

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF JAMES PEARCE BRICE, JR.**

**VSB DOCKET NO. 13-022-093126**

**AGREED DISPOSITION MEMORANDUM ORDER**

On February 19, 2014, this matter was heard by the Virginia State Bar Disciplinary Board upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by the Rules of the Supreme Court of Virginia. The panel consisted of Pleasant S. Brodnax, III, Chair, J. Casey Forrester, John A.C. Keith, Tony H. Pham and Jody D. Katz, Lay Member. The Virginia State Bar was represented by Paul D. Georgiadis, Assistant Bar Counsel. James Pearce Brice, Jr. was present and was not represented by counsel. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each member responded in the negative. Court Reporter Terry S. Griffith, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

**WHEREFORE**, upon consideration of the Agreed Disposition, the Certification, and Respondent's Disciplinary Record,

It is **ORDERED** that the Board accepts the Agreed Disposition and the Respondent shall receive a 30-Day Suspension, as set forth in the Agreed Disposition, which is attached to this Memorandum Order.

It is further **ORDERED** that the sanction is effective February 28, 2014.

It is further **ORDERED** that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the Suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. Respondent shall give such notice within 14 days of the effective date of the 30-Day Suspension, and make such arrangements as are required herein within 45 days of the effective date of the 30-Day Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the 30-Day Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of 30-Day Suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for a hearing before a three-judge court.

The Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9 E. of the Rules.

A copy teste of this Order shall be mailed by certified mail to James Pearce Brice, Jr., at his last address of record with the Virginia State Bar, Law Office of James P. Brice, Jr., 3500 Virginia Beach Blvd., Ste. 217, Virginia Beach, VA 23452 and hand-delivered to Paul D. Georgiadis, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED THIS 19<sup>th</sup> DAY OF FEBRUARY, 2014

VIRGINIA STATE BAR DISCIPLINARY BOARD

*Pleasant S. Brodnax III*

Pleasant S. Brodnax, III, Chair

VIRGINIA: 2014

**BEFORE THE DISCIPLINARY BOARD  
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF  
JAMES PEARCE BRICE, JR.**

**VSB Docket No. 13-022-093126**

RECEIVED  
FEB - 6 2014  
VIRGINIA STATE BAR

**AGREED DISPOSITION  
(30 Day Suspension)**

Come now the Virginia State Bar by its Assistant Bar Counsel Paul D. Georgiadis and Respondent James Pearce Brice, Jr., *pro se*, and pursuant to the Rules of the Virginia Supreme Court Rules of Court Part 6, Section IV, Paragraph 13-6.H., hereby enter into the following Agreed Disposition arising out of the referenced matter.

**I. STIPULATIONS OF FACT**

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about August 29, 2012, Wells Fargo Bank issued a Notice of Insufficient Funds to the Virginia State Bar regarding Respondent's trust account. The Bank reported that on August 29, 2012, Respondent's trust account was overdrawn by \$293.83 as a result of check No. 1916 in the amount of \$1,250.00 being presented against an account balance of \$956.17. Respondent had written check No. 1916 on June 12, 2012. The bank paid the amount and assessed a \$35.00 overdraft fee.
3. The overdraft occurred in spite of Respondent's last minute efforts to seed his trust account with personal funds. On or about August 30, 2012, Respondent deposited a check in the amount of \$373.40 which was a refund of a utility deposit payable to Respondent's wife. On August 30, 2012, Respondent also transferred \$200.00 of his funds from his business account to the trust account.
4. From the date that Respondent wrote the trust account check for \$1,250.00, June 12, 2012, until the date of presentment of the check, August 29, 2012, Respondent was

repeatedly out of trust, with his trust account balance falling below \$1,250.00 repeatedly throughout June, July, and August, 2012.<sup>1</sup>

5. By letter dated September 10, 2012, the bar's Intake Counsel forwarded the bank's Insufficient Funds Report, demanded that by September 17, 2012, Respondent provide a written explanation of what caused the overdraft, and demanded that Respondent advise as to what steps he has taken to avoid a recurrence.
6. Notwithstanding said demand, Respondent failed to respond at all, requiring the bar to open a formal complaint of which the bar advised Respondent by its September 26, 2012 letter demanding a written answer within 21 days.
7. By letter to the bar dated October 9, 2012, Respondent submitted his answer to the complaint. Therein he stated that:
  - a. "my trust account held one item in trust, a deposit for rental home for inmate Elvin Perez...; and
  - b. that he had conducted a "reconciliation" of the account and found that he was out of trust.
8. The bar's ensuing investigation found that Respondent's trust account held numerous items in trust- not just the one item, and further found that Respondent failed to conduct any reconciliation of either the general trust account or the Perez client subsidiary account.
9. The bar's ensuing investigation found that Respondent failed and continues to fail to maintain the records required for a trust account.
  - a. In the Perez subsidiary ledger, these failures include but are not limited to:
    - i. failing to keep a running balance or a record of the unexpended balance ;
    - ii. failing to note the means by which funds were received or paid out such as by cash or check;
    - iii. failing to record receipt of funds belonging to client Perez including but not limited to :
      1. December 1, 2011 payment of \$1,250 to client Perez;
      2. February 1, 2012 payment of \$1,250 to client Perez.

---

<sup>1</sup> The Trust Account balance fell below the outstanding check amount of \$1,250.00 on the following days : June 27, June 29, June 30, July 2-July 25, and August 2, August 7-9 and August 28-29.

- iv. failing to record payments made on behalf of client Perez including but not limited to :
  - 1. Check No. 1830 dated 11/28/11 for \$750.00 payable to Peninsula Therapy is not reflected on the Perez subsidiary ledger;
  - 2. Check No. 1864 dated February 5, 2012 for \$600.00 payable to Dr. Miller is not reflected on the Perez subsidiary ledger.
- b. In numerous other client subsidiary ledgers, Respondent has failed to maintain the required records and information.
- c. With regard to his general ledger or cash receipts and disbursements journal, Respondent has failed to maintain the required records, including but not limited to failing to record the amount of unexpended funds or the running balance.

## II. NATURE OF MISCONDUCT

Such conduct by the Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

### **RULE 1.15 Safekeeping Property**

- (a) Depositing Funds. All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts or placed in a safe deposit box or other place of safekeeping as soon as practicable.
  - (3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows: funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein except as follows;
    - (i) Funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution...
    - (ii) Funds in which two or more persons (one of whom may be the lawyer) claim an interest...
- (b) Specific Duties. A lawyer shall :
  - (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

- (1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transactions; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.
- (2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust. The ledger should clearly identify:
  - (i) The client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and
  - (ii) Any unexpended balance.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15(a)-(c), the following minimum trust accounting procedures are applicable to all trust accounts:

(3) Reconciliations.

- i. At least quarterly, a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.
  - ii. A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance, and the trust account bank statement balance.
  - iii. At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).
  - iv. Reconciliations must be approved by a lawyer in the law firm.
- (4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

## **RULE 8.1 Bar Admission And Disciplinary Matters**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact;
- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

**III. PROPOSED DISPOSITION**  
(30 Day Suspension)

Accordingly, Assistant Bar Counsel and the Respondent tender to the Disciplinary Board for its approval the agreed disposition of a 30 day suspension as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. In light of on-going case responsibilities, the Respondent requests and the bar does not oppose the request that the suspension take effect February 28, 2014.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

THE VIRGINIA STATE BAR

By:   
Paul D. Georgiadis, Assistant Bar Counsel

  
James Pearce Brice, Jr., Respondent *pro se*