

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

M. REID STANFORD

FILED

PETITIONER

vs.

JUL 23 2018

CASE NO: 2018-BR-587

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

THE MISSISSIPPI BAR

RESPONDENT

**SECOND SUPPLEMENT TO THE PETITION OF M. REID STANFORD
FOR REINSTATEMENT TO THE MISSISSIPPI BAR WITH
REQUEST FOR EXPEDITED CONSIDERATION**

COMES NOW M. Reid Stanford, Petitioner, pursuant to Rule 12 of the Rules of Discipline for the Mississippi Bar (“Rules of Discipline”), and in support of the Petition of M. Reid Stanford for Reinstatement to the Mississippi Bar with Request for Expedited Consideration (the “Petition”) and in response to the Answer of The Mississippi Bar to the Petition of M. Reid Stanford for Reinstatement to the Mississippi Bar (the “Response”) submits the following supplemental information for consideration by this honorable Court to-wit:

PREFACE

First, Mr. Stanford does not seek to challenge the Bar’s findings in the Response and appreciates the Bar’s support of his quest to be reinstated. Mr.

Stanford has accepted responsibility for the issues giving rise to the underlying complaint, has met the conditions precedent established by the Complaint Tribunal, and now seeks reinstatement to the practice of law. However, as this matter was resolved through a *quasi* mediation conducted by the Presiding Judge of the Complaint Tribunal, the record before this Court is lacking in the underlying facts of this case other than as set out in the Complaint Tribunal's Agreed Opinion and Judgment ("Opinion"). *See: Exhibit 1*. What appears to be the sole issue of contention in the Response is whether full amends and restitution has been made by Mr. Stanford which brings up two points Mr. Stanford believes needs further clarification.

Point 1: This was not an attorney escrow account under M.R.P.C. 1.15 but was an escrow account of a loan closing company of which Mr. Stanford owned no more than a 16% interest.

As a part of the Response, the Bar attaches a copy of a letter from Eugene M. Harlow, Esq. objecting to Mr. Stanford's reinstatement. Throughout Mr. Harlow's letter, he repeatedly refers to the funds in question being deposited into the "trust account" of Mr. Stanford. The funds were never deposited into Mr. Stanford's IOLTA account or any other account of his firm. The funds were deposited into an escrow account for Mississippi Real Estate Closings of Hattiesburg, LLC ("MRECH"), a limited liability loan closing company of which

Mr. Stanford owned at most a 16% interest.

The Complaint Tribunal specifically acknowledged Mr. Stanford's ownership interest in the Opinion. *See: Exhibit 1, page two, third paragraph.* The Complaint Tribunal also acknowledged the account in question was a business account when it found that "Mr. Stanford elected to use a sweep account for all of the **real estate closing businesses' escrow accounts.**" (Emphasis added). *See: Exhibit 1, page two, fourth paragraph.*

On July 26, 2017, the undersigned counsel¹ filed a Motion for Summary Judgment on behalf of Mr. Stanford raising questions of law as to whether the Bar actually had jurisdiction to consider a complaint arising out of a business enterprise in which an attorney happened to own a minority interest. *See: Exhibit "2".* In support of the motion, counsel also filed a Memorandum Brief in Support of Respondent's Motion for Summary Judgment. *See: Exhibit "3".*²

It is important for this Court to understand that Mr. Stanford does not submit the motion and brief to reargue the points of law therein. Given Mr. Stanford's acceptance of the discipline imposed, those points of law are moot. They are submitted to clarify the facts, events, and circumstances which gave rise

¹ The undersigned counsel entered his appearance in this matter on April 13, 2017.

² The Complaint Tribunal denied the Motion for Summary Judgment by Order Denying Motion for Summary Judgment dated August 3, 2017, following a telephonic hearing on July 28, 2017.

to the underlying complaint some of which are actually addressed in the Opinion.

Point 2: MRECH had adequate commercial liability insurance to make Mr. Harlow's clients whole and the clients chose to settle for less than the actual loss.

Mr. Harlow next contends his clients were not made whole by Mr. Stanford. The events involving the escrow account at MRECH led to the total collapse of all of the real estate holding companies and, as recognized by the Bar in the Response, forced Mr. Stanford into personal bankruptcy. While Mr. Stanford did not have the personal financial ability to make Mr. Harlow's clients whole and was subject to the restrictions of the bankruptcy act, he did have insurance for just that purpose.

Each of these companies were agents of Stewart Title. The penal sum of the general liability policies³ of the companies was far in excess of the claims of Mr. Harlow's clients. This was also a dead lock cinch of a case. This type of claim is exactly why the liability policies existed. Why Mr. Harlow and his clients decided to settle the case for \$75,000.00 when probably no less than a million dollars of coverage existed is not explained in Mr. Harlow's letter. None the less, it was Mr. Harlow and his clients that made the conscious decision to accept the money in a

³ Keep in mind that Mr. Stanford's law firm's errors and omissions carrier denied coverage as they determined the losses did not arise out of the law practice but a business venture.

full and complete settlement of all claims. This was not forced on them by anyone and certainly not Mr. Stanford who would have had little to no control over the carrier's decision to settle the case.

Make no mistake about this, Mr. Stanford is not trying to lessen the importance of what happened with the MRECH escrow account. But had it not been for the missed deposit, which was exacerbated by the sweep account, which had been approved by Stewart Title, we would not be here. If not for the sweep account, the issue would have been discovered and resolved quickly. That was over nine (9) years ago and it has been over five (5) years since Mr. Harlow settled the litigation. Prior to the events with the escrow account and in all the time since, Mr. Stanford has not had a single complaint filed against him.

But a simple, yet critical mistake by a staff person has had a life changing impact on Mr. Stanford. To be clear, Mr. Stanford does not make this statement regarding the mistake to deflect responsibility for what happened with the MRECH escrow account; he accepted that responsibility by accepting the discipline. Notwithstanding, a mistake did occur. Mr. Stanford would argue the Complaint Tribunal reached the same conclusion in the Opinion when it found “[t]he Tribunal does not find any aggravating factors in this case.” *See: Exhibit 1, page nine, third paragraph.*

Mr. Stanford was restricted by the bankruptcy on any action he could take as to Mr. Harlow's clients. Notwithstanding, Mr. Harlow's clients had access to more than enough money to make them whole. They made the conscious decision to accept less than the total loss as a compromise and settlement with Mr. Stanford's carrier which was outside of Mr. Stanford's control.

Point 3: Mr. Stanford submits additional letters of recommendation in support of the Petition.

Paragraph 11 of the Petition contained letters of recommendation from attorneys who are familiar with Mr. Stanford's lifestyle and actions both before and after entry of the Opinion. Subsequent to the filing of the Petition, Stanford received additional letters of recommendation which were thought to have been delivered to the Court. However, out of an abundance of caution and in an effort to make certain the Court has before it all letters of recommendation, Mr. Stanford submits the following:

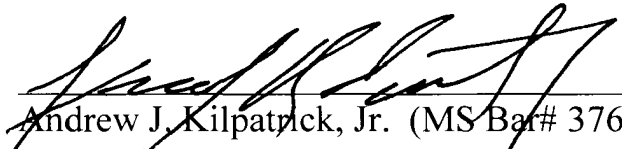
- (i) Letter of L. Bradley Dillard, Sr., Esq. dated May 7, 2018. *See: Exhibit "4"*; and
- (ii) Letter of Sonji L. Harris on behalf of the residents of Eastern Heights Subdivision, Grenada, Mississippi, dated May 21, 2018. *See: Exhibit "5"*.

WHEREFORE, PREMISES CONSIDERED, M. Reid Stanford prays that this Court consider this supplemental information in support of the Petition and for

entry of an order reinstating Mr. Stanford's license to practice law in the State of Mississippi and reinstating Mr. Stanford as a member of The Mississippi Bar.

Respectfully submitted:

Date: July 20, 2018



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Counsel for M. Reid Stanford

CERTIFICATE OF SERVICE

I, Andrew J. Kilpatrick, Jr., do hereby certify that I have this day caused to be served, a true and correct copy of the above and foregoing to the following listed persons:

Via Electronic Mail: mmartin@msbar.org

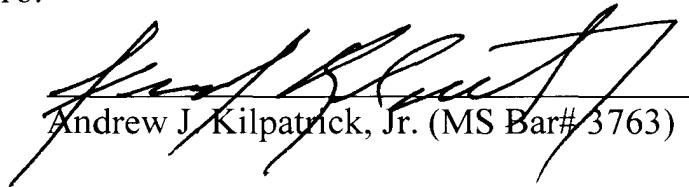
& Regular Mail

Melissa Selman Martin, Esq.
Deputy General Counsel
The Mississippi Bar
Post Office Box 2168
Jackson, MS 39225
Counsel for The Mississippi Bar

Via Electronic Mail:

Hon. Prentiss Harrell (Electronic Mail Only: [c/o moquain@circuit15.org](mailto:c/o_moquain@circuit15.org))
Joseph Kelly, Esq. (Electronic Mail Only: joek@jkellyalw.net)
L. Clark Hicks, Jr., Esq. (Electronic Mail Only: clark@hicksattorneys.com)
Complaint Tribunal Judges

This the 20th day of July, 2018.



