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June 12, 2023

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VIA E-MAIL

Adam B. Kilgore, Esq.
General Counsel
The Mississippi Bar
643 N. State Street
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Re: Docket No: 22-303-4
Attorney: T. Swayze Alford
Filed by: Robert B. Sullivant, Jr.

Dear Mr. Kilgore:

Please accept this letter as the informal response of Swayze Alford, Esq., to the April 3, 2023 Complaint filed by Mr. Robert Sullivant, Jr., as well as his subsequent submissions to the Bar dated April 25, 2023, May 30, 2023, and June 9, 2023. A review of the background facts and the attached documents establishes that Mr. Sullivant, Jr.'s complaint holds no merit. Accordingly, Mr. Alford respectfully requests that the Committee on Professional Responsibility exercise its discretion under Rule 7(b)(i) of the Rules of Discipline to dismiss Mr. Sullivant, Jr.'s Complaint and retire the file without the necessity of further investigation.

FACTUAL BACKGROUND

Mr. Alford was retained by Mr. Sullivant, Jr.'s father, Robert Sullivant, Sr.. On October 25, 2021, Mr. Alford, on behalf of Mr. Sullivant, Sr. filed a complaint against Mr. Sullivant, Jr. in the Chancery Court of Lafayette County, Mississippi (Cause No. 2021-612).¹ Honorable Robert Q. Whitwell is presiding over the matter. The Chancery Court Complaint asserts claims of breach of fiduciary duty, breach of the duty of care, negligent and intentional infliction of emotional distress, breach of duty of good faith and fair dealing, breach of duty of loyalty, negligence, gross negligence, conversion, and unjust enrichment against Mr. Sullivant, Jr. The Complaint bases these claims on the following factual allegations:

- "On July 12, 2017, Sullivant Sr. executed a General Durable Power of Attorney appointing his son, Sullivant, Jr., as his lawful agent and attorney in fact."²

¹ See Complaint attached hereto as **Exhibit A**.

² See **Exhibit A** at ¶ 5.

- “It recently came to Sullivant, Sr.’s attention that Sullivant, Jr. was taking very large sums of money from Sullivant Sr.’s checking account. On or about May 19, 2021, Sullivant, Sr. opened a money market account with Regions Bank that was in his name only. That same day, Sullivant, Sr. transferred the sum of \$230,000.00 from a Regions account in which Sullivant, Jr. had signature authority to his new money market account.”³
- “Upon information and belief, Sullivant, Jr. went to the Regions Bank in Batesville and attempted to withdraw funds from Sullivant, Sr.’s new money market account, but was turned down. Sullivant, Jr. then went to the Regions Bank in Oxford, where he successfully withdrew and transferred the sum of \$230,000.00 from Sullivant, Sr.’s new money market account to an account only in his name.”⁴
- “Upon information and belief, Sullivant, Jr. also withdrew and/or traded monies and/or stocks from Sullivant, Sr.’s Schwab account without Sullivant, Sr.’s knowledge or permission. Sullivant, Jr. has taken Sullivant, Sr.’s money for his own personal use and benefit.”⁵

On or about December 9, 2021, Sullivant, Jr. filed an Answer and Counterclaim.⁶ In the Counterclaim, Sullivant, Jr. sought a conservatorship over Sullivant, Sr. He also demanded an accounting in reference to certain real and personal property to which Sullivant Sr. and Sullivant Jr. were beneficiaries.⁷ The Counterclaim also sought compensation from his father, Sullivant, Sr. for Sullivant, Jr.’s for care-taking services he allegedly provided for his father.⁸

On February 8, 2022, the Court entered an Agreed Order for Independent Medical Exams.⁹ The Order outlined that the parties agreed that Sullivant Sr. was to undergo two independent medical examinations (IMEs).¹⁰ The Order further directed Sullivant Jr. to sign closing papers for the sale of some property Sullivant Sr. and Sullivant Jr. jointly owned, and that “[t]he funds resulting from that sale will be held in trust by the Office of Swayze Alford until further Order of this Court.”¹¹

After the closing on the property, Sullivant, Sr. received approximately \$438,430.35 in proceeds from the sale. Mr. Alford felt it was his duty to attempt to earn interest on this sum while the proceeds were agreed to be held for Sullivant, Sr.’s benefit. To that end, Mr. Alford and Brad Golman, Mr. Sullivant Jr.’s initial attorney, had a conversation in which Mr. Golman agreed that the funds could be put somewhere to earn a return as opposed to Mr. Alford’s non-interest bearing trust account.¹² Mr. Alford and Mr. Golman discussed that any such account would be restricted from withdrawal until further order of the Court.¹³ Thereafter, Mr. Alford shopped around for interest rates and the funds were placed in First National Bank in the name of Sullivant Sr.—as

³ See **Exhibit A** at ¶ 6.

