

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

~~IN THE MATTER OF CHRISTIAN JARRELL GRIFFIN~~

VSB DOCKET NO. 10-070-080484

ORDER OF SUSPENSION WITH TERMS

THIS MATTER came on to be heard on November 16, 2012, before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board") consisting of Martha JP McQuade, Chair, presiding; John S. Barr; William C. Boyce, Jr.; Peter A Dingman; and Lay Member Jody D. Katz. The Virginia State Bar (the "Bar") was represented by Assistant Bar Counsel Alfred L Carr. The Respondent, Christian Jarrell Griffin, was represented by Michael L Rigsby. Valarie L. S. May, court reporter, Chandler & Halasz, PO Box 9349, Richmond, VA 23227, 804-730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair opened the hearing by polling the members of the Board as to whether any of them was conscious of any personal or financial interest which would preclude them from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative.

The matter came before the Board on a Seventh District Subcommittee Certification. The Bar's Exhibit A (Tabs 1-10), Exhibit B (Respondent's Disciplinary Record), and Respondent's Exhibit A (Four Letters) were admitted. The following Stipulation of Facts and Misconduct were also accepted by the Board and admitted as Joint Exhibit A:

I. STIPULATION OF FACTS

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

2. Based upon information received by the VSB that Respondent was withdrawing large sums of cash directly from his attorney trust account, the VSB initiated the instant matter. ~~By letter dated July 30, 2009, the VSB notified Respondent of the allegations concerning~~ irregular transactions occurring in Respondent's trust account. And in accordance with applicable rules, demanded a written response to those allegations within twenty-one (21) days. Simultaneously therewith, the VSB issued subpoenas *duces tecum* to both Respondent and to First Bank, the institution holding Respondent's trust account, seeking copies of all of Respondent's trust account records for the period covering April, 2008, through July, 2009.

3. By letter dated August 20, 2009, Respondent responded to the complaint advising the VSB that in 2008, he became involved in a dispute with the Internal Revenue Service (hereinafter the "IRS") regarding his nonpayment of income taxes for the years 2001 and 2002. This resulted in the imposition of a levy in the amount of \$45,004.03 against Respondent's personal and non-trust business bank accounts held at First Bank on January 2, 2009. In his response, Respondent admitted that, due to the imposition of this levy, he began to use his trust account, "as one might normally use an Operating or Personal checking account." Respondent advised the VSB further that, because of this IRS levy, he had, "to live out of [his] Trust Account[.]"

4. In his written response to the VSB, Respondent also admitted that during the relevant time period, he did not maintain the records required under Rule of Professional Conduct 1.15, or perform the reconciliations required under this RPC.

5. On January 28, 2010, this matter was referred for a more detailed investigation. Incident to that investigation, VSB Investigator Donald L. Lange personally interviewed Respondent on May 12, 2011. During the course of this interview, Respondent represented to Investigator Lange that he began using his trust account as his personal and law office operating

banking account in or around February or March of 2009, following his receipt of notice of the IRS levy.

6. The documents produced by both Respondent and First Bank in response to the subpoenas *duces tecum* previously issued in this case showed, however, that Respondent began using his trust account to directly pay personal expenses prior to January, 2009. In fact, the records produced in response to these subpoenas *duces tecum* confirmed that Respondent had been paying personal expenses out of his trust account since in or around April, 2008.

7. These records also confirmed that Respondent authorized vendors, including DirectTV and at least two (2) credit card companies, to have direct access to his trust account, debiting that account to pay personal invoices and bills incurred by Respondent.

8. These bank records also confirmed that Respondent routinely wrote checks payable to himself, but failed to notate either on the check, or in a cash disbursements journal, the purpose of the check or the identity of the client on whose behalf the funds were being withdrawn.

9. These bank records also showed that Respondent routinely withdrew cash from his trust account but failed to notate on the cash withdrawal request, or in a cash disbursements journal, the purpose of the check or the identity of the client on whose behalf the funds were being withdrawn.

