

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DAVID LASSITER, JR.

VSB Docket No. 11-033-086054

MEMORANDUM ORDER

This matter came on to be heard on May 1, 2013 before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Tyler E. Williams, III, 2nd Vice Chair, presiding; Timothy A. Coyle; Whitney G. Saunders; John Casey Forrester and Dr. Theodore Smith, lay member, (the "Board" or the "Panel"). The bar was represented by Bar Counsel Edward L. Davis. The Respondent appeared with his counsel, Claire Grimmer Cardwell, Esquire. Tracy J. Stroh, Chandler & Halasz, Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, was the court reporter for the hearing and transcribed the proceedings.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent presented to the Board a written proposed Agreed Disposition with respect to the matter.

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 Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having

considered all the evidence before it, the Panel accepted the Agreed Disposition by unanimous decision.

The Agreed Disposition contained the following

I. STIPULATIONS OF FACT

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

1. During all times relevant hereto, the Respondent, David Lassiter, Jr., was an attorney licensed to practice law in the Commonwealth of Virginia, having been admitted to practice on October 15, 1996.
2. On July 24, 2001, Mr. Lassiter applied for approval as appointed counsel in federal criminal cases under the Criminal Justice Act (CJA), 18 U.S.C. 3006A. The U.S. District Court for the Eastern District of Virginia approved his appointment and placed him on the list of CJA attorneys.
3. On November 17, 2003, Zaman Ashraf was arrested on a charge of conspiracy to distribute cocaine base, a felony. The same day he appeared before the U.S. District Court for the Eastern District of Virginia, Richmond Division, where he requested appointed counsel and submitted a financial affidavit.
4. The court determined that he was eligible for appointed counsel and, on November 18, 2003, appointed Mr. Lassiter to represent Mr. Ashraf on the charge.
5. On November 21, 2003, Mr. Lassiter and his client appeared for a detention hearing. The court ordered Mr. Ashraf held without bond.
6. Thereafter Mr. Lassiter met with Mr. Ashraf approximately eight times at the Piedmont Regional Jail in Farmville, Virginia.
7. At their first meeting, around the time of the November 21, 2003 detention hearing, the parties discussed the prospect of Mr. Ashraf paying legal fees to Mr. Lassiter instead of Mr. Lassiter remaining in the status of being court-appointed.
8. Mr. Ashraf recalls Mr. Lassiter telling him that he would be "better able to represent" him if Mr. Ashraf paid him, and that his fee would be \$10,000. Mr. Ashraf told Mr. Lassiter that he would have to contact his family about coming up with the money.
9. Mr. Lassiter, on the other hand, would say that the idea of paying a fee originated with Mr. Ashraf, that Mr. Ashraf cut off their discussion and asked Mr. Lassiter what his fee

would be for a case like his. Mr. Lassiter said he told Mr. Ashraf that his typical fee for a case such as his would be \$10,000, with \$6,000 paid up front. Mr. Lassiter said that Mr. Ashraf wanted to hire him because Mr. Ashraf believed that it was the honorable thing to do as he had the funds to pay for the representation, and that he asked for appointed counsel because he thought he could get an attorney more quickly that way and get a faster bond hearing.

10. Both men agree that they discussed a fee of \$10,000, and that Mr. Ashraf's family eventually paid \$6,000 to Mr. Lassiter to represent Mr. Ashraf on the charge for which Mr. Lassiter was previously appointed.
11. Shortly after the November 2003 meeting, Mr. Ashraf's daughter, Rita Butcher, contacted Mr. Lassiter to make arrangements for the payment. She asked Mr. Lassiter to provide his bank account number. Mr. Lassiter gave her his operating account number at Wachovia Bank, and on November 28, 2013, she deposited \$6,000 cash into Mr. Lassiter's operating account.
12. Mr. Lassiter explained that it was a mistake if he gave Ms. Butcher the number for his operating account since it was his responsibility to ensure that the funds were deposited into a proper account, that he must have given her what he thought was his trust account number.
13. Mr. Lassiter explained to the bar that he had no specific recollection of providing his account number to Ms. Butcher, but that he must have done so since she deposited the funds into his account.
14. During the bar's investigation Mr. Lassiter discovered a letter on his computer created on December 1, 2003. Mr. Lassiter recalled that during their first meeting, Mr. Ashraf provided his Citibank account number so that Mr. Lassiter could draft a letter for him to give Mr. Ashraf's daughter signature authority on the account and pay Mr. Lassiter's legal fee. Mr. Lassiter explained that Ms. Butcher "jumped the gun" and deposited the funds into Mr. Lassiter's account before he sent the letter.
15. Ms. Butcher said that she and Mr. Lassiter discussed setting up a place to meet and exchange the money, saying that he asked for cash. When they could not agree upon a place to meet, Ms. Butcher said that Mr. Lassiter provided her with his Wachovia Bank account number. She then opened her own account at Wachovia where she deposited the funds and then transferred them to Mr. Lassiter's account. On Mr. Lassiter's instructions, she wrote "Law Office of David Lassiter" on the deposit slip, according to Ms. Butcher.
16. Mr. Lassiter denied asking for cash and said that he wondered why Ms. Butcher did not simply send him a check. (Subsequent investigation revealed that Ms. Butcher's family gave her cash from Mr. Ashraf's mother to deliver to Mr. Lassiter.)