⁴ See **Exhibit A** at ¶ 7.

⁵ See **Exhibit A** at ¶ 8.

⁶ See Answer and Counterclaim attached hereto as **Exhibit B**.

⁷ *Id.*

⁸ *Id.*

⁹ See February 8, 2022 Agreed Order for Independent Medical Exams attached hereto as **Exhibit C**.

¹⁰ *Id.*

¹¹ *Id.*

¹² See Affidavit of Bradley T. Golman attached hereto as **Exhibit D**.

¹³ *Id.*

those funds belonged entirely to him.¹⁴ Candidly, on February 11, 2022, Mr. Alford had the funds deposited into an interest-bearing money market account at First National Bank without securing an agreed order to restrict the funds—and Mr. Alford acknowledges this mistake.¹⁵ Thereafter, Mr. Sullivant, Sr. opened a checking account at First National Bank and transferred approximately \$188,384 from his money market account and spent approximately \$57,000 of his own funds which included the purchase of a truck for approximately \$48,500.¹⁶ After realizing what had happened, Mr. Alford ensured that the funds Mr. Sullivant spent were all recouped, which included ensuring the truck was sold. Mr. Sullivant, Sr.'s account has been completely restored to the original balance plus some interest.¹⁷ The funds were recouped at no cost to Sullivant Sr. and, in fact, Mr. Alford used his own personal funds to assist in restoring the balance of Mr. Sullivant, Sr.'s accounts. After the funds were fully restored, the parties entered into an Agreed Order freezing the funds in Mr. Sullivant's Sr.'s accounts at First National Bank. The Court was made fully aware of the situation at a motion hearing on January 12, 2023, and after ensuring that the funds were restricted via Court Order, the Court did not admonish Mr. Alford in any way.¹⁸

Mr. Sullivant Jr. terminated Mr. Golman as his attorney in April of 2022 (after approximately six (6) months of representation).¹⁹ Thereafter, Mr. Sullivant, Jr. hired Mitchel Driskell to represent him in the chancery court litigation.

Mr. Sullivant, Sr. underwent an IME by Dr. Brian Thomas and Dr. Milton Hobbs. Dr. Hobbs performed his IME on February 7, 2022, and concluded that Sullivant, Sr. could manage his own affairs. So, there was no delay in setting up the initial IME. On June 20, 2022, Sullivant Jr. filed a Motion to Strike or Exclude Opinion of Dr. Milton Hobbs. The hearing on this Motion was set for August 30, 2022, but did not go forward. Given the fact that Dr. Hobbs retired following his examination of Sullivant, Sr., the parties entered an Agreed Order to strike Dr. Hobbs as an expert. This Agreed Order Granting Motion to Exclude Testimony was entered on October 31, 2022. The October 31, 2022 Agreed Order stated that Sullivant Sr. would undergo another independent medical examination.

Shortly after September 12, 2022, Mr. Sullivant Jr. terminated Mr. Driskell as his attorney (after approximately five (5) months of representation) because Sullivant, Jr. was apparently unhappy with the length of time it took for the October 31, 2022 Agreed Order to be entered.

On November 3, 2022 (three days after entry of the October 31, 2022 Agreed Order), Sullivant, Jr., now proceeding *pro se*, filed a Motion for Order to Compel the Second Exam of the Agreed Order for Independent Medical Exams. This Motion was never set for hearing.

On December 1, 2022, Sullivant, Jr. moved for a clerk's entry of default with regard to his Counterclaim against Sullivant Sr. Thereafter, Sullivant, Sr. moved to set aside the default judgment, which the Court granted on or about January 12, 2023.

¹⁴ See Account Agreement and bank statements for FNB money market account 10822583 attached hereto as **Exhibit E-1**.

¹⁵ *Id.*

¹⁶ See Account Agreement and bank statements for FNB Advantage Lite Checking Account 10822831 attached hereto as **Exhibit E-2**.

¹⁷ See bank statements attached hereto as **Exhibit E-3** and **Exhibit E-4** showing restoration of total funds to \$439,988.78 as of May 5, 2023.

¹⁸ See Excerpts from the transcript of January 12, 2023 Motion Hearing at pgs. 51-52 attached hereto as **Exhibit F**.

