

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF**

**JON IAN DAVEY**

**VS. DOCKET NOS. 14-090-099262 and 15-090-099856**

**AGREED DISPOSITION MEMORANDUM ORDER**

On October 16, 2015, 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 Esther J. Windmueller, Chair, Jeffrey L. Marks, Samuel R. Walker, Tyler E. Williams, III and Sandra W. Montgomery, Lay Member. The Virginia State Bar was represented by Edward J. Dillon, Jr. Jon Ian Davey 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 matters to which each member responded in the negative. Court Reporter, Tracy J. Stroh, 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, and Respondent's Disciplinary Record,

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

It is further **ORDERED** that the sanction is effective October 23, 2015 at 5:00 p.m.

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 of the Revocation or 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 Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Revocation or Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

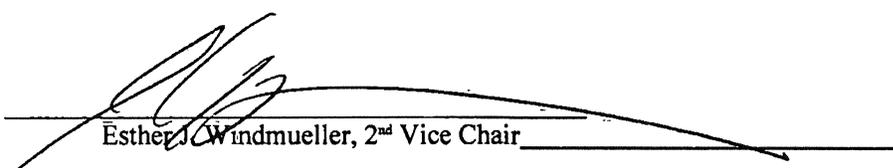
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the Revocation or Suspension, he shall submit an affidavit to that effect within 60 days of the effective date of the Revocation or Suspension to the Clerk of the Disciplinary System at the Virginia 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, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

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 Jon Ian Davey, Respondent, at Law Office of Jon E. Davey, 128 S. Market St., P.O. Box 777, Danville, VA 24543-0777, his last address of record with the Virginia State Bar and handdelivered to Edward J. Dillon, Jr., Assistant Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED THIS 16<sup>th</sup> DAY OF October, 2015

VIRGINIA STATE BAR DISCIPLINARY BOARD

  
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Esther J. Windmueller, 2<sup>nd</sup> Vice Chair

**VIRGINIA:**

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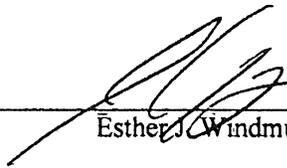
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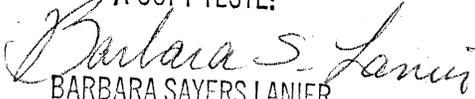
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ENTERED THIS 16<sup>th</sup> DAY OF October, 2015

VIRGINIA STATE BAR DISCIPLINARY BOARD

  
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Esther J. Windmueller, 2<sup>nd</sup> Vice Chair

A COPY TESTE:  
  
BARBARA SAYERS LANIER  
CLERK OF THE DISCIPLINARY SYSTEM

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
JON IAN DAVEY

VSB Docket Nos. 14-090-099262 and  
15-090-099856

AGREED DISPOSITION  
(ONE-YEAR SUSPENSION WITH TERMS)

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 Edward James Dillon, Jr., Assistant Bar Counsel and Jon Ian Davey, Respondent, hereby enter into the following Agreed Disposition arising out of the referenced matters.

VSB Docket No. 14-090-099262 (Complainant Robert Keen)

STIPULATIONS OF FACT

1. At all relevant times, Respondent Jon Ian Davey ("Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law in the Commonwealth of Virginia in or about October 1993.
3. In or about January 2013, Complainant Robert Keen paid Respondent a \$750 advanced legal fee to represent him in seeking a reduction in spousal support payments.
4. Respondent took no action in regard to Mr. Keen's case and never rendered any of the requested legal services to Mr. Keen.
5. Beginning in or about June 2013, Mr. Keen periodically called or visited Respondent's law office in an effort to determine the status of his case. Mr. Keen has stated that, on at least some of these occasions, he left messages for Respondent to contact him, but that Respondent did not respond to these messages or otherwise contact him about his case.
6. On or about April 22, 2014, Mr. Keen filed a Bar Complaint against Respondent with the Virginia State Bar, alleging that he had not heard anything from Respondent since he paid Respondent \$750 in or about January 2013.
7. By letter to Mr. Keen dated May 21, 2014, Respondent apologized to Mr. Keen for having failed to provide the requested legal services and refunded to Mr. Keen, by check, the entirety of the \$750 advanced legal fee.
8. In a letter dated May 29, 2014 to the Virginia State Bar responding to the Bar Complaint (the "May 29 Letter"), Respondent stated: "I take full responsibility for my unfortunate overlooking of Mr. Keen's request for legal services." Respondent also stated in that letter: "In looking back to what happened, I believe my error was not reviewing my

