

**VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF
TIMOTHY PAUL HARRIS**

VSB Docket No. 12-041-091303

MEMORANDUM ORDER
(SIX-MONTH SUSPENSION WITH TERMS)

This matter came on to be heard on April 3, 2013, by telephone conference, for consideration of an Agreed Disposition between the parties, which was presented to a duly convened Panel of the Virginia State Bar Disciplinary Board consisting of Martha JP McQuade, Chair, presiding; Paul M. Black; J. Casey Forrester; and Esther J. Windmueller; and Robert W. Carter, Lay Member (the "Board"). Renu Mago Brennan, Assistant Bar Counsel, appeared as Counsel for the Virginia State Bar (the "Bar"), and Respondent appeared in person, *pro se*. Tracy J. Stroh, RPR, CCR, of Chandler & Halasz, PO Box 9849, Richmond, VA 23227, (804) 730-1222 was the court reporter for the hearing and transcribed the proceedings.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition for a Ninety-Day Suspension with Terms and presented same to the Panel.

The Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that could affect, or could reasonably be perceived to affect, his or her ability to be impartial in this case. Each member, including the Chair, verified that he/she had no such interests.

After hearing argument from both parties, including that Respondent has no prior disciplinary record with the Bar, the Board retired to deliberate as to whether to accept the proposed Agreed Disposition. Upon reconvening, having considered all the evidence before it, and based on the seriousness of the conduct and violations which had been stipulated, the Panel unanimously rejected the Agreed Disposition for a Ninety-Day Suspension with Terms. However, the Chair advised the parties that the Panel would unanimously accept an Agreed Disposition with an initial suspension of six months, with the alternate sanction of an additional three year suspension, and with the terms otherwise being the same as those in the originally proposed Disposition. Both the Respondent and the Bar agreed to and accepted those changes and entered into an Agreed Disposition for a Six-Month Suspension with Terms, which was accepted by the Board, including the following stipulated findings of fact and admissions of misconduct:

I. FINDINGS OF FACT

1. At all times referenced herein, Respondent Timothy Paul Harris (Respondent) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. At all times referenced herein, Respondent was with the Esquire Firm, which Respondent established in May 2010.
3. Respondent was the only attorney and person who worked at the Esquire Firm.
4. Although Respondent worked out of his apartment located at 617 S. Walter Reed Drive, Apartment 512B, his letterhead referenced law offices in Fairfax, Virginia. According to Respondent, the office address referenced on his letterhead was the office address of attorney Kathryn Hemlock, with whom Respondent had an informal arrangement by which Respondent and Ms. Hemlock occasionally worked on cases together. Respondent defined the relationship as an "Of Counsel" arrangement.
5. Respondent never established a trust account for the Esquire Firm.

Representation of Leigh Bodden v. Anatoly Zharkin, United States District Court for the Northern District of Illinois Eastern Division, Civil No. 11-cv-01104

6. In late 2010, Respondent agreed to represent Leigh Bodden in a matter involving a breach of a business loan agreement.
7. Respondent prepared an engagement letter dated December 2, 2010, with an attached unsigned "Retainer Agreement and Wire Instructions," pursuant to which Respondent agreed to represent Leigh Bodden in "pursuing (Bodden's) lawsuit against Anatoly Zharkin regarding his breach of (Bodden's) business loan agreement with him."
8. Respondent's engagement letter stated, "(b)ased on our understanding of the claims involved in this matter, we are prepared to file this lawsuit in U.S. District Court for the Northern District of Illinois seeking damages currently in the amount of One Million Nine Hundred Fifty Four Thousand Seven Hundred Sixty Dollars (\$1,954,760 USD)."
9. Respondent's fee for the representation was \$175,000 "if the matter proceed(ed) to trial."
10. Respondent required a \$141,250 "flat retainer" to cover all litigation expenses prior to trial. Respondent's agreement stated that if case settled prior to trial, no further payment would be due, however, if the case proceeded to trial, the remaining balance would be due at the commencement of trial.
11. On December 6, 2010, as instructed by Respondent, Mr. Bodden's mother, Carolie Walker, wired the sum of \$141,250 to Respondent's personal checking account.
12. On December 6, 2010, Respondent transferred \$105,000 from his personal checking account into his savings account.
13. As stated, Respondent never set up or maintained a trust account.
14. Two months later, on February 7, 2011, at Respondent's request, Ms. Walker wired the sum of \$33,750 to Respondent's personal checking account. Respondent requested this sum prior to filing litigation, even though he stated in his representation letter that the remaining balance of \$33,750 would not become due unless and until trial began. Specifically, Respondent's letter stated as follows:

“Unless otherwise agreed with us in writing, our fee for this representation shall be (\$175,000 USD) if this matter proceeds to trial. Presently, we require a flat retainer in the amount of (\$141,250 USD) which will cover all of our firm’s litigation expenses prior to the trial. If this case settles prior to trial no further payments will be due, and this amount will be included in the settlement amount per your loan agreement. If this case proceeds to trial, the remaining balance will be due when the trial begins.”

Respondent asserts that he requested and received the \$33,750 because settlement was not likely.

