

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF KELLY RALSTON DENNIS

VSB DOCKET NOS. 07-051-064900, 07-051-070590,
08-051-072502, 08-051-072990, and 08-051-074032

ORDER OF SUSPENSION

This matter came on to be heard on January 23, 2009, upon the certification from the Fifth District Section I Subcommittee before a panel of the Virginia State Bar Disciplinary Board composed of Robert E. Eicher, Chair, Sandra L. Havrilak, David R. Schultz, Thomas R. Scott, Jr., and the Rev. W. Ray Inscoe, Lay Member. The Chair and each member affirmed that he/she had no business or personal interest that would impair, or reasonably could be perceived to impair, his/her ability to be impartial.

The court reporter recording the proceeding was Jennifer L. Hatfield of Chandler & Halasz, Registered Professional Reporters, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, who was duly sworn by the Chair

All notices required to be given the Respondent were timely served on him.

Kathleen M. Uston, Assistant Bar Counsel, represented the Virginia State Bar. The Respondent, Kelly Ralston Dennis (the "Respondent") represented himself.

Bar Counsel presented a Stipulations of Fact between the Virginia State Bar and the Respondent that stipulated the facts under each docket number, the Respondent's misconduct, the discipline to be imposed and the terms thereof, and the alternative discipline if the Respondent fails to comply with the terms imposed.

Bar Counsel offered Virginia State Bar Exhibits 1-21, which the Chair admitted without objection. Bar Counsel also introduced the Respondent's prior disciplinary record without objection.

Bar Counsel and the Respondent urged the panel to accept their Stipulations of Fact. Bar Counsel proffered, the Respondent agreed, and the panel consented to addressing both misconduct and sanction in single deliberation in closed session. Thereupon the panel of the Board retired to closed session for deliberation.

The panel reconvened in open session in due course to announce its findings. Upon consideration of the evidence and argument of Bar Counsel and the Respondent, and the Stipulations of Fact, the Board finds that the following facts have been proved by clear and convincing evidence, to wit:

1. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.

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2. In November of 2003, the Complainant, Nirav Patel, received a citation for reckless driving in Fairfax County. Mr. Patel retained the Respondent and paid him \$450.00 in cash. The Respondent did not provide a receipt or a written representation agreement.

3. The first trial in Mr. Patel's case was held on December 10, 2003. The Respondent appeared on that date and sought and received a continuance of the case to January 21, 2004. Before the January hearing, Mr. Patel informed the Respondent that he would be unable to attend the hearing in Fairfax because he was a student at Virginia Commonwealth University in Richmond, Virginia. The Respondent informed Mr. Patel that he would represent Mr. Patel in his absence.

4. On January 21, 2004, Mr. Patel was tried and convicted *in absentia*, and on January 26, 2004, the Respondent appealed this conviction to the Circuit Court. The case was set for trial on April 1, 2004. The Respondent testified by way of stipulation that he notified his client of the necessity of his appearance that day but that his client did not appear for trial.

5. On April 1, 2004, the Respondent moved to have the matter continued, representing to the Court that his client was not aware of the court date, and therefore, was not present for the trial. That motion was granted and the case was continued to April 15, 2004.

6. On April 15, 2004, Mr. Patel was again tried *in absentia*, this time at the request of the Respondent, and convicted. Mr. Patel was fined \$350.00, plus costs, and his privilege to operate a motor vehicle was suspended for ninety (90) days. The Respondent testified by way of stipulation that he again notified his client of the necessity of his appearance but his client failed to appear for trial, and that he requested a trial *in absentia* in order to avoid the issuance of a bench warrant against his client.

7. In June of 2004, Mr. Patel received a letter from the Fairfax County Circuit Court informing him that he had been found guilty of reckless driving *in absentia*. Mr. Patel then contacted the Court, discovered that a final order had been entered in the case on May 12, 2004, and that he had been driving on a suspended license. Prior to this time, the Respondent had not informed him of the outcome of his trial nor of the suspension of his license.

8. The Respondent informed the Bar's investigator that he did not maintain a trust account and had therefore not deposited Mr. Patel's advance fee of \$450.00 into trust.

Docket Number 07-051-064900

9. In 2006, the Respondent represented Allen J. Anderson on charges of murder in the Circuit Court of Fairfax County. Mr. Allen's mother, Danielle Porter, hired the Respondent on behalf of her son. Subsequent to her son's arrest, Ms. Porter encountered the Respondent in

the Fairfax County Courthouse and engaged in a conversation with him about her son's case. During that conversation, Ms. Porter decided to hire the Respondent to represent her son and agreed to pay the Respondent's fee of \$12,000.00. The Virginia State Bar was presented with evidence, in the form of the Respondent's file, demonstrating that the Respondent represented Mr. Allen competently through the trial of the case.

