriate account by a reasonable time and by spending the funds on his own personal expenditures while maintaining the appearance that the funds were safeguarded. The respondent was selfish in spending the funds on his own personal expenditures. Accordingly, the hearing panel concludes that the respondent's misconduct was motivated by dishonesty and selfishness.

"124. *Bad Faith Obstruction of the Disciplinary Proceeding by Intentionally Failing to Comply with Rules or Orders of the Disciplinary Process.* Despite multiple requests, the respondent failed to provide documentation, including a written agreement with M.K. that he claimed existed for the Odell Street property escrow arrangement, bank statements covering additional periods, and an accounting of M.K.'s escrow funds. The respondent's repeated failure to provide this documentation amounts to bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules and orders of the disciplinary process.

"125. *Substantial Experience in the Practice of Law.* The Kansas Supreme Court admitted the respondent to practice law in the State of Kansas in 1993. At the time of the misconduct, the respondent has been practicing law for around 27 years.

"126. *Indifference to Making Restitution.* The respondent eventually paid M.K. the \$1,700 she requested on August 6, 2020. However, M.K. told law enforcement that she had to go to great lengths to find the respondent to collect the money owed to her, and still the respondent has not provided information to confirm that the \$1,700 paid was the full amount owed to M.K. The hearing panel concludes the respondent showed indifference to making restitution to M.K.

"127. 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:

"128. *Absence of a Prior Disciplinary Record.* The respondent has not previously been disciplined. The hearing panel concludes this is a mitigating factor.

"129. *Personal or Emotional Problems if Such Misfortunes Have Contributed to Violation of the Kansas Rules of Professional Conduct.* The evidence during the formal hearing indicated a volatile working relationship between the respondent and Mr. McPherson by 2019 and 2020. The respondent had been removed from the official documents for the business filed with the secretary of state in 2019 without his interest in the company having been bought out. The respondent testified that Mr. McPherson told him to leave the office on May 29, 2020, and that his files would be provided for him to pick up at a later time. The respondent also testified he was taking medication to manage the stress that affected his memory and alertness at the time. The hearing panel concludes that the respondent's personal and emotional problems contributed to his misconduct.

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

"4.11 'Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.'

"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.'

"4.13 'Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.'

"4.62 'Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.'

"4.63 'Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.'

"5.12 'Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.'

"5.13 'Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.'

"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.'

"7.3 'Reprimand is generally appropriate when a lawyer negligently 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.'

*"Recommendations of the Parties*

"131. The disciplinary administrator recommended that the respondent be suspended for one year and that the respondent be required to undergo a reinstatement hearing pursuant to Rule 232.

"132. The respondent did not offer a recommendation, but counsel for the respondent offered some argument that public censure or probation would be appropriate under the circumstances.

*"Recommendation of the Hearing Panel*

"133. Based upon the findings of fact, conclusions of law, and the Standards listed above, the hearing panel unanimously recommends that the respondent be suspended for a period of one year. The hearing panel further recommends that prior to reinstatement, the respondent be required to undergo a hearing pursuant to Rule 232.

"134. When a respondent requests probation, the hearing panel is required to consider Rule 227, which provides:

'(d) Restrictions on Recommendation of Probation. A hearing panel may not recommend that the respondent be placed on probation unless the following requirements are met:

- (1) the respondent complies with subsections (a) and (c) and the proposed probation plan satisfies the requirements in subsection (b);
- (2) the misconduct can be corrected by probation; and
- (3) placing the respondent on probation is in the best interests of the legal profession and the public.'

"135. On June 14, 2022, the respondent filed and served the hearing panel and the disciplinary administrator a probation plan. The probation plan proposed by the respondent is not substantial or detailed and does not contain adequate safeguards to protect the public and ensure the respondent's compliance with the Kansas Rules of Professional Conduct, the Rules Relating to Discipline of Attorneys, or the respondent's oath of office. Further, the respondent engaged in conduct involving dishonesty, deceit, and misrepresentation, which renders probation ineffective to guard against future misconduct. *See In re Stockwell*, 296 Kan. 860, 868, 295 P.3d 572 (2013) ('this court is generally reluctant to grant probation where the misconduct involves fraud or dishonesty because supervision, even the most diligent, often cannot effectively guard against dishonest acts').

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

## DISCUSSION

In a disciplinary proceeding, this court considers the evidence, the findings of the hearing panel, and the arguments of the parties and determines whether violations of

KRPC exist and, if they do, what discipline should be imposed. Attorney misconduct must be established by clear and convincing evidence. *In re Foster*, 292 Kan. 940, 945, 258 P.3d 375 (2011); see Supreme Court Rule 226(a)(1)(A) (2022 Kan. S. Ct. R. at 281). "Clear and convincing evidence is 'evidence that causes the factfinder to believe that "the truth of the facts asserted is highly probable.'"" *In re Lober*, 288 Kan. 498, 505, 204 P.3d 610 (2009) (quoting *In re Dennis*, 286 Kan. 708, 725, 188 P.3d 1 [2008]).

The respondent was given adequate notice of the formal complaint and timely responded. The respondent was also given adequate notice of the hearing before the panel and the hearing before this court. The respondent timely filed a proposed probation plan that was provided to the Disciplinary Administrator and each member of the hearing panel. He did not file exceptions to the hearing panel's final hearing report.

With no exceptions before us, the panel's factual findings and conclusions of law are deemed admitted by the respondent and ODA. Supreme Court Rule 228(g)(1), (2) (2023 Kan. S. Ct. R. at 288). We hold that the facts found by the hearing panel were established by clear and convincing evidence. We agree with the panel in holding that respondent violated KRPC 1.15 (2023 Kan. S. Ct. R. at 372) (safekeeping property); and KRPC 8.4(c) (2023 Kan. S. Ct. R. at 434) (professional misconduct). A majority of the court finds that respondent also violated Rule 210 (2023 Kan. S. Ct. R. at 263) (duty to cooperate), although a minority of the court disagrees and would find that respondent fulfilled at least the minimum requirements of Rule 210 in his efforts to cooperate with ODA and this court during the course of investigation.

The only remaining issue is to decide the appropriate discipline for these violations. This court is not bound by any recommendations. *In re Long*, 315 Kan. 842, 853, 511 P.3d 952 (2022). The court is cognizant that "[o]ur primary concern must remain protection of the public interest and maintenance of the confidence of the public

and the integrity of the Bar.' [Citation omitted.]" *In re Jones*, 252 Kan. 236, 241, 843 P.2d 709 (1992).

After considering the evidence presented and all recommendations, we conclude appropriate discipline is respondent's suspension for one year from the practice of law. After completing his term of suspension, respondent may apply for reinstatement. A minority of the court would impose a lesser penalty.

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

#### CONCLUSION AND DISCIPLINE

IT IS THEREFORE ORDERED that Jeff L. McVey is suspended for one year from the practice of law in the state of Kansas, effective the date of this opinion, in accordance with Supreme Court Rule 225(a)(3) (2023 Kan. S. Ct. R. at 281) for violations of KRPC 1.15, 8.4(c), and Rule 210.

IT IS FURTHER ORDERED that respondent shall comply with Supreme Court Rule 231 (2023 Kan. S. Ct. R. at 292).

IT IS FURTHER ORDERED that if respondent applies for reinstatement, he shall comply with Supreme Court Rule 232 (2023 Kan. S. Ct. R. at 293) and be required to undergo a reinstatement hearing.

IT IS FURTHER ORDERED that the costs of these proceedings be assessed to respondent and that this opinion be published in the official Kansas Reports.