VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN RE: **VSB DOCKET NOS. 14-021-098924, 14-021-097215,**
DUNCAN ROBERTSON ST. CLAIR III **13-021-095356, 13-021-094637,**
13-021-094595, 13-021-094129

AGREED DISPOSITION MEMORANDUM ORDER

On September 9, 2014, this matter was heard by the Virginia State Bar Disciplinary Board upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by the Rules of the Supreme Court of Virginia. The panel consisted of Richard J. Colten, Acting Chair, John Casey Forrester, T. Tony H. Pham, David R. Schultz, Sandra W. Montgomery. The Virginia State Bar was represented by M. Brent Saunders, Assistant Bar Counsel. Duncan Robertson St. Clair, III was present and was represented by counsel, Michael F. Fasanaro, Jr. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each member responded in the negative. Court Reporter Jennifer L. Hairfield, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Respondent's Disciplinary Record and any responsive pleadings of counsel,

It is **ORDERED** that:

✓ The Board accepts the Agreed Disposition and the Respondent shall receive a

18 month suspension with terms,

as set forth in the Agreed Disposition, which is attached to this Memorandum Order.

It is further **ORDERED** that:

2. The sanction is effective:

9th September 2014

It is further **ORDERED** that:

The Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of Duncan Robertson St. Clair's 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 suspension, Duncan Robertson St. Clair, III 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 a hearing before a three-judge court.

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

4. A copy teste of this Order shall be mailed by Certified Mail to the Respondent, Duncan Robertson St. Clair, III, at his last address of record with the Virginia State Bar, St Clair & Rosenblumm 2317 E Little Creek Rd, Norfolk, VA 23518, with a copy to Respondent's Counsel, Michael F. Fasanaro, Jr., Michael F Fasanaro Jr., PLLC, 500 E Plume St Ste 205, Norfolk, VA 23510 and hand-delivered to M. Brent Saunders, Assistant Bar Counsel in this matter, at the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-3565..

ENTERED THIS 9th DAY OF Sept., 2014

VIRGINIA STATE BAR DISCIPLINARY BOARD

Richard J. Colten
Chair Designate

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

RECEIVED
SEP 8 2014

IN THE MATTERS OF
DUNCAN ROBERTSON ST. CLAIR, III

VSB Docket Nos. 13-021-094129
13-021-094595
13-021-094637
13-021-095356
14-021-097215
14-021-098924

AGREED DISPOSITION
(18-MONTH SUSPENSION WITH TERMS)

Pursuant to the Rules of the Virginia Supreme Court Rules of Court Part 6, Section IV, Paragraph 13-6.H., the Virginia State Bar, by M. Brent Saunders, Assistant Bar Counsel, and Duncan Robertson St. Clair, III, Respondent, and Michael F. Fasanaro, Jr., Respondent's counsel, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia and a principal in the St. Clair Law Firm and/or its predecessor St. Clair and Rosenblum.

13-021-094129
(Complainants the Honorable Everett A. Martin, Jr., and Jennifer Stanton)

2. In October 2011, Respondent was appointed to represent Larry M. White ("White") in the Norfolk Circuit Court on robbery, use of a firearm during the commission of a felony, and possession of a firearm by a convicted felon charges. The Honorable Everett A. Martin, Jr. ("Judge Martin") was the presiding judge in the Norfolk Circuit Court.

3. The robbery charge carried a punishment of five years to life imprisonment. Because of his prior record, White was facing a mandatory minimum of five years incarceration on each of the two firearm offenses.

4. In early February 2012, the Commonwealth offered a plea deal pursuant to which White would plead guilty to the robbery charge and the Commonwealth would move to *nolle prosequi* the two firearm charges and seek a period of active incarceration of no more than the midpoint of

the sentencing guidelines. On February 2, 2012, Respondent visited White in jail and discussed the terms of the plea offer with him. On February 15, 2012, Respondent and White discussed the terms of the plea offer over the telephone. The next day, February 16, 2012, Respondent met with White and presented him with the written Plea Agreement memorializing the terms of the plea offer. That same day, Respondent appeared with White at a guilty plea hearing before Judge Martin. White initially balked at pleading guilty to the robbery charge. After speaking with his mother, he signed the Plea Agreement, pled guilty to the robbery charge and signed a guilty plea form on which he acknowledged that the maximum possible punishment for that offense was life imprisonment. During the guilty plea colloquy, he further acknowledged that Respondent had advised him of what he believed to be the midpoint of the sentencing guidelines, which the prosecutor stated later during the guilty plea hearing was 19 years and 3 months[1]. Judge Martin accepted the Plea Agreement and guilty plea, and continued the case to May 18, 2012, for the completion of a pre-sentence investigation.