¹⁹ See **Exhibit D**.

In late October of 2022, there was some discussion between Mr. Alford, and Sullivan, Jr., now proceeding *pro se*, about the parties agreeing to appoint Sherry Wall, Lafayette County Chancery Clerk as conservator for Sullivan, Sr.—although Sullivan, Jr. ultimately changed his mind and decided he should be conservator²⁰ On December 5, 2022, Sullivan, Sr. filed a Motion to Appoint Conservator, requesting that Sherry Wall, an independent third party, be appointed as conservator.

On December 8, 2022, Sullivan Jr. filed a Motion for Summary Judgment as to all counts in Sullivan, Sr.'s Complaint. This Motion for Summary Judgment was set for hearing on January 25, 2023, and was denied by the Court after the hearing. On March 31, 2023, the Mississippi Supreme Court denied Sullivan's Jr.'s petition for interlocutory appeal of the chancery court's denial of Sullivan, Jr.'s Motion for Summary Judgment.²¹

On January 17, 2023, Dr. Frank Perkins, M.D. completed an IME of Sullivan, Sr., and issued his IME report on January 27, 2023. Given the results of Dr. Perkins' IME of Sullivan, Sr., Sullivan Sr. agreed to be placed under conservatorship, but maintained that an independent third party be appointed as conservator.

On April 3, 2023, Sullivan, Jr. filed the instant Bar Complaint against his adverse party's attorney, Mr. Alford.

On April 14, 2023, Sullivan, Sr. moved the Court for a trial setting for his damages claims. Sullivan, Sr. also moved the Court for permission to execute a will on April 21, 2023.

On April 19, 2023, Plaintiff filed an Emergency Petition for Conservator which asked the Court to appoint Sullivan Jr. as conservator over Sullivan Sr. and his estate. On April 20, 2023, Plaintiff filed a Motion to Disqualify Mr. Alford as counsel for Sullivan, Sr. based on many of the same allegations included in Mr. Sullivan, Jr.'s Bar Complaint.

On April 25, 2023, the Court heard the Motions to Appoint Conservator, the Motion to Disqualify, the Request for Permission for Sullivan Sr. to Execute a Will, and the Motion for Trial Setting. The Court agreed that an independent third party should be appointed as conservator and appointed Sherry Wall, the Lafayette County Chancery Clerk as conservator over Sullivan, Sr.'s estate. The Court dismissed the Motion to Disqualify without prejudice finding it to be premature given the matter pending before the Bar. The Court granted Sullivan, Sr.'s Request to Execute a Will after hearing Dr. Perkins testify that Sullivan, Sr. had the testamentary capacity to execute a will. Notably, Sullivan, Sr. executed a will that leaves most of his estate to a Presbyterian Church—and not Sullivan, Jr. which may explain the animus behind Sullivan, Jr.'s bar complaint.

MR. SULLIVANT, JR.'S COMPLAINT

It is important to note, again, that Sullivan, Jr. is representing himself in litigation Mr. Alford filed against Mr. Sullivan, Jr. in the Lafayette County Chancery Court. This is not an instance where a client is couching a complaint against his own attorney for misconduct. Simply put, Sullivan, Jr. has filed a bar complaint against an attorney representing a party adverse to him in ongoing litigation. Indeed, Mr. Alford's own client, Robert Sullivan, Sr., has had no issue with Mr. Alford's legal representation in the underlying matter.

²⁰ See October 27, 2022 e-mail correspondence from Sullivan, Jr. to Alford attached hereto as **Exhibit G**.

²¹ See Mississippi Supreme Court's Order attached hereto as **Exhibit H**.

Mr. Sullivant Jr. alleges violations of Rule 8.4(c), Rule 8.4(d), Rule 3.3(a), Rule 1.15(a), Rule 1.15(c) of the Mississippi Rules of Professional Conduct. Mr. Sullivant, Jr.'s allegations, for the most, part are unsubstantiated—and quite frankly not true. The Mississippi Rules of Professional Conduct are not implicated here and have certainly not been violated.

It is also worth noting that much of Mr. Sullivant, Jr.'s Complaint takes issue with the alleged actions of his two former attorneys in the underlying litigation. He also disparages the chancellor in the underlying litigation. He is now proceeding *pro se* in the underlying matter. He appears to be frustrated by the sometimes lengthy and tedious nature of the litigation process and also be his former attorneys both of whom worked without incident with Mr. Alford before Sullivant Jr. terminated them. Additionally, some of the claims that he couches against Mr. Alford are issues that could have been taken up before the Chancery Court through the Mississippi Rules of Civil Procedure. No Rules of Professional Conduct have even been implicated here.

