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Thomas Marshall James	Charlottesville, Va.	Three-Month Suspension	September 1, 2007	2
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Andrew Ira Becker	Virginia Beach, Va.	Two-Year Suspension	September 17, 2007	5
Jeffrey Frederick Bradley	Harrisonburg, Va.	Suspension	August 24, 2007	5
Ellen Frances Ericsson	South Bend, Ind.	Revocation	August 21, 2007	n/a
Thomas Marshall James	Charlottesville, Va.	Five-Year Suspension w/Terms	September 30, 2007	7
Victor Mba-Jonas	Adelphia, Md.	Suspension	September 5, 2007	n/a
Brian Lee Leslie	Alexandria, Va.	Revocation	August 17, 2007	n/a
James Bryan Pattison	Sterling, Kans.	Suspension	September 5, 2007	n/a
Claude Michael Scialdone	Virginia Beach, Va.	Impairment Suspension	September 11, 2007	16
Simon Herbert Scott III	Norfolk, Va.	Public Reprimand w/Terms	September 7, 2007	16

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Interim Suspensions—Failure to Comply with Subpoena

Myles Talbert Hylton	Roanoke, Va.	Interim Suspension	July 30, 2007	n/a
Joseph Louis Tantoh Tibui	Arlington, Va.	Interim Suspension	July 25, 2007	n/a

*Respondent has noted an appeal with the Virginia Supreme Court.

**Virginia Supreme Court granted stay of suspension pending appeal.

***Virginia Supreme Court decision pending

CIRCUIT COURT

VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

VIRGINIA STATE BAR *EX REL*
SEVENTH DISTRICT COMMITTEE,
Complainant,

v.
THOMAS MARSHALL JAMES, Respondent

Case No. CL2007-165

VSB DOCKET NUMBERS 06-070-3981
07-070-0013

ORDER OF SUSPENSION

This matter came before the Three-Judge Court telephonically empanelled on August 30, 2007, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to § 54.1-3935 of the 1950 Code of Virginia, as amended. A fully endorsed Agreed Disposition, dated the 30th day of August, 2007, was tendered by Alfred L. Carr, Assistant Bar Counsel, Respondent Thomas Marshall James, by and through his counsel, Bernard J. DiMuro, Esq., and was considered by the Three-Judge Court, consisting of the Honorable Ernest P. Gates, Retired Judge of the Twelfth Judicial Circuit, the Honorable John E. Clarkson, Retired Judge of the Fourth Judicial Circuit and by the Honorable Richard D. Taylor, Jr., Judge of the Thirteenth Judicial Circuit and Chief Judge of the Three-Judge Court. The hearing was transcribed by Donna Chandler, Court Reporter, of Chandler and Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222.

Having considered the Agreed Disposition, it is the decision of the Three-Judge Court that the Agreed Disposition be accepted, and said Court finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Thomas Marshall James, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB DOCKET NUMBER 06-070-3981

2. On June 6, 2006, Respondent overdrew his lawyer's trust account by \$90.43.

VSB DOCKET NUMBER 07-070-0013

3. On July 3, 2006, Respondent overdrew his trust account by \$583.76. On July 13, 2006, after he received notice that his trust account had a negative balance of \$583.76, he withdrew another \$250.00 from his lawyer's trust account resulting in an ending balance of negative \$833.76.
4. On July 28, 2006, during an interview with Virginia State Bar Investigator James W. Henderson, Respondent admitted that an automatic withdrawal he authorized for a personal transaction caused the June 6, 2006, Non Sufficient Funds notice from SunTrust Bank. Respondent had authorized monthly automatic withdrawals in November of 2005 to repay a personal loan to the Sallie Mae Corporation. In July of 2006, Respondent again authorized another payment in the same amount and for the same personal purpose and caused the negative balance of \$583.76 on July 3, 2006, in his trust account. Respondent had set up two additional automatic electronic withdrawals from his lawyer's trust account to pay personal bills.
5. Respondent also admitted that he made the following payments from his lawyer's trust account toward personal bills, completely unrelated to his law practice, during the period of January 1, 2006, through June 30, 2006:
 - a. an automobile insurance premium in the amount of \$155.00 for his personal vehicle, paid electronically after Respondent had set up automatic withdrawals;
 - b. payments in the amounts of \$155.35, \$26.00, and \$100.00 toward a personal Texaco credit card;
 - c. \$200.00 towards a personal Bank of America Visa credit card;
 - d. payments in the amounts of \$30.00 and \$46.00 for a Dell computer for Respondent's own personal use;
 - e. \$163.00 to Bank of America;

- f. payments in the amounts of \$425.00 and \$340.00 to Chase Bank for a personal transaction, paid electronically after Respondent had set up automatic withdrawals;
 - g. \$37.50 toward a personal Chevron credit card;
 - h. \$125.00 toward his personal Bank of America credit card;
6. Respondent also informed Investigator Henderson that he had made the following deposits of his own personal funds, not related to his law practice, into his lawyer's trust account:
- a. a personal loan from his wife in the amount of \$1,000.00;
 - b. a deposit of \$10,000.00 representing the insurance medical payments Respondent received after his fall down the courthouse steps in July of 2005.
7. During Respondent's July 28, 2006, interview with Investigator Henderson for these instant bar complaints, Investigator Henderson asked Respondent whether he recalled their conversation about his trust account activity during the February 8, 2006, interview regarding his improper use of his attorney trust account to conduct his personal transactions unrelated to the practice of law. Respondent stated that he did remember that Investigator Henderson had told him to stop using his trust account to conduct personal business. Investigator Henderson again reminded Respondent that the continued practice of depositing personal funds in his lawyer's trust account and his continued use of the attorney trust account as a personal checking account was an ongoing violation of the Rules of Professional Conduct. In response, Respondent stated to Investigator Henderson that he understood and recognized the impropriety of his continued use of his attorney trust account for personal use, but he had to do what he had to do. The Virginia State Bar does not allege that Respondent James inappropriately used client funds.

