

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF  
VAUGHAN CHRISTOPHER JONES**

**VS B Docket No.      08-033-072262  
                                 08-033-072447  
                                 08-033-072448**

**MEMORANDUM ORDER**

This matter came on to be heard on August 10, 2009, by the Disciplinary Board of the Virginia State Bar (the Board) by telephone conference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of Jody D. Katz (Lay Member), David R. Schultz, Bruce T. Clark, John S. Barr, and William E. Glover, First Vice Chair, presiding.

The Virginia State Bar appeared through its Bar Counsel, Edward L. Davis, and the Respondent, Vaughan Christopher Jones, appeared *pro se*.

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

The Vice Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Vice Chair, verified they had no such interests.

The Panel heard argument from counsel and reviewed the Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, a majority of the Panel accepted the Agreed Disposition.

### **I. FINDINGS OF FACT**

The Disciplinary Board finds the following facts by clear and convincing evidence:

1. During all times relevant hereto, the Respondent, Vaughan Christopher Jones, has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Mr. Jones is a named partner in the law firm of Johnson Jones, LLP, with Kevin E. Johnson, Esquire.
3. Mr. Jones employed attorney Diane Abato as an associate at the law firm from February 2005 until her departure on August 31, 2007.
4. Upon her departure, a dispute developed between Ms. Abato and Mr. Jones concerning client files that she took with her, and the disposition of fees paid by those clients to the law firm in advance.
5. Unable to resolve the dispute to her satisfaction, and feeling that the law firm wrongfully withheld funds due to her clients, Ms. Abato complained to the Virginia State Bar on September 25, 2007.
6. Ms. Abato authored two other complaints for clients Gloria Ann Davis and Sean Mims that they filed with the Virginia State Bar as well. Each complaint, dated October 8, 2007, alleged that the law firm wrongfully failed to turn over the unearned portion of their fees to Ms. Abato, who was concluding their cases after her departure from the firm.
7. Litigation ensued between the parties that were ultimately resolved in favor of Mr. Jones, his law partner, and the law firm.<sup>1</sup>
8. The Virginia State Bar investigation, however, revealed that Mr. Jones did not cause any of the clients' advanced fees to be deposited into the law firm's escrow account, but allowed them to be deposited into the law firm's operating account instead.
9. Mr. Jones candidly explained to the Virginia State Bar investigator that he did this even though the law firm received such fees as early as the initial client consultation, long before the fees had been earned.

10. Bank records provided by Mr. Jones in response to a subpoena duces tecum confirmed this practice.
11. Similarly, the law firm bookkeeper confirmed the practice during a deposition. The bookkeeper related further that the two partners opened LLP accounts in their own names into which they would transfer the advanced fees from the law firm's operating account.
12. Mr. Jones candidly confirmed with the Virginia State Bar that these fees were distributed to the law firm's partners as income.
13. The written fee agreements executed by clients Gloria Ann Davis and Sean Mims provided for Johnson Jones, LLP, to "reimburse you for any unearned portion of the above stated fee" upon withdrawal of representation by an attorney.
14. Similarly, letters from partner Kevin E. Johnson to Ms. Davis and Mr. Mims, each dated November 27, 2007, acknowledged that each client had terminated their relationship with the law firm, and stated, "You are entitled to the return of any unearned portion of your retainer fee."
15. As a result of depositing advanced fees into the operating account, however, there were no escrow funds to refund to the clients in the event that the law firm did not conclude their cases.
16. The law firm received Ms. Davis' check in the amount of \$2500 on May 3, 2007, the day of her first meeting with Ms. Abato, and deposited it into a non-escrow account on May 9, 2007, according to their records. Ms. Abato was still working the case upon her departure from the firm on August 30, 2007.
17. The law firm also received Mr. Mims' check in the amount of \$10,000, for representation in a federal criminal matter, on March 13, 2007, and likewise deposited it into the same non-escrow bank account on March 19, 2007. The case was still pending the sentencing hearing when Ms. Abato departed the firm on August 30, 2007.
18. Mr. Mims previously hired the firm for a state criminal matter on June 28, 2006, for which he paid \$5000 on June 28, 2006 and \$5000 on July 6, 2006. The firm deposited both checks into the same non-escrow bank account on June 30, 2006 and July 10, 2006, respectively. That case did not conclude until the following year, March 8, 2007, in the Colonial Heights Circuit Court.
19. Initially, Mr. Jones felt that the practice of depositing advanced fees into the general account upon receipt was appropriate. Since that time, Mr. Jones has consulted the pertinent Rules of Professional Conduct and understands his obligations to deposit all unearned advanced fees into an approved escrow account.