MR. ALFORD'S RESPONSE TO INITIAL BAR COMPLAINT

A. Rule 1.15(a) and Rule 1.15(c)

Mr. Sullivant, Jr. alleges Rule 1.15(a) and Rule 1.15(c) were violated “by allowing the Plaintiff access to funds that were ordered to be held in a separate trust account.” Rule 1.15(a) and Rule 1.15(c) of the Mississippi Rules of Professional Conduct states:

(a) A lawyer shall hold clients' and third persons' property separate from the lawyer's own property. Funds shall be kept in a separate trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such trust account funds and other property shall be kept and preserved by the lawyer for a period of seven years after termination of the representation.

(c) When a lawyer is in possession of property in which both the lawyer and another person claim an interest, the property shall be kept separate by the lawyer until completion of an accounting and severance of their respective interests. If a dispute arises concerning their respective interests, the lawyer shall disburse the portion not in dispute, and keep separate the portion in dispute until the dispute is resolved.

With regard to 1.15(a), the funds at issue were never placed in Mr. Alford's trust account—so this is not an instance where there was a question as to whether Mr. Alford was co-mingling Mr. Sullivant, Sr.'s funds with his own funds. As such, Rule 1.15(a) is not implicated. With regard to Rule 1.15(c), this is not an instance where both Mr. Sullivant, Sr. and Mr. Alford had an interest in the funds that were to be placed in Mr. Alford's trust account. Again, the funds belonged solely to Sullivant, Sr. and were placed in an interest-bearing account solely in Sullivant, Sr.'s name. Rule 1.15(a) and Rule 1.15(c) have no application here.

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

Mr. Sullivant, Jr. accuses Mr. Alford of violating Rule 8.4(c) and Rule 8.4(d) because he allegedly “breached the trust of the courts, was deceitful, and misrepresented to the Court and to the Defendant [Sullivant, Jr.] his intention to keep the funds from the land sale in trust until further order.” Rule 8.4(c) and (d) of the Mississippi Rules of Professional Conduct states:

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice.

Sullivant, Jr. has not set forth a single shred of evidence to support that Mr. Alford has engaged in deceitful conduct or conduct prejudicial to the administration of justice. All of Sullivant, Jr.'s allegations are completely unsubstantiated and are nothing more than speculative musings on Sullivant, Jr.'s part. In fact, when the mistake with the account was discovered, Mr. Alford went to great lengths to ensure that the funds were recovered for Sullivant, Sr. And, to the extent Mr. Alford was not able to recover the funds Sullivant, Sr. spent, Mr. Alford used his own personal funds to replenish Sullivant, Sr.'s account. All of the funds at issue (plus some interest) are accounted for, and Sullivant, Sr. (or Sullivant, Jr. for that matter) have not sustained any harm. It is worth reiterating that Mr. Alford did nothing nefarious with the funds at issue. As Mr. Golman's affidavit confirms, Mr. Alford simply thought it would be best for Sullivant, Sr. to earn some interest on his money.²² Mr. Golman confirms that after the February 2022 Order was entered, Mr. Golman and Mr. Alford had a conversation in which Mr. Golman agreed that the funds could be put somewhere to earn a return as opposed to into his non-interest bearing account.²³ Mr. Alford's mistake was in failing to follow up with an agreed order that would restrict the funds when placed in the interest-bearing account. This mistake—which was fully rectified—does not equate to dishonesty, fraud, deceit or misrepresentation. Nor does it equate to “interference with the administration of justice.” And there is absolutely no evidence that Mr. Alford engaged in any such conduct. If Mr. Sullivant, Jr. had an issue with the length of time it took to get hearings set or discovery answered, or independent medical examinations conducted, then those are issues that should have been taken up with his own attorneys and/or the Court through the proper procedural vehicles. Again, the Chancery Court has been made fully aware of the underlying allegations Sullivant, Jr. couches against Mr. Alford, and the Court has not admonished Mr. Alford in any way.

