

VIRGINIA:

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

**IN THE MATTERS OF
JAMES KEVIN CLARKE**

**VS B Docket No. 08-031-071682, 07-031-070760, 07-031-064896,
08-031-073850 and 08-031-073851**

MEMORANDUM ORDER

This matter came on to be heard on September 18, 2009 by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of Stephan A. Wannall, lay person, David R. Schultz, Peter A. Dingman, Randall G. Johnson, Jr., and Sandra L. Havrilak, Chair presiding (the Panel).

Paulo E. Franco, Jr., Assistant Bar Counsel, appeared as counsel for the Virginia State Bar, and Respondent appeared in person *pro se*.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented same to the Panel.

The Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chair, verified they had no such interests.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Panel unanimously, accepted the Agreed Disposition.

VSB DOCKET NO. 07-031-064896

Complainant: Claude E. Jordan

I. STIPULATIONS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law on May 3, 1994.
3. Claude E. Jordan ("Jordan") had been involved in a lawsuit filed by J. Christopher Kollman ("Kollman"). The suit dealt with flyers that Jordan had circulated critical of Kollman, who was at all times relevant the mayor of Colonial Heights, Virginia.
4. Kollman successfully sued Mr. Jordan at trial, but the case was overturned by the Virginia Supreme Court.
5. Sometime in March of 2007, Jordan hired Respondent to write a letter to Wachovia Bank ("Wachovia") to complain about certain information that Wachovia produced in response to a subpoena duces tecum filed by Kollman.
6. At the initial meeting, Jordan provided Respondent with material relevant to his case.
7. Jordan also hired Respondent to file a civil suit against Kollman for malicious prosecution.
8. Respondent was paid a retainer of \$2,500.00.
9. After Respondent filed the suit on Jordan's behalf against Mr. Kollman, Jordan attempted on numerous occasions to contact Respondent about the status of the matter.
10. There were no other meetings between Respondent and Jordan.
11. Respondent did not return any telephone calls or answer any correspondence.

12. Exasperated, Jordan requested the return of all files and materials that Jordan had provided Respondent.

13. Respondent ignored requests from Jordan demanding the return of his files.

14. Unbeknownst to Jordan, Respondent had stopped going to his office, and had changed his cell phone number, without providing any updated contact information to Jordan.

15. In investigating the instant complaint, the Bar's investigator made several efforts to locate Respondent.

16. The Bar's investigator has stated that it was difficult in tracking down Respondent to interview him.

17. Respondent did not turn over Jordan's client materials until such time after he was contacted by the Bar's investigator.

18. Respondent failed to take adequate steps to protect Jordan's interests after filing the lawsuit and simply abandoned his client.

II. STIPULATIONS OF MISCONDUCT

Such conduct by James Kevin Clarke constitutes misconduct in violation of the following provisions of the 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.

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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.

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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).

- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and shall be returned to the client upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Upon request, the client must also be provided copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship.

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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, in connection with a disciplinary matter, shall not:

- (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

VSB DOCKET NO. 07-031-070760

Complainant: Kimberlee Davis

I. STIPULATIONS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law on May 3, 1994.
3. Ms. Kimberlee Davis ("Davis") was involved in an automobile accident sometime in July of 2006, and she engaged Respondent to represent her interests.
4. Shortly after her car accident, Davis was involved in a slip and fall at a Pizzeria Uno's that resulted in her being injured.
5. Uno's had agreed to pay for Davis' medical bills, but promptly stopped after two visits to Patient First.
6. Since Respondent was already representing Davis in the automobile accident case, she engaged Respondent to represent her interests against Uno's.
7. During the course of the representation, Davis found it increasingly difficult to contact Respondent. Thereafter, it became impossible as Respondent failed to return any of her phone calls.
8. Davis' mother went to Respondent's office to locate him, but was unable to find him.
9. Davis terminated Respondent and requested that he return all client material to her.
10. Respondent failed to do so and failed to respond to the request.
11. As a result of Respondent's inattention to Davis' case, Davis' credit record has been compromised due to her inability to pay medical bills.
12. It was not until after Davis filed a Bar complaint against Respondent and responded to a Bar issued subpoena duces tecum that Respondent finally turned over Davis' original client material.
13. Unbeknownst to Davis, Respondent had stopped going to his office, and had changed his cell phone number, without providing any updated contact information to Davis.