15. Respondent did not render any accountings to Mr. Bodden, either directly or through Ms. Walker, regarding the \$175,000 or any portion thereof, nor did he account to Mr. Bodden, either directly or through Ms. Walker, for his services and time.
16. On February 16, 2011, suit was filed on Mr. Bodden’s behalf against Anatoly Zharkin in the United States District Court for the Northern District of Illinois.
17. On March 1, 2011, Respondent was granted leave to appear *pro hac vice* on Mr. Bodden’s behalf in the Illinois suit.
18. On May 6, 2011, default judgment in the amount of \$1,978,500 was entered on Mr. Bodden’s behalf.
19. By e-mail dated June 15, 2011, Respondent advised Ms. Walker that RPS Companies, Inc. would handle collection efforts, and he provided the name of the appropriate point of contact.
20. On July 13, 2011, Respondent entered into a contract with RPS Companies, Inc. to collect on Mr. Bodden’s claim. Per the contract, RPS’s fee was a commission only on funds paid by the debtor to RPS.
21. Respondent was unable to collect on the judgment.
22. In April 2012, Mr. Bodden fired Respondent. Ms. Walker requested an accounting of the fee paid. Ms. Walker also requested that Respondent return Mr. Bodden’s files to him. Respondent never provided Mr. Bodden with an accounting. Respondent did not respond to Ms. Walker’s request for the files, but he subsequently provided Mr. Bodden’s new counsel his password to access the work Respondent had performed for Mr. Bodden.

23. Based on Respondent's time records, Respondent reported the work performed on Mr. Bodden's case to another client Corporate Athletic Management, with whom he had an arrangement by which he was paid \$5,000 per month.

24. Respondent never returned any portion of any fee to Mr. Bodden.

Representation of Leigh Bodden v. Collins Fee LLC et al, United States District Court for the District of Maryland, Civil No. RWT-11-2323

25. In 2011, Respondent agreed to represent Mr. Bodden regarding a dispute over a condominium in Miami, Florida. Respondent determined that Mr. Bodden, a citizen of Maryland, should file suit in federal court in Maryland, under the federal diversity jurisdiction statute, 28 U.S.C. § 1332, even though one of the defendants was incorporated in Maryland and thus also a citizen of Maryland. Respondent acknowledges that the parties were not diverse and thus diversity jurisdiction did not exist under the federal diversity jurisdiction statute, 28 U.S.C. § 1332, but he wanted to file the suit in federal court to facilitate settlement.

26. There was also an issue of whether the federal court had personal jurisdiction over one of the defendants.

27. Respondent did not advise Mr. Bodden of any of the jurisdictional issues, including the fact that there was not complete diversity between the parties.

28. Respondent drafted the complaint in which he alleged that the Court had jurisdiction over the action under 28 U.S.C. §1332 because the matter in controversy exceeded the sum or value of \$75,000, exclusive of interest and costs, and was between citizens of different states.

29. As Respondent was not licensed to practice law in Maryland, Respondent requested a Maryland attorney (Maryland counsel) move his admission *pro hac vice*. Per Respondent, Maryland counsel did not sign the motion for admission, and the motion was denied.

30. On August 22, 2011, Maryland counsel filed the suit prepared by Respondent.

31. Beginning October 7, 2011, and continuing through March 19, 2012, Respondent's license to practice law in the Commonwealth of Virginia, his only license to practice law, was administratively suspended for non-payment of dues. Respondent's license had been previously administratively suspended for non-payment of dues from October 8, 2010 to December 10, 2010.

32. Respondent did not advise his client, Mr. Bodden, either directly or through his mother, Ms. Walker, of either of the administrative suspensions of his license to practice law.
33. On November 21, 2011, defendants filed a motion to dismiss for lack of subject matter jurisdiction and lack of personal jurisdiction.
34. The motion to dismiss was served on Maryland counsel, who forwarded the motion to Respondent.
35. Pursuant to District of Maryland Local Rule 105.2, Mr. Bodden's opposition to the motion to dismiss was due on or before December 8, 2011.
36. Respondent did not timely respond to the motion to dismiss.
37. On December 15, 2011, the law clerk for the Court e-mailed Maryland counsel to determine the reason Mr. Bodden did not oppose the motion to dismiss and to request a response to the motion to dismiss accompanied by an appropriate motion for leave to file out of time.
38. Maryland counsel forwarded the e-mail to Respondent. Respondent replied to Maryland counsel that he would prepare a response to the motion to dismiss.
39. As set forth in the Court's Memorandum dated January 4, 2012, entered as an Order on March 30, 2012, in anticipation of promptly receiving an opposition filed on behalf of Mr. Bodden, the Court scheduled a hearing on the motion to dismiss for February 9, 2012, at 10 a.m., but the Court expressly noted that the Court reserved the option to decide the motion to dismiss on the pleadings.
40. Respondent did not file an opposition to the motion to dismiss.
41. On December 27, 2011, a Memorandum Opinion and Order was entered granting the motion to dismiss. The Court held that complete diversity between the parties did not exist, and the Court lacked personal jurisdiction over one of the defendants. In its Memorandum Opinion and Order, the Court held as follows:

“On the face of the Complaint it is obvious that this Court lacks subject matter jurisdiction over this matter, as well as personal jurisdiction . . . These are matters that would be obvious even to the most newly-minted attorney. Consequently, Plaintiff and Plaintiff's counsel will be directed to show cause as to why sanctions are not appropriate under Federal Rule of Civil Procedure 11(c)(3) or under this Court's inherent authority . . .”