THE THREE-JUDGE COURT finds by clear and convincing evidence that such conduct on the part of the Respondent, Thomas Marshall James, Esquire, constitutes a violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.
 - (2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;
 - (3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;
 - (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
 - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

CIRCUIT COURT

(5) Reconciliations.

- (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;
- (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;
- (iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

(6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

UPON CONSIDERATION WHEREOF, the Three-Judge Court hereby **ORDERS** as follows:

The Respondent shall receive a **three (3) month suspension** of his license to practice law in the Commonwealth of Virginia, effective **September 1, 2007**.

ORDERED that pursuant to the provisions of Part Six, § IV, ¶ 13.M. of the Rules of the Supreme Court of Virginia, the Respondent shall forthwith give notice by certified mail of his suspension to all clients for whom he is currently handling matters and to all opposing attorneys and the presiding judges in pending litigation. The Respondent also shall make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. The Respondent shall give such notice within fourteen (14) days of the effective date of his suspension and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. Respondent also shall furnish proof to the Bar within sixty (60) days of the effective date of his suspension that such notices have been timely given and such arrangements made for the disposition of matters. The Virginia State Bar Disciplinary 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 Part Six, § IV, ¶ 13.M. of the Rules of the Supreme Court of Virginia; and it is further

ORDERED that four (4) copies of this Order be certified by the Clerk of the Circuit Court of City of Charlottesville, Virginia, and be thereafter mailed by said Clerk to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent at his address of record with the Virginia State Bar, Respondent's Counsel, Mr. Bernard J. DiMuro, Esquire, and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

ENTERED this 5th day of September, 2007.

RICHARD D. TAYLOR JR.
Chief Judge of Three-Judge Court

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

**IN THE MATTER OF
ANDREW IRA BECKER
VSB DOCKET NUMBERS: 04-021-2662
04-021-3554
06-021-1176**

ORDER OF SUSPENSION

It appearing that the license of Andrew Ira Becker to practice law in the Commonwealth of Virginia was suspended for two years, effective June 1, 2007, by Order of the Virginia State Bar Disciplinary Board; and

It appearing further that the Respondent appealed the suspension to the Supreme Court of Virginia and filed a petition to stay the suspension, which petition was granted by the Supreme Court of Virginia effective May 23, 2007; and

It further appearing that the Supreme Court of Virginia entered an Order dated September 7, 2007, terminating the stay in this case, and instructing the Disciplinary Board to enter an Order fixing the effective date of the suspension and the date Andrew Ira Becker shall comply with the provisions of Part Six, § IV, ¶ 13.M. of the Rules of the Supreme Court of Virginia; and

It further appearing appropriate to do so;

It is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia will be suspended for a period of two years, effective September 17, 2007; and

It is further ORDERED that pursuant to the provisions of Part Six, § IV, ¶ 13.M. of the Rules of the Supreme Court of Virginia, that Andrew Ira Becker shall forthwith give notice by certified mail, return receipt requested, of the Suspension 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. He also shall make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. He shall give such notice within fourteen (14) days of the effective date of the disbarment or suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the disbarment or suspension order. He also shall furnish proof to the bar within sixty (60) days of the effective date of the disbarment or suspension order that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that an attested copy of this Order be mailed to the Respondent by certified mail, return receipt requested, at his address of record with the Virginia State Bar, Law Offices of Andrew Becker, P.L.C., 4164 Virginia Beach Boulevard, Suite 200, Virginia Beach, Virginia 23452, by regular mail to Respondent's Counsel, Michael L. Rigsby, Carrell Rice & Rigsby, Forest Plaza II, Suite 310, 7275 Glen Forest Drive, Richmond, Virginia 23226, and hand delivered to Edward L. Davis, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

ENTERED this order this 12th day of September, 2007.

FOR THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

Barbara Sayers Lanier
Clerk of the Disciplinary System

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

**IN THE MATTER OF
JEFFREY FREDERICK BRADLEY
VSB DOCKET NUMBER 07-070-0021**

ORDER OF SUSPENSION

THIS MATTER came on to be heard on August 24, 2007, before a panel of the Disciplinary Board consisting of W. Jefferson O'Flaherty, Lay Member, David R. Schultz, Michael S. Mulkey, Sandra L. Havrilak and William H. Monroe Jr., 2nd Vice Chair ("Chair"). Pursuant to a Notice of

DISCIPLINARY BOARD

Non-Compliance and Request for Suspension of License to Practice Law for Failure to Comply with Subpoena Duces Tecum (issued January 10, 2007), which Notice was sent by certified mail on May 29, 2007, to Jeffery Frederick Bradley (“Respondent”).

Assistant Bar Counsel, Alfred L. Carr (“Bar Counsel”), appeared as counsel for the Virginia State Bar (“VSB”). The respondent failed to appear after the clerk called his name three times in the hallway outside the courtroom, nor did any counsel appear on his behalf. The court reporter for the proceeding, Teresa L. McLean, of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, was duly sworn by the Chair. All required notices of the date and place of the hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law. The Chair polled all members of the Board and determined that no member had a conflict of interest that precluded them from hearing this matter.

