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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

VIRGINIA STATE BAR
EX REL SIXTH DISTRICT COMMITTEE

v. **Case No. CL14-390**

WILLIAM STEPHEN COLEMAN

MEMORANDUM ORDER
(SIX MONTH SUSPENSION WITH TERMS)

This cause was heard on March 26, 2014 before a duly appointed Three-Judge Circuit Court consisting of the Honorable Aundria Deloris Foster, the Honorable Richard S. Blanton, and the Honorable Kenneth R. Melvin, Chief Judge Designate, upon the Rule to Show Cause which was issued pursuant to Virginia Code §54.1-3935 and the Rules of the Supreme Court of Virginia, Part 6, § IV, Paragraph 13. Pursuant to the Rules of Court Part 6, Section IV, Paragraph 13-6.H., the Virginia State Bar, represented by Kathryn R. Montgomery, Deputy Bar Counsel, and William Stephen Coleman, the respondent, represented by Rhetta M. Daniel, Esquire, entered into an Agreed Disposition for a Six Month Suspension with Terms to resolve the referenced matter. The Court, convened via telephone conference, and the parties, by counsel, presented argument in support of the Agreed Disposition and sought the Court's approval of the Agreed Disposition. Respondent William Stephen Coleman did not participate in

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the telephone hearing. The proceeding was recorded by Terry S. Griffith of Chandler and Halasz, P.O. Box 9349, Richmond, Virginia, 23227, telephone number 804.723.1222.

Upon the parties' stipulations of fact and rule violation set forth in the Agreed Disposition and the arguments of counsel, the Court hereby approves the Agreed Disposition and makes the following findings:

I. FINDINGS OF FACT

1. Respondent William Stephen Coleman ("Respondent") was licensed to practice law in the Commonwealth of Virginia on May 13, 1980.
2. On or about March 30, 2012, Respondent presented a check for payment from his general trust account maintained by BB&T Bank. The check was in the amount of $1237.87.
3. The bank issued a notice of nonsufficient funds to the Virginia State Bar and the bar opened a file against Respondent and demanded an answer. Respondent's initial response to the bar, dated April 11, 2012, blamed the overdraft on a late deposit.
4. On or about May 29, 2012, Respondent was interviewed by the bar's investigator with regard to the March 30, 2012 presentation of the $1237.87 check against nonsufficient funds in his trust account.
5. During this interview, Respondent admitted that the $1237.87 check was a paycheck to his paralegal.
6. Respondent also admitted that he improperly used his general trust account for about "a month and a half" because the IRS had put a lien on his general business operating account, thus he was unable to deposit funds into his operating account to pay business expenses.

7. Respondent told the bar investigator that he resumed using his operating account on April 16, 2012.

8. The bar subpoenaed the Respondent's bank for Respondent's bank account statements from 2011 and 2012 for his general trust account, real estate trust account, and operating account.

9. The bank records indicate that the IRS did not freeze or in any way obstruct Respondent's use of his operating account in 2011 or 2012. The IRS did levy Respondent's operating account on the following dates in the following amounts: August 10, 2011 ($3,026.55); September 29, 2011 ($271.76). These levies, however, did not affect Respondent's active use of his operating account. For a period of time after the IRS levies were issued, Respondent was fearful that additional IRS levies would be filed and that overdrafts would occur on his operating account.

10. As of March 30, 2012 (the same day Respondent attempted to pay his paralegal's salary from his general trust account), the balance in Respondent's operating account was *negative* $23.06. Respondent's bank charged $35 overdraft item fees against Respondent's operating account on March 2, 2012, March 5, 2012, March 14, 2012, March 23, 2012, March 26, 2012, March 27, 2012 and March 30, 2012.

11. Respondent later admitted to the bar that he paid his paralegal's wages from his trust account on "3 or 4" occasions other than on March 30, 2012.

12. During the course of its investigation, the bar reviewed Respondent's bank statements for his general trust account and discovered checks cashed in the amount of $1237.87 on September 30, 2011, October 14, 2011, November 15, 2011, January 18, 2012, February 2, 2012 and March 16, 2012. Respondent later confirmed that these checks

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were paychecks to his paralegal. Copies of the checks obtained from the bank also confirmed that the checks were written to Respondent's paralegal.

