

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
KYLE MARS COURTNALL**

**VS. DOCKET NOS. 11-052-088056
12-052-088622
12-052-089214
12-052-089485
12-052-090130
12-052-093638
12-052-094313**

AGREED DISPOSITION MEMORANDUM ORDER

On November 22, 2013, these matters were 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, John Sykes Barr, Robert W. Carter, Lay Member, Tony H. Pham, and Lisa A. Wilson. The Virginia State Bar was represented by Anastasia K. Jones, Assistant Bar Counsel. Kyle Mars Courtnall 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 Sarah M. Bickel, 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, Respondent's Disciplinary Record and any responsive pleadings of counsel,

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

It is further **ORDERED** that the sanction is effective on November 22, 2013.

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 Suspension, and make such arrangements as are required herein within 45 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 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, 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 Kyle Mars Courtnall, PLLC, Suite 104 South, 3905 Railroad Avenue, Fairfax, Virginia 22030, with the Virginia State Bar, and hand-delivered to Anastasia K. Jones, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED THIS 8th DAY OF January, 2014

VIRGINIA STATE BAR DISCIPLINARY BOARD



William H. Atwill, Jr., Chair

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AGREED DISPOSITION
(FIFTEEN MONTH SUSPENSION)

Pursuant to the Rules of the Virginia Supreme Court Rules of Court Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar, by Anastasia K. Jones, Assistant Bar Counsel and Kyle Mars Courtball, Respondent, pro se, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. At all times relevant herein, Respondent was and is an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent has no prior record of discipline.

Docket No. 12-052-089214

3. In September 2010, Respondent was retained by Michael Leonard to represent him in a felony case in the Fairfax County Circuit Court. After Mr. Leonard's conviction and sentencing, Mr. Leonard asked Respondent to pursue an appeal on his behalf.

4. Respondent thereafter properly filed a Notice of Appeal.

5. Respondent filed the Petition for Appeal late. As a result, the Court of Appeals of Virginia dismissed the appeal.

6. Respondent sent a letter to his client informing him of the situation, but received no response. Respondent's client asserts that he did not receive the letter.

7. Respondent did not pursue a delayed appeal, or follow through with any other avenues of relief for his client.

Docket Nos. 11-052-088056 and 12-052-089485

8. On or about January 31, 2011, Respondent was appointed by the Fairfax County Circuit Court to represent Dante Anders Nizama-Maldonado in his appeal from a felony conviction in that court.

9. Respondent thereafter properly filed a Notice of Appeal.

10. Respondent failed to file a Petition for Appeal. As a result, the Court of Appeals of Virginia dismissed the appeal.

11. Respondent did not pursue a delayed appeal, or follow through with any other avenues of relief for his client.

12. Respondent did not inform his client that the appeal had been dismissed.

Docket No. 12-052-088622

13. On or about June 20, 2011, Respondent wrote a check for \$1,000.00 off his trust account to pay an expense on behalf of a client. Respondent had previously received an equal amount from the client to cover the expense, but he had not deposited the funds into his trust account. Respondent did not deposit the funds until on or about July 11, 2011.

14. As a result, on or about July 8, 2011, an overdraft in the amount of \$1,000.00 occurred on Respondent's trust account.

15. In or about September 2011, Respondent acknowledged that he was not performing the required reconciliations of his attorney trust account.

Docket No. 12-052-090130

16. On or about November 19, 2011, Respondent asked his assistant to write a check off his operating account in the amount of \$1,000.00, to go cash the check, and to utilize the cash to pay rent for his office space. Respondent was not present at the time, and asked his assistant to sign the check for him. Respondent's assistant mistakenly wrote the check off the trust account rather than the operating account. As instructed, his assistant then cashed the check.

17. Upon Respondent's return to the office, the assistant gave Respondent the cash to pay the landlord. Respondent did not verify which account the funds had come from. Respondent gave the cash to the landlord.

18. Thereafter, on or about November 22, 2011, Respondent withdrew \$1,000.00 in earned fees from his trust account.

19. As a result, on or about November 22, 2011, an overdraft in the amount of \$1,000.00 occurred on Respondent's trust account.

20. Although Respondent had been notified of the overdraft, he did not replace the funds in the trust account until after meeting with the Virginia State Bar investigator on December 1, 2011.

Docket No. 13-052-094313

21. On or about June 14, 2012, Respondent was retained by Brent D. Taylor to represent him in connection with certain felony charges pending in Prince William County. The representation was to include all necessary steps in the Juvenile & Domestic Relations District Court, as well as all necessary steps in the Circuit Court.

22. Despite the client's request, Respondent did not file a bond motion in the Circuit Court. Respondent also failed to file a motion to suppress his client's statements to police. The client ultimately retained new counsel, who was substituted into the case on or about November 9, 2012. Substitute counsel was able to file the necessary motions.

23. While representing the client, Respondent sent inappropriate text messages of a sexual nature to the client's girlfriend.

24. Respondent failed to provide the client with a requested accounting regarding fees charged/earned, and failed to refund unearned fees, upon discharge. Respondent did ultimately take these steps, but only in response to the suggestion of the Virginia State Bar investigator.

Docket No. 13-052-093638

25. On or about August 16, 2012, Respondent was appointed by the Prince William County Circuit Court to represent Carl Edward Miles in his appeal from a conviction of certain felonies.

26. Respondent failed to file a Notice of Appeal on behalf of his client. As a result, the client lost his opportunity to appeal the convictions.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 1.7 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 ... a personal interest of the lawyer.

RULE 1.15 Safekeeping Property

- (a) **Depositing Funds.**

(1) 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.

...

- (b) **Specific Duties.** A lawyer shall:

...

(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

(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;

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and

(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.

...

(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.

(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 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).

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...

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to the Disciplinary Board for its approval the agreed disposition of a fifteen (15) month suspension of Respondent's license to practice law in the Commonwealth of Virginia as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board.

If a panel of the Disciplinary Board accepts this Agreed Disposition, Respondent agrees that it is final and non-appealable.

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

If the Agreed Disposition is approved, Respondent shall be required to comply with all provisions of Part 6, Section IV, Paragraph 13-25.H of the Rules of the Virginia Supreme Court, applicable to disciplinary suspensions of more than one year.

THE VIRGINIA STATE BAR

By: Anastasia K Jones
Anastasia K. Jones, Assistant Bar Counsel

Kyle Mars Courtall
Kyle Mars Courtall, Respondent