One day prior to the hearing, the Respondent filed a motion with the Clerk for a continuance of the hearing. The Board recessed to consider the motion and after due deliberation the motion was denied. Thereafter, Bar Counsel presented the following evidence:

1. The Virginia State Bar (“VSB”), by letter dated July 18, 2006, notified Respondent Bradley at his address of record that he had 21 days to respond to a bar complaint enclosed with the letter. Respondent Bradley did not respond to the letter. On October 5, 2006, Bar Counsel referred this matter to the Seventh District Committee for further investigation.
2. On October 20, 2007, VSB Investigator Donald L. Lange sent Respondent Bradley a letter by certified mail, return receipt requested, to Respondent Bradley’s address of record requesting that Respondent Bradley contact him in order to set up a convenient date, time and location to conduct the investigative interview. The United States Postal Service (“USPS”) left notices in Respondent Bradley’s post office box on October 25 and 30 and November 9, 2006. The USPS returned the certified letter to the sender, Investigator Lange, as unclaimed by the addressee, Respondent Bradley.
3. On December 7, 2007, at 8:40 p.m., Investigator Lange called Respondent Bradley at his telephone number of record with the Bar and Respondent answered the call. Investigator Lange confirmed that Respondent’s address of record with the Bar is correct and that that address is the correct address to mail all correspondence from the Bar. Respondent Bradley, however, was unable to talk and requested Investigator Lange contact him the next day, December 8, 2006, at 3:00 p.m. On December 8, 2006, Investigator Lange called Respondent at the appointed time, but Respondent Bradley did not answer the call. Investigator Lange followed up with a letter to Respondent Bradley dated December 8, 2006, memorializing the chronology of his attempts to schedule an interview with Respondent, as well as confirming his address of record and a second address, 64B Court Square, Harrisonburg, VA 22801, provided by Respondent Bradley as his office address. Respondent Bradley did not respond to Investigator Lange’s letter.
4. On January 5, 2007, Investigator Lange, by certified mail, return receipt requested, mailed the December 8, 2006, letter again to Respondent Bradley. However, the USPS again returned the letter because Respondent Bradley again did not claim it.
5. On January 10, 2007, the Virginia State Bar issued a subpoena duces tecum to Respondent Bradley directing him to deliver to the Bar, on or before February 13, 2007, a copy of one of Respondent’s client’s file, as well as the client’s billing records. In the alternative, Respondent Bradley could contact VSB Investigator Donald Lange and make other arrangements to deliver the documents in order to comply with the subpoena. (Copies of the cover letter that accompanied the subpoena and the proof of service were collectively presented as VSB Exhibit 1). The USPS left notice for Respondent Bradley on January 12, 18, and 29, 2007, informing him of the certified letter. The USPS returned the certified letter to the Bar undelivered because Respondent Bradley did not claim it though delivery was attempted at his address of record with the VSB.
6. Investigator Lange attempted to contact Respondent Bradley by telephone on December 13 and 21, 2006, January 5, 2007, and again on February 10, 2007. On February 10, 2007, Investigator Lange left Respondent a voice mail message informing him that the VSB had attempted to contact him and service him with a subpoena duces tecum directing him to comply by February 13, 2007. Investigator Lange states that he has not received any material from Respondent Bradley to comply with the January 10, 2007, subpoena duces tecum, which is deemed to have been served upon him upon mailing pursuant to Part 6, § IV, ¶13(E)(2) of the Rules of the Supreme Court of Virginia.
7. Pursuant to Part 6, § IV, ¶ 13(B)(5)(b)(2) and (3), and ¶ 13(B)(7)(a)(5) and (6) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Disciplinary Board is authorized to suspend Respondent Bradley’s license to practice law in the Commonwealth of Virginia pending Respondent’s compliance with the subpoena duces tecum under the circumstance set forth above.

The Respondent has the burden of proof by clear and convincing evidence to show cause why the Board should not suspend his license. The Board finds that the Respondent has failed to meet such burden.

Accordingly, it is **ORDERED** that pursuant to the Rules of the Supreme Court of Virginia, as specified in paragraph 7 above, the license of Respondent, Jeffrey Frederick Bradley, to practice law in the Commonwealth of Virginia shall be, and is hereby, suspended for an indefinite period

of time until such time as he complies with the subpoena duces tecum of January 10, 2007, or until such time as he can for good cause show why he can not comply with such subpoena.

It is further **ORDERED** that, pursuant Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia, Respondent shall forthwith give notice, by certified mail, return receipt requested, of this suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling any matters, to all judges and the clerks of the courts before which Respondent may have an pending cases, and to opposing counsel in all such cases. Respondent also shall make appropriate arrangements for the disposition of matters now in his care in conformity with the wishes of his clients.

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent at his address of record with the Virginia State Bar, P.O. Box 1355, Harrisonburg, Virginia 22803, by certified mail, return receipt requested, and by regular mail to 64 B Court Square, Harrisonburg, Virginia 22801; and, to Alfred L. Carr, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

ENTERED this 14th day of September, 2007.
VIRGINIA STATE BAR DISCIPLINARY BOARD

William H. Monroe Jr., 2nd Vice Chair

VIRGINIA
BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

**IN THE MATTERS OF
THOMAS MARSHALL JAMES**

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

ORDER OF SUSPENSION, WITH TERMS

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

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

Having considered the Certifications, the Expedited Petition, and the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. The Respondent was licensed to practice law in the Commonwealth of Virginia on April 22, 1993.
2. Two Virginia State Bar Investigators, on three separate occasions, informed Respondent that use of his attorney trust account for personal financial matters is a violation of the *Rules of Professional Conduct* (hereinafter "*RPC*"). In response to questions from the VSB investigators regarding whether or not he was aware that his use of his attorney trust account for personal matters is a violation of the *RPC*, Respondent replied that he was aware of his misconduct, but "he must do what he had to do."
3. On February 8, 2006, and again on July 28, 2006, Virginia State Bar Investigator James Henderson warned Respondent that continued use of his attorney trust account for personal financial matters is a violation of *RPC* 1.15. During Investigator Henderson's second interview with Respondent, Respondent admitted that he knew that use of his trust account for personal financial matters is a violation of said *RPC*.
4. The Virginia State Bar does not contend that Respondent inappropriately used client funds for his personal use or that he held client funds in the account at the time of the Non-Sufficient Funds notices underlying Virginia State Bar docket numbers 07-070-1637, 07-070-1941, 07-070-2108, 07-070-2149, 07-070-2756, 07-070-2858, 07-070-070481, 07-070-070542, 07-070-070663, 07-070-070771, 07-070-070909, 07-070-070978, 07-070-071050, 07-070-071061, 08-070-071220, 08-070-071287, 08-070-071348, 08-070-071404, and 08-070-071447. Respondent used his attorney trust account to deposit and hold client funds in trust. However, upon the closure of his

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personal account, Respondent began to deposit his personal funds into his attorney trust account in excess of two years' worth of funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution.