13. As stated above, Respondent paid his paralegal's wages of $1237.87 from his general trust account on September 30, 2011. On the day before, September 29, 2011, the IRS had levied Respondent's operating account in the amount of $271.76. In addition, on September 29, 2011, Respondent's bank had charged $35 overdraft item fees against Respondent's operating account. As of September 30, 2011, the balance of Respondent's operating account was *negative* $475.00.

14. As stated above, Respondent paid his paralegal's wages of $1237.87 from his general trust account on October 14, 2011. On October 7, 2011, Respondent's bank had charged $35 overdraft item fees against Respondent's operating account.

15. As stated above, Respondent paid his paralegal's wages of $1237.87 from his general trust account on November 15, 2011. Respondent's bank had charged $35 overdraft item fees against Respondent's operating account on November 1, 2011, November 7, 2011, November 8, 2011, November 9, 2011 and November 10, 2011.

16. As stated above, Respondent paid his paralegal's wages of $1237.87 from his general trust account on January 18, 2012. As of January 31, 2012, the balance of Respondent's operating account was $4.41. Respondent's bank charged $35 overdraft item fees against Respondent's operating account on January 6, 2012, January 19, 2011, January 23, 2012 and January 27, 2012.

17. As stated above, Respondent paid his paralegal's wages of $1237.87 from his general trust account on February 2, 2012. Two days before, on January 31, 2012, the balance of Respondent's operating account had been $4.41. In addition,

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Respondent's bank had charged a $35 overdraft item fee against Respondent's operating account on January 27, 2012.

18. As stated above, Respondent paid his paralegal's wages of $1237.87 from his general trust account on March 16, 2012. As of March 30, 2012, the balance in Respondent's operating account was *negative* $23.06. In addition, Respondent's bank charged $35 overdraft item fees against Respondent's operating account on March 2, 2012, March 5, 2012, March 14, 2012, March 23, 2012, March 26, 2012, March 27, 2012 and March 30, 2012.

19. During an interview with the bar's investigator on or about May 16, 2013, Respondent admitted depositing earned fees into his trust account during the time period September 2011 - April 2012. Below are examples of earned fees that were deposited into the trust account. This list is not exhaustive of all earned fees which Respondent deposited into his trust account:

- September 30, 2011 deposit of $1623.80 into trust—Respondent explained this was the final payment of fees due from a closed domestic case;
- November 7, 2011 deposit of $400 for fees due in a domestic case that was concluded;
- December 14, 2011 deposit of $600, $500 of which was payment of fees from a closed case and $100 was from another client for work that had been completed related to a violation of a protective order case;
- January 10, 2012, deposit of $600 for fees due on a domestic case for legal work already completed;
- January 31, 2012 deposit of $1,610 from two clients for work that had been performed relating to a refinance and preparation of legal instruments.

20. During an interview with the bar's investigator on or about May 16, 2013, Respondent admitted using his trust account as an operating account during the time

period September 2011-April 2012. Below are examples of instances in which Respondent paid business expenses from his trust account. This list is not exhaustive:

- Payment of wages of paralegal; (See: Allegations set forth above.)
- November 14, 2011 payment of $2,000 for Respondent's share of office space rental and expenses;
- January 25, 2012 payment of $2682.69 for Respondent's share of office space rental and expenses;
- January 31, 2012, payment of $38.84 to Anthem for employee's dental insurance.

21. During an interview with the bar's investigator on or about May 16, 2013, Respondent admitted using his trust account as personal account during the time period September 2011-April 2012. Below are examples of instances in which Respondent paid personal expenses from his trust account. This list is not exhaustive:

- January 19, 2012 payment of $1,548.26 for Respondent's home mortgage;
- January 31, 2012, payment of $180.34 to James River Equipment for a personal expense.

22. During the May 29, 2012 interview, Respondent admitted to the bar that he had received Notices of Intent to Levy from the Internal Revenue Service ("IRS").

23. On or about June 25, 2012, Respondent sent copies of two IRS Notices of Intent to Levy. The notices indicated that the type of taxes Respondent had failed to pay were employee withholding taxes.

24. The bar investigated whether Respondent had failed to pay employee withholding taxes.

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25. Respondent failed to pay employee withholding taxes in 2005, resulting in the IRS filing a lien in the Circuit Court for the City of Richmond on March 22, 2006 in the amount of $1239.62.

