

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR IN THE  
MATTERS OF DAVID ASHLEY GRANT NELSON, ESQUIRE

VS B Docket Numbers: 05-090-1355  
05-090-1665  
06-090-1542

**ORDER**

THESE MATTERS came to be heard on April 28, 2006, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of Joseph Roy Lassiter, Jr., Acting Chair, Bruce T. Clark, Sandra L. Havrilak, Herbert Taylor Williams, IV and Dr. Theodore Smith, lay member.

Scott Kulp, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar. The Respondent, David Ashley Grant Nelson, appeared pro se. The proceedings were recorded by Jennifer L. Hairfield, a registered court reporter with Chandler and Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 780-1222, she having been duly sworn by the Chair.

The Chair made inquiry of all Panel members as to whether they had any personal or financial interest or any bias that would preclude them from hearing this matter fairly and impartially. Each member and the Chair answered such inquiry in the negative. Thereafter, the Respondent advised the Panel that he agreed to stipulate to all evidence and acknowledged all violations submitted to the Panel in the cases under consideration as follows:

STATEMENT OF FACTS

1. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Complainant Stacy R. Dewberry (herinafter the "Complainant") and her husband, Steven McTyre (hereinafter "Mr. McTyre"), hired Respondent in June, 2004 to handle a no-fault divorce which Complainant expected to be finalized shortly thereafter. This would permit her to carry out her plans to remarry.
3. Respondent charged Ms. Dewberry a fee of Four Hundred Dollars.
4. On June 10, 2004, Complainant and Mr. McTyre each paid Respondent Two Hundred Dollars.
5. At the end of August 2004, after nothing had been done in furtherance of the divorce during the months that followed and after Complainant was unsuccessful in her repeated attempts to communicate with Respondent, Complainant filed a bar complaint against Respondent.
6. Complainant went to Respondent's office on or about September 10, 2004 to inquire about the status of her divorce.
7. Respondent informed Complainant that he was going to give her a refund of her portion of the legal fee.
8. Respondent instructed Complainant to tell Mr. McTyre to meet him at his office the following day to sign some papers.

9. Complainant and Mr. McTyre appeared at Respondent's office as directed, but the Respondent did not appear.
10. On or about September 14, 2004, again in compliance with the instructions of the Respondent, Complainant went to his office in order to pick up her refund and a copy of the separation papers. Again, Respondent did not appear.
11. Several days later, Complainant finally obtained a Two Hundred Dollar refund of her portion of the legal fee from Respondent.
12. Like Complainant, despite his attempts to do so, Mr. McTyre could not get in touch with Respondent.
13. Respondent has never obtained the divorce for which the Complainant paid him requiring her to hire alternative counsel to conclude the matter.

#### FINDINGS

Based upon the stipulations made and the evidence presented, the Panel finds that the Respondent violated the following Rules of Professional Conduct:

#### **RULE 1.3     Diligence**

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

#### **RULE 1.4     Communication**

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

**VSB 05-090-1665 (Lucy Alexander)**

STATEMENT OF FACTS

1. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On April 27, 2004, Complainant, Lucy Alexander, (hereinafter the "Complainant") received a traffic ticket for which a court date of June 10, 2004 was scheduled. Complainant engaged Respondent to handle the matter. Respondent informed the Complainant about the material she needed to provide. He also provided information concerning his legal fee and the expected court fees (fine and costs).
3. Respondent told Complainant that she did not need to appear at the June 10<sup>th</sup> court date, he would take care of it.
4. On or about May 11, 2004, Complainant sent Respondent the information he had requested, including check #3056 for Two Hundred Seventy Five Dollars payable to the Respondent for the legal fee and check # 3057 in the amount of Fifty Four Dollars payable to the Charlotte County General District Court to cover her anticipated court fees.
5. On or about May 24, 2004, Respondent deposited checks #3056 and #3057 in his escrow account #2008918 with the Bank of Charlotte County.