14. In investigating the instant complaint, the Bar's investigator made several efforts to locate Respondent.

15. The Bar's investigator has stated that it was difficult in tracking down Respondent to interview him.

16. Respondent did not turn over Davis' client materials until such time after he was contacted by the Bar's investigator.

17. Respondent failed to take adequate steps to protect Davis' interests and simply abandoned his client.

II. STIPULATIONS OF MISCONDUCT

Such conduct by James Kevin Clarke constitutes misconduct in violation of the following provisions of the 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.

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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.

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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).

- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and shall be returned to the client upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Upon request, the client must also be provided copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship.

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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, in connection with a disciplinary matter, shall not:

- (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

VSB DOCKET NO. 08-031-071682

Complainant: Robert and Mary Conner

I. STIPULATIONS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law on May 3, 1994.

3. Robert and Mary Connors were the owners of certain real property located on Gwynn's Island ("Property"), Virginia that was ultimately foreclosed. At the time of the foreclosure, the Connors had previously filed a petition in Bankruptcy under Chapter 13.

4. On February 16, 2006, the Connors retained Respondent to protect their interests on the recommendation of his friend, Bud Johnson.

5. The Connors met with Respondent and turned over all the information they had on the Property and the Conner's bankruptcy.

6. The Connors asked Respondent to contact the attorney handling the foreclosure, Stephen Woods, to see if Mr. Johnson could purchase the Property. The Connors also asked Respondent to protect their interests in personal property that remained on the Property.

7. Respondent was paid \$250 in cash twice for his services.

8. Respondent made several inquiries about Mr. Johnson's purchase of the Property and the Connor's personal property that remained on the Property.

9. Shortly after being retained, the Connors encountered difficulty in communicating with Respondent. Numerous phone calls went unreturned.

10. Mr. Johnson arranged a meeting between Respondent and the Connors where it was agreed that they would meet once a week to discuss the status of the case. Respondent appeared at the first meeting, but failed to appear thereafter and failed to communicate further with the Connors.

11. Sometime in December of 2006, the Connors retained attorneys James Sease and John Singleton to represent them in the matter for which they had previously retained Respondent.

12. Mr. Singleton's review of the case disclosed that Respondent had failed to move the matter along, and that Respondent failed to return any of Mr. Singleton's calls to discuss the case.

13. Unbeknownst to the Connors, Respondent had stopped going to his office, and had changed his cell phone number, without providing any updated contact information to the Connors.

14. In investigating the instant complaint, the Bar's investigator made several efforts to locate Respondent.

15. The Bar's investigator has stated that it was difficult in tracking down Respondent to interview him.

16. Respondent failed to take adequate steps to protect the Conner's interests and simply abandoned his clients.

II. STIPULATIONS OF MISCONDUCT

Such conduct by James Kevin Clarke constitutes misconduct in violation of the following provisions of the 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.

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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.

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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).
- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and shall be returned to the client upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Upon request, the client must also be provided copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents

(unless the originals have been returned to the client pursuant to this paragraph); pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship.

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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, in connection with a disciplinary matter, shall not:

- (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

VSB DOCKET NO. 08-031-073850

Complainant: Daniel P. Bennett

I. STIPULATIONS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law on May 3, 1994.
3. Daniel P. Bennett ("Bennett") patented a process of extraction of heat by vacuum process, for which he obtained a patent in 2004. He called the process the Seamer Down Now, and it is used for laying down carpeting.
4. He also invented an iron to be used with his carpet seamer.
5. He had approached a company called Orcon about the possibility of manufacturing the Seamer Down Now.

6. At a meeting with Orcon officials to discuss manufacturing, Bennett left the iron and schematic drawings with Orcon.

7. Bennett was subsequently advised that Orcon had lost the iron and his drawings, and was also advised that the Seamer Down Now had been lent to an Orcon employee to use.

8. Sometime in April of 2007, Bennett hired Respondent to prepare a letter to Orcon demanding a return of the iron and the drawings.

9. Respondent never communicated with Bennett about the status of the claim, and never informed him one way or the other as to whether he had even sent the letter, even though they had discussed a draft of the letter.

10. Respondent refused to return any phone calls from Bennett's father regarding the status of the case.

11. Unbeknownst to Bennett, Respondent had stopped going to his office, and had changed his cell phone number, without providing any updated contact information to Respondent.

