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VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE CITY OF PORTSMOUTH VIRGINIA STATE BAR

IN THE MATTER OF
MICHAEL JEROME MASSIE

CASE NO. CL-16-995
VSB DOCKET NOS. 13-010-092752, 13-010-092767,
13-010-093893, 14-010-097408, 15-010-100248

AGREED DISPOSITION MEMORANDUM ORDER

This matter came to be heard on May 26, 2016, before a Three-Judge Circuit Court, upon the joint request of the parties for the Court to accept the Agreed Disposition endorsed by the parties and offered to the Court as provided by the Rules of the Supreme Court of Virginia. The panel consisted of the Honorable Sarah L. Deneke, Judge of the Fifteenth Judicial Circuit, Designated Chief Judge, the Honorable Paul W. Cella, Judge of the Eleventh Judicial Circuit, and the Honorable Beverly W. Snukals, Judge of the Thirteenth Judicial Circuit. Michael Jerome Massie was represented by Michael L. Rigsby. The Virginia State Bar appeared through its Senior Assistant Bar Counsel, M. Brent Saunders. The Chief Judge polled the members of the court as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each judge responded in the negative. Court Reporter, Tracy Stroh, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Respondent's Answer, Respondent's Disciplinary Record, the Arguments of the Parties, and after due deliberation,

It is **ORDERED** that the Circuit Court accepts the Agreed Disposition and the Respondent shall receive an 18-Month Suspension with Terms, as set forth in the Agreed Disposition, which is attached and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective July 1, 2016.

It is further **ORDERED** that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail of the suspension or revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. Respondent shall give such notice within 14 days of the effective date of the sanction, and make such arrangements as are required herein within 45 days of the effective date of the suspension or revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension or revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the suspension or revocation, 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 13-29 shall be determined by the Virginia State Bar Disciplinary Board.

The Clerk of the Disciplinary System shall assess costs pursuant to ¶13-9 E. of the Rules.

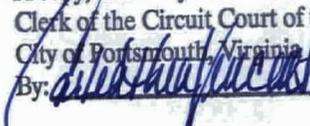
A copy teste of this Order shall be mailed, certified mail, return receipt requested, to the Respondent, Michael Jerome Massie, at his last address of record with the Virginia State Bar, The Massie Law Group, P.C., 505 Crawford Street, Portsmouth, VA 23704, with a copy to: Michael L. Rigsby, Counsel for Respondent, Michael L. Rigsby, PC, P.O. Box 29328, Henrico, VA 23242, M. Brent Saunders, Senior Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-3565, and Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED THIS 26th DAY OF May, 2016

CIRCUIT COURT FOR THE CITY OF PORTSMOUTH



Sarah L. Deneke, Chief Judge
Three-Judge Circuit Court

A copy, Teste: Cynthia P. Morrison
Clerk of the Circuit Court of the
City of Portsmouth, Virginia
By:  D.C.

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VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE CITY OF PORTSMOUTH

2016 JUN -3 PM 2:39
CYNTHIA P. MORRISON
CIRCUIT COURT CLERK

VIRGINIA STATE BAR EX REL
FIRST DISTRICT COMMITTEE
VSB Docket Nos. 13-010-092752, 13-010-092767
13-010-093893, 14-010-097408 and 15-010-100248

v.

Case No. 16-995

MICHAEL JEROME MASSIE

**AGREED DISPOSITION
(18-MONTH LICENSE SUSPENSION WITH TERMS)**

Pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-6.H, applicable to this proceeding pursuant to §54.1-3935(B) of the Code of Virginia, 1950, as amended, the Virginia State Bar, by M. Brent Saunders, Assistant Bar Counsel, and Michael Jerome Massie, Respondent, and Michael L. Rigsby, Respondent's counsel, hereby enter into the following Agreed Disposition of this matter.

I. STIPULATIONS OF FACT

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia and the sole principal in his law firm, The Massie Law Group, P.C.