Andrew J. Kilpatrick, Jr. (MS Bar# 3763)

SUPREME COURT OF MISSISSIPPI
(BEFORE A COMPLAINT TRIBUNAL)

THE MISSISSIPPI BAR

FILED

COMPLAINANT

V.

OCT 02 2017

CAUSE NO. 2011-B-1390

M. REID STANFORD

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

RESPONDENT

AGREED OPINION AND JUDGMENT

THIS MATTER having come before a duly appointed Complaint Tribunal of the Supreme Court of Mississippi, and the Complaint Tribunal having been advised that the parties have reached an agreement with respect to imposition of a **three year suspension to be composed of a six month suspension with two and a half years of probation** effective September 1, 2017, in this cause, and the Complaint Tribunal having considered the agreement of the parties, finds the agreement is well taken and should be incorporated in this Opinion and Agreed Judgment as follows:

FINDINGS OF FACT

This Tribunal finds it has jurisdiction over the parties and subject matter under Rule 8 of the Mississippi Rules of Discipline for the Mississippi State Bar ("MRD"). Mr. Stanford was admitted to the practice of law in Mississippi in 1995 and is licensed to practice in the State of Mississippi and the State of Tennessee. Mr. Stanford's license in Tennessee is presently inactive. At all relevant times in this Complaint, Mr. Stanford was an active member of the Mississippi Bar in good standing and subject to the disciplinary jurisdiction of the Supreme Court of Mississippi and its designated



agencies. The Mississippi Bar is a designated disciplinary agency pursuant to the Rule 3, MRD. Its mailing address is Post Office Box 2168, Jackson, Mississippi 39225-2168. The Formal Complaint was filed on September 19, 2011, pursuant to a directive from the Committee on Professional Responsibility to the Bar's General Counsel as contemplated by Rule 7(b)(iii), MRD.

On or about February 1, 2011, an informal [Bar] complaint against Mr. Stanford was filed by Adam B. Kilgore, in his capacity as General Counsel upon information and belief that Mr. Stanford misappropriated funds held for a third party in a real estate transaction. A true and correct copy of the complaint was attached to the Formal Complaint as Exhibit "A."

Mr. Stanford owned a 40% percent interest in MREC, Inc., a real estate closing company. MREC, Inc. held a 40% interest in Mississippi Real Estate Closings of Hattiesburg, LLC ("MRECH"). MREC, Inc. also held a 40% interest in Mississippi Real Estate Closings of Columbus, LLC; Mississippi Real Estate Closings of Greenwood, LLC; Mississippi Real Estate Closings of Grenada, LLC; Mississippi Real Estate Closings of Hernando, LLC; Mississippi Real Estate Closings of Oxford, LLC; Mississippi Real Estate Closings of Senatobia, LLC; Mississippi Real Estate Closings of Southaven, LLC and Mississippi Real Estate Closings of Tupelo, LLC.

With the approval of Stewart Title Guaranty Company ("Stewart"), Mr. Stanford elected to use a sweep account for all of the real estate closing businesses' escrow accounts. All of the available funds in each escrow account were "swept" from the

accounts daily following the close of business and placed into an investment account. When a check payable on any individual account was presented for payment funds sufficient to pay the check were “swept” back into the account without regard as to which loan closing company had deposited the funds.

On March 6, 2009, Grand Bank for Savings, FSB (“Grand Bank”) entered into a transaction with SP Properties and Russell Roberts (“Roberts”) to purchase certain property in Lamar County, Mississippi. During the transaction a dispute arose over the availability of parking. Roberts and Grand Bank contacted Mr. Stanford and asked if \$100,000.00 of the loan proceeds could remain in the escrow account of MRECH. The settlement statement for the transaction between Grand Bank and the Roberts reflects the \$100,000.00 from the sale proceeds to be held in escrow by MRECH related to the parking issue. When Grand Bank and Roberts failed to resolve the parking issue, MRECH attempted to interplead the escrowed funds on April 29, 2009; however the escrowed funds were not available to deposit with the Chancery Court.

Between March 6, 2009, when the \$100,000.00 from the Grand Bank transaction was deposited and April 29, 2009, when MRECH attempted to interplead the funds, an employee at Mississippi Real Estate Closings of Tupelo, LLC (“MRECT”) failed to make a deposit of approximately \$587,000.00 making the MRECT account deficient to cover the checks and wires from the closing. When checks and wires for the Tupelo closing were presented for payment, the MRECT account had insufficient

funds to pay the proceeds from the closing. As a result, the sweep account automatically used money from the other real estate closing businesses' accounts to cover the Tupelo error; again without regard as to which company had deposited the funds. This necessarily included the \$100,000.00 held in escrow by MRECH for Grand Bank and Roberts.

Upon learning of the problem, Mr. Stanford closed the sweep account, but at that point, neither Mr. Stanford nor anyone else was able to determine what portion of the remaining funds belonged to which real estate closing business or any party to any real estate transactions being conducted by those businesses. Eventually, \$80,000 was found in the account of Mississippi Real Estate Closings of Southaven, LLC, but the distribution of the full \$100,000 has still not been accounted for to date¹.

CONCLUSIONS OF LAW

By his conduct, Mr. Stanford violated the following provisions of the Mississippi Rules of Professional Conduct ("MRPC"):

Rule 1.15(a)

Rule 1.15(a), MRPC provides that a lawyer shall hold the property of clients and third parties separate from the lawyers own property in a separate trust account and safekeep the client's property. The rule also provides complete records of such trust account funds shall be kept and preserved by the lawyer for a period of seven

¹ MRECH and the other loan closing companies were agents of Stewart and the escrow accounts were subject to audit by Stewart. Both Stewart and a private accounting firm employed by Mr. Stanford audited the accounts but neither could determine exactly what happened to the account other than the missed deposit threw the sweep account out of balance.

years after termination of the representation. Rule 1.15(a), MRPC. When a lawyer receives funds belonging to another, deposits those funds into his trust account and prior to disbursement the trust account shows a total deposit less than the amount entrusted, in the absence of explanation “this supports the conclusion that the attorney has converted funds to an unauthorized and unlawful use.” *Reid v. Miss. State Bar*, 586 So. 2d 786, 788 (Miss. 1991). Restitution of funds previously misappropriated does not mitigate the offense. *Cotton v. Miss. Bar*, 809 So. 2d 582, 587 (Miss. 2000).

Mr. Stanford failed to safekeep the funds of third parties in the MRECH escrow account. Mr. Stanford authorized the use of a sweep account for the various real estate closing companies. Mr. Stanford agreed for MRECH to hold in escrow funds from the Grand Bank and Roberts’ transaction. During the time the funds from the Grand Bank and Robert transaction should have been in escrow and safeguarded, a deficiency existed in the escrow account. Grand Bank and the Roberts entities lost the use of their funds during that time.

Rule 1.15(b)

Rule 1.15(b), MRPC, provides a lawyer shall promptly deliver to a third person any funds the third person is entitled to receive and upon request shall promptly render a full accounting. The Comment to Miss. R. Prof. C. 1.15 explains that a lawyer should hold the property of others with the care required by a professional fiduciary. Rule 1.15(b) generally applies to the fiduciary duty connected to holding

property on behalf of third persons and therefore the practice of law is not a prerequisite for finding a violation of Rule 1.15(b). *Attorney Grievance Comm'n v. Johnson*, 976 A.2d 245, 258 (Md. 2009). As a result of Mr. Stanford's failure to safekeep the funds of Grand Bank and Roberts, he was unable to promptly deliver those funds when he filed the interpleader action.

Rule 5.3

Rule 5.3(a), MRPC, requires that a lawyer with managerial authority make reasonable efforts to ensure the firm has in effect measures giving reasonable assurance that the non-lawyer staff's conduct is compatible with the professional obligations of the lawyer. Mr. Stanford essentially abdicated his professional responsibilities to safekeep and promptly deliver to third person funds to his non-lawyer staff.

Rule 8.4

Mr. Stanford's actions described above also violate Rule 8.4(a) and (d), MRPC. Rule 8.4(a), MRPC, provides that it is professional misconduct for a lawyer to violate or attempt violate the rules of professional conduct. Rule 8.4(d), MRPC, states it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. There is no more damaging evidence as to a lawyer's fitness to practice law than his mishandling of his trust account. *McIntyre v. Miss. Bar*, 38 So. 3d 617, 625 (Miss 2010). The dignity and reputation of the legal profession is dependent on the trustworthiness and reliability of its lawyer members. *Id.* at 626.

Appropriate Discipline

Based upon the foregoing findings of fact and conclusion of law, the Tribunal must determine what discipline is to be imposed upon Mr. Stanford. In order to determine the appropriate level of discipline, the Tribunal considers the nine factors outlined in *Liebling v. Mississippi Bar*, 929 So. 2d 911, 918-920 (Miss. 2006). The nine factors are:

- 1) Nature of the misconduct involved;
- 2) The need to deter similar misconduct;
- 3) Preservation of dignity and reputation of the legal profession;
- 4) Protection of the public;
- 5) Sanctions imposed in similar cases;
- 6) The duty violated;
- 7) The lawyer's mental state;
- 8) Actual or potential injury resulting from the misconduct; and
- 9) Existence of aggravating or mitigating factors.

Within these criteria the Court has used the American Bar Association Standards for Imposing Lawyer Sanctions ("ABA Standards") which includes:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the actual or potential injury resulting from the misconduct; and
- (d) the existence of aggravating or mitigating factors.