6. Due to improper endorsement, the Federal Reserve Bank thereafter returned check # 3057 to the Bank of Charlotte County.
7. On June 10, 2004, Respondent failed to appear in court on Complainant's behalf to respond to her Uniform Traffic Summons. ( The Respondent, having stipulated to the evidence, asserted before the Panel that in fact he had attended this hearing).
8. On or about July 9, 2004, the Bank of Charlotte County notified Respondent by letter that his escrow account was overdrawn in the amount of One Thousand Three Hundred Five Dollars and Twenty Three Cents. In this notice Respondent was requested to cover the overdraft within five days.
9. Respondent did not contact the Bank nor did he made a deposit to cover the overdraft.
10. On or about August 2, 2004, Ms. Sterling Laughlin, the Collections Manager for the Bank of Charlotte County, noted that Respondent's escrow account still showed a One Thousand Three Hundred Twenty Nine Dollars and Twenty Three Cents negative balance.
11. The Bank of Charlotte County closed Respondent's personal and escrow accounts due to continuing problems with negative balances in both accounts.
12. As an adjustment, the Bank of Charlotte County's bookkeeping department applied the sum of Two Hundred Sixty Three Dollars

and Ten Cents remaining in the Respondent's personal checking account to the negative balance in Respondent's escrow account, bringing the negative balance to One Thousand Eighty Six Dollars and Thirteen Cents.

13. On or about August 16, 2004, Complainant received a letter from the Charlotte County General District Court telling her that unless she paid her court fees, her license would be revoked on August 27, 2004.
14. Having previously sent Respondent Check # 3057 in the amount of Fifty Four Dollars payable to the Charlotte County General District Court to cover the court fees, Complainant was confused as to why the court fees remained unpaid.
15. Complainant attempted to reach Respondent on multiple occasions by phone, she received an answering machine response advising her that there was no one available to answer her calls. The machine did not accept Complainant's messages.
16. On or about August 18, 2004, Complainant wrote Respondent and explained that she had received the August 16, 2004 letter from the court and did not understand what was happening. Complainant requested that Respondent pay the fee immediately and asked that he call her immediately to explain the status of her matter. Complainant further wrote that she had on multiple

occasions attempted to reach Respondent by phone without success. Complainant never heard from Respondent.

17. On or about September 2, 2004, Complainant learned that the court fees still had not been paid. Complainant further learned from the Clerk's Office that if Complainant took a driver improvement course, the Judge had agreed to dismiss the case.
18. Complainant scheduled a driver improvement course and obtained an extension from the court in her case. This extension would permit successful completion of the driver improvement course and would allow time to forward the certificate of completion to the court.
19. On or about September 2, 2004, Complainant sent Respondent a certified letter in which she advised him of the forgoing developments. She also enclosed a copy of her canceled check #3057 and again requested that Respondent pay the court fees. In addition, she again requested that the Respondent contact her to discuss the status of her situation.
20. The Bank of Charlotte County obtained a Warrant-in-Debt against Respondent for the deficit balance of One Thousand Eighty Six Dollars and Thirteen Cents in his escrow account.
21. On or about the September 9, 2004 return date for the Warrant-in-Debt, Respondent made a cash payment satisfying the bank's claim. The Warrant-in-Debt was dismissed.

22. On or about September 14, 2004, the Complainant sent the Respondent a certified letter informing him due to his substantial nonperformance, he was dismissed as her attorney. Complainant also requested return of all monies paid to the Respondent.
23. As of September 15, 2004, the Charlotte County General District Court still had not received Complainant's fees from Respondent. The Complainant therefore sent the Charlotte County General District Court another Fifty Four Dollars with her driver improvement certificate. These items were accompanied by a letter telling the court that Respondent was not long her attorney.
24. In response, the Charlotte County General District Court dismissed the Complainant's traffic case.
25. Despite her repeated efforts to communicate with Respondent prior to discharging him, Complainant never received a response from the Respondent.
26. On or about January 3, 2005, Ms. Sterling Laughlin, the Collections Manager for the Bank of Charlotte County, mailed Respondent a letter requesting that the Respondent come to the Bank to make good his check #3057 which had been returned for improper endorsement. By this time, the Respondent's P.O. Box had been closed. For this reason, this letter was returned.
27. Ms. Laughlin thereafter sent another letter to the Respondent using his home address. Ms. Laughlin again asked Respondent to make

good check #3057. In this letter, Ms. Laughlin advised the Respondent that failure to pay by January 19 would result in legal action.