VSB Docket No. 13-010-092752

2. On July 13, 2011, the complainant, Stephanie R. Poole ("Ms. Poole"), hired Respondent to represent her in pursuing claims for personal injuries arising from a motor vehicle accident in which she was involved just two days prior.¹

3. In January 2012, Respondent issued a demand to GEICO, the liability insurance carrier ("GEICO"), for \$75,000.00, which he supported by providing Ms. Poole's medical records, medical bills in excess of \$10,000, and a claim for lost wages.

¹ Two of Ms. Poole's family members, Carla and Novella Truss, were involved in the same accident and also hired Respondent to pursue personal injury claims on their behalf. They filed their own respective complaints against Respondent and those complaints are companioned with this one (VSB Docket Nos. 13-010-092767 and 13-010-093893).

4. No offer was forthcoming, and in March 2012, Respondent filed a Warrant In Debt on behalf of Ms. Poole in the Portsmouth General District Court against the driver of the other vehicle involved in the accident, claiming the statutory maximum of \$25,000.00 in damages.
5. In May 2012, GEICO offered \$16,000.00, which was not accepted. The case was set for trial on July 31, 2012. A few days prior to trial, GEICO increased its offer to \$18,300.00, which Respondent accepted.
6. It is expected that Ms. Poole, if called to testify, would assert that Respondent accepted the \$18,300.00 offer without her authorization or knowledge and against her stated desire to go to trial, and that Respondent, if called to testify, would deny Ms. Poole's contention.
7. Respondent received an \$18,300.00 settlement check from GEICO made payable to his firm and Ms. Poole which he endorsed on behalf of his firm and Ms. Poole and deposited into his firm's trust account on August 3, 2012.
8. Respondent prepared a Settlement Statement which purported to itemize the disbursement of the settlement monies. The Settlement Statement stated:
- The gross settlement amount was only \$18,000.00, an amount \$300.00 less than the actual amount Respondent had received from GEICO².
 - \$5,994.00 had been deducted as and for Respondent's 1/3 contingent fee.³
 - Respondent was withholding a total of \$1,517.00, as and for payment to four medical providers⁴.
 - Respondent was withholding \$1,322.50, as and for payment to a litigation finance company which had issued a loan to Ms. Poole⁵.
 - The amount due Ms. Poole was \$9,166.50 as and for her net share of the settlement proceeds.⁶
9. Despite having written notice of valid liens from the four medical providers listed on the Settlement Statement, and scheduling payments to those providers totaling \$1,517.00 and withholding those monies from Ms. Poole, Respondent never disbursed any of those monies to the medical providers or otherwise on behalf of Ms. Poole. Instead, those monies were disbursed to Respondent's firm.

² According to Respondent, the discrepancy between the actual settlement amount and that stated on the Settlement Statement was a clerical error.

³ In actuality, on August 3, 2012, Respondent issued a check from his trust account to his firm in the amount of \$6,093.90 as and for his 1/3 contingent fee.

⁴ Each of the four medical providers had provided Respondent with written notice of a lien against the proceeds of any personal injury settlement or recovery pursuant to Section 8.01-66.2 of the Code of Virginia, 1950, as amended.

⁵ In conjunction with the loan, Ms. Poole and Respondent signed an Irrevocable Letter of Direction dated January 4, 2012, pursuant to which: i) Ms. Poole assigned a portion of any settlement or recovery funds to the litigation finance company and directed Respondent to honor the assignment; and ii) Respondent acknowledged the assignment and agreed to honor it.

⁶ On August 16, 2012, Respondent issued a check to Ms. Poole in the amount of \$9,166.50 as and for her net share of the settlement proceeds. Ms. Poole's actual net share based on a gross settlement of \$18,300.00 was \$9,366.60, a difference of \$200.10. To satisfy the unpaid balance, Respondent issued a check to Ms. Poole from his operating account on March 29, 2013, in the amount of \$333.50. The excess amount was caused by another miscalculation on the part of Respondent.