- Trust Account accounts on a regular basis, which would have reminded me that I had work to complete for Mr. Keen.”
9. The \$750 refund check Respondent issued to Mr. Keen was not drawn on a trust account, but rather was drawn on Respondent’s operating account. Accordingly, the \$750 advanced legal fee paid by Mr. Keen to Respondent was not deposited in and was not held, at all times, in an identifiable trust account as required by Rule of Professional Conduct 1.15(a)(1).
  10. On or about October 21, 2014, Respondent told Virginia State Bar Investigator Albert E. Rhodenizer (the “VSB Investigator”) that he contemplated switching software systems in early 2014 and, in advance of that transition, he closed his trust account and moved the fees he was holding in trust at that time into his operating account. Respondent told the VSB Investigator that, for this reason, the \$750 refund check issued to Mr. Keen was drawn on Respondent’s operating account, not his trust account.
  11. During his October 21, 2014 interview with the VSB Investigator, Respondent further stated that, with the exception of about six months in 2014, he has always had a trust account for his law practice. Respondent also stated that, in or about October 2014, he opened a new trust account with First Citizens Bank.
  12. In or about January 2015, in response to a subpoena duces tecum, First Citizens Bank produced to the Virginia State Bar copies of Respondent’s bank records for his law practice for the time period January 1, 2013 to present (the “First Citizens Records”).
  13. The First Citizens Records show that, contrary to his statements to the VSB Investigator, Respondent did not have a trust account at First Citizens Bank at any point between January 2013 and October 2014. Rather, the First Citizens Records show that Respondent had a business checking account, which served as his operating account, at First Citizens Bank from January 2013 to present and a trust account at First Citizens Bank from October 2014 to present.
  14. In a subsequent February 25, 2015 interview with the VSB Investigator, Respondent stated that he had previously maintained both an operating account and a trust account at Virginia Bank & Trust; that he had closed both accounts; and that, prior to October 2014, he had subsequently opened only a business checking account at First Citizens Bank.
  15. In or about March 2015, in response to a subpoena duces tecum, Virginia Bank & Trust produced to the Virginia State Bar copies of Respondent’s bank records for his law practice for the time period January 1, 2010 to present (the “Virginia B&T Records” and, collectively with the First Citizens Records, the “Bank Records”).
  16. The Virginia B&T Records show that Respondent had a trust account at Virginia Bank & Trust from January 2010 until in or about November 2012, at which time he closed both the trust account and a separate operating account he had at Virginia Bank & Trust.
  17. As shown by the Bank Records, Respondent’s statements to the VSB Investigator that he had closed his trust account in the spring of 2014 and that he had always maintained a trust account for his law practice, with the exception of about six months in 2014, constitute false statements of material fact knowingly made by Respondent in connection with a disciplinary matter in violation of Rule of Professional Conduct 8.1(a). Respondent’s statements in the May 29 Letter regarding his failure to review his trust accounts in regard to his representation of Mr. Keen also constitute false statements of material fact knowingly made by Respondent in connection with a disciplinary matter in violation of Rule of Professional Conduct 8.1(a).

18. From in or about November 2012 until in or about October 2014, Respondent operated his law practice without a trust account despite the fact that he accepted advanced legal fees from clients during that time period.
19. From in or about November 2012 until in or about October 2014, Respondent did not maintain the books and records that Rule of Professional Conduct 1.15(c) required him to keep in regard to his trust account. These books and records include subsidiary ledgers, cash receipts journals, and cash disbursements journals.
20. From in or about November 2012 until in or about October 2014, Respondent did not perform the monthly and quarterly trust account reconciliations required by Rule of Professional Conduct 1.15(d).

#### NATURE OF MISCONDUCT

Such conduct by Respondent 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.

#### **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; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

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- (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 years 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.

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### (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 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:

(a) knowingly make a false statement of material fact[.]

**RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

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

VSB Docket No. 15-090-099856 (Complainant Ryan Gunn)

