

VIRGINIA:

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

**IN THE MATTERS OF ROBERT JOHN HARRIS
VSB Docket Nos. 06-070-2740, 06-070-2930 and 06-070-2972**

ORDER OF PUBLIC REPRIMAND

These matters came on November 2, 2007 to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, Robert John Harris, based upon the Certification of the Seventh District Committee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Sandra L. Havrilak, Michael S. Mulkey, John W. Richardson, Stephen A. Wannall, Lay Member, and William H. Monroe, Jr., presiding. The proceedings were reported by Donna Chandler of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone number (804) 730-1222.

Alfred L. Carr, representing the Bar, and the Respondent, Robert John Harris, presented an endorsed Agreed Disposition, dated November 2, 2007, reflecting the terms of the Agreed Disposition.

Having considered the Certification and the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

A. STIPULATION OF FACTS

1. At all times relevant hereto concerning VSB Docket Numbers 06-070-2740, 06-070-2930 and 06-070-2972, Robert John Harris, (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket Number 06-070-2740

2. In July of 2003, Complainant Andrew J. Francis hired Respondent to represent his legal interests in a matter concerning a mortgage company and a settlement company that closed a home loan for Mr. Francis. Mr. Francis paid Respondent a total of \$550.00 in advanced legal fees. During Respondent's interview with Virginia State Bar Investigator Donald L. Lange, he informed Investigator Lange that he placed Mr. Francis' advanced legal fee payments in his pocket. He admitted that at the time he accepted Mr. Francis' fees, he did not have an attorney trust account or any method of keeping track of clients' funds that should have been held in trust. Respondent did not perform the record keeping or keep the books as required under Rule of Professional Conduct 1.15. Respondent used legal fees for his personal use before he earned them; thereby, commingling his client's advance legal fees with his personal funds. Mr. Francis did not sign a fee agreement with the Respondent. Respondent contends that he verbally informed Mr. Francis that he would be billed at \$150.00 per hour for his legal services.

3. In November of 2004, Respondent filed suit on behalf of Mr. Francis in the Circuit Court of Frederick County, *Francis v. Lincoln Mortgage, et al.*, Case No. L04-168, alleging the defendants did not loan Mr. Francis enough money to pay off his existing debt. The defendants filed demurrers to the Motion for Judgment and the Court allowed Respondent to file an amended motion within twenty-one days, e.g., by December 16, 2006.

4. Respondent did not timely file the amended motion. Respondent filed the amended motion on or about February 25, 2006, approximately two months late. Defendants filed Pleas In Bar, respectively, alleging affirmative defenses, specifically contending that Mr. Francis' case should be dismissed with prejudice because Respondent filed the amended motion over two months late.

Respondent non-suited the case to avoid permanently prejudicing Mr. Francis rather than have the case dismissed with prejudice due to his late filing of the amended motion.

5. Mr. Francis became dissatisfied with Respondent's representation and fired him. He asked Respondent for a refund of unearned advanced legal fees and an invoice. Respondent did not refund any legal fees or provide an invoice to Mr. Francis. Mr. Francis consulted other attorneys for legal advice. Mr. Francis requested that Respondent send a copy of his file to Bradley Glenn Pollack, Esquire. Mr. Pollack informed Investigator Lange that the file Respondent mailed to him was missing several documents and informed Mr. Francis that he could not take the case until he received copies of those documents. Mr. Pollack contacted Respondent and eventually received copies of all the documents. However, Mr. Pollack informed Investigator Lange that he did not take the case because it was frivolous. Investigator Lange also interviewed Bruce E. Downing, Esquire whom Mr. Francis consulted about his case. Mr. Downing informed Investigator Lange that after he reviewed the work Respondent had done for Mr. Francis, he believed that Respondent's pleadings were not well written because he did not allege that the defendants owed any kind of legal duty to Mr. Francis. He further opined that the Court would have held that Mr. Francis should have known how much money he wanted to borrow and not closed on the home loan, and that he, Mr. Downing, would not have filed the case because it lacked a good faith basis. However, Mr. Downing did not have the heart to tell Mr. Francis because, by the time he consulted with him, Mr. Francis had lost his home.

