

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF KEVIN LINCOLN CASH VSB DOCKET NO. 14-101-099400

AMENDED AGREED DISPOSITION MEMORANDUM ORDER

On July 2, 2015, 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 William H. Atwill, Jr, Chair, Melissa W. Robinson, Samuel R. Walker, Lisa A. Wilson and Sandra W. Montgomery, Lay Member. The Virginia State Bar was represented by Edward J. Dillon, Jr., Assistant Bar Counsel. Kevin Lincoln Cash was present and was represented by counsel, Douglas R. Burtch. 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 Angela N. Sidener, 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 Certification, Answer to the Certification, Agreed Disposition and Respondent's Disciplinary Record,

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

It is further **ORDERED** that the sanction is effective July 2, 2015.

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, return receipt requested to Kevin Lincoln Cash, Respondent, at 613 Wilderness Creek Road, Monroe, VA 24502, his last address of record with the Virginia State Bar, and by regular mail to Douglas Robinson Burtch, Respondent's Counsel, at Macaulay & Burtch, P.C., 1015 East Main Street, P.O. Box 8088, Richmond, VA 23223-0088 and hand-delivered to Edward J. Dillon, Jr., Assistant Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED THIS 7th DAY OF JULY, 2015

VIRGINIA STATE BAR DISCIPLINARY BOARD

**William H.
Atwill, Jr.**

Digitally signed by William H. Atwill, Jr.
DN: cn=William H. Atwill, Jr., o=Atwill,
Troxell & Leigh, PC, ou,
email=batwill@atandlpc.com, c=US
Date: 2015.07.07 10:39:48 -04'00'

William H. Atwill, Jr., 1st Vice Chair

RECORDED

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

JUL 1 2015

IN THE MATTER OF
KEVIN LINCOLN CASH

VSB Docket No. 14-101-099400

AGREED DISPOSITION
(Six-Month Suspension)

Pursuant to the Rules of the Virginia Supreme Court Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar, by Edward James Dillon, Jr., Assistant Bar Counsel; Kevin Lincoln Cash, Respondent; and Douglas R. Burtch, Respondent's counsel, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. At all relevant times, Respondent Kevin Lincoln Cash ("Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia.
2. At all relevant times until in or about April 2014, Respondent was an equity partner at a Lynchburg law firm (the "Firm").
3. In or about 1995, Respondent set up Happy Times LLC ("Happy Times") on behalf of Jett P. Wade ("Mrs. Wade") and L. Preston Wade ("Mr. Wade" and, collectively with Mrs. Wade, "the Wades").
4. Happy Times owned a single-family residence in Lynchburg, Virginia (the "House") and maintained a checking account at Wachovia Bank, which later merged with Wells Fargo (the "Checking Account"). Until in or about May 2014, Respondent had signature authority on the Checking Account. No other person was authorized to withdraw funds from the Checking Account at the time Respondent had signature authority on the Checking Account.
5. The Wades had an estranged daughter (the "Daughter"), who also had a daughter (the "Granddaughter").
6. In or about 1995, Happy Times leased the House to the Daughter through a third party (the "Agent") at an attractive rent without Daughter knowing that the Wades owned the House.

