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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

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VIRGINIA STATE BAR EX REL  
SECOND DISTRICT COMMITTEE  
VSB Docket No. 13-021-093607

Case No. CL13-7195

v.

BENJAMIN THOMAS REED

**MEMORANDUM ORDER**

THIS MATTER came to be heard on January 2, 2014, before a Three-Judge Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of The Honorable Gary A. Hicks, Judge of the Fourteenth Judicial Circuit, Chief Judge presiding ("Chief Judge"), The Honorable Frederick H. Creekmore, Sr., Retired Judge of the First Judicial Circuit, and The Honorable William H. Shaw, III, Retired Judge of the Ninth Judicial Circuit (collectively the "Panel"). The Virginia State Bar appeared through Assistant Bar Counsel M. Brent Saunders. Respondent appeared in person and through his counsel, Ann K. Sullivan, Esquire.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against Respondent, which Rule directed Respondent to appear and show cause why his license to practice law in the Commonwealth of Virginia should not be suspended or revoked, or why he should not otherwise be sanctioned by reason of allegations of ethical misconduct set forth in the Certification issued by a Subcommittee of the Second District Committee of the Virginia State Bar.

The Chief Judge swore the court reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or

reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chief Judge, verified they had no such interests.

The Panel accepted the parties' Stipulation of Fact and admitted the bar's pre-filed exhibits with the exception of the bar's Exhibit 6(J), the admission of which was held in abeyance.

Following opening statements on behalf of the parties, the bar then presented its evidence, including the bar's Exhibit 6(J) which was admitted into evidence.

At the conclusion of the bar's case, Respondent moved to strike the evidence as to each of the allegations of misconduct charged in this case. Following the receipt of arguments from the parties and deliberation, the Panel overruled Respondent's motion to strike in its entirety.

Respondent then presented his evidence including his pre-filed exhibits which were admitted. Prior to Respondent resting his case, the bar and Respondent submitted to the Panel a joint proposal for the resolution of this case pursuant to which:

i) Respondent stipulated that his conduct established violations of the following provisions of the Virginia Rules of Professional Conduct charged in this case: Rule 1.15 Safekeeping Property (eff. thru June 20, 2011): 1.15(a); 1.15(d); 1.15(e)(1); 1.15(e)(2); and 1.15(f)(5); Rule 1.15 Safekeeping Property (eff. as of June 21, 2011): 1.15(a)(1); 1.15(a)(3); 1.15(c)(1), (2) and (3); and 1.15(d)(3); and Rule 8.4 Misconduct: 8.4(b) and (c); and

ii) the parties jointly recommended the imposition of a sanction of the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of two (2) years effective March 31, 2014 with terms (see below).

Following deliberation, and upon consideration of the evidence presented and Respondent's misconduct stipulations, the Panel unanimously found by clear and convincing

evidence the following material facts and violations of the Virginia Rules of Professional Conduct:

#### MATERIAL FACTS

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

2. Respondent represented Daevon Hunter ("Hunter") in two criminal matters.

The first representation was a sentencing review matter in the Virginia Beach Circuit Court in which Respondent represented Hunter from the spring of 2010 through December 2011. Respondent charged Hunter \$4,000.00 for that representation, and received an initial fee payment of \$2,000.00 on April 26, 2010.

The second representation was a criminal charge in Culpepper County in which Respondent represented Hunter from the summer of 2010 through early 2011. Respondent charged Hunter \$5,000.00 for that representation.

3. In mid-2010, Hunter received a check in the amount of \$35,062.77 issued by Sun Life Financial. The check was made payable to Hunter in his capacity as beneficiary under a life insurance policy. Hunter endorsed the check and sent it to Respondent with a request that Respondent hold the monies for safekeeping during the remainder of Hunter's incarceration<sup>1</sup>.

4. On July 13, 2010, Respondent deposited the \$35,062.77 check made payable to Hunter into his firm's common trust account at Heritage Bank (Accnt. No. xxxxxx5306) ("Trust Account").

