

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF  
DAVID REDDEN

VS B Docket Nos. 11-021-085200 and 11-021-086547

MEMORANDUM ORDER

This matter came on to be heard on April 17, 2012 by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of Pleasant S. Brodnax, III, Second Vice Chair, Stephen A. Wannall, Lay Member, Whitney G. Saunders, Member, and Bruce T. Clark, Member (the Panel)<sup>1</sup>.

M. Brent Saunders, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar, and Respondent appeared in person *pro se*.

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

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

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<sup>1</sup> Both Respondent and the Virginia State Bar consented to the submission of the Agreed Disposition to four members of the Board and waived any objection to the lack of a quorum.

The Panel heard argument and reviewed Respondent's prior disciplinary record with the Virginia State Bar and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Panel reconvened and announced its unanimous acceptance of the Agreed Disposition.

### I. FINDINGS OF FACT

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

1. At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia.

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2. The complainant, Cynthia McCleave ("McCleave"), was divorced by decree entered by the Norfolk Circuit Court on March 11, 2008 (*Cynthia McCleave v. Stanford R. McCleave*, Case No. CH04-2758).

3. In November 2008, McCleave hired Respondent to prepare and have entered multiple Qualified Domestic Relations Orders ("QDROs") for the purpose of effectuating the division of her ex-husband's retirement plans as set forth in a property settlement agreement and addendum that had been affirmed, ratified and incorporated into the final decree entered in the divorce case. Respondent agreed to complete those matters for a fixed fee of \$500.00, which McCleave paid in advance the day she hired Respondent.

4. In order to secure entry of the QDROs, it was necessary to have the case reinstated on the Court's docket. Respondent made no attempt to have the case reinstated on the docket until November 2009, when he finally filed a Motion to Reinstate Case. Between the

time of his hiring and the filing of the Motion to Reinstate Case, Respondent performed some work on the matter in the form of researching whether the Court had jurisdiction to reinstate the case on the docket and contacting the administrators of the retirement plans. An order reinstating the case on the Court's docket was entered on December 4, 2009 (*Cynthia McCleave v. Stanford R. McCleave*, CL09-7272). Respondent presented no QDROs for entry, and consequently, on June 11, 2010, the case was struck from the Court's docket due to no order or decree having been submitted for more than six months following the reinstatement of the matter.

5. Respondent did not notify McCleave that the matter had been removed from the Court's docket. Upon learning of it after contacting the Norfolk Circuit Court Clerk's Office in July 2010, McCleave immediately sent Respondent a letter terminating the representation and requesting that Respondent provide her with her file and a refund of the advance fee monies she had paid. McCleave sent the letter via certified mail and Respondent never claimed it. However, two days after sending it, McCleave spoke with Respondent, who promised to have the matter placed back onto the Court's docket the next month. When Respondent failed to do so, McCleave filed this complaint on September 10, 2010. Respondent refunded the advance fee in the form of a Cashier's Check in the amount of \$500.00 issued on September 25, 2010, eight days after this complaint was mailed to Respondent.

6. Respondent failed to return numerous telephone messages McCleave left for him throughout the representation in an effort to obtain information relative to the status of the matter.

7. Respondent did not deposit or maintain McCleave's advance fee monies in a clearly identified escrow account.

8. Respondent disbursed McCleave's advance fee monies to himself without earning the fees.

9. Respondent did not provide McCleave with adequate accountings of her advance fee monies or maintain trust account books and records as required.

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10. In March 2010, Kandise N. Lucas ("Lucas") hired Respondent to appeal a civil judgment rendered against her in the Richmond Circuit Court. (*Kim Taylor v. Southside Voice, Inc., et al.*, Case No. CL09-3327). Respondent agreed to represent Lucas through the conclusion of the appeal for a fixed fee of \$6,000.00 plus expenses. In late March 2010, Lucas paid Respondent \$7,500.00, which comprised the \$6,000.00 fixed fee plus \$1,500.00 for anticipated fees and costs.

11. Respondent timely filed a notice of appeal and petition for appeal in the Supreme Court of Virginia. (*Kandise N. Lucas v. Kim Taylor*, Record No. 101334).

12. Respondent failed to reference with the assignments of error set out in the petition for appeal the pages of the transcript, written statement of facts, or record where the alleged errors were preserved in the trial court as required by Rule 5:17(c), and as a result, the petition for appeal was refused by order entered on September 1, 2010.

13. Respondent did not take any action to correct the deficient petition for appeal.

14. Respondent did not notify Lucas of the refusal of the appeal. Lucas was unaware that her appeal had been refused until after she contacted the Supreme Court of Virginia on October 26, 2010, in response to being served with a garnishment summons issued against Lucas' wages on behalf of the judgment creditor in the underlying civil case following the

refusal of the appeal.

15. Respondent disbursed Lucas' advance fee monies to himself without earning the fees.

16. Respondent did not provide Lucas with adequate accountings of her advance fee monies or maintain trust account books and records as required.

## II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by David Redden constitutes misconduct in violation of the following Rules of Professional Conduct as stipulated by the parties:

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#### RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

#### RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (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 1.15 Safekeeping Property

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

dispute is finally resolved.

(c) A lawyer shall:

- (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and
- (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

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**RULE 1.3 Diligence**

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

**RULE 1.4 Communication**

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (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**

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

**RULE 1.15 Safekeeping Property**

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

follows:

(1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or

(2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) A lawyer shall:

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and

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

#### RULE 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

### III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, it is hereby **ORDERED** that the license of Respondent, David Redden, to practice law in the Commonwealth of Virginia, be, and the same hereby is, **SUSPENDED** for a period of five (5) months effective at 5:00 p.m. on April 27, 2012, with terms. The terms with which Respondent must comply are as follows:

Respondent shall refund \$2,500.00 to Kandise N. Lucas on or before December 31, 2012;

and

Respondent shall certify to the Office of Bar Counsel on or before July 1, 2012 that he has fully reviewed the Virginia State Bar publication titled Lawyers and Other People's Money, 4<sup>th</sup> Edition, available on the Virginia State Bar's website at [www.vsb.org](http://www.vsb.org).

Upon satisfactory proof that such terms and conditions have been met, this matter shall be

closed. If, however, all the terms and conditions are not met by the deadlines imposed above, the alternative disposition shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of two (2) years. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to Paragraph 13-9.E of the Rules of Court.

It is further ORDERED that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent 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. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension 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, 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, unless the Respondent makes a timely request for hearing before a three-judge court.

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

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order to David Redden at his last address of record with the Virginia State Bar, Suite 209, 12388 Warwick Boulevard, Newport News, Virginia 23606, and by hand-delivery to M. Brent Saunders, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Jennifer L. Hairfield of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227 (804) 730-1222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: April 20, 2012

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Pleasant S. Brodnax  
Pleasant S. Brodnax, III  
Second Vice Chair