

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTERS OF THOMAS MARSHALL JAMES

VSB Docket Numbers: 07-070-1637, 07-070-1941, 07-070-2108, 07-070-2149, 07-070-2756, 07-070-2858, 07-070-070481, 07-070-070542, 07-070-070663, 07-070-070771, 07-070-070909, 070-07-070978, 07-070-071050, 07-070-071061, 08-070-071220, 08-070-071287, 08-070-071348, 08-070-071404, 08-070-071447, 06-070-0574, 06-070-1845, and 07-070-0455

ORDER OF SUSPENSION, WITH TERMS

These matters came on September 24, 2007 to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Seventh District Committee and Expedited Petition. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of William E. Glover, Glenn M. Hodge, Rhysa Griffin South, Rev. Dr. Theodore Smith, Lay member, and James L. Banks, Jr., Chair, presiding.

Alfred L. Carr, representing the Bar, and the Respondent, Thomas Marshall James, by his counsel, Bernard J. DiMuro, presented an endorsed Agreed Disposition, dated September 24, 2007, reflecting the terms of the Agreed Disposition.

Having considered the Certifications, the Expedited Petition, 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:

1. The Respondent was licensed to practice law in the Commonwealth of Virginia on April 22, 1993.
2. Two Virginia State Bar Investigators, on three separate occasions, informed Respondent that use of his attorney trust account for personal financial matters is a violation of the *Rules of Professional Conduct* (hereinafter "*RPC*"). In response to questions from the VSB

Investigators regarding whether or not he was aware that his use of his attorney trust account for personal matters is a violation of the *RPC*, Respondent replied that he was aware of his misconduct, but “he must do what he had to do.”

3. On February 8, 2006, and again on July 28, 2006, Virginia State Bar Investigator James Henderson warned Respondent that continued use of his attorney trust account for personal financial matters is a violation of *RPC* 1.15. During Investigator Henderson’s second interview with Respondent, Respondent admitted that he knew that use of his trust account for personal financial matters is a violation of said *RPC*.

4. The Virginia State Bar does not contend that Respondent inappropriately used client funds for his personal use or that he held client funds in the account at the time of the Non-Sufficient Funds notices underlying Virginia State Bar docket numbers 07-070-1637, 07-070-1941, 07-070-2108, 07-070-2149, 07-070-2756, 07-070-2858, 07-070-070481, 07-070-070542, 07-070-070663, 07-070-070771, 07-070-070909, 07-070-070978, 07-070-071050, 07-070-071061, 08-070-071220, 08-070-071287, 08-070-071348, 08-070-071404, and 08-070-071447. Respondent used his attorney trust account to deposit and hold client funds in trust. However, upon the closure of his personal account, Respondent began to deposit his personal funds into his attorney trust account in excess of two years’ worth of funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution.

5. On May 31, 2007, Virginia State Bar Investigator David Jackson again informed Respondent that continued use of his attorney trust account for personal financial matters is a violation of *RPC* 1.15. During Investigator Jackson’s interview with Respondent, Respondent again admitted that he knew that use of his trust account for personal financial matters is a violation of the *RPC*.

VS B Docket No. 07-070-1637:

6. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On November 28, 2006, Respondent authorized by phone a withdrawal from his trust account to pay a personal telephone bill.

VS B Docket No. 07-070-1941:

7. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On December 28, 2006, Respondent authorized by phone a withdrawal from his trust account to pay a personal telephone bill.

VS B Docket No. 07-070-2108:

8. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On January 9, 2007, Respondent authorized by phone a withdrawal from his trust account to pay a personal telephone bill.

VS B Docket No. 07-070-2149:

9. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On January 17, 2007, Respondent authorized a withdrawal from his trust account to make a payment of \$626.07 on his son's law school loan, and to make a payment of \$100.00 towards Respondent's own personal medical bill stemming from an injury for which he had received medical treatment.

VS B Docket No. 07-070-2756:

10. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On March 14, 2007, Respondent authorized a withdrawal from his trust account in the amount of \$583.88 to pay a personal Virginia Power bill.