10. These bank records further confirmed that Respondent endorsed his clients' names to insurance company settlement checks made payable to both Respondent and his client(s), depositing those checks directly into his trust account, despite the fact that the checks required on their face that both payees personally endorse the check.

11. During his interview with Investigator Lange on May 12, 2011, Respondent admitted that he did not maintain any of the ledgers and records required to be kept under Rule of Professional Conduct 1.15, and admitted that he did not reconcile his attorney trust

account on a monthly or quarterly basis. Respondent also admitted that he did not maintain client subsidiary ledgers, but claimed that he maintained notes on the file jackets of his client files wherein he notated amounts paid by the client and the date of those payments. Although Respondent promised to provide Investigator Lange with copies of these notes, as of the date of this Determination, he has failed to do so.

12. During this interview, Respondent informed Investigator Lange that he closed his trust account at First Bank in August, 2010, and had re-opened a new trust account at Capital One Bank, into which the balance of the First Bank trust account had been deposited. Respondent represented further that, although he did not have the new account information with him at the time of the interview, he would subsequently provide the account number of the new trust account held at Capital One Bank. He did not do so, however.

13. In his written response to the VSB in this case, dated August 20, 2009, Respondent represented that he anticipated having all outstanding issues with the IRS, including the levy upon his accounts, resolved "within the next 30 days." As of the date of his interview with Investigator Lange, however, Respondent had not resolved these outstanding issues with the IRS. Upon information and belief, Respondent has still not resolved either the issue of nonpayment of income taxes for tax years 2001 and 2002, or the outstanding levy, with the IRS.

14. In his written response to the VSB, Respondent also represented that he had already begun to "tak[e] steps" to bring his handling of his trust account into compliance with applicable rules prior to his receipt of the complaint in the instant case. However, during his interview with Investigator Lange, which took place almost two (2) years later, Respondent admitted that he still was not handling his trust account as required under the rules, and he still did not maintain the required records or perform the required reconciliations. Respondent explained that his failure to bring himself into compliance with Rule of Professional Conduct 1.15 was a result of his desire to "see how this situation resolved itself."

15. In his written response to the VSB in this case, Respondent represented that he was unable to perform the "bookkeeping records ...required by the Bar," and as a result, had "retained a local accountant to handle this task." However, during his interview with Investigator Lange, Respondent admitted that he had not retained an accountant and, in fact, was awaiting the outcome of this matter before doing so.

16. In his written response to the VSB in this case, Respondent also represented that he utilized his trust account as his personal checking account only "for the period mentioned in your complaint letter," which period was limited to April-July, 2009. During his interview with Investigator Lange, Respondent represented that he used his trust account as a personal and business account during the period of the levy only (February 1, 2009, until September 1, 2009), but had never done so before or since that time. However, in a prior matter, Respondent stipulated that in 2003, he had been "using his trust account as an operating and personal account for two and a half years." Respondent justified this activity in the prior matter by claiming that "the bank closed his operating account due to little or no activity."

17. In his written response to the VSB in this case, Respondent finally represented that all funds withdrawn from his trust account during the period of the levy, used by him to pay personal expenses, were funds that he had already earned and therefore, "no client ever lost money because of this activity." Despite being asked to do so, and representing that he would do so, Respondent has failed to produce any records or other documents which would establish that this is the case.

II. NATURE OF MISCONDUCT

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

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:
- (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
 - (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
- (e) **Record-Keeping Requirements, Required Books and Records.** As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
- (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
 - (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;
 - (ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a

journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

- (iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
 - (iv) reconciliations and supporting records required under this Rule;
 - (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.
- (2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;
 - (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
 - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
 - (5) Reconciliations.
 - (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;

- (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;
 - ~~(iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.~~
- (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary 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:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or

DISPOSITION

Upon review of the foregoing Stipulation of Facts and Misconduct, the Exhibits admitted, all evidence presented in aggravation and mitigation, the Bar's proposed terms for disposition, Respondent's testimony, and the argument of his Counsel, the Board recessed to deliberate an appropriate sanction. After due deliberation, the hearing was reconvened and the Board rendered the following decision:

It is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is suspended for six (6) months, with terms as set forth below; The effective date of the suspension is November 16, 2012.