7. From in or about 1995 until in or about 1999, the Agent generally managed the House and interacted with the Daughter. Respondent stated in his Answer to the Bar Complaint: "When the [A]gent said that he would no longer handle the property because of [the Daughter], the Wades asked [Respondent] if he would manage the [H]ouse and deal with [the Daughter] as manager of Happy Times and property manager, not as an attorney providing legal services."
8. In or about December 1999, Respondent agreed to serve as property manager provided that an "arrangement could be set up in a manner that would not allow the Wades to interfere with it."
9. To facilitate such an arrangement, in or about 1999, the Wades transferred their membership interests in Happy Times to the Jett Preble Wade Irrevocable Trust (the "Trust"), of which Mrs. Wade was the grantor. Mr. Wade gave his membership interest in Happy Times to Mrs. Wade. Mrs. Wade then contributed 100% of the membership interest in Happy Times to the Trust.
10. Respondent prepared the Trust Agreement and served as trustee of the Trust from on or about January 1, 2000 until in or about May 2014. The Trust Agreement provided that Respondent was entitled to "receive compensation [for his services as trustee] in accordance with the law of the Commonwealth of Virginia in effect at the time of payment and may be guided by the fee schedule of Lynchburg banks[.]"
11. As trustee, Respondent was required to "hold the trust fund in accordance with the terms and provisions of the trust hereby created" and to "hold, manage, and distribute the trust fund under the terms of this Agreement."
12. The sole asset of the Trust was the membership interest in Happy Times. The Trust Agreement provided that the Trust would hold the Happy Times interest and would exist until the latter of Mrs. Wade's death or the date on which Granddaughter attained the age of twenty five (25).
13. Accordingly, in or about 2000, Respondent became trustee of the Trust and property manager for Happy Times, which was an asset of the Trust.
14. Between January 2008 and July 2013, Respondent paid himself \$5,550 in fees from the Trust. Respondent made these payments to himself in the following increments:
 - a. a \$250 "fee" on or about May 16, 2008;
 - b. a \$950 "Management + Trustee fee" on or about July 16, 2009;
 - c. a \$500 "fee" on or about October 21, 2009;
 - d. a \$150 "fee" on or about December 8, 2009;
 - e. a \$500 "management fee" on or about March 17, 2010;
 - f. a \$500 "fee" on or about July 8, 2010;
 - g. a \$1,500 "fee" on or about August 20, 2010;
 - h. a \$200 "fee" on or about September 14, 2010;
 - i. a \$400 "fee" on or about December 22, 2010; and

- j. a \$600 "Management fee – partial" on or about June 18, 2013.
15. Mrs. Wade died in July 2013.
 16. On or about July 16, 2013, Respondent paid himself \$6,000 from the Trust. Notwithstanding the fees described in paragraph 14 above, Respondent described the \$6,000 payment in the check register as "Management + Ttee fee 2008 – June 2013[.]"
 17. Less than one month later, on or about August 14, 2013, Respondent paid himself \$1,100 in "[f]ees" from the Trust.
 18. On or about August 19, 2013, Respondent issued a check in the amount of \$8,500 from the Checking Account payable to Respondent's father, George L. Cash (the "August 2013 Loan"). The notation in the check register stated "30 day loan[.]" Respondent admitted in his Answer to the Bar Complaint that he issued the \$8,500 check to his father and has stated that his father used the \$8,500 to purchase a truck.
 19. The August 2013 Loan was lacking in any formality. The terms of the August 2013 Loan were not reduced to writing; the August 2013 Loan was not secured by any collateral or asset(s); and the August 2013 Loan carried no specified interest rate and no payback period beyond the "30 day loan" notation in the check register.
 20. Despite the fact that he had an obvious personal interest in the August 2013 Loan to his father and that he served as trustee of the Trust at the time of the August 2013 Loan, Respondent did not advise the Trust to obtain independent legal advice in regard to the August 2013 Loan and did not otherwise secure an independent legal opinion for the Trust in regard to the August 2013 Loan. Respondent also did not obtain written consent from the Trust waiving Respondent's conflict of interest in regard to the August 2013 Loan. Moreover, Respondent has acknowledged that he did not discuss the August 2013 Loan with Mr. Wade and that he did not have permission to borrow the money from the Trust. Respondent has stated that he "borrowed" the funds in his capacity as property manager.
 21. On or about August 26, 2013, Respondent repaid the August 2013 Loan, without interest.
 22. On or about October 31, 2013, Respondent issued a check in the amount of \$628.12 from the Checking Account payable to Respondent. Respondent has stated that the \$628.12 was spent to purchase a stove for the House, but that stove was not suitable for the House and had to be returned to the store. Respondent has further stated that, after he returned the stove to the store, he inadvertently forgot to reimburse the Trust for the \$628.12 refund the store made to Respondent's personal credit card (the "Stove Refund") at the time of the return.
 23. Between January 2014 and March 2014, Respondent paid himself \$2,600 in fees from the Trust in the following increments:
 - a. \$600 for "management" on or about January 28, 2014;