28. During the period from December 2003 through August 31, 2004 – the period during which Respondent maintained escrow account number 208918 with the Bank of Charlotte County – Respondent contends that he was working in the trucking business for a company called R.T. Justice Trucking Company.
29. During this period of time, Respondent deposited personal money in his escrow account that was unrelated to his law practice. In addition, the Respondent used funds from his escrow account to satisfy obligations unrelated to his law practice.
30. Certain of these checks were written to cover the Respondent's trucking business which was unrelated to his law practice.
31. The checks that put Respondent in an overdraft situation resulting in the negative balance in his escrow account with the Bank of Charlotte County were written to employees of R.T. Justice Trucking Company.
32. During this period of time, Respondent did not maintain trust accountant records in accordance with Rule 1:15 of the Rules of Professional Conduct.
33. During this period of time, Respondent was not doing trust account reconciliations. Respondent did not have an up-to-date receipts

journal, Respondent did not maintain a disbursements journal, Respondent did not have client subsidiary records nor did Respondent keep time records.

34. Initially, after Respondent was contacted by the Bar Investigator, he refused to refund the Two Hundred Seventy Five Dollars legal fee believing he did enough work on the case to have earned the money. Later, however, Respondent agreed to refund Complainant's money in its entirety, both his fee and the court costs. The Bar's Investigator advised Respondent that the Bank of Charlotte County was also owed the court costs because it paid this amount to him when he endorsed and deposited the check. Respondent said he would take care of it.
35. When Complainant deposited Respondent's Two Hundred Seventy Five Dollar reimbursement check for legal fees in March, 2005, it was returned for insufficient funds. As a result, Complainant's bank charged a Five Dollar service fee to her account. Complainant has not yet received reimbursement of her fees nor for this bad check fee.

### FINDINGS

Based upon the above facts outlining Respondent's neglect of Complainant's representation; the determination that Respondent did not maintain proper trust account records and that he also commingled

personal funds with client funds while running a negative balance in his escrow account, the Panel finds that he has violated the following Rules of Professional Conduct:

**RULE 1.3 Diligence**

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

**RULE 1.4 Communication**

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

**RULE 1.15 Safekeeping Property**

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firms shall be deposited therein except as follows:
  - (1) Funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
  - (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

- (c) A lawyer shall:
  - (2) Promptly notify a client of the receipt of the clients funds, securities, or other properties;
  - (3) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
  - (4) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and
  - (5) Promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties of the lawyer which such person is entitled to receive.
  
- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in private practice of law in Virginia, hereinafter called “lawyer”, shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15 (a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
  - (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
    - (i) A cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;
    - (ii) A cash disbursements journal listing and identifying all disbursements from the escrow account. Check book entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not

maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements.

- (iii) Subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
  - (iv) Reconciliations and supporting records required under this Rule;
  - (v) The records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15 (a) and (c) by lawyers practicing in Virginia.
- (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
    - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
    - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

- (5) Reconciliations.
  - (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;
  - (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trail balance;
  - (iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

(6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

**RULE 1.16 Declining Or Terminating Representation**

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

**VSb 06-090-1542 (Michael Bruce Jackson)**

STATEMENT OF FACTS

1. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On June 23, 2005, Respondent appeared in the Nottoway County Juvenile and Domestic Relations Court on behalf of his client, Michael Bruce Jackson.

3. Respondent asked the court for a continuance to allow time for the parties to reach an agreement concerning issues of support.
4. Judge Southall, Chief Judge in the Nottoway County Juvenile and Domestic Relations Court, granted the continuance. Judge Southall ordered the parties to appear again on August 11, 2005.
5. Respondent's client, Michael Jackson, and Karen Jackson appeared on the appointed date with a written support agreement in hand. Respondent did not appear.
6. In order to allow Mr. Jackson time to see if he could locate the Respondent by phone, Judge Southall temporarily postponed the hearing.
7. Mr. Jackson was unable to reach Respondent. As he was returning to his military base in North Carolina, he decided to proceed without Respondent. Judge Southall thereafter approved the agreement for support.
8. The court then issued a show cause for Respondent. This show cause was first sent to the Respondent by mail. When it was returned as undeliverable, Judge Southall had a second show cause issued which was sent to the Sheriff for service.
9. The second show cause was served on Respondent in person on September 21, 2005. This show cause required the Respondent to appear for a hearing on October 27, 2005.