10. The Respondent provided Ms. Porter with a bank account number and asked her to wire funds to pay his fee directly into this account. Ms. Porter paid the Respondent's fee by wiring three (3) separate payments to this account, which was the Respondent's attorney operating account. The Respondent admits that, at this time, he did not have an approved trust account. The Virginia State Bar's investigator requested copies of bank statements for the Respondent's operating account in order to verify the dates of the wire transfers but the Respondent never provided them.

11. The Respondent testified by way of stipulation that at the time the funds were wired to his attorney operating account, the funds had been earned by him and thus were not required to be deposited to an approved attorney trust account. The Virginia State Bar has attempted to contact Ms. Porter but all efforts have been unsuccessful.

Docket Number 07-051-070590

12. On November 7, 2006, Mr. Young Lee hired the Respondent to assist him in appealing a case he had filed *pro se* and lost, paying him \$500.00 by check. The Respondent cashed Mr. Lee's check that day and did not deposit the funds to an approved attorney trust account.

13. On November 13, 2006, the Respondent timely filed a Notice of Appeal on behalf of Mr. Lee.

14. The Respondent informed the Bar's investigator that he had already earned Mr. Lee's fee when it was paid on November 7, 2006, the day that Mr. Lee hired him, and therefore, it did not have to be deposited into an approved attorney trust account.

15. Mr. Lee recently advised Assistant Bar Counsel for the Virginia State Bar that he was satisfied with the Respondent's professional services and did not wish to testify in this matter. The Respondent testified by way of stipulation that he succeeded in obtaining a money judgment on Mr. Lee's behalf, where Mr. Lee had been unable to do so, since Mr. Lee originally filed suit against the wrong party. Mr. Lee has confirmed to Assistant Bar Counsel that this judgment has been paid by the judgment debtor.

Docket Number 08-051-072990

16. In March of 2007, the Complainants, Ruth Guzman and her husband James Sirmans, retained the Respondent to assist them with modifying custody and visitation arrangements regarding Ms. Guzman's two (2) children.

17. The Respondent filed petitions in the Fairfax County Juvenile and Domestic Relations District Court seeking to modify the children's visitation with their father and to permit Ms. Guzman to relocate to Arizona. A hearing in the case was set for July 19, 2007, but due to a conflict, Ms. Guzman and Mr. Sirmans requested that the Respondent reschedule the hearing. The Respondent told his clients that he would provide them with copies of the documents he had filed with the Court to reschedule the hearing but never did so.

18. Ms. Guzman and Mr. Sirmans filed their complaint with the Virginia State Bar on November 21, 2007 and, following his receipt of their complaint, the Respondent became more responsive to his clients. A hearing was thereafter held on Ms. Guzman's petition on April 25, 2008, and a settlement of the issues was reached with which Ms. Guzman was apparently pleased.

19. Ms. Guzman and Mr. Sirmans paid the Respondent \$2,500.00 in advance fees by check dated June 19, 2007. The Respondent informed the Virginia State Bar Investigator that he cashed the check, immediately paying himself \$1,250.00 and storing the balance of the cash in his file on the case. The Respondent further advised the Bar Investigator that he removed \$750.00 approximately one week prior to the hearing originally scheduled for July 19, 2007, and then took the remaining \$500.00 after the July 19 hearing date, despite the fact that the hearing did not take place until April 25, 2008. The Respondent did not document these transactions in any way, did not account to his clients for the application of their funds, and admitted to the Bar's investigator that he did not maintain an approved attorney trust account.

20. The Respondent testified by way of stipulation that at the time these funds were paid, he had already conducted substantial research in the case and had done other work thereby entitling him to pay himself fees in the amount of \$1,250.00 at the time of his receipt of Ms. Guzman's check.

21. Neither Ms. Guzman nor Mr. Sirmans have responded to the Virginia State Bar's efforts to contact them prior to the hearing in this case.

Docket Number 08-051-072502

22. In July of 2007, the Complainants, Amy and Ben Watada, who are residents of California, hired the Respondent to assist them in evicting tenants from their rental property in Fairfax County. The Watadas paid the Respondent \$750.00 in advance fees which the Respondent did not deposit into an approved attorney trust account, claiming these funds were earned upon receipt.

