PRB File No. 001-2024

In re William Cobb, Esq.

DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

DISCIPLINARY COUNSEL EXHIBIT 1

From: Sullivan, Ian
To: Alexander, Jon
Subject: FW: Kebbie
Date: Wednesday, November 22, 2023 10:20:57 AM

Ian C. Sullivan
Rutland County State's Attorney
(802) 786-2531

From: Battey, Nicholas <Nicholas.Battey@vermont.gov>
Sent: Wednesday, November 22, 2023 9:29 AM
To: William Cobb <william.cobb@comcast.net>; Robert Kaplan <rkaplan@kaplanlawvt.com>
Cc: Sullivan, Ian <Ian.Sullivan@vermont.gov>
Subject: RE: Kebbie

Hi Bill,

Thanks for reaching out. I'm always open to conversations about resolution, and I'm sure Robert and I will have discussions going forward, but from my perspective I think we'll have to get past the deposition first before we do.

Thanks,
-Nick

Nicholas R. Battey
Deputy State's Attorney
Rutland County State's Attorney's Office
400 Asa Bloomer Building
Rutland, VT 05701
(802) 786-2531

From: William Cobb <william.cobb@comcast.net>
Sent: Tuesday, November 21, 2023 2:43 PM
To: Battey, Nicholas <Nicholas.Battey@vermont.gov>; Robert Kaplan <rkaplan@kaplanlawvt.com>
Cc: Sullivan, Ian <Ian.Sullivan@vermont.gov>
Subject: Kebbie

Hi Nick, Robert, and Ian,

Good talking to you Nick. Just wanted to throw out a few things that I think would be helpful.
First, as everyone knows, I have been serving a 15-month suspension of my law license in Vermont.

My reinstatement hearing is scheduled for this Monday in St. Johnsbury. I delayed the hearing, in part, because the attorney for the State, Jon Alexander, suggested that I do counseling and I agreed. After doing counseling over the last couple of months, I have learned for the first time that I have ADHD. I think that it partly explains some of my weaknesses - lack of organization, lack of follow-through, lack of planning ahead, unable at times to prioritize and complete tasks. If you read the Order, a lot of the issues relate to these Executive Skills that I need more work on. I have my first meeting with a physician on December 4th to see what medication, if any, should be prescribed.

Second, I believe that these weaknesses impacted my ability to advocate for Kandeh as well as I could have. I know that the trial was suddenly upon us without a plea agreement, and that I was aware that I did not have a good defense in mind. He didn't want to plead and he didn't want to testify. That left me with having to cross examine witnesses, including the victim, as my only way to cast doubt. In hindsight, I would have been better off assuming we were going to trial and preparing accordingly - lining up every defense witness I could think of to state that Kandeh and his girlfriend, the victim, had a good caring relationship and that they never saw any violence, signs of distress, or reason to think that there was ongoing abuse. However, at the time, I shortsightedly believed that I could get Kandeh to cut his losses and that we could work out a plea agreement at the 11th hour. However, that didn't happen, and the trial proceeded.

Did I give it my best at trial? Sure. Ian was there and knows the deal. And the evidence was strong. However, I didn't prepare as well as I should have. I was a solo practitioner doing way too much work, in too many courts, juggling too many things at once. With a plea, everything would have been fine. Without a plea, Kandeh got hurt, and I have to blame myself in part for the loss.
Following the trial, Judge Zonay sentenced him to 12-25 years. Did I think that was excessive? Definitely. That was a big hit. I thought that the sentence was harsh and unreasonably punitive. Not to minimize the harm, or to excuse anybody, but I thought it was a lot given everything that we know about their relationship.

We have all dealt with PCRs. I have filed a bunch, and generally tried to resolve them if possible. I had one case in Caledonia where Kirk Williams agreed to reduce the sentence in order to resolve the PCR. I had one in Essex with Vince Illuzi where the same thing happened. In both cases, I thought everyone acted reasonably to give a little in order to figure out a resolution.
I think Robert has a good case that my advocacy fell below the standard of care. Whether the Court agrees, and finds that it reached the level of ineffectiveness based on the legal standard - I have no idea.

How about if Kandeh resolves his case by getting something off the minium and giving something back on the maximum. Kandeh would like to have a 6 year minimum, 6 years reduced from the current 12 year minimum, and he should offer that time back on the maximum, and making the maximum 31 years. 12-25 years becomes 6-31 years. Shuffling the deck, the years are the same and Kandeh has the ability to get out in a year or so and get supervised on parol. Or, how about 12-25 all suspended but 6 years to serve. He's going back to New York anyway, and it's unlikely that Vermont has much of a future for him.

If everyone wants to depose me, I'm available. I will of course make any of my hearing exhibits and

affidavit and other court documents available to anyone who would like a copy.
Bill

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PRB File No. 001-2024

In re William Cobb, Esq.

DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

DISCIPLINARY COUNSEL EXHIBIT 2

Vermont Superior Court Rutland Criminal Division

Docket No. 976-8-16 Rdcr State vs. Kebbie, Kandeh 976-8-16 Rdcr

Prosecutor:	Rosemary M. Kennedy	Defendant:	Kandeh Kebbie
		DOB:	05/19/1982
Motions pdg:		POB:	
Bail set:		Atty:	Thomas L. Enzor
Incarcerated:	Out of State Facility		
	Conditions:	Aliases:	
Case Status:		Address:	TCCF
Disposed			415 U.S. Hwy 49 North
			Tutwiler MS 38963
Next Hearing:			

Dspt	Docket No.	Ct.	Statute	F/M/O	
1	976-8-16 Rdcr	1	13 1042	mis	01/09/18 Verdict by jury of ASSAULT-DOMESTIC
2	976-8-16 Rdcr	2	23 1094(a)	mis	01/09/18 Verdict by jury of VEHICLE OPERATION-WITHOUT OWNER CONSENT
3	976-8-16 Rdcr	3	13 1043(a)(1)	fel	01/09/18 Verdict by jury of ASSAULT-AGG DOMESTIC-1ST DEG
4	976-8-16 Rdcr	4	13 1043(a)(1)	fel	01/09/18 Verdict by jury of ASSAULT-AGG DOMESTIC-1ST DEG
5	976-8-16 Rdcr	5	13 1042	mis	01/09/18 Verdict by jury of ASSAULT-DOMESTIC
6	976-8-16 Rdcr	6	13 1042	mis	01/09/18 Verdict by jury of ASSAULT-DOMESTIC
7	976-8-16 Rdcr	7	13 1042	mis	01/09/18 Verdict by jury of ASSAULT-DOMESTIC
8	976-8-16 Rdcr	8	13 2406(a)(3)	fel	01/09/18 Verdict by jury of UNLAWFUL RESTRAINT-2ND DEG
9	976-8-16 Rdcr	9	13 1043(a)(1)	fel	01/09/18 Verdict by jury of ASSAULT-AGG DOMESTIC-1ST DEG
10	976-8-16 Rdcr	10	13 1043(a)(1)	fel	01/09/18 Verdict by jury of ASSAULT-AGG DOMESTIC-1ST DEG

08/31/16 Information and Affidavit filed on 2 disputes. Custody status: Marble Valley Regional Corr Fac(Rutland).
Dispute 1 for Docket No. 976-8-16 Rdcr Count 1, ASSAULT-DOMESTIC, Misdemeanor, 13 V.S.A. 1042. Alleged offense date: 08/30/16. Arrest/citation date: 08/30/16 Rutland PD.
Dispute 2 for Docket No. 976-8-16 Rdcr Count 2, VEHICLE OPERATION-WITHOUT OWNER CONSENT, Misdemeanor, 23 V.S.A. 1094(a). Alleged offense date: 08/30/16. Arrest/citation date: 08/30/16 Rutland PD.
Probable Cause found by Judge Thomas A. Zonay on disputes 1-2.
Arraignment set for 08/31/16 at 01:00 PM.
Calendar Call set for 10/05/16 at 09:00 AM. Naomi Roche, Victim’s Advocate, entered as party/participant 3.
Surety bond or cash set by Acting Judge on dispute 1-2. Bail Amount: 20000.00 pre. Condition[s] 1-2,13-14,16,31 imposed; No.14: not to have contact with Ashley Adams & Linda Adams; No.16: to appear in court on 08/31/16 @ 12:30; Other conditions: You shall not enter the lands or premises of the home, school or workplace of persons named on Cond. 14.
Arraignment held by Thomas A. Zonay. (CDVIDEO). Public Defender requested.

Attorney assigned: Mark E. Furlan.
Request granted for public defender. 50.00 to be paid; Payment Order No. 66281.
Copy of Affidavit and Information given to defendant. 24 hour rule waived.
Reading of Information waived. Defendant pleads not guilty on disputes 1-2. Pre-trial discovery order issued.
Surety bond or cash set by Thomas A. Zonay on dispute 1-2. Bail Amount: 50000.00 set. Condition[s] 1-2,11,13-15,31 imposed; No.11: Curfew: 24/7 at your residence except; No.14: not to have contact with Ashley Adams, Linda Adams, Christopher; No.15: not to harass same as 14; Other conditions: You shall not enter the lands or premises of the home, school or workplace of persons named on Cond. 14.
Mittimus for Failure to Give Bail issued. Custody status: Marble Valley Regional Corr Fac(Rutland). Conditions of Release signed by defendant.