10. When Respondent did not appear for the October 27<sup>th</sup> hearing, Judge Southall issued a capias for Respondent.
11. The capias issued on October 27, 2005 remains on file but two weeks prior to the hearing remained unserved. Respondent advised the Panel that he had been in touch with the court and was attending to the capias.

### FINDINGS

Based upon the evidence presented, the Panel finds that the Respondent violated the following Rules of Professional Conduct:

#### **RULE 1.4 Communication**

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

#### **RULE 1.16 Declining Or Terminating Representation**

- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable rules of court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

#### **RULE 3.4 Fairness To Opposing Party And Counsel**

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

**RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (b) Commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer.

Following the presentation of these above stipulated matters and the finding by the Panel of the violations set forth above, the Panel entered into the sanctions phase of the hearing. At this time, the Panel was informed that the Respondent over the approximately past five years has had a number of complaints against him focusing on his failure to carry out assignments he had accepted. The Panel was also advised that the Respondent was currently on administrative suspension for his failure to comply with subpoenas issued by the Bar in several ongoing investigations.

While the Panel credits the Respondent for being forthcoming concerning the cases before it today, and for his willingness to stipulate these matters, it goes without saying that the issues before the Panel are serious in nature, especially when viewed in light of the Respondent's prior history and his apparent inability or unwillingness to fully address the matters currently under Bar investigation or to deal with the capias outstanding against him. At this hearing during the sanctions phase, some indications were made by the Respondent attempting to explain his actions as a result of depression he was suffering. However, the Rules are clear that if a Respondent desires to base a defense upon an impairment, timely notice of the same must be provided to the Bar no less than fourteen days prior to the hearing to allow appropriate time to investigate and address any such allegation. In this matter, no such notice was given nor was any

evidence presented to the Panel in reference to these allegations other than the statements of the Respondent upon which the Panel could act if it were so inclined, which it is not.

It is clear that the Respondent has displayed a history of neglect of his cases for some time. It is also deeply troubling that the Respondent's neglect of his escrow account and his clear commingling of funds has led to injury of his clients. The Respondent himself said it best in the hearing when he stated, "It is the interest of the client and the interest of the public which comes first". Equally eloquent was one of the complainants, Lucy Alexander, who said during her testimony that Respondent's actions were, "just not the way to treat people". We agree.

The actions of the Respondent in these matters endangered his clients and discredit every member of the Bar, no matter how ethical and no matter how attentive they may be to their charges. It is the type of behavior which cannot be tolerated. Moreover the failure of an attorney to attend to his escrow account is a matter of the greatest concern. For these reasons the Panel ORDERS that the license of the Respondent to practice within the Commonwealth be REVOKED effective the 28<sup>th</sup> day of April, 2006.

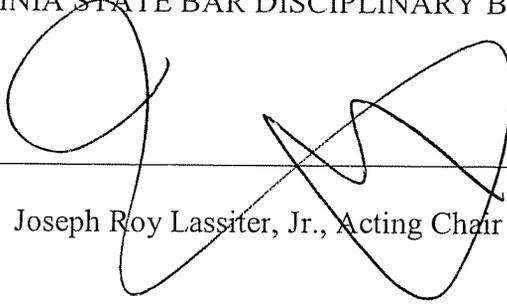
It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent, David Ashley Grant Nelson, 2819 Lorcom Lane Arlington, Virginia 22207 by certified mail, return receipt requested and by regular mail to Scott Kulp, Esquire, Assistant Bar Counsel, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23215.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

ENTERED this 9 day of May, 2006

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: \_\_\_\_\_

  
Joseph Roy Lassiter, Jr., Acting Chair