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

VSB DOCKET NUMBER 07-070-1637:

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

VSB DOCKET NUMBER 07-070-1941:

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

VSB DOCKET NUMBER 07-070-2108:

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

VSB DOCKET NUMBER 07-070-2149:

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

VSB DOCKET NUMBER 07-070-2756:

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

VSB DOCKET NUMBER 07-070-2858:

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

VSB DOCKET NUMBER 07-070-070481:

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

VSB DOCKET NUMBER 07-070-070542:

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

VSB DOCKET NUMBER 07-070-070663:

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

VSB DOCKET NUMBER 07-070-070771:

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

VSB DOCKET NUMBER 07-070-070909:

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

VSB DOCKET NUMBER 07-070-070978:

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

VSB DOCKET NUMBER 07-070-071050:

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

VSB DOCKET NUMBER 07-070-071061:

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

VSB DOCKET NUMBER 08-070-071220:

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

VSB DOCKET NUMBER 08-070-071287:

21. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On July 2, 2007, notwithstanding a negative balance of \$822.52, Respondent authorized payment of \$177.41 from his trust account which the bank returned to the payee unpaid and marked "NSF" ("non-sufficient funds"). On July 3, 2007, notwithstanding a negative balance of \$822.52, Respondent authorized payment of \$144.92 from his trust account that the bank also returned to the payee unpaid and marked "NSF." (At this time, the identity of both payees is unknown to the Bar.) If the bank had paid both checks on behalf of Respondent, Respondent's trust account would have had a negative balance of \$1,144.85.

VSB DOCKET NUMBER 08-070-071348:

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

VSB DOCKET NUMBER 08-070-071404:

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

VSB DOCKET NUMBER 08-070-071447:

24. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On July 18, 2007, notwithstanding a negative balance of \$822.52, Respondent wrote a personal check in the amount of \$100.00 from his trust account that the bank returned to the payee unpaid and marked "NSF." If the bank had paid this check on behalf of Respondent, his trust account would have had a negative balance of \$922.52.
25. Paragraphs 1 through 5 inclusive are hereby incorporated by reference. On June 1, 2007, Respondent had actual notice that his trust account had a large negative balance and that he had no available funds in his trust account to cover any checks drawn against it. On May 31, 2007, in the presence of his attorney, Bernard J. DiMuro, Respondent informed Investigator Jackson that on June 1, 2007, he would close his attorney trust account at SunTrust Bank and open a personal checking account. In Respondent's Answer to several of the above-mentioned bar complaints, he states that on June 1, 2007, he attempted to close his attorney trust account, but Sun Trust Bank refused to

DISCIPLINARY BOARD

close the account because of the large negative balance. Respondent also claimed that SunTrust informed him that they would close his trust account only after he had repaid the money he owed to them for covering his bad checks. Previously, SunTrust had the same experience with Respondent when it closed his personal checking account after he caused a negative balance of approximately \$2,000.00 in the account by issuing checks without sufficient funds to cover them. The bank closed his personal account once he repaid the debt.

26. Paragraphs 6 through 25, inclusive above, provide clear and convincing evidence that Respondent knowingly, willfully, and intentionally continues to use his attorney trust account for personal financial matters. Notwithstanding his representation to Investigator Jackson that he would close his attorney trust account at SunTrust Bank on June 1, 2007, and open a personal checking account to avoid any further *RPC* violations, Respondent has not opened a personal checking account at any other bank.
27. Respondent knowingly, willfully, and intentionally wrote checks or authorized withdraws of funds from his attorney trust account for personal financial matters knowing that there were insufficient funds available to cover the checks tendered to payees as evidenced in Paragraphs 6 through 25, inclusive above.

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

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
- (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

VSB DOCKET NUMBER 06-070-0574

28. On or about July 16, 1998, Mr. Charles F. McKay sustained injuries in a vehicular accident caused by James Bull, who had an alcohol content of 0.27 at the time of the accident. The Albemarle County Circuit Court convicted Mr. Bull of felony DWI.
29. Mr. McKay hired Respondent to protect his interests that developed from the vehicular accident caused by Mr. Bull. On or about July 14, 2000, two days before the statute of limitations would have lapsed on Mr. McKay's right to file a lawsuit against Mr. Bull, Respondent filed a motion for judgment against Mr. Bull in the Albemarle County Circuit Court. The motion filed by Respondent named James Bull and his insurance company, Integon General Insurance Corporation, as the only defendants in the lawsuit. Respondent did not name Mr. McKay's automobile insurance company as a party to the lawsuit *before* the statute of limitations lapsed on his right to sue his own insurance company under the underinsured motorist provision.
30. Respondent did not communicate to his client that he did *not* properly include his insurance company in the motion for judgment.
31. The court scheduled a jury trial on July 22, 2002. On July 19, 2002, however, upon a joint motion for a continuance generally, the court removed the trial from the docket because both parties represented that the matter was close to settlement.
32. On or about October 5, 2004, more than two years later, Charles Sipe, attorney for Integon General Insurance, drafted and delivered to Respondent a check in the amount of \$25,000, a Release and a Dismissal Order. The Release Mr. Sipe mailed to Respondent recited the \$25,000 settlement amount only. Respondent, however, created his own Release to present to Mr. McKay. Respondent intentionally and deliberately fabricated this Release showing a settlement amount of \$50,000 and presented it to Mr. McKay for approval. Mr. McKay

contends that Respondent's fabricated Release misled him to believe that a second payment of \$25,000 would be paid in January of 2005. Respondent will not oppose Mr. McKay's contention.