L.S. v. Miss. Bar, 649 So.2d 810, 815 (Miss. 1997); *Goodsell v. Miss. Bar*, 667 So.2d 7 (Miss. 1996).

The nature of Mr. Stanford's misconduct is his failure to preserve third party funds. The nature of misconduct and the lawyer's mental state at the time of his conduct are necessarily intertwined. Mr. Stanford's mental state can best be described as negligent. The ABA Standards define the mental state of negligence as "when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." Mr. Stanford allowed multiple escrow accounts to sweep into an investment account such that an error in one account placed all funds in trust at risk. Further, Mr. Stanford's abdication of his professional responsibilities to safekeep funds to his non-lawyer staff with little oversight contributed to the misconduct.

Preserving the dignity of the profession and protecting the public are considerations in this case. Mishandling the funds of others "goes to the very heart of [a lawyer's] ability to practice law and to be put in a position of trust." *McIntyre v. Miss. Bar*, 38 So. 3d at 626. The public must be protected from lawyers who fail to safekeep and promptly deliver third party funds.

As to discipline imposed in other cases, the Supreme Court of Mississippi has not extended leniency to attorneys who mishandle the funds of others. The Court has repeatedly disbarred lawyers for as little as one instance of misappropriation. *Cotton v.*

Miss. Bar, 809 So. 2d at 586; *Haines v. Miss. Bar*, 601 So. 2d 851 (Miss. 1992); *Footte v. Miss. State Bar Ass'n*, 517 So. 2d 561 (Miss. 1987); *McIntyre v. Miss. Bar*, 38 So. 3d at 626. For the most part the Court's leniency, to the extent there is any, results in a three year suspension. See *Miss. Bar v. Sweeney*, 849 So. 2d 884 (Miss. 2000); *Miss. Bar v. Coleman*, 849 So. 2d 867 (Miss. 2002); *Miss. Bar v. Odom*, 566 So. 2d 712 (Miss. 1990).

Grand Bank and Roberts suffered an actual injury in the loss of the use of their funds. The loss of use of the funds, even for a short time gives rise to an actual injury. *McIntyre*, 38 So. 3d at 627.

The Tribunal does not find any aggravating factors present in this case. The following mitigating factors are present in this case: absence of a prior disciplinary history, character or reputation and delay in disciplinary proceedings. While the delay in this matter was not the fault of either party, the Tribunal notes no additional complaints have been lodged with the Bar regarding Mr. Stanford in the six years this disciplinary matter has been pending.

Having considered the *Liebling* factors, the aggravating and mitigating factors, the Complaint Tribunal finds that Mr. Stanford should be suspended for three years to be comprised of a six month suspension and two and a half years of probation effective as and from September 1, 2017.

Mr. Stanford shall pay the sum of \$51.44 for costs and expenses incurred by the Bar in the investigation of the informal [Bar] complaint filed in this matter and \$1090.50 for cost and expenses incurred by the Bar in the prosecution of this Formal

Complaint. Mr. Stanford shall pay such costs within thirty (30) days of the entry of this Agreed Opinion and Judgment.

Within thirty days of the date of the final Opinion and Judgment to be entered in this case, Mr. Stanford should notify in writing all of his clients with active matters pending that he has been suspended and advise each of them that he is unable to act as an attorney on their behalf. He shall further return all files to such clients or the counsel for such clients upon request. Mr. Stanford shall also notify in writing all parties opposite as well as courts and agencies in which he has active cases that he has been suspended. Mr. Stanford shall file a certificate with the Clerk of the Supreme Court that he has complied with these provisions of the Agreed Opinion and Judgment within thirty days of the date of entry of the Agreed Opinion and Judgment.

Mr. Stanford shall be prohibited from practicing law or holding himself out as a lawyer until such time as he has been reinstated by the Mississippi Supreme Court.

Mr. Stanford must apply for reinstatement pursuant to the Rules of Discipline for the Mississippi State Bar. In order for Mr. Stanford to be eligible for reinstatement he must have complied with all terms of this Order. Should Mr. Stanford comply with the terms of this Order, it is the recommendation of the Tribunal that the Supreme Court give expedited consideration to Mr. Stanford's petition for reinstatement.

The Clerk of the Supreme Court shall forward copies of the Opinion and Judgment to each member of the Complaint Tribunal; to counsel for all parties; to the Executive Director of the Mississippi Bar; to all Circuit and Chancery Court judges in Grenada County, Mississippi; to the Clerks of the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi; to the Clerks of the United States District Courts for the Northern and Southern Districts of Mississippi; to the Clerk of the United States Court of Appeals for the Fifth Circuit; to the Clerk of the United States Supreme Court and the Tennessee Board of Professional Responsibility.

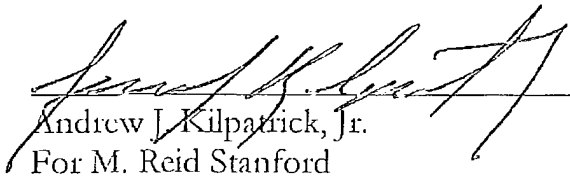
Each member of the Tribunal concurs in this Agreed Opinion and Judgment

SO ORDERED, this the 26 day of September, 2017.


Hon. Prentiss G. Harrell, Presiding Judge

APPROVED AS TO FORM:


Melissa Selman Martin
For The Mississippi Bar


Andrew J. Kilpatrick, Jr.
For M. Reid Stanford

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
(BEFORE A COMPLAINT TRIBUNAL)**

THE MISSISSIPPI BAR

COMPLAINANT

vs.

CAUSE NO, 2011-B-1190

M. REID STANFORD

RESPONDENT

MOTION FOR SUMMARY JUDGMENT

COMES NOW, M. Reid Stanford ("Stanford"), Respondent, and pursuant to M.R.C.P. 56 moves this Court for summary judgment against The Mississippi Bar (the "Bar"), Complainant, and in support thereof would show as follows to-wit:

1. There are no genuine issues of material fact with respect to the issues raised in this motion and, accordingly, Stanford is entitled to judgment as a matter of law.
2. The escrow account at issue in this matter is not an attorney escrow or trust account under M.R.P.C. 1.15 and the Bar does not have jurisdiction over a business corporation properly organized and existing under the laws of the State of Mississippi.
3. Delay in the prosecution of this case has substantially prejudiced Stanford's ability to present a complete defense.
4. In support of Stanford's motion for summary judgment, Stanford submits for the Tribunal's consideration his Memorandum Brief in Support of Respondent's Motion for Summary Judgment together with the Affidavit of M. Reid Stanford attached

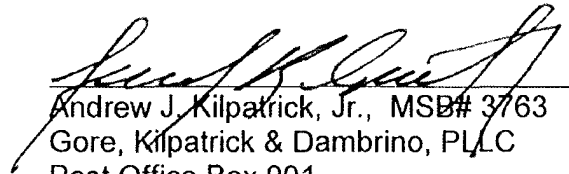


hereto as Exhibit "A", the Affidavit of John Mark King attached hereto as Exhibit "B" and together with such other affidavits and exhibits which may supplement this motion as same are obtained.

WHEREFORE, PREMISES CONSIDERED, in consideration of this motion and the supporting memorandum brief, Respondent moves this Tribunal for summary judgment and for entry of an order dismissing the above matter with prejudice

Respectfully submitted,
M. Reid Stanford

July 24, 2017



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CERTIFICATE OF SERVICE

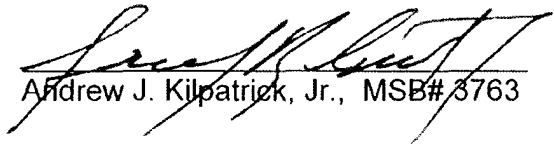
I, Andrew J. Kilpatrick, Jr., do hereby certify that I have this day caused to be served, via electronic mail and United States mail, postage prepaid, a true and correct copy of the above and foregoing to the following listed persons:

Melissa Selman Martin, Esq. (mmartin@msbar.org)
Deputy General Counsel
The Mississippi Bar
Post Office Box 2168
Jackson, MS 39225

Tribunal Judges:

Hon. Prentiss Harrell (Electronic Mail Only: [c/o moquain@circuit15.org](mailto:c/o_moquain@circuit15.org))
Joseph Kelly, Esq. (Electronic Mail Only: joek@jkellylaw.net)
L. Clark Hicks, Jr., Esq. (Electronic Mail Only: clark@hicksattorneys.com)

This the 24th day of July, 2017.