10. Despite having written notice of the valid assignment to the litigation finance company, and scheduling payment to that entity in the amount of \$1,322.50 and withholding those monies from Ms. Poole, Respondent never disbursed any of those monies to the litigation finance company or otherwise on behalf of Ms. Poole. Instead, those monies were disbursed to Respondent's firm.

VSB Docket No. 13-010-092767

11. In July 2011, the complainant, Carla C. Truss ("Ms. Truss"), hired Respondent to represent her in pursuing claims for personal injuries arising from a motor vehicle accident in which she was involved just a few days prior.

12. In December 2011, Respondent issued a demand to GEICO for \$50,000.00, which he supported by providing Ms. Truss's medical records, medical bills in excess of \$12,000, and a claim for lost wages.

13. Ms. Truss' claims were not settled, and in March 2012, Respondent filed a Warrant In Debt in the Portsmouth General District Court against the driver of the other vehicle involved in the accident claiming the statutory maximum of \$25,000.00 in damages.

14. In May 2012, GEICO offered \$15,584.00, which was not accepted. The case was set for trial on July 31, 2012. A few days prior to trial, GEICO increased its offer to \$17,500.00, which Respondent accepted.

15. It is expected that Ms. Truss, if called to testify, would assert that Respondent accepted the \$17,500.00 offer without her authorization or knowledge and against her stated desire to go to trial, and that Respondent, if called to testify, would deny Ms. Truss's contention.

16. Respondent received an \$17,500.00 settlement check from GEICO made payable to his firm and Ms. Truss which he endorsed on behalf of his firm and Ms. Truss and deposited into his firm's trust account on August 3, 2012.

17. Respondent prepared a Settlement Statement which purported to itemize the disbursement of the settlement monies. The Settlement Statement stated:

- \$5,827.50 had been deducted as and for Respondent's 1/3 contingent fee.⁷

- Respondent was withholding a total of \$3,016.25, as and for payment to four medical providers⁸.

- Respondent was withholding \$1,322.50, as and for payment to a litigation finance company which had issued a loan to Ms. Truss⁹.

⁷ On August 3, 2012, Respondent issued a check from his trust account to his firm in that amount.

⁸ One of the four medical providers had provided Respondent with written notice of its lien against the proceeds of any personal injury settlement or recovery pursuant to Section 8.01-66.2 of the Code of Virginia, 1950, as amended.

⁹ In conjunction with the loan, Ms. Truss and Respondent signed an Irrevocable Letter of Direction dated January 4, 2012, pursuant to which: i) Ms. Truss assigned a portion of any settlement or recovery funds to the litigation finance company and directed Respondent to honor the assignment; and ii) Respondent acknowledged the assignment and agreed to honor it.

The amount due Ms. Truss was \$7,333.75 as and for her net share of the settlement proceeds.¹⁰

18. Despite having written notice of a valid lien from one of the four medical providers listed on the Settlement Statement, and scheduling payments to all of those providers totaling \$3,016.25 and withholding those monies from Ms. Truss, Respondent never disbursed any of those monies to the medical providers or otherwise on behalf of Ms. Truss. Instead, those monies were disbursed to Respondent's firm.

19. Despite having written notice of the valid assignment to the litigation finance company, and scheduling payment to that entity in the amount of \$1,322.50 and withholding those monies from Ms. Truss, Respondent never disbursed any of those monies to the litigation finance company or otherwise on behalf of Ms. Truss. Instead, those monies were disbursed to Respondent's firm.

VSB Docket No. 13-010-093893

20. On July 13, 2011, the complainant, Novella Y. Truss ("Truss"), hired Respondent to represent her in pursuing claims for personal injuries arising from a motor vehicle accident in which she was involved just two days prior.

21. It is expected that Truss, if called to testify, would assert that from the time of his hiring until after Truss filed her bar complaint in November 2012, Respondent did not respond to numerous inquiries Truss made with Respondent's firm as to the status of her case, nor communicate at all with her, and that Respondent, if called to testify, would deny that contention.