09/08/16 $50000.00 bail bond posted by Eastern Bail Bond Agency, Inc.
Custody status: released.

09/14/16 Calendar Call scheduled for 10/05/16 rescheduled.
Status Conference set for 10/10/16 at 03:00 PM. rescheduled from 10/5.

09/22/16 Status Conference scheduled for 10/10/16 cancelled.
Status Conference set for 10/12/16 at 09:00 AM. rescheduled from 10/10.
Status Conference scheduled for 10/12/16 rescheduled.
Status Conference set for 10/10/16 at 02:45 PM. rescheduled from 10/12.

10/10/16 Status Conference held by Nancy S. Corsones. (CDVIDEO).
Status Conference set for 10/17/16 at 03:00 PM.
Jury Drawing set for 10/19/16 at 09:00 AM.
Jury Trial set for 11/08/16 at 08:30 AM.
Jury Trial set for 11/09/16 at 08:30 AM.

10/12/16 Jury Drawing scheduled for 10/19/16 cancelled.
Jury Trial scheduled for 11/08/16 cancelled.
Jury Trial scheduled for 11/09/16 cancelled.

10/17/16 Status Conference held by Cortland T. Corsones. (CDVIDEO).

10/18/16 Attorney Mark E. Furlan withdraws.
Appearance entered by William W. Cobb.

11/14/16 Status Conference set for 11/21/16 at 03:00 PM. This hearing will be cancelled and the parties will not need to appear if a discovery stipulation is filed prior to the hearing date.

11/21/16 Status Conference held by Cortland T. Corsones. (CDVIDEO).
Note: Parties have until 11/30/16 to file felstip.

11/30/16 Note: Felony discovery stip filed 976-8-16.

12/04/16 Tax referral on Payment 71911 Order 66281.

04/17/17 Jury Drawing set for 07/26/17 at 09:00 AM.
Pre Trial Conference set for 07/19/17 at 09:00 AM.

06/07/17 1 document filed for party 1: Request for DDR - mailed.

06/15/17 Motion to Continue (stipulated) filed by Attorney Ian C. Sullivan for Plaintiff State on disputes 1-2. Motion to Continue (stipulated) given to judge.
Motion 1 (to Continue (stipulated)) granted by Cortland T. Corsones.
Jury Drawing scheduled for 07/26/17 continued.
Pre Trial Conference scheduled for 07/19/17 continued.
Pre Trial Conference set for 08/17/17 at 09:00 AM.

08/17/17 Pre Trial Conference held by Cortland T. Corsones. (CDVIDEO).
Status Conference set for 08/30/17 at 09:00 AM.

08/18/17 Motion to Enlarge Time filed by Attorney Rosemary M. Kennedy for Plaintiff State on disputes 1-2. Motion to Enlarge Time given to judge.

08/21/17 Motion to Join Offenses (with docket 1022-9-16) filed by Attorney Rosemary M. Kennedy for Plaintiff State on disputes 1-2. Motion to

Join Offenses (with docket 1022-9-16) given to judge.
1 document filed by Attorney Rosemary M. Kennedy for party 2: Amendment of Information(8 counts added).

08/30/17 Status Conference held by Cortland T. Corsones. (CDVIDEO).
Note: Defense will respond to motion to join. Set next list.
Pre Trial Conference set for 09/20/17 at 09:00 AM.
Jury Drawing set for 09/27/17 at 09:00 AM.
Motion 2 (to Enlarge Time) granted by Cortland T. Corsones. Parties notified on the record.

09/14/17 Motion 3 (to Join Offenses (with docket 1022-9-16)) granted by Thomas A. Zonay. The motion is granted. No opposition has been filed and the motion sets forth a legal and factual basis to join the offenses for trial. The Court adopts the analysis set forth by the State in the motion as to joinder.
Note: THIS CASE IS JOINED WITH DOCKET 1022-9-16 RDCR FOR TRIAL.

09/20/17 Pre Trial Conference held by Thomas A. Zonay. (CDVIDEO).
Note: Leave on for draw - 3 days.

09/26/17 Dispute 3 for Docket No. 976-8-16 Rdcr Count 3, ASSAULT-AGG DOMESTIC-1ST DEG, Felony, 13 V.S.A. 1043(a)(1). Alleged offense date: 10/10/15. Arrest/citation date: 10/10/15 Rutland PD.
Dispute 4 for Docket No. 976-8-16 Rdcr Count 4, ASSAULT-AGG DOMESTIC-1ST DEG, Felony, 13 V.S.A. 1043(a)(1). Alleged offense date: 10/18/15. Arrest/citation date: 10/18/15 Rutland PD.
Dispute 5 for Docket No. 976-8-16 Rdcr Count 5, ASSAULT-DOMESTIC, Misdemeanor, 13 V.S.A. 1042. Alleged offense date: 03/16/16. Arrest/citation date: 03/16/16 Rutland PD.
Dispute 6 for Docket No. 976-8-16 Rdcr Count 6, ASSAULT-AGG DOMESTIC-1ST DEG, Felony, 13 V.S.A. 1043(a)(1). Alleged offense date: 05/25/16. Arrest/citation date: 05/25/16 Rutland PD.
Dispute 7 for Docket No. 976-8-16 Rdcr Count 7, ASSAULT-DOMESTIC, Misdemeanor, 13 V.S.A. 1042. Alleged offense date: 06/01/16. Arrest/citation date: 06/01/16 Rutland PD.
Dispute 8 for Docket No. 976-8-16 Rdcr Count 8, UNLAWFUL RESTRAINT-2ND DEG, Felony, 13 V.S.A. 2406(a)(3). Alleged offense date: 06/01/16. Arrest/citation date: 06/01/16 Rutland PD.
Dispute 9 for Docket No. 976-8-16 Rdcr Count 9, ASSAULT-AGG DOMESTIC-1ST DEG, Felony, 13 V.S.A. 1043(a)(1). Alleged offense date: 07/20/16. Arrest/citation date: 07/20/16 Rutland PD.
Dispute 10 for Docket No. 976-8-16 Rdcr Count 10, ASSAULT-AGG DOMESTIC-1ST DEG, Felony, 13 V.S.A. 1043(a)(1). Alleged offense date: 08/03/16. Arrest/citation date: 08/03/16 Rutland PD.
Probable Cause found by Judge Thomas A. Zonay on disputes 3-10.

09/27/17 Jury Drawing held by Thomas A. Zonay. (CDVIDEO).
Entry Order: State files amended information joining counts in this dkt to counts in dkt 1022-9-16Rdcr Probable cause is found Defendant enters not guilty plea.
Jury drawn. TAZ/.
Jury Trial set for 10/10/17 at 08:30 AM.
Jury Trial set for 10/11/17 at 08:30 AM.
Jury Trial set for 10/12/17 at 08:30 AM.
Copy of Affidavit and Information given to defendant. 24 hour rule waived.
Reading of Information waived. Defendant pleads not guilty on disputes 3-10. Co-counsel, party 2, entered as party/participant 4.

10/02/17 Motion for Individual Voir Dire filed by Attorney Rosemary M. Kennedy for Plaintiff State on disputes 1-10. Motion for Individual Voir Dire given to judge.

10/03/17 Motion 4 (for Individual Voir Dire) order issued by by Thomas A. Zonay. The State’s filing is generated by a letter from the juror’s employer indicating a hardship and requesting that the juror be excused. At the time of selection no such hardship was mentioned and th jury has been drawn for a three-day trial with only two alternates. Prior to trial commencing on the morning of October 10,

2017 the court will allow counsel for the parties an opportunity to question the juror in individual voir dire and the court will determine whether the juror shall remain after inquiry has been made. A copy of the State's filing and this order shall be sent to the juror by the clerk.

10/09/17 1 document filed by Attorney Rosemary M. Kennedy for party 2: Return of service of subpoena.

10/10/17 Jury Trial held by Thomas A. Zonay. (CDVIDEO). Jury Sworn.

10/11/17 Jury Trial held by Thomas A. Zonay. (CDVIDEO).
Trial verdict on dispute 1: guilty by jury.
Trial verdict on dispute 2: not guilty by jury.
Trial verdict on dispute 3: not guilty by jury.
Trial verdict on dispute 4: not guilty by jury.
Trial verdict on dispute 5: guilty by jury.
Trial verdict on dispute 6: guilty by jury.
Note: Count 6 - guilty on lesser included offense of domestic assault.
Trial verdict on dispute 7: guilty by jury.
Trial verdict on dispute 8: guilty by jury.
Trial verdict on dispute 9: guilty by jury.
Trial verdict on dispute 10: guilty by jury.
Entry Order: PSI ordered - Defense atty to be notified of when DOC interview is scheduled.
Presentence investigation ordered by Judge Thomas A. Zonay to be completed by Probation and Parole due. Notify Atty Cobb of interview date/time.
Presentence investigation ordered by Judge Thomas A. Zonay to be completed by Probation and Parole due.
Presentence investigation ordered by Judge Thomas A. Zonay to be completed by Probation and Parole due.
Presentence investigation ordered by Judge Thomas A. Zonay to be completed by Probation and Parole due.
Presentence investigation ordered by Judge Thomas A. Zonay to be completed by Probation and Parole due.
Presentence investigation ordered by Judge Thomas A. Zonay to be completed by Probation and Parole due.
Presentence investigation ordered by Judge Thomas A. Zonay to be completed by Probation and Parole due.
Sentencing Hearing set for 01/09/18 at 02:30 PM. transport requested.
Jury Trial scheduled for 10/12/17 cancelled.
Charge amended to ASSAULT-DOMESTIC, Misdemeanor, 13 V.S.A. 1042 on dispute 6.