Andrew J. Kilpatrick, Jr., MSB# 3763

AFFIDAVIT OF
M. REID STANFORD

STATE OF MISSISSIPPI
COUNTY OF GRENADA

PERSONALLY CAME AND APPEARED BEFORE ME the undersigned authority in and for the above said county and state M. Reid Stanford, Affiant, who, after first being duly sworn on oath by me, did state as follows, to-wit:

1. That Affiant is above the age of twenty-one years and makes this affidavit of his own personal knowledge being fully competent to testify to the matters and facts contained herein; and

2. That Affiant is a duly licensed and practicing attorney at law in good standing with The Mississippi Bar ("Bar") and the Supreme Court of the State of Mississippi having been licensed and practicing since April 17, 1995; and

3. That at all times relevant to the allegations of the Formal Complaint, Affiant was a member of the Bar licensed and in good standing with the Supreme Court of the State of Mississippi; and

4. That at all times relevant to the allegations of the Formal Complaint, MREC, Inc. was a mortgage loan closing company in which Affiant held 40% of the ownership interest with the remaining 60% interest held by other individuals; and

5. That at all times relevant to the allegations of the Formal Complaint, Mississippi Real Estate Closing of Hattiesburg, LLC ("MRECH") was a mortgage loan closing company in which MREC, Inc. held 40% of the ownership interest with the remaining 60% interest held by other individuals which did not include Affiant; MREC, Inc. also held a 40% ownership interest in Mississippi Real Estate Closings of Columbus, LLC, Mississippi Real Estate Closings of Greenwood, LLC, Mississippi Real Estate Closings of Grenada, LLC, Mississippi Real Estate Closings of Hernando, LLC, Mississippi Real Estate Closings of Oxford, LLC, Mississippi Real Estate Closings of Senatobia, LLC, Mississippi Real Estate Closings of Southaven, LLC and Mississippi Real Estate Closings of Tupelo, LLC (collectively the "Loan Closing Companies"); and

6. All of the escrow accounts held by Regions Bank for the Loan Closing Companies were set up as "sweep accounts" from which all of the available funds were "swept" from the accounts daily following the close of business and placed into an investment account until a check payable on any particular account was presented for payment at which time funds sufficient to pay the check were "swept" back into the account; and



7. All of the Loan Closing Companies were agents for Stewart Title Guaranty Company ("Stewart") authorized to issue title insurance policies with Stewart as the insurer subject to policies, procedures and conditions set forth by Stewart including, but not limited to, the establishment and management of escrow accounts for loan closing proceeds which accounts were subject to audit by Stewart on a routine basis; and

8. Prior to establishment of the sweep accounts, Affiant contacted Danny Crotwell, vice-president and state underwriting counsel for Stewart and inquired as to whether the Loan Closing Companies could establish the escrow accounts as sweep accounts and was advised that Stewart takes the position that mortgage closing companies such as MRECH, even if owned in part by attorneys, are not law offices but independent business corporations and as such the companies are free to set and maintain the accounts in such manner as the companies determine to be in their best interest subject to the policies, procedures and conditions set forth by Stewart which set up the closing software for the companies and audited the companies' escrow accounts; and

9. On or about March 6, 2009, MRECH served as closing agent for a real estate transaction involving SP Roberts Properties, LLC ("Roberts") and Grand Bank for Savings, fsb ("Grand Bank"); and

10. During the course of the closing, a dispute arose between Roberts and Grand Bank regarding issues over availability of parking at the property which was the subject of the transaction; and

11. When the dispute arose, Roberts and Grand Bank contacted Affiant and asked if \$100,000.00 of the loan closing proceeds could remain in the MRECH escrow account pending resolution of the dispute to which Affiant responded in the affirmative; and

12. The escrow agreement was negotiated and authored by Roberts and Grand Bank; Affiant was not present for the closing and did not participate in the closing other than agreeing to allow the \$100,000.00 to remain in the MRECH escrow account pending resolution of the dispute; and

13. On or about April 29, 2009, MRECH filed an interpleader action in the Circuit Court of Lamar County, Mississippi, seeking to interplead the \$100,000.00 into the registry of the court in order for the court to determine the rightful owner of the funds; however, at the time of filing the interpleader action, MRECH did not deposit the funds with the court; and

14. Between March 6, 2009, and April 29, 2009, Mississippi Real Estate Closings of Tupelo, LLC closed a real estate transaction with a total deposit of approximately \$587,000.00; however, as a result of an oversight by one its employees, the deposit was not timely made and checks on the closing began to be presented for

payment resulting in the sweep account having insufficient funds to pay the proceeds from the closing; and

15. As a result of the missed deposit, all of the sweep accounts were out of balance and MRECH immediately ordered the sweep accounts closed but MRECH did not have sufficient funds to pay the \$100,000.00 into the court; and

16. As the investigation into the sweep accounts continued, it was discovered there was approximately \$80,000.00 remaining in the escrow account at Mississippi Real Estate Closings of Southaven, LLC for which there were no outstanding checks and those funds, on information and belief, were subsequently transferred for deposit with the court as part of the interpleader action or used in the settlement of litigation; and

17. At no time did Affiant have an attorney-client relationship with either Roberts or Grand Bank nor did Affiant offer any legal advice to either party; and

18. Upon officially reporting the discrepancy in the Hattiesburg account to Stewart Title, Stewart Title immediately began an investigation and ceased all closing activities with all the branches; and

19. Affiant advised Stewart Title that there were outstanding loans waiting to be disbursed in Hattiesburg and Stewart Title took possession of the files and disbursed the funds from the Hattiesburg account.

Further Affiant sayeth not.

M. Reid Stanford (MS Bar # 10011)

SWORN TO AND SUBSCRIBED before me this the 14th day of July, 2017.



My Commission Expires: _____

Kathy Carollo
Notary Public

AFFIDAVIT OF
JOHN MARK KING

STATE OF MISSISSIPPI
COUNTY OF GRENADA

PERSONALLY CAME AND APPEARED BEFORE ME the undersigned authority in and for the above said county and state John Mark King, Affiant, who, after first being duly sworn on oath by me, did state as follows, to-wit:

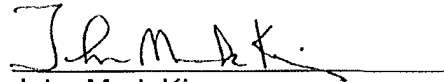
- (1) That Affiant is above the age of twenty-one years and makes this affidavit of his own personal knowledge being fully competent to testify to the matters and facts contained herein; and
- (2) That Affiant is a duly licensed and practicing certified public accountant in good standing with the Mississippi State Board of Public Accountancy having been licensed and practicing since Feb 1985 and currently practicing in Grenada, Mississippi; and
- (3) That Affiant is personally familiar with M. Reid Stanford ("Stanford") as Stanford is an attorney from Grenada, Mississippi, and currently has a law office located in Grenada; and
- (4) That Affiant served as the accountant for Mississippi Real Estate Closings Hattiesburg, LLC ("MRECH"), a Mississippi limited liability company, of which Affiant knew Stanford to somehow be a part owner but is not certain as of this Affidavit as to exactly what ownership interest Stanford had or in what capacity; and
- (5) That Affiant was primarily responsible for reconciling MRECH's operating accounts and, prior to February 2010, was not in any way responsible for MRECH's escrow accounts; and
- (6) That in or about March 2009, a dispute developed between two parties to a purchase and sale agreement being closed by MRECH at which time the parties to the closing requested MRECH hold the sum of \$100,000.00 in escrow until the dispute was resolved; and
- (7) That Affiant was advised that in or about February 2010, a court had directed MRECH to deposit the money held in escrow into the court's registry and it was subsequently determined that the escrow account of MRECH contained insufficient funds to comply with the court's order; and
- (8) That subsequent to the court's order and in 2010, Affiant was asked to review the records of MRECH's escrow account in an attempt to



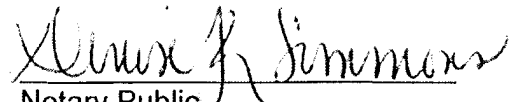
determine why the account held insufficient funds to cover the escrowed amount; and

- (9) That given the passage of time, Affiant does not recall if a conclusion was reached as to the reason behind the insufficient funds problem and no longer has any records related to Affiant's firm's review of the MRECH's escrow account but does believe the sweeping of the accounts on a daily basis probably contributed to the problem and complicated the review of the records; and
- (10) Affiant does recall that at no point in time did Affiant conclude that Stanford had diverted any of the funds of the MRECH escrow account to Stanford's personal use nor does Affiant believe Stanford received any of the funds; and

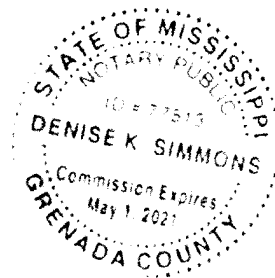
Further Affiant sayeth not.


John Mark King

SWORN TO AND SUBSCRIBED before me this the 19th day of June, 2017.


Notary Public

My Commission Expires: May 1, 2021



IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
(BEFORE A COMPLAINT TRIBUNAL)

THE MISSISSIPPI BAR

COMPLAINANT

vs.

CAUSE NO, 2011-B-1190

M. REID STANFORD

RESPONDENT

**MEMORANDUM BRIEF IN SUPPORT OF RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, M. Reid Stanford ("Stanford"), Respondent, and in support of his Motion for Summary Judgment ("Motion") filed herein against The Mississippi Bar (the "Bar"), Complainant, would submit unto this Honorable Tribunal the following memorandum and brief.