26. Respondent also failed to pay employee withholding taxes in 2009 and 2011. On or about February 13, 2012, the IRS sent Respondent a notice that it was closing its case to collect withholding taxes from certain periods in 2009 and 2011, finding that the amounts are "currently not collectible."

27. The IRS filed a federal tax lien in July 2005 in Hanover County in the amount of $56,078.58.

28. The IRS recorded a notice of federal tax lien on January 19, 2007 in the City of Richmond in the amount of $11,533.06 for failure to pay income taxes for period ending December 31, 2003.

29. The IRS recorded a notice of federal tax lien on December 31, 2010 in Hanover County in the amount of $17,476.39.

30. The IRS recorded a notice of federal tax lien on April 14, 2011 in the City of Richmond in the amount of $68,123.30 for failure to pay income taxes for the periods ending December 31, 2006, December 31, 2007, December 31, 2008, and December 31, 2009.

31. The IRS recorded a notice of federal tax lien on April 2, 2012 in the City of Richmond in the amount of $17,476.39 for failure to pay income taxes for the period ending December 31, 2010.

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32. The IRS recorded a notice of federal tax lien on February 5, 2013 in Hanover County in the amount of $5076.31 for failure to pay income taxes for period ending December 31, 2011.

II. NATURE OF MISCONDUCT

Respondent's conduct violated the following Rule of Professional Conduct:

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

(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 third party 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 transaction; 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.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar ears after termination of the representation or fiduciary responsibility.

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

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(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.

III. SIX MONTH SUSPENSION WITH TERMS

Prior to approving the Agreed Disposition, the Court considered a certification of Respondent's prior disciplinary record that was presented by the bar. The bar also informed the Court that it had provided the Internal Revenue Service with copies of the Subcommittee Certification, Respondent's Answer to the Certification, and the bar's Investigative Report. Having heard the arguments of counsel in support of the Agreed Disposition, and finding that it is just to do so, it is hereby

ORDERED that Respondent's license to practice law be suspended for six months. The terms Respondent must comply with are as follows:

1. The Six Month Suspension begins on April 30, 2014.
2. Respondent shall sign release(s) allowing the IRS to provide the Virginia State Bar with his tax information as requested until April 30, 2017. (IRS Form 8821).
3. Before returning to practice following the Six Month Suspension, Respondent shall engage and pay for a law office management consultant or a CPA (hereinafter "consultant") approved by Kathryn R. Montgomery, or her designee, to consult with him regarding trust account compliance and office management. The consultant's engagement shall be for the purposes of reviewing Respondent's current law practice policies, methods, systems and record-keeping to ensure compliance with all provisions of Rule 1.15 of the Virginia Rules of Professional Conduct (hereafter "said Rule"), as determined relevant by the law office management consultant. In the event the consultant determines that Respondent is in compliance with the said Rule, the consultant shall so certify in writing to the Respondent and the Virginia State Bar. In the event the consultant determines that Respondent is not in compliance with the said Rule, then, and

in that event, the consultant shall notify the Respondent and the Virginia State Bar, in writing, of the measures that Respondent must take to bring himself into compliance with the said Rule. In the event the Respondent is determined by the consultant to be not in compliance with the said Rule, he shall have sixty (60) days following the date the consultant issues his written statement of the measures Respondent must take to comply with the said Rule within which to bring himself into compliance. The consultant shall be granted access to Respondent's office, books, records, and files following the passage of the sixty (60) day period to determine whether Respondent has brought himself into compliance, as required. The consultant shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has brought himself into compliance with the said Rule within the sixty day (60) period, or that he has failed to do so. Respondent's failure to bring himself into compliance with the said Rule as of the conclusion of the aforesaid sixty (60) day period shall be considered a violation of the Terms set forth herein.

The consultant shall again examine the Respondent's law practice policies, methods, systems and records at a time not earlier than six (6) months following the date of the consultant's initial certification of compliance pursuant to the terms hereof, and not later than nine (9) months following such date. The consultant shall thereafter either recertify Respondent's compliance with said Rule or issue a report to the Virginia State Bar and the Respondent stating that the Respondent is not in compliance, and the basis for such a determination. The Respondent shall be deemed to have violated the Terms hereof in the event the consultant, upon such re-examination of Respondent's said law practice policies, methods, systems and record-keeping reports any noncompliance with the requirements of any provision of Rule 1.15. The Respondent shall be obligated to pay when due the consultant's fees and costs for his services (including provision to the Bar and to Respondent of information concerning this matter).

