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VIRGINIA :

IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

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VIRGINIA STATE BAR *EX REL*  
SEVENTH DISTRICT COMMITTEE,

Complainant,

v.

THOMAS MARSHALL JAMES, ESQUIRE

Case No. CL2007-165  
VSB Docket Nos. 06-070-3981  
and 07-070-0013

Respondent.

ORDER OF SUSPENSION

This matter came before the Three-Judge Court telephonically empanelled on August 30, 2007, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to § 54.1-3935 of the 1950 Code of Virginia, as amended. A fully endorsed Agreed Disposition, dated the 30<sup>th</sup> day of August, 2007, was tendered by Alfred L. Carr, Assistant Bar Counsel, Respondent Thomas Marshall James, by and through his counsel, Bernard J. DiMuro, Esq., and was considered by the Three-Judge Court, consisting of the Honorable Ernest P. Gates, Retired Judge of the Twelfth Judicial Circuit, the Honorable John E. Clarkson, Retired Judge of the Fourth Judicial Circuit and by the Honorable Richard D. Taylor, Jr., Judge of the Thirteenth Judicial Circuit and Chief Judge of the Three-Judge Court. The hearing was transcribed by Donna Chandler, Court Reporter, of Chandler and Halasz, P.O. Box 9349, Richmond, VA 23227, 804.730.1222.

Having considered the Agreed Disposition, it is the decision of the Three-Judge Court that the Agreed Disposition be accepted, and said Court finds by clear and convincing evidence

as follows:

1. At all times relevant hereto, Thomas Marshall James, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

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2. On June 6, 2006, Respondent over-drew his lawyer's trust account by \$90.43.

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3. On July 3, 2006, Respondent over-drew his trust account by \$583.76. On July 13, 2006, after he received notice that his trust account had a negative balance of \$583.76, he withdrew another \$250.00 from his lawyer's trust account resulting in an ending balance of negative \$833.76.

4. On July 28, 2006, during an interview with Virginia State Bar Investigator James W. Henderson, Respondent admitted that an automatic withdrawal he authorized for a personal transaction caused the June 6, 2006, Non Sufficient Funds notice from SunTrust Bank.

Respondent had authorized monthly automatic withdrawals in November of 2005 to repay a personal loan to the Sallie Mae Corporation. In July of 2006, Respondent, again, authorized another payment in the same amount and for the same personal purpose and caused the negative balance of \$583.76 on July 3, 2006 in his trust account. Respondent had set up two additional automatic electronic withdrawals from his lawyer's trust account to pay personal bills.

5. Respondent, also, admitted that he made the following payments from his lawyer's trust account toward personal bills, completely unrelated to his law practice, during the period of January 1, 2006 through June 30, 2006:

a. an automobile insurance premium in the amount of \$155.00 for his personal

- a. vehicle, paid electronically after Respondent had set up automatic withdrawals;
  - b. payments in the amounts of \$155.35, \$26.00, and \$100.00 toward a personal Texaco credit card;
  - c. \$200.00 towards a personal Bank of America Visa credit card;
  - d. payments in the amounts of \$30.00 and \$46.00 for a Dell computer for Respondent's own personal use;
  - e. \$163.00 to Bank of America;
  - f. payments in the amounts of \$425.00 and \$340.00 to Chase Bank for a personal transaction, paid electronically after Respondent had set up automatic withdrawals;
  - g. \$37.50 toward a personal Chevron credit card;
  - h. \$125.00 toward his personal Bank of America credit card;
6. Respondent, also, informed Investigator Henderson that he had made the following deposits of his own personal funds, not related to his law practice, into his lawyer's trust account:

- a. a personal loan from his wife in the amount of \$1,000.00;
  - b. a deposit of \$10,000.00 representing the insurance medical payments Respondent received after his fall down the courthouse steps in July of 2005.
7. During Respondent's July 28, 2006 interview with Investigator Henderson for these instant bar complaints, Investigator Henderson asked Respondent whether he recalled their conversation about his trust account activity during the February 8, 2006 interview regarding his improper use of his attorney trust account to conduct his personal transactions unrelated to the

practice of law. Respondent stated that he did remember that Investigator Henderson had told him to stop using his trust account to conduct personal business. Investigator Henderson, again, reminded Respondent that the continued practice of depositing personal funds in his lawyer's trust account and his continued use of the attorney trust account as a personal checking account was an ongoing violation of the Rules of Professional Conduct. In response, Respondent stated to Investigator Henderson that he understood and recognized the impropriety of his continued use of his attorney trust account for personal use, but he had to do what he had to do. The Virginia State Bar does not allege that Respondent James inappropriately used client funds.

**THE THREE-JUDGE COURT** finds by clear and convincing evidence that such conduct on the part of the Respondent, Thomas Marshall James, Esquire, constitutes a 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.
- (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;
- (3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;
- (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 8.4 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;

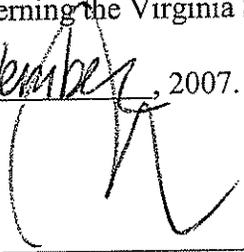
**UPON CONSIDERATION WHEREOF**, the Three-Judge Court hereby **ORDERS**  
as follows:

The Respondent shall receive a **three (3) month suspension** of his license to practice law in the Commonwealth of Virginia, effective **September 1, 2007**.

**ORDERED** that pursuant to the provisions of Part Six, § IV, ¶ 13.M. of the Rules of the Supreme Court of Virginia, the Respondent shall forthwith give notice, by certified mail of his suspension to all clients for whom he is currently handling matters and to all opposing attorneys and the 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. The Respondent shall give such notice within fourteen (14) days of the effective date of his suspension and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. Respondent shall also furnish proof to the Bar within sixty (60) days of the effective date of his suspension that such notices have been timely given and such arrangements made for the disposition of matters. The Virginia State Bar Disciplinary Board shall decide all issues concerning the adequacy of the notice and arrangements required herein, and the Board may impose a sanction of revocation or additional suspension for failure to comply with Part Six, § IV, ¶ 13.M. of the Rules of the Supreme Court of Virginia; and it is further

**ORDERED** that four (4) copies of this Order be certified by the Clerk of the Circuit Court of City of Charlottesville, Virginia, and be thereafter mailed by said Clerk to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent at his address of record with the Virginia State Bar, Respondent's Counsel, Mr. Bernard J. DiMuro, Esquire, and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

ENTERED this 5<sup>th</sup> day of September, 2007.

  
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RICHARD D. TAYLOR, JR.  
Chief Judge of Three-Judge Court