12. Respondent failed to respond to the initial investigation of this complaint despite a demand from the Bar for a Response.

13. Respondent failed to take adequate steps to protect Bennett's interests throughout the course of his representation and simply abandoned his client.

II. STIPULATIONS OF MISCONDUCT

Such conduct by James Kevin Clarke constitutes misconduct in violation of the following provisions of the 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.

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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.

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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).

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RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, 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:

- (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.

VSB DOCKET NO. 08-031-073851

Complainant: David M. Bennett

I. STIPULATIONS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law on May 3, 1994.
3. Mr. David M. Bennett ("Bennett") retained Respondent in February of 2007 to represent his interests in a malicious prosecution, statutory conspiracy and tortious interference case in York County, Virginia.
4. Respondent agreed to undertake the representation for a fee of \$7,000 and a 25% contingency fee in the event they received treble damages.

5. Bennett advised Respondent that the malicious prosecution case was dependent upon a recording of a 911 call that led to Bennett's arrest.

6. Respondent was made aware of the necessity to obtain the 911 tape but undertook no efforts to obtain it either through formal discovery or a Freedom of Information Act request.

7. As a result of Respondent's failures to obtain the 911 call, it was destroyed in the ordinary course.

8. Although Respondent wrote Bennett two letters in May and June of 2007, Respondent ceased all communications thereafter.

9. Despite numerous phone calls to Respondent's office, Respondent did not return a single call.

10. On August 15, 2007, Bennett wrote to Respondent seeking a refund and the return of all materials he had provided.

11. Respondent did not respond to that letter.

12. Bennett wrote Respondent again in January of 2008 requesting a return of his retainer and his documents.

13. Respondent failed to answer that letter as well.

14. Unbeknownst to Bennett, Respondent had stopped going to his office, and had changed his cell phone number, without providing any updated contact information to Respondent.

15. Respondent failed to respond to the initial investigation of this complaint despite a demand from the Bar for a response.

16. Respondent failed to take adequate steps to protect Bennett's interests throughout the course of his representation and simply abandoned his client.

II. STIPULATIONS OF MISCONDUCT

Such conduct by James Kevin Clarke constitutes misconduct in violation of the following provisions of the 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.

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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.

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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).
- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of

interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by item basis during the course of the representation.

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RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, 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:

- (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.

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III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed

Disposition, the Disciplinary Board **ORDERS** the following:

1. **SUSPENSION**. Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of **ONE YEAR**. Such suspension shall commence on October 25, 2009. The suspension is to run consecutive with the suspension Respondent is currently serving by order of the Disciplinary Board dated April 25, 2008.

2. **NO FURTHER MISCONDUCT**. Provided that Respondent has complied with all of his obligations and conditions precedent pursuant to Rules of the Virginia Supreme Court Rules of Court Part 6, Section IV, Paragraph 13-25.H for his prior suspension by Order of the Disciplinary Board dated April 25, 2008, Respondent shall be on a period of probation for a period beginning on October 25, 2010 until December 31, 2013 ("Probation Period"). Respondent shall not engage in any conduct that violates any of the provisions of the Virginia Rules of Professional Conduct, including any amendments thereto, the disciplinary rules of any other jurisdiction in which the Respondent may be or become admitted to the practice of law. In the event that Respondent is found by any tribunal to have engaged in any Misconduct during the Probation Period, the Disciplinary Board shall impose an alternate sanction of Revocation of the Respondent's license to practice law in the Commonwealth of Virginia.

3. **MONITORING CONTRACT.** No later than December 31, 2010, Respondent shall enter into a Monitoring Contract with Lawyers Helping Lawyers (“LHL”) that shall run through December 31, 2013. Respondent agrees that he shall request that LHL submit to the Bar quarterly reports of his progress. Respondent shall cooperate fully with LHL and shall submit to all counseling, therapies or other courses of treatment that may be ordered. Respondent’s failure to cooperate or perform any obligation imposed by LHL shall be deemed a violation of this Agreed Disposition. If at any time LHL determines that Respondent no longer requires to be monitored prior to December 31, 2013, Respondent shall request that LHL submit to the Bar a letter stating that Respondent has completed his monitoring contract requirements.