33. On October 13, 2004, Respondent deposited the \$25,000 settlement check from Integon General Insurance Corporation into his attorney trust account. Respondent represented to Mr. McKay that Integon General had agreed to settle the lawsuit for \$50,000, which he alleged was Mr. Bull's maximum policy limits. However, Mr. Sipe stated that Mr. Bull, a high-risk driver, carried only the \$25,000 minimum insurance policy limits set by Virginia law.
34. On October 19, 2004, Mr. McKay negotiated the \$25,000 check drawn on Respondent's attorney trust account. On October 20, 2004, the Albemarle Circuit Court entered an order that settled Mr. McKay's lawsuit against Mr. Bull and Integon General Insurance Corporation for \$25,000. Mr. McKay had no knowledge that the lawsuit against Mr. Bull and Integon General Insurance Corporation had been settled by Respondent or that Respondent did not protect his claim against his own insurance company.
35. Respondent did *not* communicate to Mr. McKay the actual \$25,000 settlement offer from Integon General Insurance Company. Respondent did *not* get Mr. McKay's approval to settle the lawsuit for the proposed \$25,000. Respondent settled the case for \$25,000 *without* Mr. McKay's approval and/or consent. In his affidavits to the Virginia State Bar dated August 17, 2005, and October 3, 2005, Respondent admits that he intentionally and deliberately fabricated the Release and Dismissal Order that he presented to Mr. McKay in order to cover up his error and in an effort to buy time to pay Mr. McKay from Respondent's own resources.
36. Mr. McKay confirms that Respondent falsely informed him that on October 19, 2004, the Bull lawsuit had settled for \$50,000. In addition, Mr. McKay stated that Respondent told him that he would receive a large sum of money from his own insurance company. Mr. McKay stated that he relied on Respondent's deliberate misrepresentations of the facts concerning the posture of his lawsuit and the large sum of money he was to receive from his own insurance company and retired from his job as a teacher.
37. In his February 8, 2006, report, Virginia State Bar Investigator James W. Henderson states that Mr. McKay told Investigator Henderson that Respondent informed Mr. McKay that his case had settled twice. The first settlement agreement was not enforceable because the language was incorrect, and he had to start over. Mr. McKay also told Investigator Henderson that Respondent told him that the second settlement amounts would be \$180,000 from his insurance company and \$50,000 from Mr. Bull's insurance company. Investigator Henderson reported that Respondent paid Mr. McKay various sums of money from his own resources at several of their meetings together, totaling about \$15,000. In his affidavits to the Bar dated August 17, 2005, and October 3, 2005, Respondent does not refute or deny, but corroborates, these facts.
38. Investigator Henderson's February 8, 2006, report states that Respondent informed him that he first told Mr. McKay that he would receive \$300,000 from his insurance company, but later told him that he would receive \$180,000 from his insurance company. Respondent told Investigator Henderson that he finally settled the Bull lawsuit for \$25,000 without Mr. McKay's knowledge.
39. On or about May 17, 2006, Virginia State Bar Investigator Henderson submitted Mr. McKay's telephone records and personal calendars showing that, over the course of four years, Mr. McKay had over seventy meetings with Respondent to discuss the progress of his case.
40. Over the course of this four-year attorney-client relationship, Respondent did not discuss with Mr. McKay any fee arrangements concerning the personal injury matter. Respondent did *not* communicate to his client whether he would bill on an hourly basis, or handle the case for a flat fee or on a contingency-fee basis. Investigator Henderson reports that Respondent told him that, although he never discussed any type of fee arrangement with Mr. McKay, he had intended to charge him only a ten-percent (10%) contingency fee because of their thirty-year friendship. Under the *Rules of Professional Conduct*, a contingency fee arrangement must be in writing explaining the attorney's calculation of fees and expenses. At the conclusion of the matter, the attorney must provide the client written statement showing the results obtained and the calculation of remittance paid to the client. Respondent did not provide any of this information to Mr. McKay.
41. In his affidavit to the Virginia State Bar dated August 17, 2005, Respondent admits that he lied to Mr. McKay over the course of his representation in order to conceal the following facts:
 - i) he did *not* properly include Mr. McKay's automobile insurance company in the lawsuit to protect his underinsured motorist claim;
 - ii) he did *not* attempt to correct his error when he discovered it;
 - iii) he had settled the lawsuit for \$25,000 without Mr. McKay's approval and/or consent;
 - iv) he had fabricated documents to intentionally and deliberately mislead Mr. McKay to cover up his error and to "buy time for [Respondent] to make efforts to pull the money together" to pay him from his own resources;

DISCIPLINARY BOARD

- v) he did *not* communicate his mistake to Mr. McKay when he discovered it; and,
 - vi) he lied to other attorneys involved in the case to avoid detection.
42. In his affidavit to the Virginia State Bar dated October 3, 2005, Respondent admits that he told Mr. McKay so many lies that he cannot remember all of the lies he told him to cover up his error.
43. In January of 2005, Respondent began using his attorney trust account to conduct his personal business. Respondent had overdrawn his personal or business operating account by \$2,000.00. Subsequently, due to the large overdraft, the bank closed Respondent's personal checking account.
44. In January of 2005, Respondent wrote a check from his attorney trust account for his personal use made payable to Giant Foods. In February of 2005, he wrote two checks from his attorney trust account, both for his personal use, one made payable to Giant Foods and the other to SunTrust. In November of 2005, he wrote two checks from his attorney trust account, both for his personal use, one made payable to Sallie Mae and the other to Texaco/Shell-Consumer. In December of 2005, he wrote two more checks from his attorney trust account for his personal use, one made payable to Wells Fargo Financial in the amount of \$642.00 and another made payable to Duddy Ent. (sp.).