VS B Docket No. 07-070-2858:

11. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On March 16, 2007, Respondent's trust account had a negative balance of \$222.71. However, Respondent, with knowledge of insufficient funds on deposit to cover same, wrote two personal checks totaling \$210.00. The bank paid both personal checks, leaving a negative balance of \$432.71. The respective payees were William Robbins (\$150.00) and FIA Card Services (\$60.00).

VSB Docket No. 07-070-070481:

12. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On April 27, 2007, Respondent authorized by phone a withdrawal from his trust account to pay a personal telephone bill.

VSB Docket No. 07-070-070542:

13. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On May 3, 2007, Respondent authorized by phone a withdrawal from his trust account to repay a personal loan to Sallie Mae Corporation.

VSB Docket No. 07-070-070663:

14. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On May 16, 2007, Respondent authorized payment of \$1,700.00, payable to Sears that caused a \$2,062.83 negative balance in his trust account. Respondent informed Investigator Jackson that he knew he did not have the funds in his trust account to cover the payment and that he tried to stop payment before Sears negotiated it at the bank.

VSB Docket No. 07-070-070771:

15. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. The next day, May 17, 2007, Respondent withdrew another \$20.00 from his trust account, causing a negative balance of \$1,648.69.

VS B Docket No. 07-070-070909:

16. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On June 5, 2007, notwithstanding a negative balance of \$416.69, Respondent withdrew \$120.00 from his trust account, causing a \$536.69 negative balance.

VS B Docket No. 07-070-070978:

17. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On June 8, 2007, notwithstanding a negative balance of \$536.69, Respondent withdrew \$185.83 from his trust account, causing a \$722.52 negative balance.

VS B Docket No. 07-070-071050:

18. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On June 15, 2007, notwithstanding a negative balance of \$722.52, Respondent withdrew \$100.00 from his trust account, causing a negative balance of \$822.52.

VS B Docket No. 07-070-071061:

19. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On June 19, 2007, notwithstanding a negative balance of \$822.52, Respondent authorized payment of \$271.05 from his trust account, causing a negative balance of \$1,093.57. However, the bank returned the check unpaid, resulting in a return to the negative balance of \$822.52.

VS B Docket No. 08-070-071220:

20. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On June 26, 2007, notwithstanding a negative balance of \$822.52, Respondent authorized two payments from his trust account. The bank returned both checks unpaid to payees. At this time, the Bar does not know the identity of these payees. If the bank had paid both checks on behalf of Respondent, his trust account would have had a negative balance of \$1,593.57.

VS B Docket No. 08-070-071287:

21. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On July 2, 2007, notwithstanding a negative balance of \$822.52, Respondent authorized payment of \$177.41 from his trust account which the bank returned to the payee unpaid and marked "NSF" ("not sufficient funds"). On July 3, 2007, notwithstanding a negative balance of \$822.52, Respondent authorized payment of \$144.92 from his trust account which the bank also returned to the payee unpaid and marked "NSF." (At this time, the identity of both payees is unknown to the Bar.) If the bank had paid both checks on behalf of Respondent, Respondent's trust account would have had a negative balance of \$1,144.85.

VS B Docket No. 08-070-071348:

22. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On July 6, 2007, notwithstanding a negative balance of \$822.52, Respondent authorized payment of \$177.79 from his trust account which the bank returned to the payee unpaid and marked "NSF." If the bank had paid this check on behalf of Respondent, his trust account would have had a negative balance of \$1,000.31.

VS B Docket No. 08-070-071404:

23. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On July 16, 2007, notwithstanding a negative balance of \$822.52, Respondent authorized a \$100.00 personal payment from his trust account, which the bank returned to the payee unpaid and marked "NSF." If the bank had honored this debit on behalf of Respondent, his trust account would have had a negative balance of \$922.52.

VS B Docket No. 08-070-071447:

24. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On July

18, 2007, notwithstanding a negative balance of \$822.52, Respondent wrote a personal check in the amount of \$100.00 from his trust account, which the bank returned to the payee unpaid and marked "NSF." If the bank had paid this check on behalf of Respondent, his trust account would have had a negative balance of \$922.52.

25. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On June 1, 2007, Respondent had actual notice that his trust account had a large negative balance and that he had no available funds in his trust account to cover any checks drawn against it. On May 31, 2007, in the presence of his attorney, Bernard J. DiMuro, Respondent informed Investigator Jackson that on June 1, 2007, he would close his attorney trust account at Sun Trust Bank and open a personal checking account. In Respondent's Answer to several of the above-mentioned bar complaints, he states that on June 1, 2007, he attempted to close his attorney trust account, but Sun Trust Bank refused to close the account because of the large negative balance. Respondent also claimed that SunTrust informed him that they would close his trust account only after he had repaid the money he owed to them for covering his bad checks. Previously, SunTrust had the same experience with Respondent when it closed his personal checking account after he caused a negative balance of approximately \$2,000.00 in the account by issuing checks without sufficient funds to cover them. The bank closed his personal account once he repaid the debt.

26. Paragraphs 6 through 25, inclusive above, provide clear and convincing evidence that Respondent knowingly, willfully, and intentionally continues to use his attorney trust account for personal financial matters. Notwithstanding his representation to Investigator Jackson that he would close his attorney trust account at Sun Trust Bank on June 1, 2007 and open a personal checking account to avoid any further *RPC* violations, Respondent has not

opened a personal checking account at any other bank.

27. Respondent knowingly, willfully, and intentionally writes checks or authorized withdraws of funds from his attorney trust account for personal financial matters knowing that there were insufficient funds available to cover the checks tendered to payees as evidenced in Paragraphs 6 through 25, inclusive above.

THE VIRGINIA STATE BAR DISCIPLINARY BOARD finds by clear and convincing evidence that such conduct in Virginia State Bar docket numbers 07-070-1637, 07-070-1941, 07-070-2108, 07-070-2149, 07-070-2756, 07-070-2858, 07-070-070481, 07-070-070542, 07-070-070663, 07-070-070771, 07-070-070909, 07-070-070978, 07-070-071050, 07-070-071061, 08-070-071220, 08-070-071287, 08-070-071348, 08-070-071404, and 08-070-071447 on the part of the Respondent, Thomas Marshall James, 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.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

VSB Docket Number 06-070-0574

28. On or about July 16, 1998, Mr. Charles F. McKay sustained injuries in a vehicular accident caused by James Bull, who had an alcohol content of 0.27 at the time of the accident. The Albemarle County Circuit Court convicted Mr. Bull of felony DWI.

29. Mr. McKay hired Respondent to protect his interests that developed from the vehicular accident caused by Mr. Bull. On or about July 14, 2000, two days before the statute of limitations would have lapsed on Mr. McKay's right to file a lawsuit against Mr. Bull, Respondent filed a motion for judgment against Mr. Bull in the Albemarle County Circuit Court. The motion filed by Respondent named James Bull and his insurance company, Integon General Insurance Corporation, as the only defendants in the lawsuit. Respondent did not name Mr. McKay's automobile insurance company as a party to the lawsuit *before* the statute of limitations lapsed on his right to sue his own insurance company under the underinsured motorist provision.

30. Respondent did not communicate to his client that he did *not* properly include his insurance company in the motion for judgment.

31. The court scheduled a jury trial on July 22, 2002. On July 19, 2002, however, upon a joint motion for a continuance generally, the court removed the trial from the docket because both parties represented that the matter was close to settlement.

32. On or about October 5, 2004, more than two years later, Charles Sipe, attorney for Integon General Insurance, drafted and delivered to Respondent a check in the amount of \$25,000, a Release and a Dismissal Order. The Release Mr. Sipe mailed to Respondent recited the \$25,000 settlement amount only. Respondent, however, created his own Release to present

to Mr. McKay. Respondent intentionally and deliberately fabricated this Release showing a settlement amount of \$50,000 and presented it to Mr. McKay for approval. Mr. McKay contends that Respondent's fabricated Release misled him to believe that a second payment of \$25,000 would be paid in January of 2005. Respondent will not oppose Mr. McKay's contention.

33. On October 13, 2004, Respondent deposited the \$25,000 settlement check from Integon General Insurance Corporation into his attorney trust account. Respondent represented to Mr. McKay that Integon General had agreed to settle the lawsuit for \$50,000, which he alleged was Mr. Bull's maximum policy limits. However, Mr. Sipe stated that Mr. Bull, a high risk driver, carried only the \$25,000 minimum insurance policy limits set by Virginia law.