22. For his answer to the complaint, Respondent provided a copy of a letter dated December 18, 2012 he sent to Truss in which he assured her he had been working on her case, claimed he had encountered delays in obtaining her medical records, and stated he expected a settlement offer "any day."

23. Contrary to Respondent's assertions in his December 18, 2012 letter to Truss, he had settled Truss' claims in December 2011 for \$9,000.00. By letter dated December 8, 2011, GEICO issued a settlement check in that amount made payable to Truss and Respondent's firm. That check was signed on behalf of Truss by Nicholas Gordon ("Mr. Gordon"), a non-lawyer staffer in Respondent's office, and deposited into Respondent's trust account on December 12, 2011. On that same date, Respondent issued a check from his trust account to his firm in the amount of \$2,997.00 as and for his 1/3 contingent fee. The balance of the proceeds, \$6,003.00, was never disbursed to or on behalf of Truss. Instead, those monies were disbursed to Respondent's firm.

24. Respondent did not obtain Truss' authorization to accept the \$9,000.00 settlement offer nor notify her of the settlement or receipt of the settlement check from GEICO. Truss was not

¹⁰ On August 16, 2012, Respondent issued a check to Ms. Truss in that amount.

even aware that any demand had been made or a settlement had been reached until after she filed her bar complaint in November 2012.

25. According to Respondent, he did not intentionally make false statements in his December 18, 2012 letter to Truss. He claims that he had no independent recollection of Truss' case because he had delegated complete oversight of all aspects of her case to Mr. Gordon who actually wrote the letter and who himself claims he had forgotten about the settlement reached in Truss' case a year prior.

26. Prior to Respondent's receipt of the GEICO settlement check, one of Truss' medical providers had provided Respondent with written notice of its lien against the proceeds of any personal injury settlement or recovery pursuant to Section 8.01-66.2 of the Code of Virginia, 1950, as amended. Despite having received written notice of the lien, Respondent never disbursed any of the settlement proceeds to that medical provider.

27. Respondent attributes the improper disbursements of Truss' monies to: i) his complete delegation of oversight and management of the trust account to Mr. Gordon; and ii) his admitted failure to perform reconciliations of his trust account as required.

28. Respondent delegated the handling of Truss' representation, and the management of Respondent's trust account, to Mr. Gordon, over whom Respondent had direct supervisory authority. Mr. Gordon worked independently and without proper training, instruction or supervision by Respondent.

VSJ Docket No. 14-010-097408

29. On September 27, 2011, the complainant, Kennesha M. Walker ("Ms. Walker"), hired Respondent to represent her in pursuing claims for injuries arising from a motor vehicle accident in which she was involved a few days prior.

30. It is expected that Ms. Walker, if called to testify, would assert that following the hiring of Respondent, Ms. Walker repeatedly attempted to contact Respondent to inquire about the status of her case and did not receive a response from Respondent, and that Respondent, if called to testify, would deny that contention.

31. In or about the summer of 2013, having been unable to reach Respondent, Ms. Walker contacted the liability insurance carrier, Progressive ("Progressive"), and learned Respondent, without her knowledge or authorization, had settled her claims and received a settlement check in December 2011.

32. Respondent sent a letter to Progressive dated December 8, 2011 making a settlement demand of \$6,000.00. Respondent and Mr. Gordon each subsequently engaged in oral negotiations with a Progressive claims adjuster which resulted in the reaching of a settlement in the amount of \$1,900.00. Progressive issued a settlement check approximately one week later, on December 16, 2011, made payable to Ms. Walker and Respondent's firm in the amount of

\$1,900.00, which Mr. Gordon endorsed on behalf of Ms. Walker and deposited into Respondent's trust account on or about January 13, 2012.