10/12/17 Note: PSI Packet placed in P&P basket.

12/26/17 Megan Champine, Probation Officer, entered as party/participant 5.
1 document filed for party 5: PSI report.

01/04/18 1 document filed by Attorney Rosemary M. Kennedy for party 2: Sentencing Memorandum.

01/09/18 1 document filed by Attorney William W. Cobb for party 1: Sentencing Memorandum.
Sentencing Hearing held by Thomas A. Zonay. (CDVIDEO).
Sentence on dispute 1: to serve 12 month(s) to 18 month(s) to start on 01/09/18 per Judge Thomas A. Zonay. Credit for time served by law. Sentencing Mittimus to Commissioner of Corrections issued. consecutive to ct 5,6,7 concurrent to 8,9,10. $47.00 surcharge assessed. $100.00 Special Investigative Unit surcharge assessed.
.
Sentence on dispute 5: to serve 12 month(s) to 18 month(s) to start on 01/09/18 per Judge Thomas A. Zonay. Credit for time served by law. Sentencing Mittimus to Commissioner of Corrections issued. consecutive to ct 1,6,7 concurrent to ct 8,9,10. $47.00 surcharge assessed. $100.00 Special Investigative Unit surcharge

assessed.
.
Sentence on dispute 6: to serve 12 month(s) to 18 month(s)
to start on 01/09/18 per Judge Thomas A. Zonay. Credit for time served by law. Sentencing Mittimus to Commissioner of Corrections issued. consecutive to ct 1,5,7 concurrent to ct 8,9,10. $47.00 surcharge assessed. $100.00 Special Investigative Unit surcharge assessed.
.
Sentence on dispute 7: to serve 12 month(s) to 18 month(s)
to start on 01/09/18 per Judge Thomas A. Zonay. Credit for time served by law. Sentencing Mittimus to Commissioner of Corrections issued. consecutive to cts 1,5,6 concurrent to ct 8,9,10. $47.00 surcharge assessed. $100.00 Special Investigative Unit surcharge assessed.
.
Sentence on dispute 8: to serve 2 year(s) to 5 year(s)
to start on 01/09/18 per Judge Thomas A. Zonay. Credit for time served by law. Sentencing Mittimus to Commissioner of Corrections issued. concurrent to all. $47.00 surcharge assessed. $100.00 Special Investigative Unit surcharge assessed.
Sentence on dispute 9: to serve 6 year(s) 6 month(s) to 12 year(s) 6 month(s)
to start on 01/09/18 per Judge Thomas A. Zonay. Credit for time served by law. Sentencing Mittimus to Commissioner of Corrections issued. consecutive to ct 10 concurrent to 1,5,6,7,8. $47.00 surcharge assessed. $100.00 Special Investigative Unit surcharge assessed.
.
Sentence on dispute 10: to serve 6 year(s) 6 month(s) to 12 year(s) 6 month(s)
to start on 01/09/18 per Judge Thomas A. Zonay. Credit for time served by law. Sentencing Mittimus to Commissioner of Corrections issued. consecutive to ct 9 concurrent to ct 1,5,6,7,8. $47.00 surcharge assessed. $100.00 Special Investigative Unit surcharge assessed.
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Dispute 1: Verdict by jury of guilty. Judgment of Guilty entered by Judge Thomas A. Zonay on dispute 1.
Dispute 2: Verdict by jury of not guilty. Judgment of Not Guilty entered by Judge Thomas A. Zonay on dispute 2.
Dispute 3: Verdict by jury of not guilty. Judgment of Not Guilty entered by Judge Thomas A. Zonay on dispute 3.
Dispute 4: Verdict by jury of not guilty. Judgment of Not Guilty entered by Judge Thomas A. Zonay on dispute 4.
Dispute 1: Verdict by jury of guilty. Judgment of Guilty entered by Judge Thomas A. Zonay on dispute 1.
Dispute 5: Verdict by jury of guilty. Judgment of Guilty entered by Judge Thomas A. Zonay on dispute 5.
Dispute 6: Verdict by jury of guilty. Judgment of Guilty entered by Judge Thomas A. Zonay on dispute 6.
Dispute 7: Verdict by jury of guilty. Judgment of Guilty entered by Judge Thomas A. Zonay on dispute 7.
Dispute 8: Verdict by jury of guilty. Judgment of Guilty entered by Judge Thomas A. Zonay on dispute 8.
Dispute 9: Verdict by jury of guilty. Judgment of Guilty entered by Judge Thomas A. Zonay on dispute 9.
Dispute 10: Verdict by jury of guilty. Judgment of Guilty entered by Judge Thomas A. Zonay on dispute 10.
Case closed.
Motion 4 (for Individual Voir Dire) rendered moot.
Deferred payment agreement no. 70960 issued: payments to be made.

Defendant to pay fine in full by 03/25/18 or appear for a Show Cause Hearing on at.

01/12/18 1 document filed for party : Sentence Calculation Notification.

02/05/18 Notice of Appeal from party 1.

02/09/18 Note: Sent Notice of Appeal filings, certified copy of docket entries, hearing list to Supreme Court via US mail. cc; attorneys via xmail and sent to Defender General. Will forward contents of file as soon as possible.

02/16/18 2 documents filed by Attorney William W. Cobb for party 1: Application for Public Defender Services; for Appeal.
2 documents filed for party : Cover letter assigning docket number; 2018-064 to pending appeal.

03/12/18 Note: File contents prepared for Supreme Court along with original exhibits and were to be delivered by Clerk at a meeting tomorrow. Meeting was cancelled. File will be delievered at next opportunity.
Note: File with original exhibits sent to Supreme Court via US Mail today. -.

11/21/18 1 document filed for party : Appeal Entry Order: AFFIRMED.

12/17/18 1 document filed for party 1: M. for sentence recon. (copied to attys).
Motion for Sentence Reconsideration filed by Defendant Kandeh Kebbie on disputes 1,5-7. Motion for Sentence Reconsideration waiting for Memo in Opposition.

12/31/18 A response was filed to Motion for Sentence Reconsideration filed by Attorney Ian C. Sullivan for party 2 Co-counsel.

01/02/19 Motion for Sentence Reconsideration given to Judge Thomas A. Zonay.
Entry Order: Entry Order as to defendant’s Motion for Sentence Reconsideration: Defendant, as a self-represented litigant, has filed a timely motion for sentence reconsideration after the determination of his appeal. See 13 VSA 7042(a). His prior counsel is deemed withdrawn, see VRCrP 44.2(c), and he requests the appointment of counsel. The Court will hereby appoint substitute counsel to represent defendant. Counsel shall have 30 days after appointment to make any supplemental filings regarding the motion. The State may file a response within ten days of counsel’s filing. Absent a filing by defense counsel, the Court will consider the matter on the basis of the existing pleadings and determine what, if any, further proceedings are appropriate.
Attorney William W. Cobb withdraws.
Case status changed to Disposed.

01/03/19 Attorney assigned: Thomas L. Enzor.

01/11/19 Note: Reargument period has passed and mandate set forth in the court’s order has issue d per Supreme Court letter of 01/11/19.

02/01/19 Referred to collection agency, agreement 70960.

02/06/19 Entry Order: Entry Order as to Defendant’s Motion for Sentence Reconsideration: Counsel was appointed for defendant on January 3, 2019. To date no further filings have been made as directed in the Entry Order filed January 2, 2019. Counsel shall make any supplemental filings on or before February 26, 2019. The State may respond within ten days of any such filing being made. Absent a filing by defense counsel, the Court will determine what, if any, further proceedings are appropriate on the existing pleadings.

03/01/19 Entry Order: Entry Order as to Defendant’s Motion for Sentence Reconsideration: On February 6, 2019 this Court issued an Entry Order setting forth that defendant’s counsel was to file any supplemental pleadings on or before February 26, 2019. No such filings were made. The Court also set forth in the Entry Order that [a]bsent a filing by defense counsel, the Court will determine what, if any, further proceedings are appropriate on the existing pleadings. It is unclear to the Court whether the absence of any response by counsel is to be interpreted as a waiver of any further filings and an assent to a decision on the pleadings. Accordingly, the Court hereby directs that on or before March 15, 2019 counsel for defendant file supplemental

pleadings in support of the motion, or notify the Court, in writing, that no such filings will be made.

03/18/19 1 document filed by Attorney Thomas L. Enzor for party 1: Memo re: M. for Sentence Reconsideration.
Motion for Sentence Reconsideration given to Judge Thomas A. Zonay.
Entry Order: SEE WRITTEN ENTRY ORDER as to Motion for Sentence Reconsideration in file. On or before April 19, 2019 Defendant shall file a Memorandum detailing the specific facts he contends will be adduced at the hearing and will warran the Court modifying the sentence. The Memorandum shall also set forth each legal/factual argument he is advancing, the support therefor, and why a hearing is necessary in the matter. The State shall then have until April 26, 2019 to file any supplemental opposition.