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

RULE 1.1 Competence

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

RULE 1.2 Scope of Representation

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

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 1.5 Fees

- (b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by which the fee is to be

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

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
- (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

VSB DOCKET NUMBER 06-070-1845

45. On December 5, 2005, SunTrust Bank, pursuant to the Attorney Trust Account Regulations, notified the Virginia State Bar that Respondent had two trust account instances of NSF (non-sufficient funds). A check made payable to Wells Fargo Financial and another check made payable "Duddy Ent." (sp.) caused an overdraft of \$316.52 of Respondent's attorney trust account.
46. In November of 2005 and December of 2005, Respondent made deposits of earned fees, i.e., he deposited his personal income into his attorney trust account. In Virginia State Bar Investigator Henderson's February 3, 2006, Report of Investigation, Respondent told Investigator Henderson that he used his trust account to conduct his personal business because the bank closed his personal account due to an overdraft of \$2,000.00 that he is in the process of paying back to the bank. Respondent did not attempt to open another personal checking account. Respondent admitted to Investigator Henderson that he used his IOLTA attorney trust account as a regular personal checking account ever since the bank closed his general personal account.
47. Prior to the closure of Respondent's personal bank account, he used his attorney trust account only to deposit client funds. Upon the closure of his personal account, Respondent began to deposit his personal funds into his attorney trust account and kept in excess of two years' worth of funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution. The Bar does not contend that Respondent inappropriately used client funds for his personal use or that client funds were held in the account at the time of the Non-Sufficient Funds notice.

THE VIRGINIA STATE BAR DISCIPLINARY BOARD finds by clear and convincing evidence that such conduct in Virginia State Bar docket number 06-070-1845 on the part of the Respondent, Thomas Marshall James, constitutes a violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
- (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

DISCIPLINARY BOARD

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 NUMBER 07-070-0455:

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

49. In August of 2006, Virginia State Bar Investigator James W. Henderson initiated another investigation of Respondent's use of his lawyer's trust account for personal banking. Investigator Henderson had conducted at least two previous investigations of Respondent in the past two years for the same behavior. During these previous investigations, Investigator Henderson had repeatedly warned Respondent that his use of his lawyer's trust account for personal banking — depositing personal funds into the trust account and paying personal bills from the trust account — was improper and a violation of Rule of Professional Conduct 1.15. Investigator Henderson also informed Respondent that his continued use of his lawyer's trust account for personal use subsequent to a previous warning was a violation of Rule of Professional Conduct 8.4 — Misconduct because he had actual notice of his violation, but by knowingly, intentionally, and willfully continued to use his IOLTA attorney trust account to conduct personal financial transactions.

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

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

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

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

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

THE VIRGINIA STATE BAR DISCIPLINARY BOARD finds by clear and convincing evidence that such conduct in Virginia State Bar docket number 06-070-0455 on the part of the Respondent, Thomas Marshall James, constitutes a violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
- (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

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

1. On September 30, 2012, Thomas Marshall James shall certify his compliance with this term by delivering a fully and properly executed sworn statement to the Assistant Bar Counsel assigned to the Virginia State Bar's Seventh District, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, that he has not received a notice of non-sufficient funds concerning any and all financial institution accounts where Respondent currently serves as a fiduciary or assumes a fiduciary obligation of an account, during the five-year period of his license suspension. For the purpose of this Order adopting the Agreed Disposition, the term "fiduciary" includes only Respondent's conduct as a personal representative, trustee, receiver, guardian, committee, custodian, and attorney-in-fact.
2. If, however, the term and condition set fourth in the immediately preceding Paragraph 1 has not been met by September 30, 2012, the alternative sanction shall be revocation of the Respondent's license to practice law in the Commonwealth of Virginia.
3. Should the Virginia State Bar allege that Respondent has failed to comply with the terms of discipline referred to herein and that the alternative disposition should be imposed, a "show cause" proceeding pursuant to the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13.I.2.g. will be conducted, at which proceeding the burden of proof shall be on the Respondent to show the disciplinary tribunal by clear and convincing evidence that he has complied with the terms of discipline referred to herein.
4. The provisions of Part 6, § IV, ¶ 13.M. of the Rules of the Supreme Court of Virginia are inapplicable to this Agreed Disposition because the Respondent is not engaged in the practice of law at this time. It is further ORDERED that if the Respondent is not handling any client matters on September 30, 2007, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by ¶ 13.M. shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for a hearing before a three-judge court.
5. Pursuant to Part 6, § IV, ¶ 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.
6. Pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia, the Court dispenses with any requirement that this Order be endorsed by counsel of record for the parties.

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

ENTERED this 25th day of September, 2007.
VIRGINIA STATE BAR DISCIPLINARY BOARD

JAMES L. BANKS JR., Chair

DISCIPLINARY BOARD

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
CLAUDE MICHAEL SCIALDONE
VSB DOCKET NUMBER: 08-000-071841

AMENDED IMPAIRMENT SUSPENSION ORDER

This day came the Virginia State Bar (the Bar), by Assistant Bar Counsel Paul D. Georgiadis, and the Respondent, Claude Michael Scialdone, Esquire, by counsel Marvin D. Miller, Esquire, and represented to the Disciplinary Board that Mr. Scialdone suffers from “cognitive compromise”. The bar now has four (4) misconduct complaints pending against Mr. Scialdone based upon reports from judges and others of courtroom misbehavior that has led to contempt of court findings.

The Board has received uncontradicted evidence of impairment and a recommendation from a health care provider that Mr. Scialdone suspend the practice of all attorney-related functions pending further assessment. Respondent, by counsel, has agreed to said suspension based upon indications of his impairment. As such, Mr. Scialdone currently suffers from an Impairment as that term is defined in Part 6, § IV, ¶ 13 of the Rules of the Supreme Court of Virginia (Paragraph 13), and his license to practice law should be suspended under ¶ 13(I)(6) until it is established he no longer suffers from an Impairment.

It appearing proper to do so under ¶ 13(I)(6), it is hereby

ORDERED that the license of Claude Michael Scialdone to practice law in the Commonwealth of Virginia is **SUSPENDED** indefinitely effective September 11, 2007. It is further

ORDERED that the Respondent shall comply with the requirements of ¶ 13(M). Issues concerning the adequacy of the notice and arrangements required shall be determined by the Board, which may impose a sanction of revocation or further suspension for failure to comply with the requirements of this paragraph. It is further

ORDERED that a copy of this Order be mailed by first-class mail, postage prepaid, to Respondent’s Counsel, Marvin D. Miller, 1203 Duke Street, Alexandria, Virginia, 22314, hand-delivered to Paul D. Georgiadis, Assistant Bar Counsel, and mailed by Certified Mail, Return Receipt Requested, to Claude Michael Scialdone, Esq., Scialdone & Taylor, Inc., 2437 North Landing Road, P.O. Box 6116, Virginia Beach, VA 23456-6116, his address of record with the Bar.