20. Pertinent Virginia Legal Ethics Opinions and case authorities uniformly provide that fees paid in advance for legal services not yet performed are advanced legal fees that must be properly deposited and identified as belonging to the client until earned, and that because advanced legal fees do not belong to the lawyer until the services are rendered, they must be deposited in an identifiable trust account and remain the property of the client until they are earned by the attorney. LE Op. 1606.<sup>2</sup>

## **II. NATURE OF MISCONDUCT**

The Disciplinary Board finds that such conduct by Vaughan Christopher Jones constitutes misconduct in violation of the following 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.

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<sup>1</sup> Messrs. Jones and Johnson, and Johnson Jones, LLP, sued Abato and Davis for conspiracy, breach of contract, the return of fees belonging to the law firm, defamation and other matters. Abato and Davis counterclaimed for the return of the disputed flat fees and other matters. The Circuit Court for the City of Richmond sustained a demurrer to the counterclaim on the basis that the attorneys did not have standing to sue for their clients' fees. On July 30, 2008, a jury awarded a judgment for the plaintiffs against the defendants for \$5,000 each representing fees from court-appointed cases earned while the defendants were employed by the plaintiffs.

<sup>2</sup> Further, the element of payment for future legal services differentiates advanced legal fees from a retainer. LE Op. 1322, LE Op. 1178. The two terms are not synonymous.

### **III. IMPOSITION OF SANCTION**

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** that the Respondent, Vaughan Christopher Jones, receive a **PUBLIC REPRIMAND WITH TERMS**, the terms being:

1. The Respondent will schedule an appointment with Virginia State Bar Investigator Oren M. Powell to review the trust account records of the Respondent's existing law practice within ninety (90) days of the date of the entry of this disposition.
2. The scope and purpose of the inspection(s) is to insure compliance with Rule 1.15 of the Rules of Professional Conduct.
3. Mr. Jones shall be in full compliance with Rule 1.15 when he meets with Investigator Powell.
4. If the Virginia State Bar Investigator discovers any areas in the management or reconciliation of the Respondent's attorney trust account that require improvement or revision, the Respondent will make such revisions or improvements as directed by the Virginia State Bar.
5. If the Respondent fails to make any such revisions or improvements to the satisfaction of the Virginia State Bar, or fails to comply with any of the terms of this disposition within the time period stated, the bar shall serve notice upon the Respondent to appear before the Virginia State Bar Disciplinary Board to show cause why the alternate disposition should not be imposed.

Upon satisfactory proof that the terms and conditions of this Agreed Disposition have been met, this matter shall be closed. Failure to comply with any of the foregoing terms and conditions will result in the imposition of the alternate disposition: a hearing before the Virginia

State Bar Disciplinary Board to determine an appropriate sanction, including but not limited to the suspension or revocation of the Respondent's law license.

The imposition of the alternate disposition will not require a hearing before the Virginia State Bar Disciplinary Board or a three-judge court on the underlying charges of misconduct stipulated to in this Agreed Disposition if the Virginia State Bar discovers that the Respondent has violated any of the foregoing terms and conditions. Instead, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate disposition should not be imposed. The sole factual issue will be whether the Respondent has violated any of the terms of this Agreed Disposition without legal justification or excuse. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by the Virginia State Bar Disciplinary Board.

It is further **ORDERED** that the second and third cases, VSB Docket Number 08-033-072447, and VSB Docket Number 08-033-072448 are hereby **DISMISSED** because the facts alleged in those matters are the same as those set forth in Findings of Fact of this disposition.

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

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order to Vaughan Christopher Jones at his last address of record with the Virginia State Bar, Johnson Jones LLP, 1622 West Main Street, Richmond, VA 23220 and a copy hand delivered to Edward L. Davis, Bar Counsel, 707 East Main Street, Suite 1500, Richmond, VA 23219.

Traci Johnson, Registered Professional Court Reporter, Chandler & Halasz, Post Office Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, was the court reporter for the hearing.

ENTERED: August 12, 2009

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:   
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William E. Glover, First Vice Chair