(Memorandum Opinion and Order entered March 30, 2012, in *Bodden v. Collins Fee, LLC, et al.*, Case No.: RWT11cv2323). The Court directed Mr. Bodden and his counsel of record, Maryland counsel, to appear before the Court on February 9, 2012, to show cause why sanctions should not be entered against them.

42. As further set forth in the Court's Memorandum dated January 4, 2012, entered as an Order on March 30, 2012, on December 28, 2011, Respondent e-mailed the Law Clerk for the Court stating that he was "providing support to the attorney of record" for the Plaintiff" and that Plaintiff "expected more time to file the requested documents," specifically the opposition to the motion to dismiss and motion for leave to file out of time, which would have been filed by Friday of that week. Respondent did not copy opposing counsel on his e-mail.
43. Prior to the hearing on the Order to Show Cause, Respondent signed an affidavit in which he represented that "the Complaint was primarily drafted by a former associate of mine who is not [sic] longer employed by me or in my office."
44. In fact, Respondent never employed an associate, and Respondent drafted the complaint.
45. The hearing on the Order to Show Cause was continued to March 14, 2012.
46. At the March 14, 2012, hearing on the Order to Show Cause, the Court noted that Mr. Harris's license to practice law in the Commonwealth of Virginia had been administratively suspended since October 2011. Respondent was thus not entitled to practice law at all during much of the pendency of the litigation. The Court expressed its concern with Respondent's affidavit and the fact that it appeared that Respondent had taken advantage of Maryland counsel. The Court did not sanction Respondent because it was uncertain as to whether it had authority over Respondent. The Court concluded the "real problem in this case was Mr. Harris," and it referred the matter to the bar for such action as it deemed appropriate.

II. NATURE OF MISCONDUCT

Such conduct by Timothy Paul Harris constitutes misconduct in violation of the following Rules of Professional Conduct:

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.

RULE 1.5 Fees

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.

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.
- (3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:
 - (i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to

avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

(b) Specific Duties. 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 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.

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 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of law or fact to a tribunal;

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law;

All other disciplinary rule violations charged against the Respondent in the underlying Notice in this matter were withdrawn by Bar Counsel.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition for a Six-Month Suspension with Terms, the Disciplinary Board **ORDERS** that Respondent's license to practice law in the Commonwealth of Virginia is hereby suspended for a period of six months effective April 3, 2013.

It is further **ORDERED** that Respondent comply with the following Terms:

1. For a period of three years following the entry of this Order, Respondent shall not engage in any conduct that violates the following provisions of the Rules of Professional Conduct, Rules 1.3(a); 1.4(a); 1.5(a); 1.15(a)(1)(3)(i)(ii); 1.15(b)(3)(4)(5); 1.16(d); 3.1; 3.3(a)(1)(4); 8.4(a)(b)(c), including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which Respondent may be deemed 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.

2. On or before October 1, 2013, Respondent shall complete 12 hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of legal ethics. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent 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 Assistant Bar Counsel Renu M. Brennan, promptly following his attendance of each such CLE program(s).
3. Respondent shall read in its entirety Rule 1.15 and all subparts, Legal Ethics Opinion 1606, and *Lawyers and Other People's Money* and shall certify compliance in writing to Assistant Bar Counsel Renu M. Brennan not later than June 1, 2013.
4. For a period of three years following entry of this Order, 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. Respondent shall fully cooperate with the Virginia State Bar Investigator in the Investigator's inspections and audits.

Upon satisfactory proof that such Terms have been met, this matter shall be closed. If, however, all the Terms are not met by the deadlines imposed above, the Respondent agrees that the Disciplinary Board shall impose an additional three-year suspension of Respondent's license to practice law in the Commonwealth of Virginia pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O. Any Proceeding initiated due to failure to comply with Terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to Paragraph 13-9.E of the Rules of Court.

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. 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.

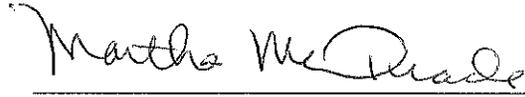
It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order by certified mail to Timothy Paul Harris at his last address of record with the Virginia State Bar, 2501 9th Rd S Unit #333, Arlington, VA 22204, and by hand-delivery to Renu Mago Brennan, Assistant Bar Counsel, 707 E. Main Street, Suite 1500, Richmond, VA 23219.

ENTERED April 24, 2013:

VIRGINIA STATE BAR DISCIPLINARY BOARD

A handwritten signature in cursive script that reads "Martha JP McQuade". The signature is written in black ink and is positioned above a horizontal line.

Martha JP McQuade, Chair