

VIRGINIA:

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

**IN THE MATTER OF
KHALIL WALI LATIF**

**VSB Docket Nos: 04-031-0899
04-031-3237
05-031-0466
05-031-0082
05-031-2868
05-031-3226
05-031-3674
05-031-4699
06-000-0741**

**ORDER
(SUSPENSION OF 1 YEAR AND 1 DAY WITH TERMS)**

On June 14, 2006, a duly-convened 5-member panel of the Virginia State Bar Disciplinary Board consisting of Robert L. Freed, Chair, V. Max Beard, Lay Member, William C. Boyce, Jr., William H. Monroe, Jr., and Rhysa G. South, met and heard the Agreed Disposition of the parties, Respondent Khalil Wali Latif, by counsel Thomas H. Roberts, and the Virginia State Bar, by Assistant Bar Counsel Kathryn R. Montgomery, made pursuant to Part Six, Section IV, Paragraph 13.B.5.c of the Rules of the Supreme Court of Virginia. The proceeding was transcribed by Theresa H. Griffith of Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222. The Board hereby approves the Agreed Disposition.

The Board heard evidence in the case involving Complainant Zachary Hamlet (Docket No. 04-031-3237) during the March 23-24 hearing and based upon the testimony of witnesses *ore tenus* and through *de bene esse* deposition, the exhibits and oral argument of counsel for the Bar and Respondent makes the following findings of fact in

that case. In the remaining cases, Respondent, his counsel and counsel for the Bar have stipulated to the findings of fact.

FINDINGS OF FACT

1. Khalil Wali Latif, formerly known as Alan Eugene Barnett, Sr., was admitted to the practice of law in the Commonwealth of Virginia on April 25, 1991.

Docket No. 04-031-3237 (Zachary Hamlett)

2. In July of 2002 Zachary Hamlett (Hamlett) and/or his family paid Respondent \$7,500 to represent Hamlett in an appeal of his criminal convictions. Respondent filed an appeal with the Court of Appeals.

3. In his Notice of Appeal to the Court of Appeals, Respondent represented (as is required) “a transcript has been ordered by counsel from the COURT REPORTER, who reported this case.”

4. Subsequently, Respondent filed a Motion to Extend Time for Filing Transcript (the Motion) in which he represented “Counsel has ordered same from COURT REPORTER RACHEL BARKSDALE, TEL. [REDACTED PHONE NUMBER], in Brookneal, VA and has paid her in advance for same. Ms. Barksdale advised office of counsel that the record is so lengthy and her schedule so busy that she cannot meet the required deadline and needs an extension.” The Court of Appeals granted the Motion in an order dated August 19, 2002.

5. Rachel Barksdale then wrote Respondent on August 28, indicating she received the Motion and “This is to advise that I have not received payment in this matter, in advance, and I have not agreed to prepare the transcript until payment is received by me. I have attempted to contact your office several times regarding this matter but my calls

have not been returned.” Barksdale also told Respondent’s secretary several times she would not prepare the transcript until she was paid \$1,000.

6. Subsequently, Rachel Barksdale was paid and the transcript was prepared and filed.

7. The Court of Appeals denied the appeal in an order dated June 24, 2003.

8. Respondent did not advise Hamlett of the denial of the appeal until a letter dated August 22, 2003. That letter did not address the possibility of a further appeal to the Virginia Supreme Court.

9. In responding to the complaint, Respondent said he did not believe Hamlett wanted to continue the appeals process. More recently, in an interview with the Bar’s Investigator, Respondent said he did not file an appeal to the Virginia Supreme Court because Respondent believed such an appeal would not be successful.

10. On August 20, 2003, Hamlett’s father (Carter) paid Respondent \$1,850 for possible representation in a habeas corpus matter (unrelated to the failure to file an appeal to the Supreme Court). Respondent admits he did not put those funds into his trust account. He told the Bar Investigator he performed about 4 hours worth of work on the habeas matter at \$200 per hour, and in response to her questions acknowledged he owed a refund of \$1,050. He has made no refund despite repeated requests from Hamlett.

11. This case was tried before the Virginia State Bar Disciplinary Board on March 23, 2006. The Board found violations of Rules 1.3(b); 1.4(a); 1.15(a) and (c); 8.4(c), but did not determine the appropriate sanction. Pursuant to the agreement and request of the parties, the Board includes this case in the proposed disposition.