17. On December 20, 2003, Mr. Lassiter transferred the \$6,000 from his operating account to his attorney escrow account at Wachovia Bank. While Mr. Lassiter does not specifically recall this transfer he surmises that he made it when he realized that the money had been deposited in the wrong account.
18. Mr. Lassiter explained that he did not have a file or subsidiary ledger card for Mr. Ashraf's funds because his files were ruined during the 2004 Hurricane Gaston flooding.
19. On December 15, 2003, the grand jury indicted Mr. Ashraf for conspiracy to distribute crack cocaine, and on December 22, 2003, Mr. Lassiter and his client appeared at court for arraignment.
20. The Criminal Justice Act (CJA) Plan, Part III (F) (9), under which Mr. Lassiter was appointed, was adopted by order entered October 1, 2002, and provides that *Counsel appointed under the CJA Plan shall not solicit or accept anything of value from a defendant, the defendant's family or others acting for, or on behalf of the defendant, without previous approval by a district judge.* (As Mr. Lassiter indicates, this plan became effective after Mr. Lassiter's approval as federal appointed counsel the year before. For this reason, he explains, he was not aware of it. A copy of any previous plan cannot be located. The existing Criminal Justice Act statute did not have a similar provision, although it provided that no payments or promises to pay could be accepted by appointed counsel without authorization.)¹
21. Although the client's family paid Mr. Lassiter \$6,000 ten days after his appointment, and Mr. Lassiter transferred those funds to his attorney escrow account on December 20, 2003, two days before the arraignment hearing, Mr. Lassiter did not inform the court about the payment or seek leave of court to receive the payment from his client's family during the arraignment hearing or at any time.
22. Mr. Lassiter explained to the bar that he did not know the rule that he had to advise the court that he had been retained. He said that he knew he could not submit a voucher to court for payment if he was retained, and that he did not do so. (Mr. Lassiter in fact did not submit a request for payment as appointed counsel.)
23. Mr. Lassiter explained that normally at the close of a case the trial judge's clerk would ask if he was appointed or retained, at which time he would inform the court that he was retained, but that did not occur because he was substituted out of the case. He said that after the funds were deposited on November 28, 2003, to the best of his recollection at the time of the bar investigator's interview, he was not back in court on Mr. Ashraf's case, and that he never had an opportunity to advise the court in person. Mr. Lassiter emphasized, however, that he did not know that the CJA plan required him to do so.

24. Thereafter, Mr. Ashraf hired successor counsel who moved to substitute himself into the case on January 5, 2004. The court granted the motion on January 9, 2004, relieving Mr. Lassiter as Mr. Ashraf's counsel.
25. Mr. Lassiter explained to the bar investigator that he did not feel Mr. Ashraf was entitled to a refund because of the amount of time that he had devoted to the case, including eight visits to the Piedmont Regional Jail. He denies that anyone asked for a refund.
26. Mr. Lassiter did not render an accounting of his use of the \$6,000 to the client or to anyone.
27. After two more substitutions of counsel, Mr. Ashraf eventually pled guilty to the charge and was sentenced to 190 months in prison. He was found guilty of similar charges in New York for which he was also sentenced.ⁱⁱ
28. On August 21, 2009, Mr. Ashraf filed a complaint against Mr. Lassiter in the United States District Court for the Eastern District of Virginia alleging that Mr. Lassiter had defrauded him of \$6,000 that his family paid Mr. Lassiter to represent him when Lassiter was court appointed. On September 25, 2012, however, the U.S. District Court dismissed Mr. Ashraf's complaint for failure to state a claim upon which relief may be granted.ⁱⁱⁱ
29. In December 2009, having seen the suit, and knowing that Mr. Lassiter was court-appointed, the U.S. District Court initiated a disciplinary investigation against Mr. Lassiter during which he said that he consulted with another lawyer about whether an appointed client could hire their appointed counsel. He said that this lawyer advised him that if an appointed person could hire an attorney, then the person should not have appointed counsel, and that Mr. Lassiter should accept the money and not submit a voucher. Mr. Lassiter, however, could not recall whether this consultation was before or after he received Mr. Ashraf's payment, and could not recall who the attorney was. When pressed during the court's investigation, he named two attorneys from whom he thought he might have solicited professional advice at that time. Subsequently neither of those attorneys acknowledged giving such advice. Mr. Lassiter is adamant, however, that during the investigation he was clear that he could not recall who the attorney he consulted was.
30. Following its investigation, the U.S. District Court ordered the prosecution of Mr. Lassiter for violating the Rules of Professional Conduct and the court's CJA plan. Mr. Lassiter then requested removal from membership in the bar of the U.S. District Court. The court granted his request and removed him from the CJA panel as well, ending the disciplinary prosecution, and forwarded the matter to the Virginia State Bar. Mr. Lassiter will be eligible for reinstatement to the U.S. District Court upon written permission of the Chief Judge of the Eastern District of Virginia and a Certificate of Good Standing from the Virginia State Bar.

