

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF JAMES WILLIS HILLDRUP VSB DOCKET NO. 14-060-099391

AGREED DISPOSITION MEMORANDUM ORDER

On November 12, 2015, this matter was heard by the Virginia State Bar Disciplinary Board upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by the Rules of the Supreme Court of Virginia. The panel consisted of William H. Atwill, Jr., 1st Vice Chair, Pleasant S. Brodnax, III, Anderson Wade Douthat, IV, Lay Member, T. Tony H. Pham and R. Lucas Hobbs. The Virginia State Bar was represented by Prescott L. Prince, Assistant Bar Counsel. James Willis Hilldrup was present and was not represented. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each member responded in the negative. Court Reporter Tracy J. Stroh, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Respondent's Disciplinary Record and any responsive pleadings of counsel,

It is **ORDERED** that the Board accepts the Agreed Disposition and the Respondent shall receive a one month suspension with terms, as set forth in the Agreed Disposition, which is attached to this Memorandum Order.

It is further **ORDERED** that the One Month Suspension with Terms is effective upon entry of this order.

It is further **ORDERED** that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail of the 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 date 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 within 60 days of the effective date of the Suspension to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

The Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9 E. of the Rules.

A copy teste of this Order shall be mailed by Certified Mail, return receipt requested, to James Willis Hilldrup, at his last address of record 4343 Plank Road, Suite 220, Fredericksburg, Virginia 22407-4807, and hand-delivered to Prescott L. Prince, Assistant Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED THIS 16th DAY OF November, 2015

VIRGINIA STATE BAR DISCIPLINARY BOARD

**William H.
Atwill, Jr.**

Digitally signed by William H.
Atwill, Jr.
DN: cn=William H. Atwill, Jr.,
o=Atwill, Troxell & Leigh, PC, ou,
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William H. Atwill, Jr., 1st Vice Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JAMES WILLIS HILLDRUP**

VS Docket No. 14-060-099391

**AGREED DISPOSITION
(SUSPENSION FOR A PERIOD OF ONE MONTH WITH TERMS)**

Pursuant to the Rules of the Virginia Supreme Court Rules of Court Part 6, Section IV, Paragraph 13-6.H., the Virginia State Bar, by Prescott L. Prince, Assistant Bar Counsel and James Willis Hilldrup, Respondent, *pro se*, hereby enter into the following agreed disposition arising out of the referenced matter.:

I. STIPULATIONS OF FACT

1. At all times relevant hereto, James W. Hilldrup, (hereinafter "Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or around 6 May 2010, Respondent was qualified by the Circuit Court of Spotsylvania County, Virginia as Executor for the Estates of Anne W. Hilldrup and Edward Gordon Hilldrup,¹ The subject estate contained substantial assets and Bond in the case (without surety) was set at \$6,000,000.
3. After qualifying as the executor on the two estates, Mr. Hilldrup took no significant action on either case. Among the significant actions that Respondent failed to perform were:
 - a. Inventories of the two estates were due on 6 September 2010; Respondent failed to submit these inventories as required;

¹ Anne W. Hilldrup and Edward Gordon Hilldrup are the deceased parents of Respondent.

b. The first accounting for the two estates (for the period of 6 May 2010 through 6 May 2011) was due on 6 September 2011. Respondent failed to submit these accountings as required.

c. The second accounting for the two estates (for the period of 6 May 2011 through 6 May 2012) was due on 6 September 2012. Respondent failed to submit these accountings as required.

d. The third accounting for the two estates (for the period of 6 May 2012 through 6 May 2013) was due on 6 September 2013. Respondent failed to submit these accountings as required.

4. The Spotsylvania County Commissioner of Accounts (COA) sent a letter to Respondent dated 30 May 2013, advising Respondent that he was derelict in his responsibilities regarding the filing of the inventories for the two estates and the first, second and third accountings for the estates. The letter further advised Respondent that if he did not comply with his responsibilities, the COA would file a Show Cause, the COA would issue a summons and additional penalty fees which would be assessed personally against Respondent.