6. In March of 2006, after the Virginia State Bar notified Respondent Harris of the instant bar complaint, but before the re-filing statute of limitations ran on Mr. Francis' lawsuit, Respondent Harris re-filed the lawsuit.

B. STIPULATION OF MISCONDUCT

The aforementioned conduct on the part of the Respondent in VSB docket number 06-070-2740 constitutes a 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.
- (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.

RULE 1.4 Communication

- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.5 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:
 - (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.

- (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.

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).

C. STIPULATION OF FACTS

VSB Docket # 06-070-2930

7. In December of 2005, Complainant Randy E. Langford hired Respondent to assist him in overturning the suspension of his contractor's license and to seek a reduction of a \$9,500 fine levied against him by the Virginia Department of Professional and Occupational Regulation. By check dated December 4, 2005, Mr. Langford paid Respondent \$420.00 as an advanced legal fee. In addition, Langford hired Respondent to defend him in a lawsuit filed by a former customer of Langford's renovation company that Mr. Langford listed as a creditor in a bankruptcy petition filed by Respondent on his behalf. Respondent informed Investigator Lange that, at the time he accepted Mr. Langford's advanced legal fee, he did not have an attorney trust account, client subsidiary ledgers or billing records.

8. Mr. Langford did not sign a fee agreement with Respondent. Respondent did not discuss billing or fee paying arrangements with Mr. Langford.

9. Respondent Harris drafted an Answer for Mr. Langford to file in a lawsuit against him filed by one of Langford's creditors. Mr. Langford signed and filed the Answer ghost written by Respondent Harris. Respondent Harris informed Investigator Lange that he had ghost written the

pleading for Mr. Langford so Langford could buy time to come up with the money to pay Respondent before he would perform further legal services for Mr. Langford, which is a violation of Rule of Professional Conduct 8.4(c).

10. Later in December of 2005, Mr. Langford attempted to contact Respondent to discuss his case. Mr. Langford made several more attempts to contact Respondent by phone, but Respondent never returned Mr. Langford's calls. Mr. Langford had a cell phone number for Respondent that he continued to call and leave messages to request updates on the status of his case, but Respondent did not respond to his messages. Mr. Langford requested Respondent return his file to him. Respondent has not returned Mr. Langford's file to him.

11. Mr. Langford learned that, sometime after his last meeting with Respondent on December 4, 2005, Respondent moved his office from 583 West King Street, Strasburg, Virginia to 15 Loudoun Street, N.E., Leesburg, Virginia. Respondent did not inform Mr. Langford that sometime during late winter or spring of 2006, he again moved his office to Net Tech Center, 2281 Valley Ave., Suite 202, Winchester, Virginia. Respondent also did not inform the Virginia State Bar's membership department of his new office location as required by Part 6, Section IV, Paragraph 3 of the *Rules*. Sometime during spring or summer of 2006, Respondent again moved his office to Stone Manor, 13193 Mountain Rd., Lovettsville, Virginia.

12. On March 20, 2006, the VSB notified Respondent of the instant bar complaint and demanded that he responds within twenty-one days of said date. Respondent Harris did not respond to this bar complaint. He informed Investigator Lange that just did not get around to responding to it.

D. STIPULATION OF MISCONDUCT

The aforementioned conduct on the part of the Respondent in VSB docket number 06-070-2930 constitutes a 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.
- (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.

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 1.5 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:
 - (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.

- (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.

- (2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:
- (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;
 - (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
 - (iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

RULE 1.16 Declining Or Terminating Representation

- (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.

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;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

E. STIPULATION OF FACTS

VSB Docket # 06-070-2972

13. In March of 2004, Complainant Michael Allen Putman, Jr. hired Respondent to represent him on criminal charges in the Circuit Court for the City of Charlottesville. Mr. Putman and his family paid Respondent an advanced fee of \$2,500.00. Respondent did not have an attorney trust account at the time Mr. Putman paid him. Respondent informed Investigator Lange that he just put the money into his pockets. Respondent commingled his client's funds with his personal funds and/or converted them for his personal use before he earned the advanced fees. Respondent also informed Investigator Lange that he did not comply with the attorney trust account record-keeping requirements, keep the required books and records, subsidiary ledgers or billing records as required

under Rule of Professional Conduct 1.15.