- b. \$1,000 for "management" on or about February 21, 2014; and
 - c. \$1,000 for "management" on or about February 25, 2014.
24. On or about March 6, 2014, Respondent issued a check in the amount of \$6,000 from the Checking Account payable to Respondent (the "March 2014 Loan"). The notation on the check register stated "loan[.]" Respondent admitted in his Answer to the Bar Complaint that he issued the \$6,000 check to himself and has stated that he needed the \$6,000 to pay tuition costs at Virginia Episcopal School, a private boarding school in Lynchburg that Respondent's son attended.
 25. The March 2014 Loan was lacking in any formality. The terms of the March 2014 Loan were not reduced to writing; the March 2014 Loan was not secured by any collateral or asset(s); and the March 2014 Loan carried no specified interest rate and no payback period.
 26. Despite the fact that he had an obvious personal interest in the March 2014 Loan to himself and that he was serving as trustee of the Trust at the time of the March 2014 Loan, Respondent did not advise the Trust to obtain independent legal advice in regard to the March 2014 Loan and did not otherwise secure an independent legal opinion for the Trust in regard to the March 2014 Loan. Respondent also did not obtain written consent from the Trust waiving Respondent's conflict of interest in regard to the March 2014 Loan. Respondent has further acknowledged that the March 2014 Loan was for his personal use, that he did not have permission to make the March 2014 Loan, and that he decided to make the March 2014 Loan because he knew he was going to repay it.
 27. In or about April 2014, Respondent took a medical leave of absence from the Firm.
 28. Members of the Firm subsequently reviewed the finances of Happy Times, including the check register for the Checking Account, and discovered the payments described herein, including the August 2013 Loan, the Stove Refund, and the March 2014 Loan.
 29. On or about April 25, 2014, the Firm presented its findings to Respondent and requested that he reimburse Happy Times in the amount of \$6,724.71, which included interest on the August 2013 Loan, \$628.12 plus interest in regard to the Stove Refund, and repayment of principal and interest on the March 2014 Loan.
 30. The Firm also terminated Respondent's employment with the Firm and reported the matter to the Virginia State Bar.
 31. On or about May 1, 2014, Respondent reimbursed Happy Times in the amount of \$6,724.71.
 32. In or about May 2014, Respondent resigned as manager of Happy Times and as trustee of the Trust. As of May 2014, Respondent no longer had signature authority over the Checking Account at Wells Fargo.

33. Subsequent to the filing of the Bar Complaint, Respondent voluntarily ceased practicing law and changed his membership status with the Virginia State Bar to associate status. Respondent has not practiced law since leaving the Firm in or about April 2014.
34. On December 8, 2014, Respondent voluntarily consented to an Impairment suspension (the "Impairment Suspension"). A copy of the Consent Order of Voluntary Impairment Suspension is attached hereto as **Exhibit A**. Respondent's license to practice law in the Commonwealth of Virginia remains suspended indefinitely based on his Impairment Suspension.
35. The circumstances that led to the Impairment Suspension may have been a contributing factor in the Misconduct at issue in this matter.
36. Respondent has no prior disciplinary record with the Virginia State Bar.