Respondent subsequently misappropriated and converted approximately \$27,000.00 of Hunter's monies by disbursing those monies out of the Trust Account to himself for his personal use and benefit, all without Hunter's knowledge or authorization, as follows:

- On July 30, 2010, Respondent disbursed \$2,000.00 from the Trust Account by issuing a check (#1106) in that amount to himself and depositing it into his firm's operating

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<sup>1</sup> Hunter remained incarcerated throughout the commencement of Respondent's representation of him in the two criminal matters.

account at Heritage Bank (Acct. No. xxxxxx4506) ("Operating Account"). At least \$1,992.00 of those monies belonged to Hunter.

- On March 9, 2011, Respondent disbursed from the Trust Account \$10,000.00 belonging to Hunter by issuing a check (#1115) in that amount to himself and depositing it into the Operating Account.
- On May 27, 2011, Respondent disbursed from the Trust Account \$15,000.00 belonging to Hunter by issuing a check (#1116) in that amount to himself and depositing it into the Operating Account.

Respondent fully reimbursed Hunter for the misappropriated monies by sending monies to Hunter or to third parties as requested by Hunter. The first partial reimbursement payment was made in July 2011 (over a year prior to the filing of this bar complaint), and the final such payment was made in September 2013.

5. Respondent failed to maintain the books and records required under Rule 1.15(e)(2) of the Rules of Professional Conduct (through June 20, 2011) and Rule 1.15(c)(3) of the Rules of Professional Conduct (effective as of June 21, 2011) with regard to the monies he held as custodian on behalf of Hunter.

6. In 2010, 2011 and 2012, Respondent failed to maintain the books and records or perform the reconciliations of his firm's trust accounts as required under Rule 1.15(e)(1) and (f)(5) of the Rules of Professional Conduct (through June 20, 2011) and Rule 1.15(c)(1) and (2) and (d)(3) of the Rules of Professional Conduct (effective as of June 21, 2011).

#### VIOLETIONS OF THE VIRGINIA RULES OF PROFESSIONAL CONDUCT

##### RULE 1.15 Safekeeping Property (effective through June 20, 2011)

(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.

(d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:

(1) funds may be maintained in a common escrow account subject to the provisions of Rule 1.15(a) and (c) in the following cases:

- (i) funds that will likely be disbursed or distributed within thirty (30) days of deposit or receipt;
- (ii) funds of \$5,000.00 or less with respect to each trust or other fiduciary relationship;
- (iii) funds held temporarily for the purposes of paying insurance premiums or held for appropriate administration of trusts otherwise funded solely by life insurance policies; or
- (iv) trusts established pursuant to deeds of trust to which the provisions of *Code of Virginia* Section 55-58 through 55-67 are applicable;

(2) funds, securities, or other properties may be maintained in a common account:

- (i) where a common account is authorized by a will or trust instrument;
- (ii) where authorized by applicable state or federal laws or regulations or by order of a supervising court of competent jurisdiction; or
- (iii) where (a) a computerized or manual accounting system is established with record-keeping, accounting, clerical and administrative procedures to compute and credit or charge to each fiduciary interest its pro-rata share of common account income, expenses, receipts and disbursements and investment activities (requiring monthly balancing and reconciliation of such common accounts), (b) the fiduciary at all times shows upon its records the interests of each separate fiduciary interest in each fund, security or other property held in the common account, the totals of which assets reconcile with the totals of the common account, (c) all the assets comprising the common account are titled or held in the name of the common account, and (d) no funds or property of the lawyer or law firm or funds or property held by the lawyer or the law firm other than as a fiduciary are held in the common account.

For purposes of this Rule, the term "fiduciary" includes only personal representative, trustee, receiver, guardian, committee, custodian and attorney-in-fact.

(e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c).

Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

(1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:

- (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and

the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts:

(ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

(iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;

(iv) reconciliations and supporting records required under this Rule;

(2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:

(i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;

(ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above

(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.

(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.

**RULE 1.15 Safekeeping Property (effective as of June 21, 2011)**

**(a) Depositing Funds.**

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts or placed in a safe deposit box or other place of safekeeping as soon as practicable.

(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

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

(3) Reconciliations.

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

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

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

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

#### RULE 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;

Having accepted Respondent's misconduct stipulations, the Panel dismissed all other disciplinary rule violations charged in this case.

**AFTER DUE CONSIDERATION** of the evidence including the nature of the ethical misconduct committed by Respondent, the character evidence submitted on behalf of Respondent, and the fact that Hunter suffered no permanent loss or actual harm to his pecuniary interests as a result of Respondent's misappropriations of his monies and has been fully reimbursed by Respondent, the Panel reached the unanimous decision that the joint sanction recommendation should be accepted and that Respondent's license to practice law in the Commonwealth of Virginia should be suspended for a period of two (2) years with terms. Therefore, it is hereby **ORDERED** that the license of Respondent, Benjamin Thomas Reed, to practice law in the Commonwealth of Virginia, be, and the same hereby is, **SUSPENDED** for a period of two (2) years, effective March 31, 2014<sup>2</sup>, with terms. The terms with which Respondent must comply are as follows: Respondent shall not accept any new privately retained clients between January 2, 2014 and March 31, 2014. If Respondent fails to comply with the terms, the alternative disposition shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of three (3) years.

It is further **ORDERED**, pursuant to the provisions of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, that 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

<sup>2</sup> Respondent shall not accept any new privately-retained clients between January 2, 2014 and March 31, 2014.

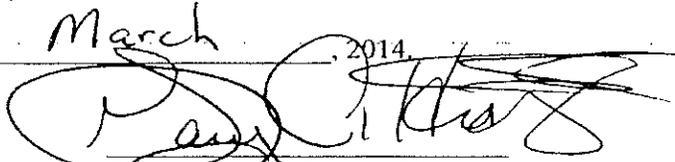
opposing attorneys and presiding judges in pending litigation. Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the license suspension, and make such arrangements as are required herein within 45 days of this effective date of the license suspension. The Respondent shall furnish proof to the Virginia State Bar within 60 days of the effective date of the license suspension that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and the arrangements required herein shall be determined by the Virginia State Bar Disciplinary Board.

Pursuant to Part Six, Section IV, Paragraph 13-9 of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

It is further **ORDERED** that the Clerk of this Court shall send a copy *teste* of this order to Respondent by regular mail at Benjamin Thomas Reed, 4504 Colley Avenue, Norfolk, Virginia 23508, his address of record with the Virginia State Bar; and send copies *teste* by regular mail to counsel of record and to Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

These proceedings were recorded by Biggs & Fleet, Ltd., 125 St. Paul's Blvd., Ste. 309, Norfolk, VA 23510, telephone number (757) 622-2049.

ENTERED this 5<sup>th</sup> day of March, 2014.



The Honorable Gary A. Hicks  
Chief Judge

COPY TESTE:  
GEORGE E. SCHAEFFER, CLERK  
NORFOLK CIRCUIT COURT  
BY \_\_\_\_\_  
Tracey Stapler, Deputy Clerk  
Authorized to sign on behalf  
of George E. Schaeffer  
Date: 3/11/14

SEEN AND AGREED:

VIRGINIA STATE BAR

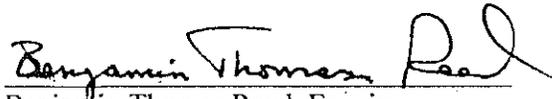
By: 

M. Brent Saunders, Esquire  
Assistant Bar Counsel



Ann K. Sullivan, Esquire  
Respondent's Counsel

AND



Benjamin Thomas Reed, Esquire  
Respondent