14. On October 18, 2005, Respondent appeared in court with Mr. Putman for a sentencing hearing and sentenced Mr. Putman to thirty days in jail. At the time of this sentencing hearing, Mr. Putman was serving time for another sentence under the home electronic monitoring system, which allowed him to continue to work outside his home. The Court ordered Respondent to provide an order for entry, within ten days of October 18, 2005, allowing Mr. Putman to serve his thirty day sentence by electronic monitoring at his home in Winchester, Virginia. Respondent did not file the order as directed by the Court in a timely fashion. Respondent Harris informed Investigator Lange that he did not file the Order with Judge Hogshire's court until after he had received the instant bar complaint. The Court entered the order on April 6, 2006, one week before Mr. Putman's release date of the prior sentence. If the court had not entered the order before Mr. Putman completed his prior sentence under the home electronic monitoring arrangement, he would have had to return to jail to serve the thirty day sentence imposed on October 18, 2005 and lose his job.

15. On March 22, 2006, the VSB notified Respondent Harris of the instant bar complaint and demanded that he respond with in twenty-one days of said date. Respondent Harris did not respond to this bar complaint. He informed Investigator Lange that just did not get around to responding to it.

F. STIPULATION OF MISCONDUCT

The aforementioned conduct on the part of the Respondent in VSB docket number 06-070-2972 constitutes a 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.

- (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.

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 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;

MITIGATING FACTORS:

The Board, in accepting the Agreed Disposition for a Public Reprimand, considered several significant and powerful mitigating factors. In absence of such mitigating factors concerning the instant cases, a suspension of Respondent's license to practice law would be justified.

The Board found that Respondent had served a sixty-day suspension imposed by another Board panel for matters of misconduct that occurred during the same time period as the three instant misconduct cases. The Board panel upon imposition of the sixty-day suspensions gave considerable weight to Respondent's personal and emotional problems concerning the death of his law practice mentor and the severe and debilitating illness of his wife. In addition, the Board considered other mitigating factors such as Respondent's lack of a disciplinary record prior to the period when

Respondent was experiencing the extraordinary personal and emotional problems, as well as the fact that Respondent's clients were not harmed as direct result of his misconduct in the instant cases. Therefore, because the same mitigating factors are applicable here, and the Respondent had received a sixty-day suspension as discipline for misconduct that occurred during the same period of distress in his personal life, the Board accepts the Agreed Disposition for a Public Reprimand as a resolution to VSB Docket Nos. 06-070-2740, 06-070-2930 and 06-070-2972.

UPON CONSIDERATION WHEREOF, the Virginia State Bar Disciplinary Board hereby ORDERS that the Respondent shall receive a **PUBLIC REPRIMAND**, effective November 2, 2007.

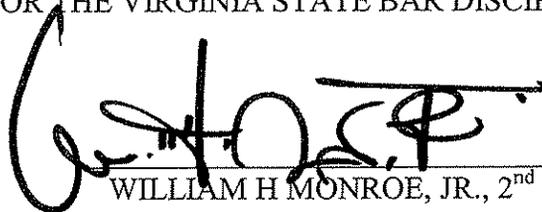
1. Pursuant to Part 6, Section IV, Paragraph 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

2. Pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia, the Board dispenses with any requirement that this Order be endorsed by counsel of record for the parties.

It is further ordered that the Clerk of the Disciplinary System shall mail an attested copy of this order, by certified mail, return receipt requested, to the Respondent, Robert John Harris, at his address of record with the Virginia State Bar, Stone Manor, 3193 Mountain Road, Lovettsville, Virginia 20180, and by regular mail to Alfred L. Carr, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133.

ENTERED this 7th day of November, 2007.

FOR THE VIRGINIA STATE BAR DISCIPLINARY BOARD:



WILLIAM H. MONROE, JR., 2nd Vice Chair