33. Respondent did not obtain Ms. Walker's authorization to accept the \$1,900.00 settlement offer nor notify her of the settlement or receipt of the settlement check from Progressive. Ms. Walker was not even aware that any demand had been made or a settlement had been reached until after she contacted Progressive directly in or around the summer of 2013.

34. Respondent never disbursed any of the settlement proceeds to or on behalf of Ms. Walker. Instead, those monies were disbursed to Respondent's firm.

35. Respondent attributes the mishandling of Ms. Walker's monies to: i) his complete delegation of oversight and management of the trust account to Mr. Gordon; and ii) his admitted failure to perform reconciliations of his trust account as required.

36. Respondent delegated the handling of significant aspects of Ms. Walker's representation, and the management of Respondent's trust account, to Mr. Gordon, over whom Respondent had direct supervisory authority. Mr. Gordon worked independently and without proper training, instruction or supervision by Respondent.

VSB Docket No. 15-010-100248

37. In January 2011, the complainant, Jean C. Richardson ("Ms. Richardson"), hired Respondent to represent her in pursuing claims for injuries arising from a motor vehicle accident in which she had been involved.

38. From the time of his hiring through 2014, Respondent did not respond to numerous telephone inquiries Ms. Richardson made with Respondent's office as to the status of her case, nor communicate at all with her.

39. In July 2014, having been unable to reach Respondent, Ms. Richardson contacted the liability insurance carrier, Alfa Insurance ("Alfa"), and learned Respondent, without her knowledge or authorization, had settled her claims and received a settlement check in November 2011.

40. In his initial response to the complaint, Respondent stated he needed additional time to fully respond as he was not "familiar" with Ms. Richardson since he had never personally met with her nor had "any contact with her ever . . ." In his supplemental response, he: i) reiterated he had never spoken with Ms. Richardson and was not even aware she was a client of his firm until he received her bar complaint; ii) claimed that Mr. Gordon had accepted and handled Ms. Richardson's case from inception through settlement, all without Respondent's permission or knowledge; and iii) explained that his lack of knowledge was based in part on the fact that Mr. Gordon had been given responsibility for overseeing the firm trust account and had failed to perform proper reconciliations.

41. Contrary to Respondent's assertions in his supplemental response, he did have direct involvement in Ms. Richardson's case. Specifically, Respondent signed letters dated July 26, 2011 addressed to Alfa announcing his representation of Ms. Richardson and making a settlement demand of \$40,000.00. In addition, he had a settlement discussion with Alfa's claim adjuster on October 7, 2011.

42. Respondent settled Ms. Richardson's claims in November 2011 for \$13,500.00. On November 22, 2011, Alfa issued a settlement check in that amount made payable to Respondent's firm and Ms. Richardson. That check was signed on behalf of Ms. Richardson by Mr. Gordon and deposited into Respondent's trust account on December 12, 2011. Respondent never disbursed any of those monies to or on behalf of Ms. Richardson. Instead, those monies were disbursed to Respondent's firm.

43. Respondent did not obtain Ms. Richardson's authorization to accept the \$13,500.00 settlement offer nor notify her of the settlement or receipt of the settlement check from Alfa. Ms. Richardson was not even aware that any demand had been made or a settlement had been reached until after she contacted Alfa in July 2014.

44. Prior to Respondent's receipt of the Alfa settlement check, one of Ms. Richardson's medical providers had provided Respondent with written notice of its lien against the proceeds of any personal injury settlement or recovery pursuant to Section 8.01-66.2 of the Code of Virginia, 1950, as amended. Despite having received written notice of the lien, Respondent never disbursed any of the settlement proceeds to that medical provider.

III. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

VSB Docket No. 13-010-092752

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 . . .

RULE 1.4 Communication

(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 1.15 Safekeeping Property

(b) Specific Duties. 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;

(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 that such person is entitled to receive; and

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

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;

VSB Docket No. 13-010-092767

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 . . .

RULE 1.4 Communication

(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 1.15 Safekeeping Property

(b) Specific Duties. 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;

(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 that such person is entitled to receive; and

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

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;

VSB Docket No. 13-010-093893

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 . . .