5. Respondent failed to comply with his responsibilities notwithstanding the warning letter from the COA. On 30 April 2014, the COA requested that a Rule to Show Cause be issued against Respondent and in accordance with Virginia Code Section 64.2-1216, the COA notified the Virginia State Bar of Respondent's apparent failure to comply with his statutory responsibilities.²

² On 12 November 2013, the Spotsylvania County Commissioner of Accounts was permitted by the Spotsylvania Circuit Court to withdraw from the case due to a conflict of interest and an Order was entered appointing the Stafford County Commissioner of Accounts as Substitute Commissioner of Accounts. Hereafter, all references to the COA will relate to the Stafford Commissioner of Accounts acting in her capacity as the Substitute Commissioner of Accounts in this matter.

6. On 12 May 2014, an Order to Show Cause was entered against Respondent by the Spotsylvania Circuit Court ordering Respondent to show cause why he should not be held in contempt of court for his failure to file the required Inventory, First, Second and Third Accounts of the estate of Edward G. Hilldrup.

7. On 2 June 2014, an Order to Show Cause was entered against Respondent by the Spotsylvania Circuit Court ordering Respondent to show cause why he should not be held in contempt of court for his failure to file the required Inventory, First, Second and Third Accounts of the estate of Anne W. Hilldrup.

8. On 16 June 2014, the Spotsylvania Circuit Court entered an Order requiring Respondent to file the Inventory for each of the two estates on or before 27 June 2014, and to file the First, Second and Third Accounts in each of the two estates on or before 16 July 2014. The Court further ordered the matter continued until 21 July 2014.

9. Respondent did not file the Inventory or any of the required accountings in either of the two estates and on 21 July 2014, the Spotsylvania Circuit Court accepted the resignation of Respondent as the executor of the two estates and appointed Valerie Jean Mayo as Administrator d.b.n.c.t.a.

10. The Court Order further ordered Respondent to turn over to Ms. Mayo all assets of the two estates and all information regarding the two estates including bank accounts and other relevant documentation.

11. Respondent did not promptly comply with the Order of the Spotsylvania Circuit Court to provide Ms. Mayo with documentation regarding the two estates. Initially, Respondent partially complied with the Court Order but his response was slow and significant discrepancies continued to be noted by Ms. Mayo. Respondent's slow response required three reviews by the

Spotsylvania Circuit Court. On 5 March 2015, Ms. Mayo reported to the Spotsylvania Circuit Court that she believed that Respondent had finally substantially complied with the 21 July 2014 Order of the court to turn over to Ms. Mayo all assets of the Estate and the information, documentation, bank accounts, etc. under his control.³

12. As a result of the complaint to the Virginia State Bar filed by the COA as detailed above, Assistant Bar Counsel Prescott L. Prince sent Respondent a letter dated 12 May 2014 enclosing a copy of the bar complaint. Bar Counsel's letter demanded a response to the complaint within 21 days, and identified Respondent's duty to provide lawfully demanded information to the Virginia State Bar pursuant to Rule 8.1(c) of the Rules of Professional Conduct.

13. Mr. Hilldrup did not respond to the letter at that time. Thereafter, the matter was referred for investigation.

14. Incident to the investigation of the Virginia State Bar, VSB Investigator, Edward A. Bosak, insisted that Respondent provide a written response to the bar complaint.

15. In his written response, as well as in his meetings with Investigator Bosak, Respondent admitted that he failed to properly carry out his responsibilities as executor of the two estates. Respondent noted during the relevant time period that he was overwhelmed by a number of circumstances, including, but not limited to the ongoing stress of maintaining his law practice, grief over the loss of his parents, family matters (in addition to the administration of the estate) related to the death of his parents and the serious illness of another family member. Respondent asserts that whereas the emotional impact of the circumstances affected his ability to

³ Reviews by the Spotsylvania Circuit Court were held on 22 September 2014, 14 November 2014 and 12 December 2014 prior to the final review on 5 March 2015. On each of these hearings, Ms. Mayo reported that Respondent's compliance was incomplete and the matter was carried over until the following court date.

properly carry out his duties as detailed herein, he has taken appropriate steps to address these issues.

16. Notwithstanding the deficiencies noted by the COA and the reported delay in turning over information as reported by the substitute Administrator as detailed herein, there was no evidence of any loss or misappropriation of funds from either the estate of Anne W. Hilldrup and Edward Gordon Hilldrup.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.16 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[.]