STATEMENT OF UNCONTESTED FACTS

1. That at all times relevant to the allegations of the Formal Complaint, Stanford was a member of the Bar licensed and in good standing with the Supreme Court of the State of Mississippi.
2. That at all times relevant to the allegations of the Formal Complaint, MREC, Inc. was a mortgage loan closing company in which Stanford held 40% of the ownership interest with the remaining 60% interest held by other individuals. See: *Affidavit of M. Reid Stanford* attached to the Motion as Exhibit "A" ("*Stanford Affidavit*") , ¶4.
3. That at all times relevant to the allegations of the Formal Complaint,



Mississippi Real Estate Closings of Hattiesburg, LLC ("MRECH") was a mortgage loan closing company in which MREC, Inc. held 40% of the ownership interest with the remaining 60% interest held by other individuals which did not include Stanford; MREC, Inc. also held a 40% ownership interest in Mississippi Real Estate Closings of Columbus, LLC, Mississippi Real Estate Closings of Greenwood, LLC, Mississippi Real Estate Closings of Grenada, LLC, Mississippi Real Estate Closings of Hernando, LLC, Mississippi Real Estate Closings of Oxford, LLC, Mississippi Real Estate Closings of Senatobia, LLC, Mississippi Real Estate Closings of Southaven, LLC and Mississippi Real Estate Closings of Tupelo, LLC (collectively the "Loan Closing Companies").
Stanford Affidavit ¶5.

4. All of the escrow accounts held by Regions Bank for the Loan Closing Companies were set up as "sweep accounts" from which all of the available funds were "swept" from the accounts daily following the close of business and placed into an investment account until a check payable on any particular account was presented for payment at which time funds sufficient to pay the check were "swept" back into the account. *Stanford Affidavit ¶6.*

5. All of the Loan Closing Companies were agents for Stewart Title Guaranty Company ("Stewart") authorized to issue title insurance policies with Stewart as the insurer subject to policies, procedures and conditions set forth by Stewart including, but not limited to, the establishment and management of escrow accounts for loan closing proceeds which accounts were subject to audit by Stewart on a routine basis. *Stanford Affidavit ¶7.*

6. Prior to establishment of the sweep accounts, Stanford contacted Danny

Crotwell, vice-president and state underwriting counsel for Stewart and inquired as to whether the Loan Closing Companies could establish the escrow accounts as sweep accounts and was advised Stewart takes the position that mortgage closing companies such as MRECH, even if owned in part by attorneys, are not law offices but independent business corporations and as such the companies are free to set and maintain the accounts in such manner as the companies determine to be in their best interest subject to the policies, procedures and conditions set forth by Stewart which set up the closing software for the companies and audited the companies' escrow accounts. *Stanford Affidavit ¶8.*

7. On or about March 6, 2009, MRECH served as closing agent for a real estate transaction involving SP Roberts Properties, LLC ("Roberts") and Grand Bank for Savings, fsb ("Grand Bank"). *Stanford Affidavit ¶9.*

8. During the course of the closing, a dispute arose between Roberts and Grand Bank regarding issues over availability of parking at the property which was the subject of the transaction. *Stanford Affidavit ¶10.*

9. When the dispute arose, Roberts and Grand Bank contacted Stanford and asked if \$100,000.00 of the loan closing proceeds could remain in the MRECH escrow account pending resolution of the dispute to which Stanford responded in the affirmative. *Stanford Affidavit ¶11.*

10. The escrow agreement was negotiated and authored by Roberts and Grand Bank; Stanford was not present for the closing and did not participate in the closing other than agreeing to allow the \$100,000.00 to remain in the MRECH escrow account pending resolution of the dispute. *Stanford Affidavit ¶12.*

11. On or about April 29, 2009, MRECH filed an interpleader action in the Circuit Court of Lamar County, Mississippi, seeking to interplead the \$100,000.00 into the registry of the court in order for the court to determine the rightful owner of the funds; however, at the time of filing the interpleader action, MRECH did not deposit the funds with the court. *Stanford Affidavit ¶13.*

12. Between March 6, 2009, and April 29, 2009, Mississippi Real Estate Closings of Tupelo, LLC closed a real estate transaction with a total deposit of approximately \$587,000.00; however, as a result of an oversight by one its employees, the deposit was not timely made and checks on the closing began to be presented for payment resulting in the sweep account having insufficient funds to pay the proceeds from the closing. *Stanford Affidavit ¶14.*

13. As a result of the missed deposit, all of the sweep accounts were out of balance and MRECH immediately ordered the sweep accounts closed but MRECH did not have sufficient funds to pay the \$100,000.00 into the court. *Stanford Affidavit ¶15.*

14. As the investigation into the sweep accounts continued, it was discovered there was approximately \$80,000.00 remaining in the escrow account at Mississippi Real Estate Closings of Southaven, LLC for which there were no outstanding checks and those funds, on information and belief, were subsequently transferred for deposit with the court as part of the interpleader action or used in the settlement of subsequent litigation. *Stanford Affidavit ¶16.*

15. At no time did Stanford have an attorney-client relationship with either Roberts or Grand Bank nor did Stanford offer any legal advise to either party. *Stanford*

Affidavit ¶17.

16. Upon officially reporting the discrepancy in the MRECH account to Stewart, Stewart immediately began an investigation and ceased all closing activities with all of the branches. *Stanford Affidavit ¶18.*

17. Stanford advised Stewart there were outstanding loans waiting to be disbursed from MRECH and Stewart took possession of the MRECH files and disbursed the funds from the Hattiesburg account. *Stanford Affidavit ¶19.*

ARGUMENT

Point 1: The escrow account at issue in this matter is not an attorney escrow or trust account under M.R.P.C. 1.15 and the Bar does not have jurisdiction over a business corporation properly organized and existing under the laws of the State of Mississippi.

By opinion dated December 16, 2005, the Attorney General for the State of Mississippi (the "Attorney General") opined on the propriety of "loan closing businesses" which close real estate transactions in Mississippi. See: *Opinion of the Office of the Attorney General for the State of Mississippi, 2005-0423, 2005 Miss. Ag Lexis 345*, a copy of which is attached hereto as Exhibit "A". Specifically, the Department of Banking and Consumer Finance ("DBCF") asked whether "title agent companies", as defined by DBCF in the opinion request, are prohibited from using a bank account for the purpose of depositing and distributing money for the closing of real estate loans and if this activity should be regulated and examined by DBCF. The pertinent facts presented by DBCF to the Attorney General for consideration are as follows:

. . . . in summary a number of Mississippi attorneys are shifting their real estate loan closing operations from their law practices to "title companies" owned by the attorneys. Most of these "title companies" are not licensed title insurance

companies with substantial assets. Instead, these "title companies" are merely agents for licensed companies. You then refer to these "title companies" as "title agent companies."

In recent years there has been considerable growth in Mississippi in the number of "title agent companies" that perform real estate loan closings under various names. **The role of attorneys in such companies may vary from full ownership and management to no ownership and no management.**

In order to operate a loan closing business, an entity must deposit and disburse monies from and to lenders, buyers, sellers, and third parties using a bank checking account. The Department of Banking and Consumer Finance (DBCF) is of the opinion that the bank account is an "escrow account" and the owner of the account is an escrow agent. **Such accounts, which are not in the names of attorneys, are not subject to the State Bar's rules and regulations governing escrow accounts.** The argument that DBCF often hears is that "loan closing" is a business transaction, not a legal service and, therefore, **does not require a lawyer.** However, Section 81-27-1.102 clearly requires that the attorney act as an escrow agent. (Emphasis added).

The question then presented by DBCF for opinion was "whether 'title agent companies' are prohibited from using a bank account for the purpose of depositing and disbursing money for the closing of real estate loans and if this activity should be regulated and examined by the DBCF.

The opinion does not give a black and white answer to the question; but it certainly does not prohibit the activity. The opinion basically concludes that DBCF can adopt rules and regulations "determined necessary or appropriate to implement the provisions of this chapter".

The opinion goes on to find as follows:

that "'title agent companies' . . . are engaged in the trust business and likewise may only engage in such activities on behalf of an entity listed in Section 81-27-1.101, unless excepted under Section 81-27-1.102. Whether a particular 'title agent company' is performing such activities on behalf of an authorized entity or is otherwise excepted under Section 81-27-1.102, is a determination that would have to be made on a case by case basis."

To this writer's knowledge, there has been no determination that any "title agent company" is operating contrary to the provisions of *Miss. Code Ann. §81-27-1.101, et seq.* In fact, title agent companies continue to close real estate mortgage loans in the State of Mississippi. DBCF also pointed out where legal secretaries and title abstractors were purchasing errors and omissions coverage, becoming agents for title insurance companies, setting up escrow accounts and closing loan transactions. Yet, again, the opinion did not determine that conduct to be prohibited.

Further, the opinion also does not dispute the conclusion of the DBCF that "accounts which are not in the names of attorneys, are not subject to the State Bar's rules and regulations governing escrow accounts".

The opinion does state that "[g]enerally, attorneys are held to the same standard of conduct while performing other business services as those applicable to the practice of law". However where the conduct in question arises outside of an attorney's professional capacity, discipline should be imposed only if the alleged "misconduct is of a serious nature, and tends to show him to be an unfit person to be an attorney." *Watkins v. Mississippi Bar* 589 So.2d 660, 664 (Miss. 1991); *Brumfield v. Mississippi State Bar Association*, 497 So.2d 800, 808 (Miss. 1986); *Rhodes v. Rhodes*, 420 So. 2d 759, 761 (Miss. 1982). The events with the company owned trust account clearly occurred outside of Stanford's professional capacity. As will be shown later, there is no way the events with the company owned trust account tends to show Stanford to be an unfit person to be an attorney.

In addition, there has been no published determination by the Bar, either in case law or ethic's opinions, that the Bar considers the closing of real estate mortgage loans

to be the practice of law or that escrow accounts of such companies are subject to the Bar's rules and regulations under M.R.P.C. 1.15. If such is the case, then the Bar owes its members clear direction as to the Bar's position before attempting to discipline attorneys involved with any "title agent company".