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.
- (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 1.15 Safekeeping Property

(b) **Specific Duties.** A lawyer shall:

- (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
- (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;
- (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 that such person is entitled to receive; and
- (5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal;

(d) **Required Trust Accounting Procedures.** In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(3) **Reconciliations.**

- (i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.
- (ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.
- (iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).
- (iv) Reconciliations must be approved by a lawyer in the law firm.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known

of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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;

VSB Docket No. 14-010-097408

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 . . .

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.

(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 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

- (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
- (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;
- (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 that such person is entitled to receive; and
- (5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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;

VSB Docket No. 15-010-100248

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 . . .

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.

(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 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

(1) promptly notify a client of the receipt of the client's funds, securities, or other properties;

(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;

(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 that such person is entitled to receive; and

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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;

III. PROPOSED DISPOSITION

In entering into this agreed disposition, the bar has considered the following mitigating evidence:

1) Most of the misconduct was unintentional and the result of Respondent's: a) gross inattention to the client matters and his trust account; and b) over-reliance on his non-lawyer staffer to

whom Respondent improperly delegated oversight of the client matters and management of Respondent's trust account without adequate training or supervision.

- 2) The misconduct occurred during a limited period during the late 2011 through mid-2012 timeframe;
- 3) Respondent has taken remedial measures to prevent any recurrence of similar misconduct including assuming direct oversight of all settlements and exclusive management of his trust account and implementation of case management and trust accounting systems;
- 4) Respondent has compensated the clients for their portion of the settlements and any unpaid lien and assignment amounts;
- 5) Respondent has accepted responsibility and expressed his remorse for the misconduct and the resulting harm; and
- 6) Respondent has no prior disciplinary record.

Accordingly, Assistant Bar Counsel and Respondent tender to the Three-Judge Panel for its approval the agreed disposition of the suspension of the license of the Respondent to practice law in the Commonwealth of Virginia for a period of 18 months effective July 1, 2016, with terms. The terms with which Respondent must comply are as follows:

1. For a period of two (2) years effective upon the termination of the 18-month suspension of Respondent's license to practice law in the Commonwealth of Virginia agreed to herein, Respondent shall submit to random reviews of his law firm records by a Virginia State Bar Investigator and/or other agent of the Bar for the purpose of ascertaining his compliance with the escrow account maintenance and record-keeping requirements of Rule 1.15 of the Virginia Rules of Professional Conduct. Respondent shall reasonably cooperate with the Bar Investigator and/or agent in submitting to such random reviews and making available bank records, cancelled checks, checkbooks, subsidiary ledgers, cash receipts journals, cash disbursements journals, evidence of reconciliations, and any and all other documents necessary for the completion of the review.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms are not met, Respondent agrees that the alternative disposition shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for an additional 18 months.

Respondent and his counsel agree further that:

- If the Three-Judge Panel designated to hear this matter approves this agreed disposition, this agreed disposition becomes **Final and Non-Appealable** and Respondent waives the right to seek a stay of the sanction or appeal this agreed disposition or the Memorandum Order to be issued; and

- If, for any reason, the Three-Judge Panel designated to hear this matter declines to approve this agreed disposition, then: 1) the same Three-Judge Panel shall hear, preside over and conclude this matter in accordance with the designation by the Supreme Court of Virginia as previously scheduled, and Respondent hereby waives any challenge to the composition of the Three-Judge Panel based on its consideration and/or rejection of this agreed disposition; and 2) this agreed disposition shall be accepted into the record of this matter as a stipulation of facts and rule violations.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

[SIGNATURES ON FOLLOWING PAGE]

THE VIRGINIA STATE BAR

By: M. Brent Saunders
M. Brent Saunders, Assistant Bar Counsel

Michael Jerome Massie
Michael Jerome Massie, Respondent

Michael L. Rigby 5/24/2016
Michael L. Rigby, Respondents Counsel