4. **MENTAL HEALTH PROVIDER.** Respondent shall remain under the care of Maurice S. Fisher, Sr., Ph.D, LCSW or such other licensed health care professional as approved by the Bar, through December 31, 2013 or until such time as Dr. Fisher or Respondent’s treating health care provider certifies to the Bar that care or treatment is no longer needed. Respondent shall have Dr. Fisher or such other health care provider submit quarterly reports stating whether, in the professional opinion of the health care provider, whether the Respondent’s physical and/or mental conditions impair the Respondent’s ability to represent clients or otherwise engage in the practice of law. If such health care provider opines that Respondent has an impairment that materially affects his ability to practice law, then the Respondent agrees to have his license suspended for impairment pursuant to Rules of the Virginia Supreme Court Rules of Court Part 6, Section IV, Paragraph 13-23. Respondent shall cooperate fully with Dr. Fisher or such health care provider and shall submit to all counseling, therapies or other courses of treatment that may be ordered. Failure to comply with this term shall be deemed a violation of this Agreed Disposition. Respondent shall bear the cost and expenses of compliance with this term.

5. **RELEASES.** Respondent shall execute and deliver the Bar any and all releases necessary for LHL and any of his health care providers to produce his records and communicate about his health care and treatment with the Virginia State Bar.

6. **ADDITIONAL CLE.** In addition to all of his mandatory continuing legal education requirements by the Virginia State Bar and any other jurisdiction in which Respondent is admitted or will become admitted, the Respondent shall take one continuing legal education course in law office management or other such course as may be approved by the Bar for the years 2010 through 2013. Any credit that Respondent may receive for attending such continuing legal education courses shall not count as part of any continuing legal education requirements of the Virginia State Bar. Respondent shall provide Bar Counsel written proof of his compliance with this section no later than December 31 of each year he is required to take the continuing legal education course.

7. **SUPERVISION.** Upon reinstatement from his suspension, Respondent shall submit within thirty days from the date in which he becomes active and in good standing with the Virginia State Bar a letter from an attorney, agreed to by both Respondent and Bar Counsel,

who will monitor and supervise Respondent's practice. Respondent shall remain under the monitoring and supervision of such attorney for a period of one year from the day that he is active and in good standing with the Virginia State Bar. In the event that the supervising attorney is no longer able to serve in that capacity, Respondent and Bar Counsel shall agree to another attorney. Such supervising attorney shall submit quarterly reports to the Virginia State Bar.

8. **ALTERNATIVE DISPOSITION.** In the event that Respondent is found to have violated or otherwise be in noncompliance with any of the terms of this Agreed Disposition, the Disciplinary Board shall impose an alternative sanction of Revocation of the Respondent's license to practice law in the Commonwealth of Virginia. In the event of alleged noncompliance of the terms of this Agreed Disposition, Bar Counsel shall issue a Rule to Show Cause setting the time and place for a hearing before the Board. The sole issue to be determined by the Board at such hearing will be Respondent's compliance with each of the terms of this Agreed Disposition. The Respondent shall have the burden of proving compliance or good cause for the alleged noncompliance by clear and convincing evidence. Respondent hereby waives his right to have the show cause hearing heard by a three judge panel pursuant to either the Rules of the Supreme Court of Virginia and/or the Code of Virginia.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the 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.

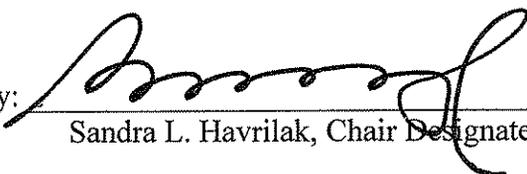
It is further ORDERED that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further ORDERED that the Clerk of the Disciplinary System shall send a certified copy of this order to James Kevin Clarke at his last address of record with the Virginia State Bar at 1500 Bellevue Avenue, Richmond, VA 23227 and by hand to Paulo E. Franco, Assistant Bar

Counsel, 707 E. Main Street, 15th Floor, Richmond, VA 23219 Valerie L. Schmit May, RPR of
Chandler & Halasz, PO Box 9349, Richmond, Virginia 23227, telephone No. 804-730-1222,
was court reporter for the hearing and transcribed the proceedings.

ENTERED: September 21, 2007

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
Sandra L. Havrilak, Chair Designate