34. On October 19, 2004, Mr. McKay negotiated the \$25,000 check drawn on Respondent's attorney trust account. On October 20, 2004, the Albemarle Circuit Court entered an order that settled Mr. McKay's lawsuit against Mr. Bull and Integon General Insurance Corporation for \$25,000. Mr. McKay had no knowledge that the lawsuit against Mr. Bull and Integon General Insurance Corporation had been settled by Respondent or that Respondent did not protect his claim against his own insurance company.

35. Respondent did *not* communicate to Mr. McKay the actual \$25,000 settlement offer from Integon General Insurance Company. Respondent did *not* get Mr. McKay's approval to settle the lawsuit for the proposed \$25,000. Respondent settled the case for \$25,000 *without* Mr. McKay's approval and/or consent. In his affidavits to the Virginia State Bar dated August 17, 2005 and October 3, 2005, Respondent admits that he intentionally and deliberately fabricated the Release and Dismissal Order that he presented to Mr. McKay in order to cover up his error and in an effort to buy time to pay Mr. McKay from Respondent's own resources.

36. Mr. McKay confirms that Respondent falsely informed him that on October 19,

2004, the Bull lawsuit had settled for \$50,000. In addition, Mr. McKay stated that Respondent told him that he would receive a large sum of money from his own insurance company. Mr. McKay stated that he relied on Respondent's deliberate misrepresentations of the facts concerning the posture of his lawsuit and the large sum of money he was to receive from his own insurance company and retired from his job as a teacher.

37. In his February 8, 2006 report, Virginia State Bar Investigator James W. Henderson states that Mr. McKay told Investigator Henderson that Respondent informed Mr. McKay that his case had settled twice. The first settlement agreement was not enforceable because the language was incorrect and that he had to start over. Mr. McKay also told Investigator Henderson that Respondent told him that the second settlement amounts would be \$180,000 from his insurance company and \$50,000 from Mr. Bull's insurance company. Investigator Henderson reported that Respondent paid Mr. McKay various sums of money from his own resources at several of their meetings together, totaling about \$15,000. In his affidavits to the Bar dated August 17, 2005 and October 3, 2005, Respondent does not refute or deny, but corroborates, these facts.

38. Investigator Henderson's February 8, 2006 report states that Respondent informed him that he first told Mr. McKay that he would receive \$300,000 from his insurance company, but later told him that he would receive \$180,000 from his insurance company. Respondent told Investigator Henderson that he finally settled the Bull lawsuit for \$25,000 without Mr. McKay's knowledge.

39. On or about May 17, 2006, Virginia State Bar Investigator Henderson submitted Mr. McKay's telephone records and personal calendars showing that, over the course of four years, Mr. McKay had over seventy meetings with Respondent to discuss the progress of his

case.

40. Over the course of this four-year attorney-client relationship, Respondent did not discuss with Mr. McKay any fee arrangements concerning the personal injury matter. Respondent did *not* communicate to his client whether he would bill on an hourly basis, or handle the case for a flat fee or on a contingency-fee basis. Investigator Henderson reports that Respondent told him that, although he never discussed any type of fee arrangement with Mr. McKay, he had intended to charge him only a ten-percent (10%) contingency fee because of their thirty-year friendship. Under the *Rules of Professional Conduct*, a contingency fee arrangement must be in writing explaining the attorney's calculation of fees and expenses. At the conclusion of the matter, the attorney must provide the client written statement showing the results obtained and the calculation of remittance paid to the client. Respondent did not provide any of this information to Mr. McKay.

41. In his affidavit to the Virginia State Bar dated August 17, 2005, Respondent admits that he lied to Mr. McKay over the course of his representation in order to conceal the following facts:

- i) he did *not* properly include Mr. McKay's automobile insurance company in the lawsuit to protect his underinsured motorist claim;
- ii) he did *not* attempt to correct his error when he discovered it;
- iii) he had settled the lawsuit for \$25,000 without McKay's approval and/or consent;
- iv) he had fabricated documents to intentionally and deliberately mislead Mr. McKay to cover up his error and to "buy time for [Respondent] to make efforts to pull the money together" to pay him from his own resources;
- v) he did *not* communicate his mistake to Mr. McKay when he discovered it; and,
- vi) he lied to other attorneys involved in the case to avoid detection.