In support of his claims for “misappropriation of client funds,” Sullivant, Jr. cites to *Mathes v. Mississippi Bar*, 637 So.2d 840, 847 (Miss. 1994) and provides that “[m]isappropriation of client funds usually leads to disbarment.” This is not the holding in *Mathes*, and in any event, this case is clearly distinguishable. In the *Mathes* case (which resulted in a six-month suspension of license), an attorney received attorney's fees without first petitioning the Bankruptcy Court for approval and then failed to tender the fees to the bankruptcy trustee after signing an agreed order mandating him to do so. The attorney in the *Mathes* case made no efforts to obtain an extension of time to turn over the fees on the grounds of hardship and was belligerent and evasive which the Mississippi Supreme Court took into account when imposing a six-month license suspension. This is not the same situation by a long shot. Here, Mr. Alford did not take any funds from Sullivant, Sr., nor did he benefit from the funds in anyway. The funds were solely Sullivant, Sr.'s funds. While the Agreed Order did require Mr. Alford to place the funds in his trust account, Mr Alford truly believed that he had the obligation to place the funds in an interest-bearing account in Sullivant, Sr.'s name—and did so after verbal agreement from Mr. Sullivant, Jr.'s attorney at the time. Upon realizing he mistakenly failed to follow-up with an agreed order that would restrict the funds in the interest-bearing account, Mr. Alford did everything in his power to ensure—and did ensure--the funds were replenished and the account was frozen pursuant to a subsequent court order. In fact, Mr. Alford reimbursed Sullivant, Sr.'s account for approximately \$7,000 of money Sullivant, Sr. had spent on legitimate *living expenses*. No party or third party has suffered any harm.

²² See **Exhibit D**.

²³ *Id.*

Further, Mr. Alford is aware of his duties not only to his clients, but also to the Court and to the legal profession and takes them seriously as his swift subsequent action to rectify the situation indicates. To the extent that Mr. Sullivan, Jr. has alleged a violation of Rule 3.4(c) which prohibits a lawyer from “knowingly disobeying an obligation under the rules of a tribunal” Mr. Alford submits that he did not knowingly disobey the Agreed Order—he sought and received permission from opposing counsel to place the funds where he did and mistakenly failed to present the Court with an agreed order restricting the funds the First National Bank account. Again, Mr. Alford is now in complete compliance with all court orders. The Court has been made fully aware of this issue and has not admonished Mr. Alford in any way. And there is certainly no evidence that establishes Mr. Alford has engaged in conduct involving dishonesty, fraud, deceit or misrepresentation or engaged in conduct prejudicial to the administration of justice. As such, Rule 8.4(c) and Rule 8.4(d) are not implicated here.

Sullivan, Jr.’s Complaint also accuses Mr. Alford of purposefully delaying the chancery court proceedings, but there is simply no evidence that establishes that any delays were the result of any alleged gamesmanship on the part of Mr. Alford. For instance, Sullivan, Jr. takes issue with the amount of time that had elapsed for the second IME of Sullivan, Sr. to take place. As set forth previously, the Court originally entered an Agreed Order on February 8, 2022 that required Sullivan, Sr. to undergo two independent medical examinations (IMEs), one of which was to be performed by Dr. Hobbs.²⁴ Dr. Hobbs’ IME actually took place on February 7, 2022, so there was no delay on the part of Mr. Alford in setting up the initial IME. On June 20, 2022, Sullivan Jr. filed a Motion to Strike or Exclude Opinion of Dr. Milton Hobbs.²⁵ The hearing on this Motion was set for August 30, 2022 by agreement of the parties. Sullivan, Jr. takes issue with the fact that the date of August 30, 2022 was chosen as opposed to earlier July and August dates that Sullivan, Jr.’s previous counsel, Mr. Driskell had proposed. However, the Motion was filed on June 20, 2022—it surely cannot be deemed “purposeful delay” when an attorney *accepts a date proposed by Sullivan, Jr.’s counsel*. Many of the dates proposed for hearing were not even in Oxford. An e-mail exchange between counsel shows that Mr. Alford’s office replied on July 13, 2022: “Swayze can do August 23, August 29, or August 30. He is already in front of Whitwell on August 29 so that would be the preference if it works for Mitchell.”²⁶ The parties eventually agreed on August 30, 2022, but the hearing did not go forward because the parties eventually agreed to exclude the testimony of Dr. Hobbs. An Agreed Order Granting Motion to Exclude Testimony was entered on October 31, 2022.²⁷ The October 31, 2022 Agreed Order stated that Sullivan Sr. would undergo another independent medical examination.²⁸ The second IME of Sullivan, Sr. was completed on January 17, 2023 by Dr. Frank Perkins in accordance with Dr. Perkins’ schedule. There is simply no evidence of the calculated, egregious delay that Sullivan, Jr. describes.