04/22/19 1 document filed by Attorney Thomas L. Enzor for party 1: Supplemental Sentencing Memorandum.

05/02/19 Motion 5 (for Sentence Reconsideration) denied by Thomas A. Zonay. SEE WRITTEN ENTRY ORDER IN FILE.

06/03/19 2 documents filed by Attorney Thomas L. Enzor for party 1: Notice of Appeal re: Denial of; Sentence Reconsideration.
Case status changed to Disposed - Appeal Pending.

06/07/19 Note: Sent Notice of Appeal for Decision on Denial of Sentence Reconsideration, transmittal cover letter, certified copy of docket entries, hearing list, and copy of file pertaining to appeal out in US mail to Supreme Court.

06/13/19 2 documents filed for party : Cover letter assigning docket number; 2019-203 to appeal.

09/18/19 Note: Sent copies of docket entries and entry orders & appeal cover letter to defendant.

12/22/19 Tax referral on Fine 76911 Order 70960.

03/20/20 2 documents filed for party : Entry Order - Defendant’s Appeal on his; Motion for Sentence Reconsideration.
Case closed.

PRB File No. 001-2024

In re William Cobb, Esq.

DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

DISCIPLINARY COUNSEL EXHIBIT 3

STATE OF VERMONT

SUPERIOR COURT
RUTLAND UNIT

CIVIL DIVISION
Docket No. [redacted]
205-4-19 Rdcv

In re Kandeh Kebbie

PETITION FOR POST CONVICTION RELIEF

NOW COMES Kandeh Kebbie, Petitioner, Pro-Se, and pursuant to Section 7131, of Vermont Statutes Annotated Title 13, hereby moves this Honorable Court to vacate his unlawful convictions.

Petitioner alleges that his right to the effective assistance of counsel at every stage of the proceedings was violated, and that, but for the numerous and highly prejudicial and unprofessional errors of his trial counsel, there exists a reasonable probability the results of the proceedings would have been different.

Petitioner avers that his right to the effective assistance of counsel is a fundamental right which was secured to him at all times under Chapter I, Article 10, of the Vermont State Constitution, as well as by the Sixth and Fourteenth Amendments to the United States Constitution.

In support of this Petition, Petitioner submits the following facts establishing the numerous and highly prejudicial errors committed by his trial counsel and a memorandum of law which Petitioner contends entitles him to relief.

FACTS

a. Counsel failed to conduct any meaningful pre-trial investigation into viable alternative defense strategies;

b. Counsel failed to present any defense whatsoever, and instead relied solely upon an un-fulfilled promise to the jury that Petitioner would testify;

c. Counsel failed to investigate the existence of evidence and favorable witnesses whose testimony could have established that the alleged victim was lying for pecuniary gain, and that far from being a helpless victim of domestic violence, was instead an experienced hand at manipulating the criminal justice system to obtain victim's rights benefits;

d. Counsel failed to ensure that Petitioner was aware that he had a right to testify on his own behalf, and that the trial judge obtained a constitutionally valid waiver of that right.

MEMORANDUM OF LAW

The United States Supreme Court long ago recognized that a fundamental ingredient of due process of law, implicit in the Fourteenth Amendment to the United States Constitution, was the right of a criminal defendant to the assistance of counsel at all critical stages of the proceedings. See; Powell v. Alabama, 287 U.S. 45, 68-69 (1932).

In so doing, the Powell Court resorted to the principle of incorporation, that makes certain fundamental constitutional rights embodied within the United States Constitution applicable to the States. Id. at 71-72; See Also; Twining v. N.J, 211 U.S. 78, 99 (1908).

Although not necessary to the disposition of the case, the Powell Court also intimated that the right to counsel meant the right to effective assistance in both the preparation and presentation of the defense. See; Powell, 287 U.S. at 71; Avery v. Alabama, 308 U.S. 444, 445 (1940).

Because of a lack of clarity with respect to when, and under what circumstances the right to counsel was constitutionally mandated, the Court's jurisprudence was, for a time, less than consistent. See; Betts v. Brady, 316 U.S. 445, 471 (1942).

In Gideon v. Waighwright, 372 U.S. 335 (1963), the Supreme Court once and for all clarified, beyond peradventure, that the United States Constitution imposes an obligation upon the several States to appoint counsel in any case where a defendant's liberty was at stake.

The Court also explicitly held that the trial courts have a duty to ensure that a criminal defendant's right to assistance of counsel could not be discharged by the mere formal appointment of counsel. See; McMann v. Richardson, 397 U.S. 759, 771, n.14 (1970); Argensinger v. Hamlin, 407 U.S. 25, 27-28 (1971).

The Supreme Court also began to recognize that for the results of any trial to be reliable, the State's case must be subjected to "the crucible of meaningful adversarial testing." See; U.S. v. Cronic, 466 U.S. 648 656, 658-59 (1984).

In addition, because the term "ineffective assistance of counsel" was so nebulous, and subject to disparate interpretation, the Supreme Court devised a two prong standard of review for such claims. See; Strickland v. Washington, 466 U.S. 668 (1984).

The Strickland, test requires the defendant prove, by a preponderance of the evidence, that the performance of trial counsel fell below prevailing professional norms, and were it not for counsel's errors there is a reasonable probability that the results of the proceedings would have been different. Id. at 687-89.

The norms of professionalism for defense counsel are informed by standards set by the American Bar Association. See; Williams v. Taylor, 529 U.S. 362, 396 (2000); Wiggins v. Smith, 539 U.S. 510, 522 (2003).

In any criminal proceeding, the most basic duty a defense attorney owes his client is to adequately investigate the law in relation to the facts of the case. See; Strickland, 466 U.S. at 690-91; Wiggins, 539 U.S. at 522.

Such investigation(s) need not be exhaustive, and communications between counsel and the client as to what may be relevant to the defense can inform the attorney's strategic choices as to whether further investigation is warranted. See; Strickland, 466 U.S. at 691.

In assessing the strategic choices an attorney makes during the course of representation those choices are to be accorded a high measure of deference, with reviewing courts striving to eliminate the distorting effects of hindsight. Id. at 689-90.

Thus, strategic choices are presumed to be reasonable. id. at 690-91.

To overcome that presumption, a defendant must demonstrate that the choices were not in fact strategic, but were instead, the product of counse's failure to adequately investigate reasonable alternatives. id.

That is not to say that the existence of reasonable alternatives to that chosen by counsel will support relief, but that the choices made were not reasonable given the totality of the circumstances. id. at 695.

In this case, defense counsel failed to conduct reasonable investigations -- insisted upon by Petitioner -- into readily available evidence and favorable witnesses that would have established that the alleged victim's trial testimony was false.

In addition, counsel's "strategic choice" for a defense was completely indefensible, for after counsel assured the jury during opening arguments that they would hear from Petitioner, counsel rested the defense without following through with that promise, leaving the jury to speculate why Petitioner did not testify.

That failure was exponentially compounded when, during the closing arguments counsel repeatedly reinforced the State's theory of the case and the testimony of its witnesses, and argued -- without any foundation -- that Petitioner had denied all the allegations.

Additionally, counsel failed to ensure that Petitioner understood he had a right -- independent of counsel's advice -- to take the stand and testify.

The court's colloquy on Petitioner's right to testify was woefully inadequate on that subject, and, not once, did the court obtain an acknowledgment from Petitioner that he understood and waived his right to testify on his own behalf.

All of these errors culminated in a result that was patently unreliable in violation of Petitioner's fundamental right of due process and the effective assistance of counsel guaranteed under the Sixth and Fourteenth Amendments to the United States Constitution as well as under Chapter I, Article 10 of the Vermont State Constitution.

RELIEF

For all of the foregoing reasons Petitioner prays that this Honorable Court will:

1. Accept jurisdiction over this matter, and;

2. Appoint counsel to assist Petitioner in supporting and presenting the issues set forth herein, and;

3. Grant leave to amend as necessary, and;

4. Hold such hearings as may be required, and;

5. Grant this Petition and vacate Petitioner's unlawful convictions.

RESPECTFULLY SUBMITTED this 10 day of April 2019.

By: Kandeh Kebbie

Kandeh Kebbie, Pro-Se

PRB File No. 001-2024

In re William Cobb, Esq.

DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

DISCIPLINARY COUNSEL EXHIBIT 4

STATE OF VERMONT

VERMONT SUPERIOR COURT
RUTLAND UNIT

CIVIL DIVISION
Docket No. 205-4-19 Rdcv

KANDEH KEBBIE
Plaintiff,

V.

STATE OF VERMONT
Defendant.

NOTICE OF APPEARANCE

NOW COMES Robert J. Kaplan, Esq., of KAPLAN AND KAPLAN hereby enters his appearance on behalf of Plaintiff, KANDEH KEBBIE, in the above-captioned matter.

DATED at Burlington, Vermont, this 9th day of August 2022.

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PRB File No. 001-2024

In re William Cobb, Esq.

DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

DISCIPLINARY COUNSEL EXHIBIT 5

STATE OF VERMONT

VERMONT SUPERIOR COURT
RUTLAND UNIT

CIVIL DIVISION
Docket No. 205-4-19 Rdcv

IN RE: Kandeh Kebbie

AMENDED PETITION FOR POST- CONVICTION RELIEF

Petitioner, Kandeh Kebbie, by counsel, Robert J. Kaplan, hereby petitions this Court pursuant to 13 V.S.A. § 7131 to vacate the Judgment of conviction and sentence entered against him in *State v. Kandeh Kebbie,* 976-8-16 Rdcr. In support of this Petition, Petitioner states that his Judgment of conviction should be set aside based upon ineffective assistance of counsel as Defense Counsel's performance "fell below an objective standard of reasonableness informed by prevailing professional norms," and that Petitioner was prejudiced, based upon his Defense Counsel's performance. In further support of this motion, Petitioner states the following:

I. Parties and Jurisdiction

On or about August 31, 2016, Petitioner was charged in Rutland County Criminal Court ("Rutland Criminal Court") with ten different counts. These included Count #1-Domestic Assault (13 V.S.A. § 1042), Count #2-Operating Without Owner's Consent (23 V.S.A. § 1094), Count #3-Aggravated Domestic Assault (13 V.S.A. § 1043), Count #4-Aggravated Domestic Assault (13 V.S.A. § 1043), Count #5-Domestic Assault (13 V.S.A. § 1042), Count #6-Aggrvated Domestic Assault (13 V.S.A. § 1043), Count #7-Domestic Assault (13 V.S.A. § 1042), Count #8-Unlawful Restraint (13 V.S.A. § 2406), Count #9-Aggravated Domestic Assault (13 V.S.A. § 1043), and Count #10-Aggravated Domestic Assault (13 V.S.A. § 1043). The charges involved alleged incidents during a span of about a year. Petitioner pled not guilty.

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Petitioner was represented by Attorney William Cobb ("Defense Counsel"), including at the two-day trial (October 10, 2017-October 11, 2017) held in the Rutland Criminal Court. Petitioner was found guilty of multiple charges (Counts #1, 5, 6 (to a lesser included offense of Domestic Assault), 7, 8, 9, and 10). On January 9, 2018, a sentencing hearing was held. Petitioner was sentenced to prison for an effective sentence of 12-25 years.

This Court has jurisdiction pursuant to 13 V.S.A. §7131 et seq., as this case is brought in the Superior Court of the county of conviction, and Petitioner is currently serving his sentence.

II. Statement of the Claim and Authority

Petitioner alleges that his conviction and sentence should be set aside due to Defense Counsel's ineffective assistance of counsel. In the case of *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052 (1984), the United States Supreme Court ("the Supreme Court") held that "an accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." As a result, the Supreme Court recognized that "the right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771, n.14 (1970), as cited in the Strickland case at 686. According to the Supreme Court, "a defendant's claim of ineffective assistance of counsel which would entitle him to a reversal of a conviction has two components" as follows:

> First, the defendant must show that counsel's performance was deficient. This requires showing that the counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is unreliable.

Id at 687.

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In the case of *In re Combs*, 2011 VT 75, ¶ 9, 190 Vt. 559, 27 A.3d 318 (2011), the Vermont Supreme Court ("the Court") explained the standard for evaluating ineffective assistance of counsel as follows:

> Vermont uses a two-part standard for evaluating an ineffective assistance of counsel claim - a test that is essentially equivalent under the United States and Vermont constitutions. *In re Russo*, 2010 VT 16, ¶ 16, 187 Vt. 367, 991 A.2d 1073. Ineffective assistance of counsel cases first require that the petitioner show by a preponderance of the evidence that defense counsel's performance 'fell below an objective standard of reasonableness informed by prevailing professional norms.' *In re Dunbar*, 162 Vt. 209, 212, 647 A.2d 316, 319 (1994); see also *In re Washington*, 2003 VT 98, ¶ 8, 176 Vt.529, 838 A.2d 87 (mem.). If this first burden is met, petitioner must further show that counsel's performance prejudiced the defense by demonstrating 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' *Dunbar*, 162 Vt. At 212, 647 A.2d at 319 (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)); see also *Russo*, 2010 VT 16, ¶ 16; *Washington*, 2003 VT 98, ¶ 8. As this Court has previously acknowledged, petitioner's burden in ineffective assistance of counsel cases 'is a heavy one.' *Dunbar*, 162 Vt. At 212, 647 A.2d at 319. Trial counsel is allowed much discretion in decisions regarding trial strategy, and we will not measure counsel's competence based on the failure of that strategy. *Id.* Instead, we must assess whether counsel's decisions were 'within the range of competence demanded of attorneys in a criminal case at that time.' *In re Mecier*, 143 Vt. 23, 32, 460 A.2d 472, 477 (1983).

Therefore, Petitioner must first show by a preponderance of the evidence that Defense Counsel's performance fell below an objective standard of reasonableness that is informed by prevailing professional norms. Once proven, Petitioner must show that Defense Counsel's performance prejudiced Petitioner by demonstrating that there was a reasonable probability that, but for Defense Counsel's unprofessional errors, the result of the proceeding would have been different.

III. Defense Counsel's performance fell below an objective standard of reasonableness informed by prevailing professional norms.

Petitioner's conviction and sentence should be set aside based on Defense Counsel's

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following errors:

1) Defense Counsel failed to spend sufficient time preparing the case.

Petitioner maintains that the amount of time Defense Counsel spent working on this case was completely inadequate. Petitioner's memory of the preparation was that he suggested upwards of four witnesses that could be helpful to his defense. Defense Counsel apparently only deposed one of these witnesses and failed to seek out any other witnesses to aid Petitioner's case. This meant that at the time of the trial on October 10, 2017, Defense Counsel's only possible witness was Petitioner. In comparison, the State presented 14 different witnesses during the two days of trial. Any jury deliberating on this matter would have wondered why Petitioner and his counsel failed to have any witnesses to rebut the State's cascade of testimony. As a result, the lack of preparation put Defense Counsel on the backfoot before the trial ever started.

2) Defense Counsel's entire legal strategy was short-sighted and flawed and below the applicable standard of competence.

Defense Counsel's planned legal strategy was destined to fail from the start. As Defense Counsel had prepared no witnesses for the trial, he would need to do something to rebut the State's arguments. Early in Defense Counsel's opening, he stated "Mr. Kebbie would say that at some point, Ms. Adams started to believe that he was seeing somebody else." (October 10th Transcript, Page 19, Line 15-Page 19, Line 17). This statement would indicate to a juror that Petitioner was going to tell his side of the story. Defense Counsel went on to say that "So Kandeh is here today to say he did not do these things and that this was a relationship that ultimately wasn't going to work out but that he's not guilty of the crimes that he's facing today. Thank you." (October 10th Transcript, Page 20, Line 18-Page 20, Line 21). This was Defense

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Counsel's final line in his opening statement. It was the last statement the jurors would hear before the witnesses began to testify.

These statements were a disaster. Petitioner did not want to testify during the trial. Defense Counsel was aware that Petitioner might not testify. He himself later stated that "So I don't know that the defendant actually has -- made the decision yet about whether he wants to testify. My sense is probably not, but I don't want to push him right now because I think he needs more time to reflect on his options right now." (October 11th Transcript, Page 116, Line 18-Page 116, Line 22). Defense Counsel's own statement shows that on the second day of the trial, Defense Counsel suspected his client would not testify. Hence, it was incredibly reckless and inappropriate for Defense Counsel to use his opening to insinuate to the jurors that Petitioner was going to testify.

Additionally, Defense Counsel brought up his client testifying during the cross-examination of the complaining witness. He stated that "And Kandeh would say that's consistent with the way she always was, be it at home, on the phone, or text?" (October 10th Transcript, Page 133, Line 13-Page 133, Line 14). The State objected that Petitioner had not testified yet. (October 10th Transcript, Page 133, Line 15-Page 133, Line 16). This interaction once again reminded the jurors that Petitioner was, as far as they knew, going to testify in his own defense. Defense Counsel did the same thing later when he stated that Petitioner was disputing the complaining witnesses' testimony. (October 10th Transcript, Page 138, Line 9-Page 138, Line 14).

Defense Counsel set up his client and himself for failure with his choice of tactics. Defense Counsel's opening statement and cross-examination caused the jurors to reasonably expect Petitioner to testify. When Petitioner did not testify, it meant that the only voices the jury

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had heard over two days were favorable to the State. This would leave any juror wondering what Petitioner's defense of the alleged crimes was.

3) Defense Counsel's performance during the trial was deficient and below the lowest standard of professional competence.

Without an effective theory of defense, Defense Counsel's resulting performance was utterly deficient of even basic professional competence. On the first day of the trial, the State presented eight witnesses, including the complaining witness. Defense Counsel only cross-examined the complaining witness. Even more damaging for Petitioner was Defense Counsel's performance on the second day of trial. Defense Counsel spent much of his cross-examination of a witness who found the complaining witness at the Rutland Country Club parking lot after an alleged assault by Petitioner focusing on a yellow motorcycle. (October 11th Transcript, Page 32, Line 16-Page 35, Line 11). Defense Counsel continued this line of questioning with another witness who took the complaining witness home the night she ended up at the Rutland Country Club. (October 11th Transcript, Page 45, Line 23-Page 48, Line 9). Additionally, Defense Counsel questioned a friend of the complaining witness about the yellow motorcycle. (October 11th Transcript, Page 84, Line 7-Page 85, Line 4). Defense Counsel even questioned the complaining witnesses' mother about the motorcycle. (October 11th Transcript, Page 101, Line 13-Page 101, Line 18). The question of the motorcycle played no part in the State's narrative of the case, especially as eight of the ten charges facing Petitioner had nothing to do with the night that the yellow motorcycle was seen. Focusing on a single witness seeing a person on a yellow motorcycle drive out of a parking lot was irrelevant to any cognizable defense theory. This is especially clear as the motorcycle was never mentioned in either party's closing. Nevertheless, it was seemingly an obsession of Defense Counsel during his cross-examinations, and not a helpful one.