Docket No. 05-031-0466 (Elizabeth Caraveo)

12. The Bar contends that Respondent did not diligently file Complainant's bankruptcy petition in violation of Rule 1.3(a) of the Rules of Professional Conduct and did not promptly comply with her reasonable requests for information in violation of Rule 1.4(a).

13. Respondent contends that he filed Complainant's petition in a timely manner and promptly complied with her reasonable requests for information. Respondent further contends that Complainant's petition was not filed earlier because she vacillated in her decision whether to file.

14. In consideration for this Agreed Disposition, the Bar withdrew the charge that Respondent violated Rule 1.3(a) and Rule 1.15(c) and (e) of the Rules of Professional Conduct.

15. In consideration for this Agreed Disposition, Respondent stipulates to a violation of Rule 1.4(a) of the Rules of Professional Conduct.

Docket No. 05-031-0082 (Daniel S. Arnold, Sr.)

16. In early September 2002, Complainant Daniel S. Arnold, Sr. ("Complainant") retained Respondent to represent his mother, Mary Virgil, age seventy (70), in a divorce from her husband, James Virgil, Complainant's stepfather. The couple had separated in June 2002, and Complainant had taken his mother to live with him in New Jersey. Complainant agreed to pay Respondent for the legal services with the client's consent.

17. In addition to the separation and divorce, Respondent also agreed to handle the property settlement, assist in the sale of property, and investigate why James Virgil had not been prosecuted for physically abusing Complainant's mother. Complainant sent to Respondent an advanced legal fee of \$2500, which Complainant paid by cashier's

check dated September 3, 2002. Complainant understood this amount was “to get the services started.” Dep.at 26.

18. In the time period between September 3, 2002 and September 1, 2003, James Virgil died, leaving all the marital property to Complainant’s mother and rendering the divorce and property settlement issues moot.

19. Respondent did not file a petition for divorce, since James Virgil died in about a year, and did not settle the property issues, since Mr. Virgil’s will left everything to Respondent’s client. Respondent did determine that the abuse charges were dropped against James Virgil due to lack of evidence. Respondent also talked with Mr. Virgil’s son regarding property issues and determined that no action was necessary to prevent the sale of the real estate which was owned as tenants by the entirety with right of survivorship. Sometime in 2003, Respondent advised Complainant of what he had learned.

20. During the course of the representation, Respondent rarely returned Complainant’s calls.

21. By letter dated June 5, 2003, Respondent advised Complainant’s mother that his license to practice law would be suspended on September 1, 2003 for a period of four months.

22. After receiving the June 5, 2003 letter, Complainant spoke with Respondent, who promised him a partial refund of his \$2500 fee. Respondent told Complainant that an employee had embezzled money from his trust account, and therefore he could not immediately refund the fee. Complainant told Respondent that he would drop the bar complaint if Respondent refunded his money.

23. In a letter dated November 19, 2003 from Respondent to Complainant, Respondent promised to refund \$2500 to Complainant after his license to practice law was reinstated in January 2004.

24. As of May 24, 2005, Respondent has not refunded any portion of the \$2500.00 fee to Complainant.

25. Respondent contends that Complainant was attempting to extort money from him in violation of law and that he was not required to pay or deliver to Complainant any refund. However, in consideration of this Agreed Disposition, Respondent stipulated to a violation of Rule 1.15(c)(4), which requires lawyers to promptly pay to the client or another as requested by such person the funds in possession of the lawyer which the person is entitled to receive.

Docket No. 05-031-2868 (Brandon Hubbard)

26. The Bar withdraws the charges of violations of Rule 1.1 (competence) and Rule 1.3(a) (diligence).

Docket No. 05-031-3674 (Michael Fortanbary)

27. On December 15, 2004, Respondent was appointed by the Prince Edward Circuit Court to represent Lauren Fortanbary, daughter of Michael Fortanbary ("Complainant"), on various criminal charges.

28. On January 5, 2005, Complainant agreed to pay Respondent to represent his daughter on these same charges in addition to additional charges levied against her. He paid Respondent \$5,000. Respondent's rate was \$200 per hour.

29. On January 10, 2005, Respondent represented Complainant's daughter at a preliminary hearing. Three charges were nolle prossed, and one charge was reduced to a misdemeanor. Complainant's daughter was released on bond. On January 18, 2005, the grand jury returned an indictment for possession of a controlled substance. Trial was set for April 4, 2005.

30. On January 28, 2005, Respondent's license to practice law was suspended for two years. In early February, 2005, Respondent notified Complainant of the suspension.