III. PROPOSED DISPOSITION

1. Respondent shall be **SUSPENDED** for a period of one month with terms, the effective date of said suspension being the date that the Memorandum Order is forwarded to Respondent, and the terms being as provided below.
2. Within 30 days of the date that the Memorandum Order in this matter is forwarded to Respondent, the Respondent shall:
 - a. Engage an approved practicing attorney or law office management consultant (both known as "Consultant") acceptable to the Virginia State Bar. The Consultant's engagement shall be for the purposes of reviewing Respondent's current law practice policies, methods, systems and record-keeping to ensure compliance with all provisions of Rules 1.3, 1.4, 1.16 and with the other provisions of law office management Rules of the Virginia Rules of Professional Conduct (hereafter "said Rules"), as determined relevant by the law office management consultant and to report to the Bar on a quarterly basis regarding Respondent's compliance with the Consultant's recommendation.
 - b. In the event the Consultant determines that Respondent has complied with the Consultant's recommendations, the Consultant shall so certify in writing to the Respondent and the Virginia State Bar. In the event the Consultant determines that Respondent has not complied with the Consultant's recommendations, the Consultant shall notify the Respondent and the Virginia State Bar, in writing, of the measures that Respondent must take to bring himself into compliance with the Consultant's recommendations.

- c. Upon receipt of a report of non-compliance with the Consultant's recommendations, the Respondent shall have thirty (30) days following the date the Consultant issues his written statement of the measures Respondent must take to bring his law office practice and procedures into compliance. The Consultant shall be granted access to Respondent's office, books, records, and files following the passage of the thirty (30) day period to determine whether Respondent has brought himself into compliance, as required. The Consultant shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has brought his practice and procedures into compliance within the thirty day (30) period, or that he has failed to do so. Respondent's failure to bring himself into compliance with the Consultant's recommendations by the conclusion of the aforesaid thirty (30) day period shall be considered a violation of the Terms set forth herein.
 - d. The Consultant shall periodically consult with and/or examine the Respondent's law practice consistent with paragraph a, above, for a period of twelve (12) months following the date of the Consultant's initial certification of compliance pursuant to the terms hereof. The Consultant shall report to the Virginia State Bar on a quarterly basis and in said report either recertify Respondent's compliance with Consultant's recommendations said Rules or issue a report to the Virginia State Bar and the Respondent stating that the Respondent is not in compliance, and the basis for such a determination. The Respondent shall be deemed to have violated the Terms hereof in the event the Consultant, upon such re-examination of Respondent's said law practice policies, methods, systems and record-keeping reports any material noncompliance.
3. That Respondent shall obtain six (6) continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matters of law office management. 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 in any other jurisdiction in which Respondent is 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 to Assistant Bar Counsel, Prescott L. Prince, or his designee, promptly following Respondent's attendance of each such CLE program and no later than twelve (12) months of the date that this Memorandum Order is forwarded to Respondent, as provided by the Certificate of Service herein.
 4. The Respondent shall be obligated to pay when due any reasonable fees and costs charged by the Consultant for his or her services, (including provision to the Bar and to Respondent of information concerning this matter).

Upon satisfactory proof that such terms and conditions have been met, these matters shall be closed.

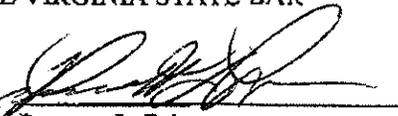
If, however, all the terms and conditions are not met by the deadlines imposed above, the Respondent agrees that the Disciplinary Board shall impose a six (6) month suspension of his license to practice law in the Commonwealth of Virginia pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O. 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 the Supreme Court of Virginia. Respondent agrees that any proceeding to address compliance with terms under this Agreed Disposition will be heard by the Disciplinary Board.

If a panel of the Disciplinary Board accepts this Agreed Disposition, Respondent agrees that it is final and non-appealable.

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

Pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-30.B, the Respondent understands that his prior disciplinary record shall be furnished to the subcommittee considering this agreed disposition.

THE VIRGINIA STATE BAR

By: 

Prescott L. Prince
Assistant Bar Counsel


James Willis Hill, Esquire
Respondent