ENTERED this 13th day of September, 2007.

FOR THE DISCIPLINARY BOARD OF
THE VIRGINIA STATE BAR

Barbara Sayers Lanier
Clerk of the Disciplinary System

VIRGINIA:
BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
SIMON HERBERT SCOTT III
VSB DOCKET NUMBERS: 07-031-0072
06-031-3876

ORDER OF PUBLIC REPRIMAND WITH TERMS

On August 29, 2007, a telephone conference in this matter was held before the Disciplinary Board of the Virginia State Bar consisting of Robert E. Eicher, Chair, Timothy A. Coyle, Sandra L. Havrilak, Martha JP McQuade, and V. Max Beard, lay person, to consider acceptance of a proposed Modified Agreed Disposition presented by Simon Herbert Scott III, Respondent, and Paulo E. Franco Jr., Assistant Bar Counsel. Donna Chandler, Court Reporter for Chandler & Halasz, 8309 Powhickery Drive, Mechanicsville, Virginia 23116, 804-730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

VSB DOCKET NUMBER 07-031-0072

Complainant: Gloria D. Wood

STIPULATED FINDINGS OF FACT

1. Simon Herbert Scott III, was admitted to practice law in the Commonwealth of Virginia on April 23, 1997.
2. At all times relevant, Mr. Scott was licensed to practice law in the Commonwealth of Virginia.
3. In March of 2006, Mr. Scott was an attorney in the offices of the law firm Scott & Sams.
4. On March 7, 2006, Ms. Gloria Woods met with Mr. Scott to discuss his representation of her in divorce proceedings.
5. The parties did not execute a formal retainer agreement, but Ms. Woods wrote Mr. Scott a check in the amount of \$1,580.00 as fee for the divorce representation.
6. On March 17, 2006, Ms. Wood called Mr. Scott for an update on her case, but he had not done anything in connection with the representation.
7. On April 7, 2006, Mr. Scott's secretary called Ms. Wood requesting information concerning the case.
8. On April 10, 2006, Ms. Wood called the secretary and provided the information.
9. Unbeknownst to Ms. Wood, Mr. Scott tendered his resignation from Sams & Scott but did not give Ms. Wood or any other of his clients notice.
10. Sams & Scott received several calls from courts in the Norfolk area wanting to know why Mr. Scott had not appeared in court-appointed cases.
11. Prior to his departure, Mr. Scott did not take appropriate steps of filing motions to seek leave to withdraw from his court-appointed and other cases, nor did he provide such courts with notice that he was leaving the firm.
12. Other attorneys in Sams & Scott continued in those cases that Mr. Scott abandoned once the firm became aware of Mr. Scott's appointment or role as counsel of record.
13. Mr. Scott did not inform any of the other attorneys at Sams & Scott that Ms. Wood was a client or that she had a pending divorce matter.
14. Sams & Scott discovered that Ms. Wood was a client only because she had called the firm after Mr. Scott's departure and advising the firm that she no longer wished Mr. Scott to represent her interests.
15. After his departure, Mr. Scott did not take appropriate steps to refund Ms. Wood the unearned portion of her retainer, nor did he take any appropriate steps to ensure that her records were returned to her.
16. Ms. Wood subsequently elected to retain LeRon Gilchrist, Esquire, an attorney with Sams & Scott.

Mr. Scott has advised Bar Counsel that he is no longer engaged in the active practice of law and is not representing clients. He has changed his status with the Virginia State Bar from Active to Associate Status.

STIPULATED FINDING OF MISCONDUCT

Such conduct by Simon Herbert Scott III constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 DILIGENCE

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

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.

DISCIPLINARY BOARD

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.
- (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 in paragraph (e).

VSB DOCKET NUMBER 06-031-3876

Complainant: VSB/Anonymous — Jemar Leon White

STIPULATED FINDINGS OF FACT

1. Simon Herbert Scott III, was admitted to practice law in the Commonwealth of Virginia on April 23, 1997.
2. At all times relevant, Mr. Scott was licensed to practice law in the Commonwealth of Virginia.
3. Jemar Leon White was convicted of possession of cocaine and resisting arrest and sentenced on September 9, 2005.
4. Respondent was appointed to represent Mr. White on appeal to the Court of Appeals of Virginia.
5. Prior to filing an appeal, Mr. White filed a motion to reconsider with the trial court. The trial court denied the motion to reconsider on November 8, 2005.
6. Respondent filed the transcripts of the proceedings at the trial court on December 6, 2005.
7. In calculating the date on which to file the transcripts as part of the appeal, Respondent erroneously used the date of November 18, 2005, the date of the order denying the Motion to Reconsider. The final order for calculating the date in which to file the transcripts was the sentencing order of September 9, 2005.
8. On December 13, 2005, the Court of Appeals issued a Rule to Show Cause requiring Mr. White to show cause why the appeal should not be dismissed.
9. On April 18, 2006, the Court of Appeals dismissed the case for failure to timely file the transcripts.
10. Respondent failed to advise his client that his appeal had been dismissed and failed to advise his client that he left the firm.
11. Mr. Scott has advised Bar Counsel that he is no longer engaged in the active practice of law and is not representing clients. He has changed his status with the Virginia State Bar from Active to Associate Status.

STIPULATED FINDING OF MISCONDUCT

Such conduct by Simon Herbert Scott III constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 DILIGENCE

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

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.