With regard to Mr. Alford’s alleged delay in responding to discovery, Sullivan, Jr. filed a Motion to Compel on September 27, 2023 to ask the court to compel documents surrounding Sullivan, Sr.’s purchase of the truck. The motion was never set for hearing. In October of 2023, Sullivan Jr. and Mr. Alford met in person to discuss various issues and in an attempt to explore a reconciliation between Sullivan, Jr. and Sullivan, Sr. At that meeting, Sullivan, Jr. agreed that Mr. Alford could produce the documents by November 2, 2023—which he did. An e-mail from Sullivan, Jr. to Mr. Alford establishes the agreement.²⁹ All documents requested by Sullivan, Sr. have been produced. Again, the Rules of Professional Conduct have not been implicated here.

²⁴ See Exhibit C.

²⁵ See Motion to Strike attached hereto as Exhibit I.

²⁶ See June 29, 2022 through July 13, 2022 e-mail exchange attached hereto as Exhibit J.

²⁷ See Agreed Order Granting Motion to Exclude Testimony attached hereto as Exhibit K.

²⁸ *Id.*

²⁹ See October 27, 2022 E-mail from Sullivan, Jr. to Alford attached hereto as Exhibit G.

C. Rule 3.3(a)(2) and Rule 3.3(a)(3)

Sullivant, Jr. also accuses Mr. Alford of violating Rule 3.3(a)(2) and (3) through “misquoted holding cases, clipped out parts of quotes to suit his narrative, and omitted decisions and quotations from his own references that what have contradicted his narrative and legal argument” in Mr. Alford’s Response to Sullivant, Jr.’s Motion for Summary Judgment. Rule 3.3(a)(2)and(3) state:

a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel

In his complaint, Sullivant Jr. (a non-lawyer) fails to point to any specific instances of Mr. Alford misrepresenting legal authority in his response to Sullivant, Jr.’s Motion for Summary Judgment. He directs the Bar to the briefing in conjunction with Mr. Sullivant, Jr.’s Motion for Summary Judgment, which the Court summarily denied. As is evident, Mr. Alford’s Response does not misrepresent legal authority in any fashion. Sullivant, Jr.’s Reply attempts to distinguish the authority Mr. Alford cited, but it does not establish that Mr. Alford misrepresented the law. As such, Rule 3.3(a)(1) and (3) have not been implicated.

Sullivant, Jr. also accuses Mr. Alford of lying in open court to which Mr. Alford takes great offense. Sullivant Jr. alleges that Mr. Alford lied to the Court about a number of matters including the funds that are the basis of his complaint, why the Motion to Strike was not set for hearing sooner, the location of some farm equipment to which Sullivant, Jr. asserts ownership, and why the parties agreed to strike Dr. Hobbs. All of these allegations are completely unsubstantiated and are nothing but vicious accusations.

It is also worth addressing Sullivant, Jr.’s numerous references to Evelyn Stevens. Ms. Stevens was hired by Sullivant, Jr. to provide care-taking services for Sullivant, Sr.³⁰ Sullivant, Jr. no longer pays Ms. Stevens to provide care-taking services for Sullivant, Sr., however, Ms. Stevens continues to assist Sullivant, Sr. as he needs her.³¹ Sullivant, Jr. claims that Ms. Stevens has asserted “undue influence” over Sullivant Sr.—but again, this is only speculation by Sullivant, Jr. Sullivant, Jr. has deposed Ms. Stevens and her deposition testimony does not indicate any nefarious behavior. Sullivant, Jr. chastises Mr. Alford for not reporting her criminal misconduct—but there is no evidence of any criminal misconduct to report. Again, no rules of professional conduct are implicated or violated here.

MR. ALFORD’S RESPONSES TO SULLIVANT, JR.’S SUBSEQUENT SUBMISSIONS TO THE BAR

On April 25, 2023, Sullivant Jr. sent another letter to the Office of General Counsel of The Mississippi Bar. The letter purports to amend Sullivant, Jr.’s initial bar complaint and seeks emergency action from the Bar based on the recent filings Mr. Alford made on behalf of Sullivant, Sr. in the ongoing chancery court litigation. Namely, Sullivant, Jr. takes issue with Sullivant, Sr.’s request for permission from the Court to execute a will. The “emergent” nature of Sullivant Jr.’s

³⁰ See Deposition Transcript of Evelyn Stevens provided by Sullivant, Jr. attached hereto as **Exhibit L**.