42. In his affidavit to the Virginia State Bar dated October 3, 2005, Respondent admits that he told Mr. McKay so many lies that he cannot remember all of the lies he told him to cover up his error.

43. In January of 2005, Respondent began using his attorney trust account to conduct his personal business. Respondent had overdrawn his personal or business operating account by \$2,000.00. Subsequently, due to the large overdraft, the bank closed Respondent's personal checking account.

44. In January of 2005, Respondent wrote a check from his attorney trust account, for his personal use, made payable to Giant Foods. In February of 2005, he wrote two checks from his attorney trust account, both for his personal use, one made payable to Giant Foods and the to SunTrust. In November of 2005, he wrote two checks from his attorney trust account, both for his personal use, one made payable to Sallie Mae and the other to Texaco/Shell-Consumer. In December of 2005, he wrote two more checks from his attorney trust account, for his personal use, one made payable to Wells Fargo Financial in the amount of \$642.00 and another made payable to Duddy Ent. (sp.).

THE VIRGINIA STATE BAR DISCIPLINARY BOARD finds by clear and convincing evidence that such conduct in Virginia State Bar docket number 06-070-0574 on the part of the Respondent, Thomas Marshall James, constitutes a violation of the following provisions of the Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

RULE 1.2 Scope of Representation

- (a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

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.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

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.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

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.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by

which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

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.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (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 lawyer's fitness to practice law;

VSF Docket Number 06-070-1845

45. On December 5, 2005, SunTrust Bank, pursuant to the Attorney Trust Account Regulations, notified the Virginia State Bar that Respondent had two trust account instances of NSF (Non Sufficient Funds). A check made payable to Wells Fargo Financial and another check made payable "Duddy Ent." (sp.) caused an overdraft of \$316.52 of Respondent's attorney trust

account.

46. In November of 2005 and December of 2005, Respondent made deposits of earned fees, i.e., he deposited his personal income, into his attorney trust account. In Virginia State Bar Investigator Henderson's February 3, 2006 Report of Investigation, Respondent told Investigator Henderson that he used his trust account to conduct his personal business because the bank closed his personal account due to an overdraft of \$2,000.00 that he is in the process of paying back to the bank. Respondent did not attempt to open another personal checking account. Respondent admitted to Investigator Henderson that he used his IOLTA attorney trust account as a regular personal checking account ever since the bank closed his general personal account.

47. Prior to the closure of Respondent's personal bank account, he used his attorney trust account only to deposit client funds. Upon the closure of his personal account, Respondent began to deposit his personal funds into his attorney trust account and kept in excess of two years' worth of funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution. The Bar does not contend that Respondent inappropriately used client funds for his personal use or that client funds were held in the account at the time of the Non-Sufficient Funds notice.

THE VIRGINIA STATE BAR DISCIPLINARY BOARD finds by clear and convincing evidence that such conduct in Virginia State Bar docket number 06-070-1845 on the part of the Respondent, Thomas Marshall James, 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.

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;

VSF Docket Number 07-070-0455:

48. On August 8, 2006, Respondent overdrew his lawyer's trust account by \$251.08. On August 11, 2006, he overdrew the account again by \$128.42.

49. In August of 2006, Virginia State Bar Investigator James W. Henderson initiated another investigation of Respondent's use of his lawyer's trust account for personal banking. Investigator Henderson had conducted at least two previous investigations of Respondent in the past two years for the same behavior. During these previous investigations, Investigator Henderson had repeatedly warned Respondent that his use of his lawyer's trust account for personal banking -- depositing personal funds into the trust account and paying personal bills from the trust account -- was improper and a violation of Rule of Professional Conduct 1.15. Investigator Henderson also informed Respondent that his continued use of his lawyer's trust

account for personal use subsequent to a previous warning was a violation of Rule of Professional Conduct 8.4 – Misconduct because he had actual notice of his violation, but by knowingly, intentionally, and willfully continued to use his IOLTA attorney trust account to conduct personal financial transactions.

50. Respondent had set up payment of three personal bills through automatic electronic withdrawals from his lawyer's trust account. In August of 2006, Respondent authorized the following automatic payments:

- a. on August 2, 2006, \$602.33 to Sallie Mae Corp;
- b. on August 3, 2006, \$155.00 to GEICO Insurance Co;
- c. on August 8, 2006, \$348.00 to Chase Bank.