4. Before returning to the practice of law following the six-month suspension, Respondent shall be in compliance with Rule 1.15 and is subject to random trust account audits by a bar investigator until April 30, 2017. Following the conclusion of the engagement of the consultant, Respondent shall be deemed to have violated the Terms hereof if the bar investigator finds noncompliance with the requirements of any provision of Rule 1.15.

5. IRS Matters:

    a. Within 30 days of receiving a true copy of the Suspension Order from the Richmond Circuit Court, the Respondent shall certify in writing to Kathryn Montgomery, or her designee at the Virginia State Bar, that the Respondent has provided a copy of the Richmond Circuit Court Suspension Order to the IRS;
    b. Within 30 days after the Respondent has resumed the practice of law, the Respondent shall certify in writing to Kathryn Montgomery, or to her designee at the Virginia State Bar, that he has engaged an enrolled agent, a Certified Public Accountant or an attorney to represent him regarding the resolution of all his past and current IRS tax issues
    c. After the Respondent resumes the practice of law and after the IRS assigns a revenue officer to the Respondent's IRS tax case, the Virginia State Bar may send the Respondent a letter, by certified mail, return receipt, to the Respondent's

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last address of record with the Virginia State Bar, in which the Virginia State Bar requests the name and contact information for IRS revenue officer assigned to the Respondent's IRS tax case. Within 30 days after said letter from the Virginia State Bar is received by the Respondent, he shall fax or mail the IRS revenue officer's contact information to Kathryn Montgomery, or her designee at Virginia State Bar.

d. Respondent shall be deemed to be in noncompliance with Term 5 if the Respondent fails to:
    i. Comply with any of the provisions of Sections A, B & C set forth hereinabove in Term 5; or
    ii. Provide written certification to Kathryn Montgomery, or her designee at the Virginia State Bar, within 30 days of its receipt, that the Respondent has received a notice from the IRS informing the Respondent that the IRS has reopened the Respondent's tax collection case for review; and/or
    iii. Provide to Kathryn Montgomery, or her designee at the Virginia State Bar, within 30 days of its receipt, a copy of a document from IRS that confirms in writing that the Respondent has entered into an agreement with the IRS related to the resolution of all of his past and present IRS tax issues.

6. Respondent shall comply with any agreement reached with the IRS and shall not fail to file his tax returns or fail to pay any tax due. The Virginia State Bar shall monitor his compliance until April 30, 2017.
7. By May 31, 2014, Respondent shall read "Lawyers and Other People's Money," and shall certify compliance in writing to Kathryn R. Montgomery, or her designee.
8. Before returning to practice following the Six Month Suspension, Respondent shall either watch the videotape of "The Devil Wears Green" a Continuing Legal Education Seminar, or he shall attend a live, in-person CLE on trust account practices approved by the Virginia State Bar for MCLE credit. Respondent shall not, however, seek MCLE credit for watching the videotape or attending the live CLE. Respondent shall certify compliance in writing to Kathryn R. Montgomery, or her designee.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, all the terms and conditions are not met by the deadlines imposed above, the Disciplinary Board shall impose a Two Year Suspension pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

It is further ORDERED that 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

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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 clients. Respondent shall give such notice within 14 days of the effective date of the suspension. The Respondent shall also furnish proof to the bar within 60 days of the effective day of the 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 this suspension, the Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar.

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

It is further ORDERED that certified copies of this Memorandum Order shall be mailed by the Clerk of the Circuit Court to the Respondent, to all counsel of record, and to the Clerk of the Disciplinary System, at 1111 East Main Street, Suite 700, Richmond, Virginia 23219-3565.

ENTERED: 4/23/14

Kenneth R. Melvin
Chief Judge Designate

SIGNATURE PAGE FOR COUNSEL OF RECORD AND THE RESPONDENT FOLLOWS

A Copy
Teste: EDWARD F. JEWETT, CLERK
BY: _____ D.C.

WE ASK FOR THIS:

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Seen and Agreed:

William Stephen Coleman
Respondent