³¹ *Id.*

April 25, 2023 letter to the Bar is likely because Sullivant, Sr.'s new will—which was drafted by another attorney and not Mr. Alford—bequeaths most of his assets to the Independence Presbyterian Church and not Sullivant, Jr. The April 25th letter accuses Mr. Alford of being “vindictive” and “going rogue” which, of course, is just vicious, unsupported accusations by Sullivant, Jr.. Mr. Alford's actions in filing the request on behalf of his client is nothing more than Mr. Alford doing his job—advocating for his client, Sullivant, Sr. Certainly, there is no implication of any Rules of Professional Conduct here.

In fact, at the May 9, 2023 hearing on the matter, Judge Whitwell made the following holding in relation to Sullivant, Sr.'s request to execute a new will after accepting testimony from Dr. Frank Perkins who testified that Sullivant, Sr. had testamentary capacity to execute a will and from Sullivant, Sr. himself who testified regarding his wishes in relation to the will:

I think he knows what he wants to do, if he wants to give his money to the church or whoever he wants to give it to. The Court is of the opinion--as I said awhile ago, the question is, what his ability right now, his testamentary capacity right now, to make a will? He's asking me to--that he wants to make one. You certainly--if he makes it and at some point we lose Mr. Sullivant and you want to contest it, you won't be prohibited from contesting it, whatever you want to do. But at this point, all he's asking is, is can he make a will. And Dr. Perkins has testified today that he's capable of doing that. The law is this, even though I appointed a conservator just this morning, the law is that a person can make a will while they're under a conservatorship. There is case law on that. I know it because I've read it and I've seen it. I don't have to quote to you today, but I know that a person under conservatorship can make a will and be held up. So the fact that I appointed Ms. Wall this morning to be his conservator doesn't mean that he doesn't have testamentary capacity.³²

When Sullivant, Jr. noted at the hearing that the request to execute a will was “peculiar” because the conservatorship had not yet been established, the Court replied:

Why is it peculiar? What if I had put the conservatorship matter off for six weeks? The question was, is he capable today of making a will. It doesn't have anything to do with it. I don't find it unusual at all. He can file all the motions he wants, just like you did. And I heard your motions, and I heard this, and I've ruled on it. And Mr. Sullivant will be allowed to make a will, if that's what he wants to do.³³

It is also worth noting in response to Sullivant's Jr. implication that Mr. Alford is somehow responsible for Sullivant, Sr.'s desire to change the will that Dr. Perkins testified that when he examined Sullivant, Sr. for testamentary capacity Sullivant, Sr. independently brought up his desire to change his will: “So during our interview, during the –before I did any of the testing when we were just having a conversation, we were talking about his family, he spontaneously raised that he wanted to change his will.”³⁴

It is clear Mr. Alford's actions on behalf of his client in requesting permission from the Court for Sullivant Sr. to execute a will did not violate any Rules of Professional Conduct. It is also clear that Sullivant, Jr.'s interests are adverse to Mr. Alford's client and Sullivant, Jr.'s bar complaint is self-serving.

³² See Excerpts from Transcript of May 9, 2023 hearing at 55-57 attached hereto as **Exhibit M**.

³³ *Id.* at pgs. 57-58.

³⁴ *Id.* at pgs. 17-18.

Also, Sullivan, Jr.'s April 25, 2023 letter makes reference to the deposition of Evelyn Stevens for the purpose of establishing Mr. Alford's alleged penchant to "go rogue." The letter states that during her deposition, Mr. Alford instructed her not to answer questions that pertained to a meeting between Sullivan, Sr., Stevens, and Mr. Alford. However, Sullivan, Jr. leaves out an important fact—Mr. Alford withdrew the objection. On page 85 of the deposition transcript Mr. Alford states: "Well, I'm going to withdraw my earlier objection about the questions you asked me during the meeting with me and Evelyn and Mr. Robert., so whatever you want to ask her ask her about it so we can get this over with."³⁵ In fact, Mr. Alford barely objected to anything over the course of Ms. Steven's deposition. Given the foregoing, we request that the Bar disregard Sullivan, Jr.'s April 25, 2023 letter.

On May 30, 2023, Sullivan, Jr. sent yet another letter to the Office of the General Counsel of the Mississippi Bar. Sullivan, Jr. spends much of the letter attempting to dispute Mr. Golman's affidavit. The affidavit speaks for itself. Sullivan's attempts to discredit both Mr. Golman and Mr. Alford are, again, speculative, conjectural, and disingenuous.