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In particular, this focus on Counts #1 and #2 caused Petitioner to end up with a much longer sentence than necessary. Petitioner was sentenced to 6.5 to 12.5 years on both counts. The sentences were consecutive. Therefore, the entire length of the sentence ended up depending on those two counts. The Domestic Assault conviction in Count #1 with its potential maximum of 18 months pales in comparison. As a result, a detailed analysis of how Defense Counsel defended Petitioner against Counts #9 and #10 is needed. In Count #9, the State's theory was that Petitioner strangled the complaining witness and left bruises. The following is how the State explained its theory during the closing:

> Count IX: Aggravated domestic assault. This is the fight that starts because she put the phone in the outlet that wasn't working properly. And her testimony was a little bit different on this event. She told you it was the hardest he'd ever squeezed her neck. It was a little bit harder than the other times. And she told you she got wedged between the bed and wall, so her ability to sort of push him off was a little bit different. And the testimony was about how the mark left after this event was a little bit different as well. He, the defendant, was even a little bit nervous about how distinct the mark was after this event. Do you remember the testimony was about how she had to go to work the next day and he lent her one of his shirts that had a collar? And that wasn't working and then he thought maybe she should wear a scarf that would cover it up. And she was like that's not going to work. You're going to be examining his intent. If someone is wedged between a bed and a wall and someone else is holding their throat, what's the intent there?

(October 11th Transcript, Page 140, Line 13-Page 141, Line 5).

Defense Counsel had a chance to cross-examine the complaining witness about her testimony. However, other than mentioning the date and the outlet, Defense Counsel never specifically addressed the complaining witnesses' allegations. (October 10th Transcript, Page 137, Line 2-Page 137, Line 3). He instead focused on questioning the complaining witness about why she stayed with Petitioner. This line of questioning failed twofold. First, it never directly questioned the complaining witness's powerful testimony about July 20, 2016. Second, it did not take into

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account that jurors understand that those in abusive relationships often do not feel like they can leave.

Additionally, the prosecutor stated in her closing argument that the testimony of Delight Colburn, Lori Alexander, and Amy Longtin about seeing the bruises was vital. (October 11th Transcript, Page 141, Line 6-Page 141, Line 15). Defense Counsel failed to cross-examine Amy Longtin after she testified about seeing the bruises. With Delight Colburn, Defense Counsel never addressed, much less raised suspicion, about Delight Colburn's testimony involving the bruises she saw. With Lori Alexander, the following was the extent of Defense Counsel's cross-examination of her regarding the bruising:

> Q. Okay. You testified about seeing marks around her neck around the collar area, correct?
> A. Um-hum.
> Q. And you don't know how she actually got those marks, correct?
> A. I can just go by what she said.
> Q. All right. You have, again, no personal knowledge as to how they got there, correct?
> A. No.
> Q. And you don't know whether it's a result of domestic violence or something else, correct?
> A. Right.
> MR. COBB: Thank you. Nothing further.
> MR. SULLIVAN: Thank you.

(October 11th Transcript, Page 59, Line 22-Page 60, Line 10).

Petitioner was facing serious charges that led to a lengthy criminal sentence. Defense Counsel's complete failure to properly prepare for and address the accusations directly led to the conviction and heavy sentence on Count #9.

The same failures happened with Count #10. The State outlined its argument during the closing:

> Count X: Aggravated domestic assault. The testimony was that Ashley sent A.A. off to Boston. She wanted her away. She didn't

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> like being away from her child. Didn't like having her home with this going on. Didn't have her child there so she could out and have fun with friends. She went to Saratoga and the testimony was that she took a picture of herself while she was out with her girlfriends -- several pictures -- and sent them to the defendant. You heard from Christy Chamberland. This was her outfit. She borrowed it. It was a pantsuit, a little revealing up top. Defendant didn't like it. Didn't like that she was out with friends. Didn't like that she was wearing this outfit. And the testimony was that when Ashley and the defendant met back up again in Rutland that he told her how he didn't like this outfit. And he showed her how he didn't like this outfit. And he showed her by choking her, by grabbing her around the neck and squeezing. And Ashley told you she couldn't breathe. And Ashley told you it hurt. On Count X, the State submits it's proven its case beyond a reasonable doubt. We ask that you return a verdict of guilty.

(October 11th Transcript, Page 141, Line 16-Page 142, Line 10).

Despite Christy Chamberland being the complaining witnesses' best friend and testifying about numerous alleged incidents, Defense Counsel never cross-examined her. As for the complaining witness, rather than directly question the incident or what happened, Defense Counsel instead asked the following questions:

> Q. Things like his, let's call it insecurities about your going out and partying late at night with your friends?
> A. In person, he would be insecure via text message or phone. He would be okay.
> Q. Yeah. He didn't like the fact that you were going out late at night, correct?
> A. No.
> Q. Okay. You knew that but you continued to do things like that anyway, correct?
> A. I would go out socially with my girlfriends--
> Q. Things like --
> A. -- from time-to-time.
> Q. A few times a day?
> A. No. No.
> Q. Once a week?
> A. Hardly, very sporadic.

(October 10th Transcript, Page 136, Line 11-Page 137, Line 1).

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Rather than address the allegation, Defense Counsel appeared to be blaming the complaining witness for upsetting Petitioner. A reasonable juror could likely conclude that this was an admission by Defense Counsel that Petitioner strangled the complaining witness. Overall, Defense Counsel's performance during the trial was far below the lowest standard of professional competence. A competent attorney would have focused on the most important counts, in particular Counts #9 and #10. Instead, Defense Counsel barely addressed them, and when he did it was ineffective. Petitioner's lengthy sentence is directly due to Defense Counsel's failures.

4) Defense Counsel's closing argument was incompetent and damaging to Petitioner.

Defense Counsel's closing argument was utterly incompetent. From the beginning it was confusing and unhelpful to Petitioner:

> Good afternoon. The State has discussed the evidence with you from its perspective. And you could say, yeah that paints a dark picture because you're not hearing from Kandeh today. You're not hearing his side of the story. And so you as the jurors, you have a hard job of trying to assess the evidence yourself and trying to make a decision about whether the evidence is enough for you to feel convinced that each of these charges is supported by evidence.

(October 11th Transcript, Page 146, Line 15-Page 146, Line 22).

Defense Counsel had built up the expectation that Petitioner was going to testify in his own defense. Now the jurors were told that they had not heard his side of the story. The jurors, because of Defense Counsel's failure to mount any real defense, were left with only the State's version of events. Moreover, Defense Counsel put into their minds that the only testimony they had heard over two days of trial "paint(ed) a dark picture" of Petitioner.

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Defense Counsel's damaging of his own case continued as the closing argument went on. Defense Counsel focused on the jurors' duty to weigh the evidence. He then proceeded to discuss two of the charges again Petitioner:

> Now, I did ask you a few moments ago -- I said what can you be convinced of? Well, the State's strongest case -- part of the case today -- is obviously what happened on August 30th. Why is that the strongest part? Well, that's when these charges got filed. And what did you learn from August 30th? You learn that there was a fight. You learn that there was a breakup of parties that had been living together and going out with each other for a number of months. You learn that at some point Ashley Adams ran out of the house calling for help and saw two men at the country club, one of whom gave her a ride. And then the police met with her and they took photos of her. And you saw those photos and she had bruising on her. You saw that some on the chest and some on the legs. And you could say well, that's pretty strong evidence because even if Mr. Kebbie didn't intentionally do that, I think he at least is responsible for the marks on her even if it was reckless. I'll say that's on him. And arguably, if you're sitting there deliberating, you could say it's strong evidence when I see pictures. I heard Ms. Adams testify and I heard the other people in the surrounding circumstances basically lay this one on Mr. Kebbie. Okay. That's August 30th. And the two charges that you heard -- one count of domestic assault and one count of operation without owner's consent -- are the two charges from August 30th.

(October 11th Transcript, Page 148, Line 22-Page 149, Line 20).

Defense Counsel did a better job of outlining and arguing the State's case than the prosecutor. Defense Counsel proceeded to outline why the State's case was strong involving these charges. He pointed out that there was physical evidence. He even explained how if not intentional, Petitioner's actions were reckless. Defense Counsel bizarrely stated, "I'll say that's on him." He closed these statements by saying the State could have strong evidence. There was absolutely no reason for Defense Counsel to make any of those statements. It needlessly weakened his own defense and strengthened the State's case.

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Defense Counsel continued to hurt his own client as the closing argument proceeded. After discussing the Operation Without Owner's Consent charge, he stated as follows:

> Okay. August 30th in my view shows -- if you're the jury, looking at all those pictures that the State had up here as the exhibits, you can look at those pictures, the testimony. You can say August 30th sounds like Mr. Kebbie should be on the hook for those injuries on that day. But when you look at and listen to the rest of the testimony, if you take away what Ms. Adams said, herself, you are left with friends saying that he spit on her one day which is very unattractive behavior. No one is going to say that makes him look like a good guy. No one's going to say yeah, you know, everyone should do that. No. No one's going to say that's good work for a man to ever spit at a woman or vice versa.

