

VIRGINIA:

VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF KELLY RALSTON DENNIS  
VSB Docket Number 06-051-3305

ORDER OF SUSPENSION

This matter came on the 21<sup>st</sup> day of March, 2008, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent. The Agreed Disposition was considered by a Panel of the Disciplinary Board consisting of Robert E. Eicher, 1<sup>st</sup> Vice Chair, V. Max Beard, Lay Member, Paul M. Black, Russell W. Updike, and Carl A. Eason. Each member affirmed that he had no business or personal interest that would impair, or reasonably could be perceived to impair, his ability to be impartial.

Kathleen M. Uston, Assistant Bar Counsel, represented the Bar. The Respondent, Kelly Ralston Dennis, was present and presented an endorsed Agreed Disposition reflecting the terms of an Agreed Disposition imposing a suspension of thirty (30) days. The Respondent requested that the suspension be made effective May 1, 2008, to permit him to conclude a pending matter.

The court reporter who recorded these proceedings is Theresa S. Griffith of Chandler & Halasz, Registered Professional Reporters, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, who was duly sworn by the 1<sup>st</sup> Vice Chair.

Upon consideration of the Agreed Disposition, the Panel finds by clear and convincing evidence as follows:

1. At all times relevant hereto, the Respondent, Kelly Ralston Dennis, (hereinafter Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In June, 2003, the Complainant, Omar Ndiaye, hired the Respondent to defend him following his indictment by a grand jury on charges of embezzlement from his employer. Mr. Ndiaye steadfastly maintained his innocence and, as such, he informed the Respondent that he would not accept any plea offers. Mr. Ndiaye paid the Respondent a total of approximately \$1,700.00 in cash for legal fees. The Respondent did not prepare for Mr. Ndiaye's signature a fee or representation agreement outlining the amount of the fees to be paid and the basis for same. The Respondent informed Virginia State Bar Investigator David W. Jackson that he believed Mr. Ndiaye had only paid \$500.00 but he had no receipts or other records to confirm the amount actually paid. Respondent admitted to Investigator Jackson that he did not deposit any of the cash paid to him by Mr. Ndiaye into trust as he considered the money paid by Mr. Ndiaye as earned upon receipt.

3. Mr. Ndiaye's case was originally scheduled to be tried before a jury on July 22, 2003, but was continued numerous times. The first and second continuances were granted on motion of the Commonwealth, without objection by the Respondent, and the case was scheduled for September 4<sup>th</sup> and October 23<sup>rd</sup>, respectively. The third continuance was granted on motion of the Respondent and the case was set for November 17, 2003. The Respondent and the Commonwealth moved jointly for a fourth continuance and the case was set for trial by jury on December 3, 2003, a mutually convenient date.

4. The Respondent did not seek or obtain Mr. Ndiaye's consent to continue the case.

5. On December 3, 2003, the Assistant Commonwealth's Attorney handling the case, Cari Steele, Esquire, was present in court with her witnesses and ready to proceed. However, neither the Respondent nor Mr. Ndiaye appeared in court for trial.

6. The Court issued a bench warrant for Mr. Ndiaye due to his failure to appear. Ms. Steele contacted the Respondent by telephone and he informed her that he had forgotten about the trial date. The Respondent further informed Ms. Steele that Mr. Ndiaye had failed to appear because he was in New York for the Christmas holidays. Mr. Ndiaye, however, did not appear in court on December 3, 2003 because the Respondent had failed to inform him of the trial date. At all times, the Respondent knew the Complainant's whereabouts and how to contact him by telephone.

7. Mr. Ndiaye's trial was rescheduled for March 30, 2004. Again, Ms. Steele appeared ready for trial with her witnesses, and again the Respondent and Mr. Ndiaye failed to appear. The Respondent appeared in court the next day and informed the Court that he had marked March 31, 2004 on his calendar as the trial date, not March 30<sup>th</sup>. The Respondent had not informed the Complainant of this new trial date and that was the reason for his non-appearance.

8. Mr. Ndiaye's trial was rescheduled for June 8, 2004. Mr. Ndiaye again failed to appear and the Court again issued a bench warrant for his arrest. Prior to this time, and throughout the course of the Respondent's representation of him, Mr. Ndiaye telephoned the Respondent to inquire about the status of his case and about the date for the trial of same. The Respondent failed to return Mr. Ndiaye's telephone calls and to otherwise keep him informed about the status of his case and of important information concerning same, including the trial dates.