Sullivan, Jr.'s May 30, 2023 letter also accuses Mr. Alford of "not reconciling court ordered funds" and seems to insinuate that Mr. Alford violated the Court's Agreed Order to Freeze Account which was entered by the Court on December 13, 2022.³⁶ This is simply not true. As the e-mail correspondence indicates, the Bank allowed eight (8) transactions to go through after the Order to Freeze Account was provided to the Bank. Mr. Alford advised the Bank of the mistake, and the Bank credited Sullivan, Sr.'s account.³⁷ Again, this is not a violation of any ethical rule. Further, pursuant to an Amendment to Agreed Order to Freeze Accounts entered on January 25, 2023, Sullivan, Jr. was permitted access to bank statement and information regarding the First National Bank accounts—so Sullivan, Jr. was able to monitor the accounts.³⁸

Sullivan, Jr.'s May 30, 2023 letter also asserts that his Motion to Disqualify Mr. Alford previously pending before the chancery court (which was actually dismissed without prejudice) is contingent upon the action of the Bar. Seeking to disqualify Mr. Alford, is again, self-serving given that Mr. Alford's client, Sullivan, Sr., elected to sue Sullivan, Jr. and given the fact that Sullivan, Jr. has counter-sued Sullivan, Sr. Disqualification of Mr. Alford only benefits Sullivan, Jr. Sullivan, Sr. is happy with Mr. Alford's legal representation. There is now an independent third party appointed as Sullivan, Sr.'s general conservator and to date she has given no indication of any issues with Mr. Alford's representation of Sullivan, Sr.

On June 9, 2023, Sullivan, Jr. sent a *fourth* letter to the Office of the General Counsel of the Mississippi Bar. Unbelievably, this letter--without any evidence whatsoever--accuses Mr. Alford of having *ex parte* contact with Judge Whitwell thereby violating Rule 3.5 of the Rules of Professional Conduct. Sullivan, Jr. spends five and a half pages completely disparaging Judge Whitwell based on Judge Whitwell's questioning of Sullivan, Jr. at the hearing on Sullivan, Jr.'s Motion for Summary Judgment. The letter, for the most part, takes issue with Judge Whitwell, and then speculates that the Judge's line of questioning was a result of *ex parte* contact between Mr. Alford and Judge Whitwell. Mr. Alford emphatically did not engage in any *ex parte* contact with Judge Whitwell prior to the hearing, and there is absolutely no evidence to establish such an outlandish accusation. Indeed, Sullivan Jr. admits he is speculating: "Where did Judge Whitwell get a fabricated story that 'you had your PIN on it?'" A fabricated story that angered Judge Whitwell

³⁵ See Excerpts from Evelyn Stevens Deposition Transcript at 85 attached hereto as **Exhibit M.**

³⁶ See Agreed Order to Freeze Accounts attached hereto as **Exhibit N.**

³⁷ See e-mail correspondence attached to Sullivan, Jr.'s May 30, 2023 letter to the Bar attached hereto as **Exhibit O;** see also bank statements attached hereto as **Exhibit E-4.**

³⁸ See Amendment to Agreed Order to Freeze Accounts attached hereto as **Exhibit P.**

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enough to interrupt my argument and accuse me of the fabrication. A fabrication based on speculation, and not fact nor reason. I allege that Mr. Alford had an 'ex parte' communication in violation of Rule 3.5 with Judge Whitwell prior to the hearing with the intention of angering the Judge with speculative information enough to prejudice me and cause me damage." The letter is devoid of any factual allegations that establish that Mr. Alford had *ex parte* contact with the Court. Sullivant, Jr. only speculates here. Nevermind the fact, that the information the Judge questioned him on was included in Sullivant, Sr.'s briefing. As such, Sullivant, Jr.'s allegation of a violation of Rule 3.5 should be disregarded.

Mr. Sullivant, Jr.'s Complaint and subsequent submissions to the Bar do not establish conduct warranting further investigation by the Committee. Accordingly, the Complaint should be dismissed, and the file should be retired without further investigation consistent with Rule 7(b)(1). We appreciate the Committee's careful consideration of Mr. Alford's response. We stand ready to address any questions posed by the Committee.

Cordially,

PHELPS DUNBAR LLP

A handwritten signature in blue ink that reads "James G. Wyly, III". The signature is written in a cursive style with a small "III" at the end.

James G. Wyly, III

JGW/LRM

cc: Robert B. Sullivant, Jr.
T. Swayze Alford