STIPULATIONS OF FACT

1. At all relevant times, Respondent Jon Ian Davey ("Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law in the Commonwealth of Virginia in or about October 1993.
3. Complainant Ryan Gunn paid Respondent \$2,000 to represent him on a felony charge pending in Danville General District Court.
4. In or about May 2014, Mr. Gunn terminated Respondent's representation of him and requested a refund of \$1,250 of the \$2,000 advanced legal fee he had paid to Respondent.
5. On or about June 27, 2014, Mr. Gunn filed a Bar Complaint against Respondent with the Virginia State Bar, alleging, among other things, that Respondent owed him a \$1,250 refund of his advanced legal fee.
6. By letter to Mr. Gunn dated July 15, 2014, Respondent refunded, by check, \$1,250 to Mr. Gunn.
7. In a letter to the Virginia State Bar dated August 18, 2014 responding to the Bar Complaint, Respondent acknowledged that Mr. Gunn was entitled to a refund of a portion of his advanced legal fee since his representation of Mr. Gunn concluded before the underlying criminal case was resolved.
8. The \$1,250 refund check Respondent issued to Mr. Gunn was not drawn on an identifiable trust account, but rather was drawn on Respondent's operating account.
9. Respondent told Virginia State Bar Investigator Albert E. Rhodenizer (the "VSB Investigator") that he contemplated switching software systems in early 2014 and, in advance of that transition, he closed his trust account. Respondent told the VSB Investigator that, for this reason, he deposited the \$2,000 received from Mr. Gunn in two payments into his operating account and later refunded \$1,250 to Mr. Gunn from his operating account. Accordingly, the \$2,000 advanced legal fee paid to Respondent by Mr. Gunn was not deposited in and was not held, at all times, in an identifiable trust account as required by Rule of Professional Conduct 1.15(a)(1).
10. During his October 21, 2014 interview with the VSB Investigator, Respondent further stated that, with the exception of about six months in 2014, he has always had a trust account for his law practice. Respondent also stated that, in or about October 2014, he opened a new trust account with First Citizens Bank.

11. In or about January 2015, in response to a subpoena duces tecum, First Citizens Bank produced to the Virginia State Bar copies of Respondent's bank records for his law practice for the period of time from January 1, 2013 to present (the "First Citizens Records").
12. The First Citizens Records show that, contrary to his statements to the VSB Investigator, Respondent did not have a trust account at First Citizens Bank at any point between January 2013 and October 2014. Rather, the First Citizens Records show that Respondent had a business checking account, which served as his operating account, at First Citizens Bank from January 2013 to present and a trust account at First Citizens from October 2014 to present.
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16. As shown by the Bank Records, Respondent's statements to the VSB Investigator that he had closed his trust account in the spring of 2014 and that he had always maintained a trust account for his law practice, with the exception of about six months in 2014, constitute false statements of material fact knowingly made by Respondent in connection with a disciplinary matter in violation of Rule of Professional Conduct 8.1(a).
17. From in or about November 2012 until in or about October 2014, Respondent operated his law practice without a trust account despite the fact that he accepted advanced legal fees from clients during that time period.
18. From in or about November 2012 until in or about October 2014, Respondent did not maintain the books and records that Rule of Professional Conduct 1.15(c) required him to keep in regard to his trust account. These books and records include subsidiary ledgers, cash receipts journals, and cash disbursements journals.
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#### NATURE OF MISCONDUCT

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**RULE 1.15 Safekeeping Property****(a) Depositing Funds.**

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(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 years after termination of the representation or fiduciary responsibility.

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

#### PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to the Disciplinary Board for its approval the Agreed Disposition of a One-Year Suspension of Respondent's license to practice law in the Commonwealth of Virginia with terms as representing an appropriate sanction if these matters were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. The terms with which Respondent must comply are as follows:

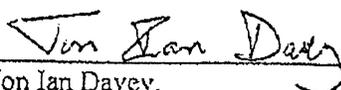
1. For a period of three (3) years following the termination of the misconduct suspension imposed pursuant to the Agreed Disposition in these matters, Respondent authorizes the Virginia State Bar to conduct unannounced personal inspections of his trust account books, records, and bank records to ensure his compliance with all of the provisions of the Rules of Professional Conduct. Respondent shall fully cooperate with the Virginia State Bar and its investigators during any such inspection.
2. For a period of three (3) years following the termination of the misconduct suspension imposed pursuant to the Agreed Disposition in these matters, Respondent shall not engage in any conduct that violates Rules 1.3, 1.15, 8.1 or 8.4 of the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, including any amendments thereto, of the disciplinary rules of another jurisdiction in which Respondent may be admitted to practice law. The terms contained in this paragraph shall be deemed to have been violated when any ruling, determination, judgment, order or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the Rules of Professional Conduct referred to above, provided, however, that the conduct upon which such finding was based occurred within the period referred to above, and provided, further, that such ruling has become final.

Upon satisfactory proof that such terms and conditions have been met, these matters shall be closed. If, however, all the terms and conditions are not met by the deadlines imposed above, the Respondent agrees that the Disciplinary Board shall revoke his license to practice law in the Commonwealth of Virginia pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

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

THE VIRGINIA STATE BAR

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

  
 Jon Ian Davey,  
 Respondent