31. On February 19, 2005, Complainant and his daughter met with Respondent at his office. Complainant told Respondent he wanted an itemized bill and a refund on the portion of the fee that was unearned. Respondent said attorney Eric Tinnell would handle the case, and that Respondent would transfer the unearned portion of his fee to Mr. Tinnell. Respondent also said he would schedule a meeting with Mr. Tinnell.

32. On several occasions thereafter, Complainant tried to reach Respondent by phone, but was unsuccessful. On March 11, 2005, Complainant e-mailed Respondent's then former assistant requesting a full accounting and transfer of the unearned portion of the fee to Mr. Tinnell or alternatively, a refund of the unearned fee.

33. Respondent mentioned Complainant's daughter's case to Mr. Tinnell, but did not discuss the case in detail or provide the file. Moreover, Respondent did not transfer any part of his fee to Mr. Tinnell or advise Mr. Tinnell that he would do so.

34. Thereafter, having heard nothing from Respondent, Complainant scheduled a meeting with Mr. Tinnell. Complainant paid Mr. Tinnell \$500 to handle the case, which Mr. Tinnell did. An order of substitution was entered and a plea agreement for probation was reached and accepted by the court on April 20, 2005.

35. Complainant never received an itemized bill from Respondent or a refund of the unearned portion of his fee.

36. Mr. Tinnell never received the file or any portion of the \$5,000 fee from Respondent.

37. The Virginia State Bar issued a subpoena duces tecum to Respondent returnable June 24, 2005 for all trust account records related to this case. However, Respondent has produced no trust account records related to this case. Respondent contends that since his suspension, he has struggled to earn a livelihood for his family and has been unable to locate the records to produce same.

38. Respondent contends that he was poorly trained and equipped to manage the “backend” of a small law office including proper trust accounting implicating Rule 1.15 (e), realizing that he should have remained in an office environment where those functions were performed either by the state (e.g., his job as a prosecutor in Petersburg, VA) or a larger law office or public defenders office. In that regard, when and if Mr. Respondent enters the practice of law again, he would take such steps necessary to ensure that these law office management tasks are not part of his duties or responsibilities, by working in a government office or the like.

39. In consideration of this Agreed Disposition, Respondent stipulated to violations of Rules 1.3(a), 1.4(a), 1.5(a), 1.15(c) and (e), and 1.16(d) and (e).

Docket No. 05-031-4699 (Andrea R. Sprague-Smith)

40. The Bar withdraws the charges that Respondent violated Rule 1.3(a) of the Rules of Professional Conduct and Rule 1.4(a) of the Rules of Professional Conduct.

II. RULES OF PROFESSIONAL CONDUCT

The Board hereby finds the following violations of the 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.

RULE 1.5 Fees

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

- (8) whether the fee is fixed or contingent.

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.
- (c) A lawyer shall:
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.
- (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

- (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).
- (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 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

III. DISPOSITION

The Board hereby approves the Agreed Disposition, and ORDERS as follows:

Respondent's license to practice law shall be Suspended for One Year and One Day. *All but three months* of the one-year, one-day suspension shall run *consecutively* with his current suspension, such that the suspension imposed herein shall begin on **October 27, 2006 and end on October 28, 2007**. This proposed disposition includes any sanction the Board would impose for the Rule violations found in 04-031-3237. The Board also ORDERS that Respondent shall timely comply with the following terms:

1. Respondent Khalil Wali Latif shall remit the following amounts to the following persons by **August 1, 2006**:
 - \$1850 to James Carter, the father of Complainant Zachary Hamlett;
 - \$500 to Complainant Daniel S. Arnold, Sr.
 - \$1000 to Complainant Michael Fortanbary
2. Respondent shall not engage in the private practice of law for five (5) years after his suspension herein imposed ends unless he first completes two (2) hours of CLE credit in the area of trust account management and completes four (4) hours of *live* CLE credit in the area of ethics. These hours of CLE shall not count toward Respondent's annual MCLE requirement or the reinstatement requirements of Part Six, Section IV, Paragraph 13.I.8.c of the Rules of the Supreme Court of Virginia. Respondent shall not submit these hours to the MCLE Department of the Virginia State Bar or any other Bar organization for credit. Instead, he shall submit proof of attendance to the Office of Bar Counsel of the Virginia State Bar.