II. NATURE OF MISCONDUCT

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

RULE 1.7 Conflict of Interest: General Rule.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

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 to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

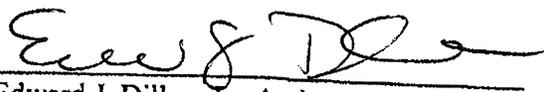
III. PROPOSED DISPOSITION

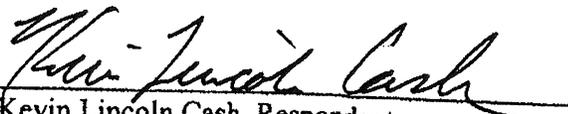
Accordingly, Assistant Bar Counsel, Respondent, and Respondent's counsel tender to the Disciplinary Board for its approval the Agreed Disposition of a Suspension of Respondent's license to practice law for a period of six (6) months as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board.

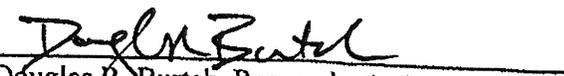
This Agreed Disposition has no effect on the Impairment Suspension and nothing in this Agreed Disposition shall impact or alter the procedures, as set forth in Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia, by which Respondent's Impairment Suspension may be terminated at some point in the future.

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

THE VIRGINIA STATE BAR

By: 
Edward J. Dillon, Jr., Assistant Bar Counsel


Kevin Lincoln Cash, Respondent


Douglas R. Burtch, Respondent's Counsel

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
KEVIN LINCOLN CASH

VSB DOCKET NO. 15-000-100203

CONSENT ORDER OF VOLUNTARY IMPAIRMENT SUSPENSION

WHEREAS the Virginia State Bar, by the undersigned assistant bar counsel, and Kevin Lincoln Cash, through his attorney, Jack W. Burch, Esq., request entry of an order voluntarily suspending Mr. Cash's license to practice law in the Commonwealth of Virginia on the basis that Mr. Cash suffers from depression to the degree that it constitutes an Impairment as that term is defined in Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia; and

WHEREAS Kevin Lincoln Cash acknowledges and represents that he is suffering from depression to the degree that it constitutes an Impairment as that term is defined in Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia and that, as a result of this Impairment, Mr. Cash has ceased practicing law for the present time and changed his Virginia State Bar license to associate status; and

WHEREAS the Virginia State Bar Disciplinary Board hereby finds that Kevin Lincoln Cash suffers from depression to the degree that it constitutes an Impairment as that term is defined in Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia and that the underlying condition materially impairs Mr. Cash's current



ability and fitness to practice law.

Based on the forgoing and the consent and request of Kevin Lincoln Cash, through his attorney, Jack W. Burtch, Esq., and the Virginia State Bar, and it otherwise appearing proper to do so, it is hereby ORDERED, pursuant to Part Six, Section IV, Paragraph 13-23 of the Rules of the Supreme Court of Virginia, that Kevin Lincoln Cash's license to practice law in the Commonwealth of Virginia shall be and hereby is SUSPENDED indefinitely upon entry of this Order due to Impairment and shall remain suspended until it is established that he no longer suffers from an Impairment.

It is further ORDERED that Kevin Lincoln Cash shall give notice, by certified mail, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients, if any, for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation, and shall make appropriate arrangements for the disposition of any matters presently in his care in conformity with the wishes of his clients, pursuant to the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia.

It is further ORDERED that the Clerk of the Disciplinary System shall send a certified copy of this Order by certified mail to Kevin Lincoln Cash at his last address of record with the Virginia State Bar: 613 Wilderness Creek Road, Monroe, Virginia 24502; and to Mr. Cash's attorney, Jack W. Burtch, Esq. at MaCauley & Burtch, P.C., 1015 East Main Street, P.O. Box 8088, Richmond, Virginia 23223-0088; and shall deliver a copy to Edward J. Dillon, Assistant Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-3565.

ENTERED THIS 8th DAY OF December 2014

VIRGINIA STATE BAR DISCIPLINARY BOARD

By Barbara S. Lewis

WE ASK FOR THIS:

Kevin Lincoln Cash

Kevin Lincoln Cash, Respondent

Jack W. Burch

Jack W. Burch, Counsel for Respondent

Edward J. Dillon

Edward J. Dillon, Assistant Bar Counsel