(October 11th Transcript, Page 150, Line 22-Page 151, Line 8).

Defense Counsel's argument made no sense. Defense Counsel appears to admit that Petitioner should be convicted of Domestic Assault. He then attempted to mitigate that by mentioning that Petitioner spat on the complaining witness and does not seem like a "good guy." Again, Defense Counsel appeared to be doing the State's job for them.

Defense Counsel then attempted to build up his client as a good person. Which was difficult considering his previous statements. Defense Counsel then stated the following:

> What I'm getting at is this: If you take away Ashley's testimony, you're left with some evidence that there were things going on without it being clear what it was. Kandeh Kebbie has said that he was never strangling her. He's denied strangulation. And it's a very serious charge. It's the most serious charge that anyone can be charged with -- the strangulation. Because as soon as you say someone choked me, they put their hands around me and they squeezed -- that becomes one of the most serious crimes you can be charged with. It's a very effective testimony for anyone to say someone strangled him. Very often it's difficult to disprove it, especially when it was like a year ago. By the way, a year ago he strangled me on this day and this day. And how does Kandeh Kebbie sitting here, how is he able to say I didn't do it? You've got to believe me. What is it that he's going to say other than I didn't do it? Which is what he's doing by sitting here and contesting all of these charges is saying well hold on, I'm not necessarily going to

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> say anything. I'll let you the jury decide whether or not the evidence is clear enough to actually convict me of these charges.

(October 11th Transcript, Page 153, Line 1-Page 153, Line 21).

Defense Counsel's apparent theory was that Petitioner was denying the charges through his not guilty plea and taking the case to trial. However, the jurors had never heard him say that he never strangled anybody. All that this statement likely reminded the jurors of was the fact that Defense Counsel failed to testify while numerous other witnesses either stated that Petitioner strangled the complaining witness or that they saw the bruises.

Defense Counsel next discussed circumstantial evidence. However, he did so in the oddest of ways:

> But let's say for example -- let's say I go to work, right? I go to work one day and I have a very large dog at home who's a good pet and I have a baby at home and there's a babysitter. And let's say while I'm at work, someone comes running up to me and they say hey, Bill, you know what happened? I say what happened? He say (sic) the dog has blood all over him and the baby is gone. And of course in my panic I run home. And I don't know what's happened, but I'm fearing the worst that this big dog who is the gentle best friend to me in the world has done something terrible to my baby, right? And I run home and I open the door and I see the dog. And he does have blood on his mouth and I look inside and the place is all bloodied and it's in shambles. And there's no baby there and I assume the worst. What do I assume? I assume the dog, my best friend, has actually lost his mind and killed my own baby. And I do the only thing that I can do because I reach that conclusion. I reach that conclusion that it must be that. It must be the way I I think it is. I didn't really have enough evidence. I didn't know for sure, but I see enough. I go, I take my gun, I shoot the dog because he must be crazy. Sometime later, my wife comes back with the baby into the house and I'm stuck. I'm saying what happened? She said yeah, there was another dog that came in and our dog Pete attacked him and they went at it until he got rid of the other dog and he stayed with our child. The point is: I can't take that back. I can't take that moment back when I jump to a conclusion and I thought I knew when I didn't really know. And that's what I'm asking you to consider today when you go and deliberate. Thank you.

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(October 11th Transcript, Page 154, Line 7-Page 155, Line 10).

The last thing the jurors heard Defense Counsel discuss before deciding on Petitioner's guilt was a strange analogy involving a baby, blood, and shooting one's dog. It is difficult to see how this could have possibly helped the jurors see Petitioner's argument more clearly or more sympathetically.

Overall, Defense Counsel's performance during the two-day trial and the closing was atrocious. He was unprepared, erratic, and odd. During the closing argument, he not only damaged his own client, but he failed to effectively address the most dangerous charges Petitioner was facing. It should be no surprise to anyone that the jury came back with a series of guilty convictions. Defense Counsel simply failed Petitioner by performing below the lowest standard of professional competence.

IV) <u>There is a reasonable probability that, but for Defense Counsel's unprofessional errors, the results of the proceeding would have been different.</u>

Defense Counsel's unprofessional errors directly led to Petitioner's convictions and heavy sentencing. Before the trial even started, Defense Counsel had effectively doomed his client. Specifically, Defense Counsel's defense for Petitioner' was apparently going to be his testimony. However, Petitioner alleges that he told Defense Counsel that he did not feel comfortable testifying. As Defense Counsel had failed to locate, much less prepare, any other witnesses, this meant that the jurors would only hear one side of the story. The error of this defense was made very clear by the fact that the State produced 14 witnesses and a clear argument while Defense Counsel's defense was muddled from the start.

Furthermore, Defense Counsel's performance at the trial was completely ineffective. The opening appears to have promised that the jurors would hear from Petitioner. That was not to

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happen. Defense Counsel only cross-examined 1 of 8 witnesses on the first day of the trial. On the second day, a plurality of Defense Counsel's cross-examination focused on a yellow motorcycle that was immaterial to the State's arguments. Defense Counsel completely failed to counter or question Counts #9 and #10. These convictions are what led to Petitioner's heavy prison sentence. Moreover, Defense Counsel's closing argument was ineffective at best and damaging to Petitioner at worst.

In all, Defense Counsel's complete lack of preparation and professionalism directly led to Petitioner's convictions and long prison sentence. A marginally competent attorney would have prepared additional witnesses if he knew his client was unlikely to testify. At the very least, he would not have made it sound like his client was going to testify in the opening statement and then have to explain why the client did not do so in the closing argument. A competent attorney would not have focused his cross-examination, which was the only time he could truly develop his defense as he had no witnesses, on an immaterial fact that was not relevant to most of the charges. Instead, a competent defense attorney would have focused on the felony charges his client was facing. A competent attorney would not have been so scattershot and ineffective during the trial itself. And a competent attorney would not have made the State's arguments during his own closing argument. Ultimately, Defense Counsel completely failed Petitioner.

Conclusion

Defense Counsel's performance fell below an objective standard of reasonableness informed by prevailing professional norms, in violation of *Dunbar*. Defense Counsel's haphazard preparation for the trial directly led to a lack of effective defense during the trial. His lack of preparation meant that he was not prepared to counter the State's strongest arguments with witnesses of his own. Further, a competent attorney would have performed in a much

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stronger manner at trial. An objectively competent attorney would not have made these errors. Additionally, Petitioner was prejudiced because there was a reasonable probability that, but for these unprofessional errors, he would not have been convicted and then sentenced to a lengthy time in prison. Instead, Petitioner could have worked with his Defense Counsel on presenting an effective argument at trial. The foregoing therefore violated Petitioner's rights under the Sixth and Fourteenth Amendments of the United States Constitution and under Chapter One, Article Ten of the Vermont Constitution.

WHEREFORE, Petitioner, KANDEH KEBBIE, respectfully requests that this Court:

A. Accept jurisdiction of this matter;

B. Schedule a prompt hearing;

C. Vacate the judgment of conviction and sentence entered against him; and

D. Take such further action as is warranted in the interests of fairness and justice.

DATED at Burlington, Vermont, this 1st day of February 2023.

Respectfully Submitted,

KANDEH KEBBIE

By Counsel:

KAPLAN AND KAPLAN

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PRB File No. 001-2024

In re William Cobb, Esq.

DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

DISCIPLINARY COUNSEL EXHIBIT 6

STATE OF VERMONT

VERMONT SUPERIOR COURT
RUTLAND UNIT

CIVIL DIVISION
Docket No. 205-4-19 Rdcv

KANDEH KEBBIE

v.

STATE OF VERMONT

STIPULATED MOTION TO AMEND THE DISCOVERY SCHEDULE AND CONTINUE THE PRETRIAL CONFERENCE

COMES NOW Plaintiff, Kandeh Kebbie, by counsel, Patrick E. Lamb, Esquire and KAPLAN AND KAPLAN, and the State of Vermont by and through Deputy State's Attorney Nicholas Battey, Esquire, with both parties respectfully requesting that this Court amend the discovery schedule for depositions and motions and to continue the Pretrial Conference now set for December 18, 2023, for the following reasons:

After difficulties scheduling all parties, the State and Plaintiff's Counsel completed the deposition of Plaintiff's trial attorney on November 28, 2023. This deposition led both parties to do further research and consider additional depositions. Moreover, Robert Sussman, the Plaintiff's expert, needs time to review the deposition to finish his report. Lastly, both parties are currently discussing a resolution that would settle the above docket. These discussions will take time. If an agreement were to happen, the parties would inform this Court and request a hearing to be scheduled by this Court.