The need for such directive is further exemplified by the split in various jurisdictions over whether the closing of loans by one other than an attorney constitutes the unauthorized practice of law. Consider the case of *Countrywide Home Loans, Inc. v. Kentucky Bar Ass'n*, 113 S.W.3d 105, 119 A.L.R. 5th 641 (Ky. 2003) wherein the Supreme Court of Kentucky held that lay persons may conduct real estate closings on behalf of other parties, but they may not answer legal questions that arise at the closing or offer any legal advice to the parties.

Also consider *In re Opinion No. 26 of Committee on Unauthorized Practice of Law*, 139 N.J. 323, 654 A.2d 1344 (1995), wherein the Supreme Court of New Jersey held the practice of conducting residential real estate closings and settlements without the presence of attorneys to represent vendor and purchaser is not the unauthorized practice of law, so long as the broker notifies the vendor and purchaser of the conflicting interests of the brokers and title companies and of the general risk involved in not being represented by an attorney.

In *Cardinal v. Merrill Lynch Realty/Burnet, Inc.*, 433 N.W.2d 864 (Minn. 1988), the Supreme Court of Minnesota held that a real estate broker did not engage in the unauthorized practice of law when it charged and collected a drafting fee for "closing services" in connection with the sale of real estate.

While in each of these cases, the courts laid out specific guidelines to guard

against the unauthorized practice of law particularly restricting the closing person from rendering legal advice, the courts did not find the closing of the loan itself to be the unauthorized practice of law.

As previously stated, there is a split in the jurisdictions with South Carolina, Georgia and Florida, for example, all holding that it is the unauthorized practice of law for anyone other than an attorney to close a real estate transaction. However, the Supreme Court of Florida did carve out an exception for closings incident to title insurance commitments in *The Florida Bar v. McPhee*, 195 So. 2d 552 (Fla. 1967).

Accordingly, if the Bar contends the closing of loans to be the unauthorized practice of law, then the Bar should so state and educate its members although that might be a slippery slope for the Bar to travel in the light of the United States Supreme Court's recent ruling in *North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015)¹

In the instant case, Stanford did not hold the controlling interest in MREC, Inc. Further, MREC, Inc. only held a 40% interest in MRECH with the remaining interests held by other, non-attorney, individuals. The escrow account in question was held by, and was in the name of, a duly qualified limited liability company and not an attorney. While an attorney held a minority interest in a company which held a minority interest in MRECH, that is not sufficient to deem the account an IOLTA account under M.R.P.C. 1.15 to give rise to jurisdiction in this matter.

¹ In summary, the Court held that a state board on which the controlling number of decision makers are active market participants in the occupation the board regulates must be actively supervised by the state to enjoy antitrust immunity.

Point 2: Delay in prosecution has substantially prejudiced Stanford's ability to present a complete defense.

For the purpose of this argument, it is important to keep in mind the following chain of events:

- (a) The events giving rise to the issues with the escrow account occurred between March 6, 2009, and April 29, 2009; and
- (b) The interpleader action was filed on April 29, 2009; and
- (c) The M.R.P.C. 8.3 letter was issued to the Bar on December 15, 2010; and
- (d) The informal information and belief complaint was filed by General Counsel of the Bar on January 7, 2011; and
- (e) The Formal Complaint in this matter was filed on September 19, 2011; and
- (f) Stanford's answer was filed on or about November 18, 2011; and
- (e) The deposition of Stanford, the only discovery taken in this matter, occurred on May 7, 2015, over three years and eight months after the filing of the Formal Complaint and six years after the events giving rise to the issues in question occurred; and
- (e) This matter is set for hearing on the Formal Complaint on August 16, 2017, almost six years after the filing of the Formal Complaint and over eight years after the events giving rise to the issues in question occurred .

The Bar will undoubtedly argue that it has met the burden of proof by the simple fact the escrow account did not have the requisite funds to pay the amount retained in escrow. The Bar relies on cases such as *Reid v. The Mississippi State Bar*, 596 So. 2d 786, 788 (Miss. 1991) wherein the Court stated:

When a lawyer receives and deposits in his trust account funds belonging to others, and prior to disbursing any of such funds to the lawful payees, the trust account shows a total deposit less than the amount he had been entrusted with, this supports the conclusion that the attorney has converted funds to an unauthorized and unlawful use.

The Bar will also argue the account dropped below the amount necessary to cover the escrow amount and constitutes, "in the absence of explanation, clear evidence of an unlawful conversion." *Id.* at 788. In essence the Bar will charge that the burden of proof has switched to Stanford to prove he did not convert the funds. The problem with this assertion is the delay in the prosecution of this matter has substantially prejudiced Stanford's ability to defend this action and prove he did not convert the funds.

The accountant, John Mark King ("King"), whom Stanford asked to review the escrow account, stated that given the passage of time he could not recall if a conclusion was reached as to the reason the escrow account had insufficient funds to cover the escrow amount. However, King did surmise the sweeping of accounts probably contributed to the problem and complicated the review of the accounts. See: *Affidavit of John Mark King* attached to the Motion as Exhibit "B" ("*King Affidavit*") ¶9. However, what is important is the following recollection of King:

Affiant does recall that at no point in time did Affiant conclude that Stanford had diverted any of the funds of the MRECH escrow account to Stanford's personal use nor does Affiant believe Stanford received any of the funds; "*King Affidavit*" ¶10.

The Supreme Court of Mississippi has addressed unusual delays in Bar disciplinary hearings and held that "[i]n order to bar disciplinary proceedings due to delay, the respondent must demonstrate **substantial prejudice in his ability to present a defense.**" *The Mississippi Bar v. An Attorney*, 636 So. 2d 371, 375 (Miss. 1994; citing, *In re Ettinger*, 128 Ill. 2d, 351, 538 N.E. 2d 1152 (Ill. 1989). (Emphasis added).

Here, the Bar seeks to compel Stanford to prove he did not convert the escrowed funds to his own use despite the fact that the passage of time has resulted in the loss of documents reviewed by Stewart and King to determine the cause of the overdraft. It was their obligation to review and try to determine the cause. Now, again, the passage of time has dulled the recollection of King on whether a conclusion was reached as to the reason behind the insufficient funds problem although he does believe the sweeping of accounts on a daily basis complicated the review of the records. *King Affidavit*, ¶9. Other than Stanford's own testimony, the only evidence available to Stanford to prove he did not convert the funds is King's recollection he never concluded Stanford had done so. *King Affidavit*, ¶10.

Also, while not directly on point, consider the Court's discussion in *Miss. Bar v. Thompson*, 5 So 3d 330 (Miss.2008). In *Thompson*, the Court was reviewing the impact of the remoteness of the misconduct as a mitigation factor in the imposition of discipline. While we will ultimately show that no discipline should be imposed in this matter, with respect to the mitigation aspect, the Court concluded the remoteness of the misconduct had two facets:

The first is whether the passage of time itself has accomplished rehabilitation of the lawyer. **The second is whether the transgressions are so remote in time that intervening developments and current circumstances dilute the public interest in proper and prompt discipline.** *Id.* At 339-340. (Emphasis added).

As to the first, there is no evidence Stanford commingled funds or converted funds. The issues creating the overdraft occurred from the failure to make a deposit; a **mistake**. There is no rehabilitation aspect in this case but, if there were, Stanford's

conduct in the practice of law since the events in question has been exemplary. There have been no complaints filed against him and he has continued to practice law since the events in question although not in the loan closing arena.

As to the second facet, the events giving rise to this matter occurred in April 2009. The issues were widely publicized in Stanford's home town at the time of the incident. However, the passage of time has not only diluted the public's interest, it is respectfully argued the event has been completely forgotten. There can be little benefit to the Bar in imposing discipline for what the Bar considers to be such egregious conduct over eight (8) years after the events in question and almost seven (7) years after the filing of the M.R.P.C. 8.3 complaint.

Finally, we would urge the Tribunal to give strong consideration to the comments in the dissent of Presiding Justice Dan Lee² in the case of *Barrett v. The Mississippi Bar*, 648 So. 2d 1154, (Miss. 1995). In the dissent, Justice Lee addresses denial of attorneys to the right to a speedy resolution of disciplinary proceedings.

As I stated in my earlier dissent in *The Mississippi Bar v. An Attorney*, 636 So. 2d 371 (1994), I do not believe that a criminally accused's right to speedy trial as announced in *Barker v. Wingo*, 407 U.S. 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972), extends to bar disciplinary proceedings. But I cannot agree that attorneys facing serious penalties have no constitutionally protected interest in an expeditious resolution. **Due process and fundamental fairness require that an attorney not be called upon in 1991 to defend against a complaint filed in 1982, where no good reason is shown for the Bar's delay.** To quote from my earlier dissent on the subject of speedy resolution of disciplinary proceedings:

That due process must be afforded to attorneys in disciplinary proceedings is beyond peradventure. See: *Netterville v. Mississippi State Bar*, 397 So. 2d 878 (Miss. 1981). As this Court has recently stated:

² Justice McRae joined in Justice Lee's dissent and also provided a separate written dissent on the issue of the delay in bringing disciplinary proceedings.