II. NATURE OF MISCONDUCT^{iv}

By his behavior set forth above, by accepting the payment of a fee from his court-appointed client, through the client's family, without seeking permission of the court and without informing the court, despite a court order to the contrary which he, as a Criminal Justice Act appointed attorney was required to follow; or by lacking familiarity with and not following the requirements of the Criminal Justice Act plan under which he was appointed; by causing his client's advanced fee to be deposited into a non-escrow account; and by not rendering an account of his use of the client's funds to the client or to anyone despite his discharge from the case before its conclusion, the Respondent was in violation of the following Rules of Professional Conduct:

Rule 1.3 Diligence

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

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 1.15 Safekeeping Property

- (c) A lawyer shall:
 - (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and *render appropriate accountings to the client regarding them*

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 receive a **PUBLIC REPRIMAND WITH TERMS**, effective May 1, 2013. The Terms with which the Respondent must comply are as follows:

1. By April 30, 2014, the Respondent will return \$2,358.80 (two thousand three hundred fifty-eight dollars and eighty cents) to Bibi Phatma Majeed, the source of the \$6,000 and the mother of his former client, Zaman Ashraf. The Respondent may coordinate with his former client's daughter, Bibi Rita Butcher, concerning the delivery of the funds to Bibi Phatma Majeed.
2. The Respondent is placed on disciplinary probation for a period of one year from May 1, 2013 to April 30, 2014. The Respondent will engage in no professional misconduct as defined by the Virginia Rules of Professional Conduct during such one-year probationary period. Any final determination of misconduct by any District Committee of the Virginia State Bar, the Disciplinary Board, or a three-judge court to have occurred during such period will be deemed a violation of the terms and conditions of the Agreed Disposition as stated in this Order and will result in the imposition of the alternate sanction: a hearing before the Virginia State Bar Disciplinary Board to consider the imposition of a greater sanction. The alternate sanction will not be imposed while the Respondent is appealing any adverse decision that might result in a probation violation. For clarification, a mere complaint, or a subcommittee finding that the Respondent may appeal, for example, shall not constitute a violation of this term. Only a final determination of misconduct by any District Committee of the Virginia State Bar, the Disciplinary Board or a three-judge circuit court to have occurred during the one-year probationary period will be deemed to be a violation of this term.

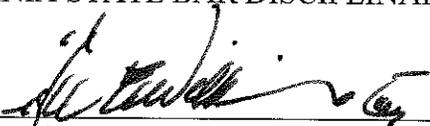
Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, all the terms and conditions are not met by the deadlines imposed above, the Respondent agrees that the matter will be set for hearing before the Virginia State Bar Disciplinary Board to consider the imposition of a greater sanction, pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

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 David Lassiter, Jr. at his last address of record with the Virginia State Bar, David Lassiter, Jr., P.C., 1516 W Laburnum Ave, PO Box 9165, Richmond, VA 23227 and to Claire Grimmer Cardwell, Counsel for Respondent, at Cardwell & Dinkin, PLC, Suite K, 101 Shockoe Slip, Richmond, VA 23219, and to David Preston Baugh, Esq., Counsel for Respondent, 4317 Grantlake Road, Richmond, VA 23234, and via hand-delivery to Edward L. Davis, Bar Counsel, Virginia State Bar, Suite 1500, 707 East Main Street, Richmond, VA 23219-2800.

ENTERED: May 9, 2013

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
Tyler E. Williams, III
2nd Vice Chair

¹ 18 U.S.C. 306A (f) provides in pertinent part, *Whenever the United States magistrate judge or the court finds that funds are available for payment for or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provision of this section.*

Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

ⁱⁱ Mr. Ashraf also sued his hired New York counsel in August 2010 alleging fraudulent billing and breach of contract that was dismissed for lack of jurisdiction. That complaint was similar to a prior complaint by Mr. Ashraf alleging a conflict and ineffective assistance by his New York counsel that the court subsequently determined to be unfounded.

ⁱⁱⁱ In reaching the decision to dismiss Mr. Ashraf's complaint against Mr. Lassiter, the Court considered the Criminal Justice Act statute under which Mr. Lassiter was appointed and under which Mr. Ashraf sued. The statute provides that, except as authorized by a court or magistrate, an appointed attorney may not request or accept payment for representing a defendant. In dismissing Mr. Ashraf's case, however, the Court found that under the circumstances it was particularly appropriate not to infer a private cause of action in favor of litigants like Ashraf "because the CJA requires district courts to insist that the cost of defending even indigent criminal defendants not be borne by the taxpayers '[w]henver...funds are available for payment from or on behalf of a person furnished representation' under the Act."

^{iv} Rule 1.15 is cited in its 2003-2004 versions, the Rule having been amended since then. The other Rules cited have not been amended since 2004.