3. Respondent shall not engage in the private practice of law for five (5) years after his suspension herein imposed ends unless he engages the services of a law office management consultant approved by the Virginia State Bar to review and make written recommendations concerning his law practice policies, methods, systems, and procedures.

a. The Respondent shall institute and thereafter follow with consistency any and all recommendations made to him by the law office management consultant following the law office management consultant's evaluation of the Respondent's practice. The Respondent shall grant the law office management consultant reasonable access to his law practice from time to time, at the consultant's request, for purposes of ensuring that the Respondent has instituted and is complying with the law office management consultant's recommendations. In evaluating the Respondent's law office management policies and procedures, the law office management should, *inter alia*, consult with Respondent initially to organize and to set practices and procedures into place and thereafter may provide three quarterly checkups to adjust and/or to insure that the practices and procedures are working.

b. The engagement of the law office management consultant's services shall specifically include the authorization and directive by the Respondent to the law office management consultant, upon the Respondent's failure to comply with any of the law office management consultant's recommendations, that the law office management consultant shall provide the Virginia State Bar with access, by telephone conferences and/or written reports detailing the failure to comply with the findings and recommendations of the law office management consultant by the Respondent.

c. The Respondent shall be obligated to pay when due the fees and costs of the law office management consultant including, but not limited to, the provision to the Bar of information described above concerning this matter.

4. Respondent shall timely comply with his obligations under Part Six, Section IV, Paragraph 13.M of the Rules of Court, which states as follows:

After a Suspension against a Respondent is imposed by either a Summary or Memorandum Order and no stay of the Suspension has been granted by this Court, or after a Revocation against a Respondent is imposed by either a Summary Order or Memorandum Order, that Respondent shall forthwith give notice, by certified mail, of his or her Revocation or Suspension to all clients for whom he or she 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 or her care in conformity with the wishes of his or her clients. The Respondent shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of the Revocation or Suspension that such notices have been timely given and such arrangements made for the disposition of matters. The 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 the requirements of this subparagraph.

5. Time is of the essence for compliance with each and every one of the above stated terms.

6. Before, Respondent's license to practice law is reinstated, he must comply with Part Six, Section IV, Paragraph 13.I.8.c of the Rules of Court, which states:

After Disciplinary Suspension for More than One Year

After a Suspension for more than one year, the License of the Attorney subject to the Suspension shall not be reinstated unless the Attorney demonstrates to the Board that he or she: has attended 12 hours of continuing legal education, of which at least two hours shall be in the area of legal ethics or professionalism, for every year or fraction thereof of the Suspension; has taken the Multistate Professional Responsibility Examination since imposition of discipline and received a scaled score of 85 or higher; has reimbursed the Bar's Clients' Protection Fund for any sums of money it may have paid as a result of the Attorney's Misconduct; has paid to the Bar all Costs that have been assessed against him or her, together with any interest due thereon at the judgment rate at the time the Costs are paid; and has reimbursed the Bar for any sums of money it may have paid as a result of a receivership involving Petitioner's law practice.

If, however, Respondent fails to meet any of terms #1 through #5 within the time specified as to that term, pursuant to the Agreed Disposition, the Disciplinary Board ORDERS that the alternative sanction is Revocation. If there is disagreement as to whether the terms were fully and timely completed, the Disciplinary Board will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the term or terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

In consideration of this Agreed Disposition, Assistant Bar Counsel has sought a dismissal of VSB 06-000-0741, a Paragraph 13M Show Cause pending before the Disciplinary Board. By this Order, that case is hereby DISMISSED.

On March 22-23, 2006, the Board conducted a full hearing in both VSB 04-031-0899 and 05-031-3226, and dismissed all Charges of Misconduct. By this Order, those cases are hereby DISMISSED.

As part of the Agreed Disposition, Assistant Bar Counsel withdrew all Charges of Misconduct in VSB 05-031-2868 and 05-031-4699. Therefore, by this Order, those cases are hereby DISMISSED.

The Clerk of the Disciplinary System shall assess costs pursuant, Part 6, Section IV, Paragraph 13.B.8.C, of the Rules of the Supreme Court of Virginia.

It is further ordered that an attested copy of this Order be mailed by certified mail, return receipt requested, to Khalil Wali Latif, at his address of record with the Virginia State Bar, P.O. Box 5300 Midlothian, Virginia 23112-0022, and copy by regular mail to Thomas H. Roberts, counsel for the Respondent, at 105 South First Street, Richmond, Virginia 23219, and hand delivered to Kathryn R. Montgomery, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED THIS 30 DAY OF June, 2006.



Robert L. Freed, Chair
Virginia State Bar Disciplinary Board