We have repeatedly held that attorneys who are accused in bar disciplinary proceedings have the right to due process of law, *Attorney K. v. Mississippi State Bar Association*, 491 So. 2d 220, 222 (Miss. 1986); *Myers v. Mississippi State Bar*, 480 So. 2d 1080, 1087 (Miss. 1985) *Netterville v. Mississippi State Bar*, 397 So. 2d 878, 883-84 (Miss. 1981), although it is not at all clear that attorneys would be without this right if disciplinary proceedings were regarded as wholly civil in nature.

Mississippi State Bar v. Young, 509 So. 2d 210, 212 (Miss. 1987).

...

Rule 8.1 of the Mississippi Rules of Discipline clearly provides that proceedings **"shall be completed within 180 days from the date of the designation of the tribunal, unless extended by the court on motion of either party for good cause shown."**

Rule 26 provides, in pertinent part:

References to time within these rules and procedural sections are directory and not jurisdictional. Time limitations are administrative, not jurisdictional; however, the time for filing appeals or seeking reinstatement shall be jurisdictional. Failure to observe directory time interval may result in contempt of the agency having jurisdiction but will not justify abatement of any disciplinary investigation or proceeding.

In my estimation, the remedy provided by Rule 26 is woefully insufficient as a safeguard for the due process right to a speedy resolution of disciplinary proceedings.

I would interpret Rule 8.1 as a[n absolute] requirement and hold that violations without a finding of good cause require dismissal of the complaint.

The Mississippi Bar v. An Attorney, 636 So. 2d 371, 376 [****27**] (1994) (Lee, P.J. dissenting).

No good can come from this Court allowing the State Bar to sit on a complaint against an attorney for almost nine years. **Accused attorneys are entitled to faster resolution and members of the public deserve more timely protection.** Regrettably, the only way to create an effective incentive for the Bar to act seasonably is to reverse sanctions imposed after an unreasonable delay. Furthermore, Rule 8.1 establishes a generous time frame for handling bar matters (which was also exceeded in this case), and I think this Court should enforce it. Accordingly, I would also reverse the public reprimand and dismiss the Bar's complaint with prejudice. *Id.* At 1161-1162. (All emphasis added).

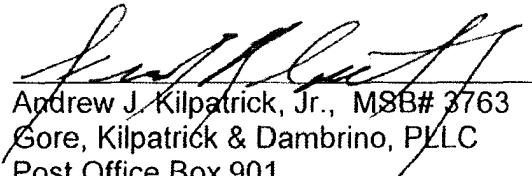
Conclusion

The Tribunal lacks jurisdiction to hear a matter involving the escrow account of a limited liability loan closing company. There is no established statute or case law that holds that a business organization cannot conduct loan closings. If the Bar chooses to attack that process, it should be done in an independent action through the Court and not through a disciplinary action against an attorney owning not more than 16% of the company.

Regardless, the time for bringing this disciplinary action has long passed, if it ever existed. There is no question the passage of time has substantially prejudiced Stanford's ability to present a defense in this matter especially in the light of the Bar's position that the burden of proof has shifted to Stanford to prove he did not convert the funds to his own use. There is no reason to believe Stanford presents any danger to the public nor will the reputation of the Bar be vindicated by taking disciplinary action against an attorney for events occurring over eight (8) years ago. Stanford respectfully moves this matter be dismissed with prejudice.

Respectfully submitted,
M. Reid Stanford

July 24, 2017



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Fax: 662.837.1009
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CERTIFICATE OF SERVICE

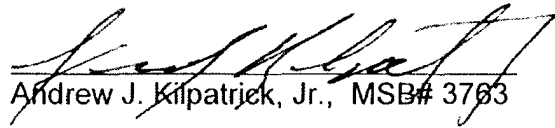
I, Andrew J. Kilpatrick, Jr., do hereby certify that I have this day caused to be served, via electronic mail and United States mail, postage prepaid, a true and correct copy of the above and foregoing to the following listed persons:

Melissa Selman Martin, Esq. (mmartin@msbar.org)
Deputy General Counsel
The Mississippi Bar
Post Office Box 2168
Jackson, MS 39225

Tribunal Judges:

Hon. Prentiss Harrell (Electronic Mail Only: c/o moquain@circuit15.org)
Joseph Kelly, Esq. (Electronic Mail Only: joek@jkellyalw.net)
L. Clark Hicks, Jr., Esq. (Electronic Mail Only: clark@hicksattorneys.com)

This the 24th day of July, 2017.


Andrew J. Kilpatrick, Jr., MSB# 3763

DOUGLAS REUTERS
WESTLAW **Mississippi Attorney General Opinions**

John S. Allison

Office of the Attorney General
December 16, 2005
2005 WL 3817063 (Miss.A.G.)
Office of the Attorney General
State of Mississippi
Opinion No.
2005
0423
December 16, 2005

Re: Title Companies/Escrow Agents

*1 John S. Allison
*1 Commissioner
*1 Department of Banking and Consumer Finance
*1 Post Office Drawer 23729
*1 Jackson, MS 39225-3729

Dear Mr. Allison:

*1 Attorney General Jim Hood received your request for an Official Opinion and assigned it to me for research and response. In your letter of request, a copy of which is attached hereto and incorporated herein by reference, you state, in summary that a number of Mississippi attorneys are shifting their real estate loan closing operations from their law practices to "title companies" owned by the attorneys. Most of these "title companies" are not licensed title insurance companies with substantial assets. Instead, these "title companies" are merely agents for licensed companies. You then refer to these "title companies" as "title agent companies."

*1 In recent years there has been considerable growth in Mississippi in the number of "title agent companies" that perform real estate loan closings under various names. The role of attorneys in such companies may vary from full ownership and management to no ownership and no management.

*1 In order to operate a loan closing business, an entity must deposit and disburse monies from and to lenders, buyers, sellers, and third parties using a bank checking account. The Department of Banking and Consumer Finance (DBCF) is of the opinion that the bank account is an "escrow account" and the owner of the account is an escrow agent. Such accounts, which are not in the names of attorneys, are not subject to the State Bar's rules and regulations governing escrow accounts. The argument that DBCF often hears is that "loan closing" is a business transaction, not a legal service and, therefore, does not require a lawyer. However, Section 81-27-1.102 clearly requires that the attorney act as an escrow agent.

*1 Lenders protect their loan closing proceeds by requiring a "closing protection letter" issued by a licensed title insurance company and a title insurance commitment issued by a title insurance agent for each transaction. The "closing protection letter" affords no protection against defalcation by the title agent to the buyer or seller, unless the letter is addressed to them. Most buyers and sellers do not receive this protection and purchasers do not regularly purchase owner's title insurance. In addition, a closing agent's errors and omissions policy are usually written as a "claims made" policy, which coverage may lapse before a claim is made. Many transactions do not involve lenders or title insurance and, therefore, no protection is afforded to the parties, directly or collaterally, by title insurance.

*1 DBCF is also aware of legal secretaries and title abstractors purchasing errors and omissions coverage and becoming agents for title insurance companies. From there, it is simply a matter of setting up a checking account and engaging in the closing business completely unregulated. It appears then that practically any person can get into the loan closing business and handle huge sums of money without any regulation or oversight.

*2 You then ask whether "title agent companies" are prohibited from using a bank account for the purpose of depositing and disbursing money for the closing of real estate loans and if this activity should be regulated and examined by the DBCF.

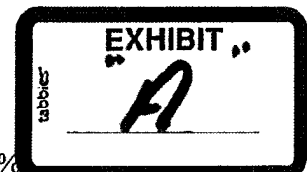
*2 In response, Section 81-27-1.001 provides the following:

*2 (a) Articles 1 and 2 of this chapter may be cited as the Multistate Trust Institutions Act

*2 (b) It is the express intent of Articles 1 and 2 of this chapter to permit banks and other depository institutions, foreign banks and trust companies to engage in the trust business on a multistate and international basis to the extent consistent with the safety and soundness of the trust institutions engaged in a trust business in this state and the protection of consumers, clients and other customers.

*2 Section 81-27-1.101 provides that:

*2 (a) No company shall act as a fiduciary in this state except



*2 (1) A state trust company;

*2 (2) A state bank;

*2 (3) A savings association organized under the laws of this state and authorized to act as a fiduciary pursuant to Section 81-12-1 et seq. or Section 81-14-1 et seq.;

*2 (4) A national bank having its principal office in this state and authorized by the Comptroller of the Currency to act as a fiduciary pursuant to 12 USCS 92a;

*2 (5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;

*2 (6) An out-of-state bank with a branch in this state established or maintained pursuant to Section 81-23-1 et seq. or a trust office licensed by the commissioner pursuant to this chapter;

*2 (7) An out-of-state trust company with a trust office licensed by the commissioner pursuant to this chapter; or

*2 (8) A foreign bank with a trust office licensed by the commissioner pursuant to this chapter.

*2 (b) No company shall engage in an unauthorized trust activity.

*2 (Emphasis added).

*2 Section 81-27-1.002(2) states that "act as a fiduciary" or "acting as a fiduciary" means:

*2 (A) Accept or execute trusts, including to (i) act as a trustee under a written agreement; (ii) receive money or other property in its capacity as trustee for investment in real or personal property; (iii) act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction; (iv) act as trustee of the estate of a deceased person; or (v) act as a trustee for a minor or incapacitated person;

*2 (B) Administer in any other fiduciary capacity real or tangible personal property;

...