23. On August 10, 2007, the Respondent filed a summons for unlawful detainer on behalf of the Watadas and set the matter for hearing on September 7, 2007. The Watadas traveled from California for this hearing and met the Respondent in the courthouse on the

morning of September 7, 2007. Upon arriving at the courtroom where their case was to be heard, the Respondent informed the Watadas that he had another matter in a different courtroom but would return shortly. The Watadas thus waited outside the courtroom where their hearing was to be conducted. When the Respondent returned, he and the Watadas entered the courtroom and discovered that the judge had dismissed their case because no one was present in the courtroom when the case was called.

24. The Respondent testified by way of stipulation that at the time of this hearing, the Watadas' tenant had already vacated the premises, a fact of which they were aware, and therefore the Unlawful Detainer matter would have been non-suited or dismissed in any event.

25. The Respondent told the Watadas that he would re-file their case and informed them that he would not charge them any additional fees. In fact, the Respondent did not charge any additional legal fees and paid the costs associated with re-filing himself.

26. The Respondent thereafter filed a warrant in debt against the tenants for past due rent and other charges, and contacted the Watadas to inform them that the return date was December 10, 2007. At the return hearing, a trial date of February 20, 2008 was set and Mr. Watada again traveled from California to attend. At the trial held, the Watadas were awarded a judgment against their former tenants in the amount of \$6,296.77 in back rent, interest, costs, and attorney's fees.

27. On April 30, 2008, the Respondent filed a suggestion for summons in garnishment against one of the Watadas' former tenants, with a return date of August 28, 2008. He also spoke with Mr. Watada that day to inform him of the garnishment summons and of the August 28, 2008 return date. As of this date, no funds have been collected by the Respondent in satisfaction of the Watadas' judgment.

The Board further finds that the acts and omissions set forth in paragraphs 1 through 27 establish by clear and convincing evidence that the Respondent violated the Virginia Rules of Professional Conduct, as follows:

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 1.15 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:
 - (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (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[.]

Upon consideration of the foregoing and the Stipulations of Fact, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia be and hereby is

SUSPENDED for a period of six (6) months effective 12:01 a.m. on February 20, 2009, expressly subject to the following terms, to wit:

1. For a period of two (2) years following entry of this Order, the Respondent shall not commit any of the acts of misconduct which violate Rules 1.1, 1.3, 1.4, 1.15, 8.1, or 8.4 of the Rules of Professional Conduct.

2. The Respondent shall accrue six (6) hours of Continuing Legal Education in the area of Trust Account Management by enrolling in and attending a *live* Virginia State Bar approved Continuing Legal Education program(s) not later than six (6) months following the date of entry of this Order. The Respondent's Continuing Legal Education attendance obligation set forth in this paragraph shall *not* be applied toward Respondent's Mandatory Continuing Legal Education requirement in Virginia and any other jurisdictions in which he may be licensed to practice law. Respondent shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form (Form 2) to Kathleen M. Uston, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).

3. The Respondent shall read in its entirety *Lawyers and Other People's Money* and Legal Ethics Opinion 1606, and he shall certify his compliance with the term set forth in this paragraph, in writing, not later than six (6) months following the date of entry of this Order to Kathleen M. Uston, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314. The amendment to the Stipulations of Fact, including the Agreed Disposition recited therein, requiring the Respondent to read Legal Ethics Opinion 1606 was imposed by the Chair, speaking on behalf of a unanimous Panel, and was agreed to by both the VSB and Respondent on the record in open hearing.

4. For a period of two (2) years following entry of this Order, the Respondent hereby authorizes a Virginia State Bar Investigator to conduct unannounced personal inspections of his trust account books, records, and bank records to ensure his compliance with all of the provisions of Rule 1.15 of the Rules of Professional Conduct.

5. If the Respondent fails to comply with any of the terms set forth in the preceding paragraphs 1 through 4, inclusive, in the manner and at the time compliance with any such term is required, then, and in such event, the Virginia State Bar Disciplinary Board, following the entry of a Show Cause Order and after notice and an opportunity to be heard, shall, as an alternative disposition to any discipline otherwise imposed by the Board, suspend the Respondent's license to practice law in the Commonwealth of Virginia for a period of five (5) years unless the Respondent proves by clear and convincing evidence at such hearing that he has complied as set forth herein.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) 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. The 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 February 20, 2009, 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 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent at his address of record with the Virginia State Bar, being Chung & Press PC, Suite 200, 6718 Whittier Avenue, McLean, Virginia 22101, by certified mail, return receipt requested, and by regular mail to Kathleen Uston, Assistant Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria Virginia 22314-3133

ENTERED THIS 29th day of January, 2009.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By Robert E. Eichen
Chair