51. On October 17, 2006, Respondent, through his counsel, Bernard J. DiMuro, facsimiled his response to the instant Bar complaint to Investigator Henderson. This facsimile also included a statement, dated September 30, 2006 and prepared by Respondent, in which Respondent admitted that:

- a. he deposited personal funds into his lawyer's trust account in excess of two years' worth of financial institution service fees;
- b. he used his lawyer's trust account as a personal checking account; and
- c. he set up automatic withdrawals from his lawyer's trust account to conduct personal transactions unrelated to his practice of law.

52. Prior to the closure of Respondent's personal bank account, he used his attorney trust account only to deposit client funds. Upon the closure of his personal account, Respondent began to deposit his personal funds into his attorney trust account in excess of two years' worth of funds reasonably sufficient to pay service or other charges or fees imposed by the financial

institution. The Bar does not contend that Respondent inappropriately used client funds for his personal use or that he held client funds in the account at the time of the Non-Sufficient Funds notices.

THE VIRGINIA STATE BAR DISCIPLINARY BOARD finds by clear and convincing evidence that such conduct in Virginia State Bar docket number 06-070-0455 on the part of the Respondent, Thomas Marshall James, 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.

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 Virginia State Bar Disciplinary Board hereby ORDERS that the Respondent shall receive a **FIVE (5) YEAR SUSPENSION, WITH TERMS**, effective September 30, 2007, subject to the terms and alternative disposition set forth

below:

1. On September 30, 2012, Thomas Marshall James shall certify his compliance with this term by delivering a fully and properly executed sworn statement to the Assistant Bar Counsel assigned to the Virginia State Bar's Seventh District, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, that he has not received a notice of non-sufficient funds concerning any and all financial institution accounts where Respondent currently serves as a fiduciary or assumes a fiduciary obligation of an account, during the five-year period of his license suspension. For the purpose of this Order adopting the Agreed Disposition, the term "fiduciary" includes only Respondent's conduct as a personal representative, trustee, receiver, guardian, committee, custodian, and attorney-in-fact.

2. If, however, the term and condition set fourth in the immediately preceding Paragraph 1 has not been met by September 30, 2012, the alternative sanction shall be revocation of the Respondent's license to practice law in the Commonwealth of Virginia.

3. Should the Virginia State Bar allege that Respondent has failed to comply with the terms of discipline referred to herein and that the alternative disposition should be imposed, a "show cause" proceeding pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.I.2.g. will be conducted, at which proceeding the burden of proof shall be on the Respondent to show the disciplinary tribunal by clear and convincing evidence that he has complied with terms of discipline referred to herein.

4. The provisions of Part 6, Section IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia are inapplicable to this Agreed Disposition because the Respondent is not engaged in the practice of law at this time. It is further ORDERED that if the Respondent is not handling any client matters on September 30, 2007, 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 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for a hearing before a three-judge court.

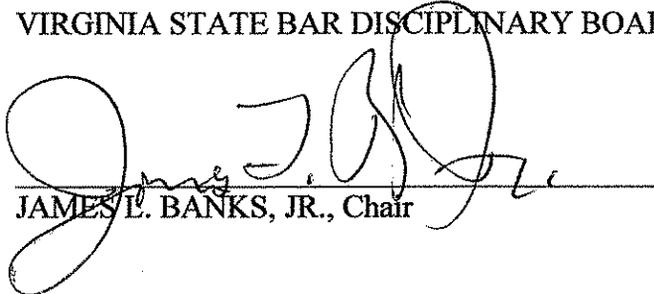
5. Pursuant to Part 6, Section IV, Paragraph 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

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

It is further ORDERED that an attested copy of this Order be mailed to the Respondent by certified mail, return receipt requested, to his Virginia State Bar address of record, at 700 East High Street, Charlottesville, VA 22902, and a copy by regular mail to his counsel, Bernard J. DiMuro, Esq., at 908 King Street, Suite 200, Alexandria, VA 22314-3018, and a copy by regular mail to Alfred L. Carr, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street suite 310 Alexandria, VA 22314-3133.

ENTERED this 25th day of September, 2007.

VIRGINIA STATE BAR DISCIPLINARY BOARD



JAMES L. BANKS, JR., Chair