*2 (Emphasis added).

*2 Section 81-27-1.002(34) states:

*2 "Trust business" means holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state, including but not limited to:

*2 (A) Acting as a fiduciary, or

*2 (B) To the extent not acting as a fiduciary, any of the following: (i) receiving for safekeeping personal property of every description; (ii) acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or (iii) acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity.

*3 ...

*3 "Unauthorized trust activity" is defined in Section 81-27-1.002(38) as:

*3 (A) A company, other than one identified in Section 81-27-1.101(a), acting as a fiduciary within this state,

*3 (B) a company engaging in a trust business in this state at any office of such company that is not its principal office, if it is a state trust institution, or that is not a trust office or a representative trust office of such company, or

*3 (C) an out-of-state trust institution engaging in a trust business in this state at any time an order issued by the commissioner pursuant to Section 81-27-2.302(b) is in effect.

*3 (Emphasis added).

*3 Section 81-27-1.1002(b) provides:

*3 These definitions shall be liberally construed to accomplish the purposes of the chapter. Additional definitions applicable to this chapter are contained in Section 81-27-6.001. The commissioner by rule or regulation may adopt other definitions to accomplish the purposes of this chapter.

*3 The activities that you describe, to-wit, the receipt, deposit and disbursement of significant sums of monies from and to lenders, buyers, sellers, and other third parties, which are typical in the practice of engaging in real estate closings do fall within the definition of a "trust business" under Section 81-27-1.002. As such, any person engaging in such activities must do so on behalf of one of the entities listed in Section 81-27-1.01, unless the person falls within the exceptions provided under Section 81-27-1.102.

*3 Section 81-27-1.102 provides:

*3 Notwithstanding any other provision of this chapter, a company does not engage in the trust business or in any other business in a manner requiring a charter, license or registration under this chapter or in an unauthorized trust activity by:

*3 (a) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to a n activity which is not an unauthorized trust activity;

*3 (b) Rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the Supreme Court of this state;

*3 (c) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

*3 (d) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Mississippi Real Estate Commission;

*3 (e) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the Secretary of State or the Securities and Exchange Commission;

*3 (f) Rendering service as a financial advisor or financial planner, provided that the person rendering that service has successfully completed the education and training requirements prescribed by a national certifying organization, has received certification from that organization, and holds current certification from that organization;

*4 (g) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Department of Insurance to the extent that the activity is regulated by the Department of Insurance;

*4 (h) Engaging n the lawful sale of prepaid funeral benefits under a permit issued by the Insurance Commissioner under Section 83-37-1 et seq. or engaging in the lawful business of a perpetual care cemetery corporation under Sections 41-43-35 through 41-43-53;

*4 (i) Acting as trustee under a voting trust as provided by Section 91-9-1 et seq.;

*4 (j) Acting as trustee by a public, private, or independent institution of higher education or a university system, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to or otherwise made available to such institution with respect to its educational or research purposes;

*4 (k) Engaging in other activities expressly excluded from the application of this chapter by rule of the department;

*4 (l) Rendering services customarily performed by a certified public accountant in a manner authorized by the State Board of Public Accountancy;

*4 (m) Provided the company is a trust institution and is not barred by order of the commissioner from engaging in a trust business in this state pursuant to Section 81-27-2.302(b), (1) marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state, (2) delivering money or other intangible assets and receiving the same from a client or other person in this state, or (3) accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client.

*4 As previously stated above, individuals engaging in the trust business may only do so on behalf of an entity listed in Section 81-27-1.101, unless excepted or deemed not to be engaged in the trust business under Section 81-27-1.102. Attorneys permitted to practice law in Mississippi, who perform loan closing services as individuals or as part of a law firm, including entities in which attorneys are permitted to engage in the practice of law, such as professional corporations and limited liability companies, etc., are deemed not to be engaged in the trust business, or any other business requiring a charter under this chapter, or in an unauthorized trust activity by virtue of Section 81-27-1.102(b).

*4 While not within the general scope of your request for an Attorney General's Opinion, we note that The Mississippi Bar (the Bar) has issued a number of ethics opinions addressing the issue of attorneys engaging in business activities that are not necessarily considered to be the practice of law. Generally, attorneys are held to the same standard of conduct while performing other business services as those applicable to the practice of law. Attorneys are encouraged to contact the Office of General Counsel for the Bar if there are questions regarding these issues.

*5 The "title agent companies" that you describe are engaged in the trust business and likewise may only engage in such activities on behalf of an entity listed in Section 81-27-1.101, unless excepted under Section 81-27-1.102. Whether a particular "title agent company" is performing such activities on behalf of an authorized entity or is otherwise excepted under Section 81-27-1.102, is a determination that would have to be made on a case by case basis.

*5 For your additional information, we note that Section 81-27-1.003 authorizes the Commissioner of Banking and Consumer Finance to promulgate rules and regulations that are determined to be necessary or appropriate to implement the provisions of the chapter.
Very truly yours,

*5 Jim Hood

*5 Attorney General

*5 By: Charles T. Rubisoff

*5 Special Assistant Attorney General

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May 7, 2018

Mississippi Supreme Court
P. O. Box 117
Jackson, MS 39205

Re: Reinstatement Petition of Reid Stanford

Dear Justices of the Court:

I am writing in support of Reid Stanford's Petition for Reinstatement to the practice of law in the State of Mississippi. I have known Reid since 1992, when we both entered the University of Mississippi School of Law as first year law students. Throughout our time in law school together I was frequently around Reid in social and academic settings, including our service together on the Mississippi Law Journal. At all times, Reid's competency, and more importantly his integrity, were evident to all around him. I can state unequivocally that Reid is a man of high moral character.

Since our time together in law school, I have worked with Reid from time to time professionally, and have represented him as my client. Specifically, I represented Mr. Stanford and Mississippi Real Estate Closings of Hattiesburg, LLC in a lawsuit filed by Grand Bank for Savings, FSB, in the Chancery Court of Lamar County, Mississippi in Cause Nos. 2010-0539 and 2010-0205. I diligently represented Reid and his company during the course of that litigation and at no time did I see any evidence that Reid improperly used trust account funds for his own purpose, or that Reid did anything with ill intent or otherwise designed to benefit himself to the detriment of any other party. That litigation was resolved to the satisfaction of all parties involved and was ultimately dismissed with prejudice. Any issue with escrowed funds appeared to have solely been related to the use of a "sweep account" which was implemented by Reid at the suggestion of his banker. Again, at no point was any evidence discovered showing that Reid absconded with escrowed funds or otherwise used such funds for his own purpose in any fashion.

Reid has in my experience been a very competent attorney, and more importantly is a man of integrity who I would trust to represent my interests and the interests of my family. I would not write this letter in support of his reinstatement if I had any questions or doubts concerning his competency or integrity. If reinstated, Reid will be a



benefit to the Mississippi Bar and to his potential clients throughout the State of Mississippi who may rely upon his sound advice and guidance. I respectfully request the court to grant Reid's Petition for Reinstatement on an expeditious basis, and allow Reid to resume the practice of law within the State of Mississippi.

Sincerely yours,



L. Bradley Dillard

/kd

May 21, 2018

Sonji L. Harris
212 Lyons Drive
Grenada, MS 38901

Mississippi Supreme Court
P.O. Box 117
Jackson, MS 39205

I, Sonji L. Harris, am writing this letter on behalf of the Eastern Heights community of Grenada, MS in support of Mr. Reid Stanford, Esquire. We met Mr. Stanford two years ago when our community started suspecting toxic chemicals might be the culprits behind high cancer rates and deaths in our neighborhood. From day one Mr. Stanford showed himself to be an honest and caring friend, attorney, and down-right good human being towards each of us. He worked diligently to keep us informed about our case; while helping us to understand the technical information that we otherwise would not have the ability to decipher on our own. The numbers, maps, graphs, and etc that we receive concerning this case are very intensive and well beyond our scope of expertise.

The last six or seven months have been very trying without Mr. Stanford at the helm of our team guiding us through this journey for justice. Eastern Heights is a small community of 88 homes, made up of retired educators, military service men and women, retired blue collar workers, and etc. These homeowners are all first generation homeowners who purchased their homes in the seventies and beyond. Each one chose this neighborhood because they wanted to give their families a better life. So imagine having found out two years ago that since the seventies they'd been exposed to toxins. Mr. Stanford was tremendous in helping us to navigate through this crisis. He helped us to first deal with the impact of it all. Then he led us to a group of Environmental attorneys who have been equally driven to help this community meet with justice behind the losses of life and health that has been faced.

We are at a critical juncture in this process. Quite honestly, we desperately need our attorney back on our case fighting alongside us guiding us through this process. We are simply a community of people who are in a fight for life literally who need this man's help to continue fighting successfully. That said, we are asking you to please reinstate Mr. Reid Stanford back to wholeness.

Please consider our heartfelt earnest letter and bring us all good news. Not only is Mr. Stanford is an honest, upright man; he's a Christian man who has credentials to lead a church, but instead he chose to fight for people like us-the underdogs.

Thank you so much for your time and consideration. If you have any questions please call or email me.

Thanks again.

Sincerely,

Shay Harris
(901)870-449 9