DISPOSITION

The Disciplinary Board finds that had this matter gone to a full hearing the Bar would have met its burden to prove the aforementioned Rule violations by clear and convincing evidence. Pursuant to Part 6, § IV, ¶ 13.I.2.f, g and h of the Rules of the Supreme Court of Virginia, the

Disciplinary Board of the Virginia State Bar hereby accepts by a unanimous vote the Modified Agreed Disposition tendered to it, as modified by the suggestion of the Board and freely and voluntarily accepted by Respondent and Assistant Bar Counsel, and

Accordingly it is ORDERED that the Respondent, Simon Herbert Scott III, receive a Public Reprimand with Terms effective August 29, 2007.

The terms to which Respondent shall be held are as follows:

1. In the event that Respondent elects to return to the active practice of law and activates his status with the Virginia State Bar from Associate to Active, within 30 days of such activation he shall provide written certification to the Office of Bar Counsel that he is working under the supervision of another lawyer.
2. Respondent shall remain under the active supervision of such lawyer for a period of not less than one year.

Should Respondent fail to comply with the foregoing terms, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction should not be imposed. The matter shall be referred to the Disciplinary Board for a hearing to determine an appropriate alternative sanction. The sole factual issue will be whether the Respondent has violated 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 Disciplinary Board. At the hearing, the burden of proof shall be on the Respondent to show timely compliance with the terms, including timely certification of such compliance by clear and convincing evidence.

It is further ORDERED that the Clerk of the Disciplinary System shall assess an administrative fee pursuant to Part 6, § IV, ¶ 13.B.8.C.1 of the Rules of the Supreme Court of Virginia.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Simon Herbert Scott III, at his address of record with the Virginia State Bar, being 4012 Newport Avenue, Norfolk, Virginia 23508, by certified mail, return receipt requested, and hand delivered to Paulo E. Franco Jr., Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 7th day of September, 2007.

Robert E. Eicher, First Vice Chair
Virginia State Bar Disciplinary Board

DISTRICT COMMITTEES

**VIRGINIA:
BEFORE THE SIXTH DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
MICHAEL JAMES GEORGE, ESQUIRE
VSB DOCKET NUMBER 03-060-0264**

**SUBCOMMITTEE DETERMINATION
PUBLIC ADMONITION WITH TERMS**

On the 28th day of June, 2007, a meeting in this matter was held before a duly convened subcommittee of the Sixth District Committee consisting of Richard Henry Stuart, Esq., John E. Graham, and Jennifer Lee Parrish, Esq., presiding. Pursuant to Part 6, § IV, ¶ 13(G)(1)(d) of the Rules of Virginia Supreme Court, a subcommittee of the Sixth District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition With Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Michael James George, Esquire, (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. The events that led to the bar complaint are related to a contentious divorce between the Respondent and his former wife. The Complainant in this matter was counsel for the Respondent's wife during the divorce proceeding.

DISTRICT COMMITTEES

3. On or about September 9, 2000, the Respondent and his wife were married in Stafford County, Virginia, after a brief courtship. Following the marriage, the wife began working in the Respondent's law office.
4. After she began working in his law office, the Respondent's wife opened a checking account in her own name at Wachovia Bank. The Respondent did not have signatory authority on the wife's Wachovia Bank account.
5. At the time of the events in question, the Respondent's income was derived primarily from court-appointed guardian *ad litem* fees which had been earned upon receipt. In addition, he had a small number of retained clients.
6. On one or more occasions during the time the Respondent's wife worked at the Respondent's law office, unearned fees were received from retained clients in the form of checks, and the Respondent's wife deposited them in her individual account at Wachovia Bank. The Respondent's wife abruptly terminated her employment at the Respondent's office and relocated to the state of California.
7. The Respondent stipulates that the deposit of unearned fees into his wife's account was a direct result of his failure to properly supervise an employee and was inconsistent with the Rules of Professional Conduct related to trust account practices. At no time, however, was the Respondent out of trust, and there is no evidence that any client harm resulted from the practice described in paragraph six (6) *supra*.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct have been violated:

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:
 - (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 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 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.

PUBLIC ADMONITION WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which by the dates set forth below shall be a predicate for the disposition of this complaint by imposition of a Public Admonition With Terms. The terms and conditions which shall be met are:

1. On or before December 31, 2007, the Respondent shall complete sixteen (16) hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of ethics. The Respondent's Continuing Legal Education attendance obligation set forth in this paragraph **shall not** be applied toward his Mandatory Continuing Legal Education requirement in Virginia or

any other jurisdictions in which the Respondent may be licensed to practice law. The Respondent shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form (Form 2) to Marian L. Beckett, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of each such CLE program(s).

2. For a period of one (1) year following the date of entry of this Order, the Respondent shall engage in no conduct that violates any provisions of Virginia Rules of Professional Conduct 1.15, and 5.3, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which the Respondent may be admitted to practice law. The terms contained in this Paragraph 2 shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against the Respondent by any disciplinary tribunal that contains a finding that Respondent has violated one or more provisions of the disciplinary rules referred to above; *provided, however*, that the conduct upon which such finding was based occurred within the one-year period referred to above, and provided, further, that such ruling has become final.

Upon satisfactory proof that the above noted terms and conditions have been complied with in full, a PUBLIC ADMONITION WITH TERMS shall then be imposed, and this matter shall be closed. If, however, the Respondent fails to comply with any of the terms set forth herein, as and when the obligation with respect to any such Term has accrued, then, and in such event, the alternative disposition of CERTIFICATION TO THE VIRGINIA STATE BAR DISCIPLINARY BOARD shall be imposed, upon an agreed stipulation of facts and misconduct as the facts and misconduct are set forth herein for the sole purpose of the imposition of a sanction deemed appropriate by the Virginia State Bar Disciplinary Board, pursuant to Part 6, § IV, ¶ 13(I)(2)(g) of the Rules of the Supreme Court of Virginia.

IV. COSTS

Pursuant to Part Six, § IV, ¶ 13(B)(8)(c)(1) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

Jennifer Lee Parrish, Chair