Therefore, both parties believe it is in the interest of justice and the best use of the judiciary's time and resources to amend the discovery schedule and to continue the Pretrial Conference now scheduled for December 18, 2023, until April 2024. Thus, both parties would

stipulate to the following amended discovery schedule:

Discovery Schedule

1. Plaintiff to file amended Petition by: **Done**
2. The State to provide all documentary discovery to the Plaintiff by: **Done**
3. Plaintiff to provide witness list, excluding experts, and Rule 12.1 notices to the State by: **Done**
4. Plaintiff shall name all expert witnesses by: **Done**
5. The parties shall complete all depositions by: **February 15, 2024**
6. The parties shall file all Rule 26 notices and motions by: **March 15, 2024**
7. Case trial ready by: **April 2024 Jury Draw**
8. Estimated Trial Length: **To Be Determined**

WHEREFORE, both Plaintiff and the State request that this Court amend the discovery schedule as set out above, and continue the Pretrial Conference now set for December 18, 2023.

Dated: 12/8/23

Patrick Lamb, Esquire
Attorney for Plaintiff
KAPLAN AND KAPLAN

Dated: 12/8/23

Nicholas Battey
STATE OF VERMONT
Rutland County State's Attorney's Office

SO ORDERED

Dated at _____, Vermont this ____ day of _____, 2023.

_____
Judge

PRB File No. 001-2024

In re William Cobb, Esq.

DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

DISCIPLINARY COUNSEL EXHIBIT 7

PRB-001-2024
IN RE:
William W. Cobb, Petitioner

REINSTATEMENT HEARING
Monday, November 27, 2023
9:00 AM - 2:24 PM
Caledonia County Courthouse
St. Johnsbury, Vermont

Hearing Panel: James Valente, Esquire - Chair
James Murdoch, Esquire - Attorney Member
Thad Richardson - Non-Attorney Member
Wendy W. Chen, Esquire - Panel Attorney

A P P E A R A N C E S:

For the Petitioner:

Brice C. Simon, Esquire
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Disciplinary Counsel:

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Responsibility Program
32 Cherry Street, Suite 213
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REPORTED BY:

O'Brien Reporting Services
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St. Johnsbury, Vermont 05819-0024
obrienreporting24@gmail.com

Kaplan has filed on behalf of Mr. Kebbie, but the nature of an ineffective assistance claim is that the attorney didn't do a good job, so that is part of why I'm being deposed tomorrow.

Q Right. I was getting to that. You're having your deposition in the PCR case taken tomorrow?

A I am.

Q By deputy State's Attorney Nick Battey?

A By Robert Kaplan. He's the attorney who's taking my deposition. Nicholas Battey will be present for the deposition, can ask me questions as well.

Q Okay. So you were Mr. Kebbie's counsel at the underlying criminal trial?

A Correct.

Q And in this current PCR case you are essentially a witness, correct?

A I think that's true.

Q Okay. Last Monday, November 20th, you had a telephone conversation with deputy State's Attorney Battey regarding the arrangements for your deposition tomorrow?

A I did.

Q Okay. And then the next day, Tuesday, November 21st, last Tuesday, you followed up on that telephone conversation with Mr. Battey by sending him an email?

Any other basis for objection?

MR. SIMON: Well, that goes to admissibility if his proffer is that that was somehow inappropriate representation, but. Because then it would not be -- it's not relevant. But again, I don't want to belabor the process.

CHAIRMAN VALENTE: I will tell you from the foundation I think there's enough to get where there needs to be because it's both an admission and it's within 403 limits.

MR. SIMON: Understand.

MR. ALEXANDER: Move to admit Exhibit 1.

CHAIRMAN VALENTE: You're admitted. The objection is overruled.

MR. ALEXANDER: Okay. And to whom should I give the exhibit to be marked into evidence?

CHAIRMAN VALENTE: That's a good question. I don't actually know because we usually would do this a different way. Give it to the stenographer right now, the original to hold, and if you want to give us copies, that's fine.

MR. ALEXANDER: At this time if the Panel and Panel Counsel would like, I do have Bench copies to read along.

CHAIRMAN VALENTE: Any objection to publishing?

MR. SIMON: No.

CHAIRMAN VALENTE: Okay.

Q (By Mr. Alexander) So, Mr. Cobb, if you could direct your attention back to Exhibit 1. You note in the first paragraph of that email to DSA Battey that you're alleged diagnosis of ADHD quote, "partly explains some of my weaknesses, lack of organization, lack of follow-through, lack of planning ahead, unable at times to prioritize and complete tasks." Is that right?

A Yes.

Q I read that correctly?

A Yes.

Q And you note that you've been doing counseling for the last couple months, is that right?

A Yes.

Q Okay. And that you're not under any medication currently for the ADHD, but you have a meeting with your doctor December 4th?

A Right.

Q Okay. So have been treating for -- you've been attending counseling for two months, and you're not under any medication for ADHD?

A Right.

Q Okay. You continue in the second paragraph of the email to Nick, quote, "I believe that these

going to give you three more minutes, okay?

MR. ALEXANDER: Okay.

Q (By Mr. Alexander) So you then can see in the third paragraph, quote, "I didn't prepare as well as I should have for Mr. Kebbie's trial"?

A Right.

Q And quote, "I have to blame myself in part for the loss at trial"?

A Yes.

Q In the fourth paragraph you tell Mr. Battey, "I think Robert, Robert Kaplan, has a good case that my advocacy fell below the standard of care." Do you see that?

A Yes.

Q And so "whether it reached the level of ineffectiveness based on legal standards I have no idea" is what you write?

A That's right.

Q Okay. At that point you broached the topic of settlement --

A Yes.

Q -- of the PCR case? Okay. You write, "how about if Kandeh resolves his case, his PCR case by getting something off the minimum and giving something back on the maximum." Do you see that?

A Yes.

Q Basically what you're proposing on behalf of Mr. Kebbie is that the State cooperate with Mr. Kebbie's Counsel to effect a reduction in his prison sentence, right?

A Not necessarily. Because my offer is change the times.

Q Okay.

A Lower the minimum, raise the maximum as an idea. And since you're asking me, Jon, the reason why that went in the emails is because Nick Battey, when we spoke on the phone, we were talking about settlement discussions, and he said that he would be interested to the idea of settlement, but that he and Attorney Kaplan had not spoken about settlement yet, so I used this as an opportunity to simply throw out an idea of how a settlement could go, if they chose to do it. Otherwise, I have no skin in the game.

Q Okay. So you're making a proposal on behalf of Mr. Kebbie?

A I'm not making a proposal on behalf of him. I'm proposing something that would have served two purposes. One, it could have resolved the case without having to have a hearing and dragging me into it. And if they settle the case, I probably don't have to get

deposed either. So they would be cutting to the chase by talking about an agreement. That is true.

Q Well, nonetheless, in this email you are attempting to help negotiate a settlement of Mr. Kebbie's ineffective assistance of counsel claim, correct?

A Problem solver, I did that.

Q And you, yourself, are the subject of the ineffective assistance of counsel claim?

A I am. Well, I'm a witness in the case. Whether it has any merit or not, it's still an idea that they should both consider as helpful to try to get the case resolved. Why don't you guys settle it? Judges tell lawyers that all the time. "Why don't you go out in the hall and settle it?" Well, they all have an interest in efficiency. I -- I envision, since my son worked for Robert Kaplan for about two years, I know how the office goes. Everything's going to get dragged out. I said, why don't you just figure out a way to get the thing resolved, as an idea. If you don't like it, then you're no worse off.

Q Okay. So you're advocating for the interests of Mr. Kebbie in his PCR case?

A I'm actually advocating as much for Ian Sullivan to try to figure out something that's going to be potentially time consuming and difficult. I mean, I

Q So why throw out ways that these guys can potentially resolve things?

A Well, it is the problem solver thing in me. Jon just pointed out, well, you just breached all these other rules, right? Okay. So, you know, of course, I wouldn't have done it if I thought this was like a point of contention. Right? I did it thinking that I was simply trying to be helpful and --

Q Did you think or mean to convey that you had any authority to actually negotiate on Mr. Kebbie's --

A No, of course not. No one was looking at me for anything. This was all unsolicited, just hey, you guys, why don't you keep this in mind? If you settled it, isn't this a way to do it? Nick Battey sounded to me like he was very inexperienced deputy, and I was kind of just giving him -- when I talked to him on the phone about settling PCRs, he didn't seem to have any sense of that when I talked to him. He's like "oh, that's an interesting idea." And I'm thinking well, that's -- where I come from, it's like you try to settle these things if you can.

Q Have you handled PCR cases?

A Yes, I've handled PCRs, and I've had them negotiated and settled. I settled one with Vince. I have that in the email. And I settled one with someone

counselor?

THE WITNESS: So the current counselor, I believe I've had -- I believe I've had five sessions with her, and two with the others.

CHAIRMAN VALENTE: Are these weekly sessions.

THE WITNESS: Yeah, weekly sessions. Every Wednesday or Thursday for an hour.

CHAIRMAN VALENTE: You have not taken medication for ADHD yet.

THE WITNESS: Right. That's true. December 4th is when I'm meeting for prescription discussion.

CHAIRMAN VALENTE: Is there any reason, either philosophically or medically, that you couldn't take certain types of ADHD medication.

THE WITNESS: I think I'm able to.

CHAIRMAN VALENTE: Okay.

THE WITNESS: Yeah.

CHAIRMAN VALENTE: You don't have any -- I know you said you'd be willing to do medication.

THE WITNESS: Yes.

CHAIRMAN VALENTE: I don't know if that applies to anything that the doctor prescribes or --

THE WITNESS: Any treatment that's recommended, I will value their expertise.

CHAIRMAN VALENTE: Okay. No objection to