9. On August 4, 2004, Mr. Ndiaye was arrested and jailed for his failure to appear for trial. The Clerk's Office contacted the Respondent and informed him of Mr. Ndiaye's arrest.

The Respondent failed to appear at Mr. Ndiaye's arraignment on August 12, 2004, and the case was continued until August 17, 2004 for appearance of counsel. Mr. Ndiaye spoke to the Respondent on August 16, 2004 regarding the hearing; nevertheless, on August 17, 2004, the Respondent again failed to appear and the Court asked Mr. Ndiaye if he wished to retain other counsel or have counsel appointed to replace the Respondent. Mr. Ndiaye chose to retain B. Mayo Robertson, Esquire as his attorney and Mr. Robertson thereafter entered his appearance in the case.

10. On August 19, 2004, Mr. Robertson appeared with Mr. Ndiaye at a hearing on the bench warrant following which Mr. Ndiaye was released from jail.

11. Ms. Steele advised VSB Investigator Jackson that a note in the Commonwealth's file from one of her colleagues indicated that the Court believed that all three failures by Mr. Ndiaye to appear were the fault of the Respondent.

12. Respondent informed Investigator Jackson that he never missed any court dates in Mr. Ndiaye's case and insisted that he was present in court on December 3, 2003.

13. The charges against Mr. Ndiaye were ultimately nolle prossed by the Commonwealth's Attorney and Mr. Ndiaye is pursuing a civil suit against his employer arising out of the embezzlement charges filed against him.

14. Following Mr. Ndiaye's discharge of the Respondent as his counsel, he requested that Respondent return all documents and evidence furnished to him incident to the representation. Although the Respondent returned some documents to Mr. Ndiaye, he failed to provide him with other original client furnished documents.

15. Mr. Ndiaye also requested, through Mr. Robertson, that the Respondent refund all

or a portion of the fees paid to him and the Respondent advised Mr. Robertson that he would do so. To date, Respondent has failed to return any funds to Mr. Ndiaye, but states that he is prepared to meet with Mr. Ndiaye to address a refund.

16. Respondent also states that he was under the impression that, after Mr. Ndiaye failed to appear at the March trial date, he was on “fugitive status,” meaning that he, Respondent, was out of the case until further notice. Respondent also believed that when Mr. Ndiaye was incarcerated, new counsel would be appointed for him, as is customary. Respondent further states that he advised Mr. Ndiaye to take a plea to a no-jail-time misdemeanor with restitution.

The aforementioned conduct on the part of the Respondent constitutes a violation of the following 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 1.2 Scope of Representation**

- (a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

**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.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

**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.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

**RULE 1.5 Fees**

- (b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

**RULE 1.15 Safekeeping Property**

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
  - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) 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 accounts to the client regarding them; and
- (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 which such person is entitled to receive.

**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.

Upon consideration whereof, the 1<sup>st</sup> Vice Chair announced following private deliberations that the Board rejected the Agreed Disposition as presented, but would approve an Agreed Disposition that imposed a suspension of sixty (60) days effective May 1, 2008, if accepted by the Respondent not later than March 28, 2008. On March 21, 2008, the Respondent filed with the Clerk's Office his acceptance of the Agreed Disposition with a suspension of sixty (60) days.

Accordingly, it is ORDERED that the Agreed Disposition as amended be accepted, and that the Respondent's Virginia license to practice law be and hereby is SUSPENDED for a period of sixty (60) days effective May 1, 2008.

IT IS FURTHER ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c.1 of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs; and

IT IS FURTHER ORDERED that a certified copy of this order shall be served by the Clerk of the Disciplinary System upon the Respondent, Kelly Ralston Dennis, Chung & Press PC, #200, 6718 Whittier Avenue, McLean, Virginia 22101, his address of record with the Virginia State Bar and to Kathleen M. Uston, Assistant Bar Counsel, at 100 N. Pitt Street, Suite 310, Alexandria, Virginia 22314.

ENTERED THIS 24<sup>th</sup> day of March, 2008.

VIRGINIA STATE BAR DISCIPLINARY BOARD

  
Robert E. Eicher, 1<sup>st</sup> Vice Chair