It is FURTHER ORDERED that the following terms are imposed:

1. Respondent shall, on November 16, 2012, provide the VSB with the account numbers and other identifying information for Respondent's trust and operating accounts.

2. Respondent shall, for a period of 18 months thereafter, update the VSB within three (3) business days of any change in any such account numbers and other identifying information regarding his trust account and operating accounts.
3. During Respondent's period of suspension, he shall retain, at his expense, a law office management consultant acceptable to the Bar (the "consultant"), to review and make recommendations concerning the Respondent's law practice policies, methods, systems, procedures and account maintenance and record-keeping to ensure Respondent's compliance with all provisions of the Virginia Rules of Professional Conduct, particularly Rule 1.15 (Safe Keeping Property); The timing of the hiring of the consultant is to ensure that, before the Respondent resumes the practice of law at the expiration of his suspension, he has the systems and procedures in place, and has been trained in same, so that he is in compliance from day one of his resumed practice.
4. The Respondent shall cause the consultant to file a written report with the Bar with respect to Term 3 above; It is the Respondent's responsibility to ensure that the consultant's report is completed and filed by the time he resumes the practice of law.
5. In addition, and again, by the time he resumes the practice of law, the Respondent shall certify to the Bar that he understands what is required of him in order to maintain his compliance with the above and with the Rules, particularly Rule 1.15.
6. For a full 12 month period thereafter, and at least quarterly, the Respondent shall cause the consultant to review the records relating to his accounts and procedures, and to file a written report with the Bar with respect to same; Again, it is the Respondent's responsibility to ensure that the consultant's reports are completed and filed timely as set forth herein.
7. Also for the same full 12 month period thereafter, and at least quarterly, the Respondent shall certify to the Bar that he is in compliance with the above, and with the Rules, particularly Rule 1.15.
8. For all, and the full, periods of time that the consultant is required to be utilized as set forth above, the Bar is to have full access to the consultant and to any information, including but not limited to reports and/or records that he or she has with respect to his or her work with the Respondent, as well as directly to the Respondent's records should the Bar deem that advisable; The Respondent shall provide whatever authorization may be required in order to provide the Bar with such access.
9. Also for the same "full 12 month period thereafter" which is referenced above, the Respondent shall refrain from engaging in any professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which he is admitted to practice law. A final determination by a District Sub-Committee, a District Committee, the Disciplinary Board, a Three Judge Panel, or the Supreme Court of Virginia that Respondent engaged in professional

misconduct during such 12 month period shall be deemed a violation of a term of this Order.

It is FURTHER ORDERED that, if the Respondent fails to fully comply with any of the foregoing terms, the alternative disposition, pursuant to Part Six, Section IV, Paragraph 13-18.O of the Rules of the Supreme Court of Virginia, shall be REVOCATION of his license to practice law in Virginia.

It is further ORDERED that, Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia and provide the Clerk of the Disciplinary System a written statement, within 14 days of the effective date of his Suspension as set forth above, that he gave 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 clients. Respondent shall make such arrangements as are required within 45 days of the effective date of the Suspension. The Respondent shall also furnish proof to the VSB 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 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 hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, Section IV, 13-9.E 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 by Certified Mail to the Respondent Christian Jarrell Griffin at his address of record with the Virginia State Bar, at Law offices of Christian J. Griffin, 109 Fox Court, Winchester, VA 22603; send a copy by regular mail to the Respondent's Counsel, Michael L. Rigsby, at P.O. Box 29328, Henrico, VA 23242; and hand-deliver a copy to Alfred L. Carr, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

ENTERED December 31, 2012

VIRGINIA STATE BAR DISCIPLINARY BOARD



Martha JP McQuade, Chair