5. Shortly following the guilty plea hearing, White accused Respondent in court filings of, *inter alia*, coercing him into entering into the Plea Agreement by intimidating and lying to him by telling him the maximum sentence he would receive would be seven years. In response to those filings, Respondent filed a motion to withdraw White's guilty plea and a motion to withdraw as White's counsel. On March 21, 2012, a hearing was held before Judge Martin during which White stated Respondent had told him the midpoint sentencing range would be three to seven years. Judge Martin allowed Respondent to withdraw, appointed Jennifer Tope Stanton ("Stanton") as White's new counsel, and deferred consideration of the motion to withdraw White's guilty plea.

6. On September 20, 2012, a hearing was held before Judge Martin on White's motion to withdraw his guilty plea.

a. White testified that: i) during a telephone call on February 15, 2012, Respondent told him he was going to get him a sentence of three to five years; ii) on February 16, 2012, Respondent told him to take the plea since he would only have to serve three to five years followed by a program or halfway house; and iii) Respondent never told him about any statutory minimum sentences applicable in his case.

b. White's mother, Renee White, testified that on February 16, 2012, Respondent told her that her son would receive no more than three to five years if he took the plea deal. She also said Respondent told her that the judge was a friend whom he knew personally, and that he could talk him into placing White into a halfway house.

c. White's brother, William Richardson, testified that he heard Respondent tell his mother on February 16, 2012 that White would only have to serve three to five years and then would be released to a halfway house.

d. Judge Martin received as exhibits a tape recording and transcript of the telephone conversation between Respondent and White on February 15, 2012, which had been recorded by the Hampton Roads Regional Jail ("HRRJ"), where White was being detained. The transcript indicates that during that approximately four-minute telephone call, Respondent and White discussed the guilty plea hearing scheduled for the following day and the sentencing that would

[1] Respondent never ran the sentencing guidelines, and instead relied on what James F. Entas ("Entas"), the prosecuting attorney, told him was the estimated midpoint.

occur later. After Respondent acknowledged White's goal of getting into an alternate sentencing program and provided general sentencing strategy advice, White asked "What did they say about the three years to five years . . . or whatever?" to which Respondent responded "It's only going to be three." White then asked "are they going to take it?" and Respondent responded "I think they're going to take it. It's obviously a pretty low thing but we'll see if we can't make it happen my friend."

e. The Commonwealth called Respondent as a witness. He testified that he never advised White he would only receive between three to five years if he accepted the Plea Agreement. He initially claimed his recorded telephone discussion with White regarding three to five years was in reference to the minimum mandatory sentence White would receive if convicted of the use of a firearm during the commission of a felony offense. Later in his testimony, he claimed that he was referring to the sentence White had received for his prior use of a firearm conviction.

f. At the conclusion of the hearing, the matter was continued.

7. The day after the hearing, September 21, 2012, Respondent visited Judge Martin in his chambers for the purpose of speaking with him *ex parte* about White's pending motion to withdraw his guilty plea. Respondent provided Judge Martin with a third possible explanation for the references to "three" and "five" during his February 15, 2012 telephone conversation with White, i.e., he was referring to the courtroom they would be in the following day. Upon realizing Respondent was speaking to him *ex parte* about a pending matter, Judge Martin terminated the conversation and notified Stanton and Entas of Respondent's *ex parte* communication. Respondent did not notify either Stanton or Entas of his intention to speak with Judge Martin about White's pending motion to withdraw his guilty plea.

8. On October 31, 2012, the hearing on White's motion to withdraw his guilty plea was resumed.

a. Timothy Faheed Smith ("Smith"), an inmate at HRRJ, testified that: i) on February 16, 2012, he was present with White in the lockup area outside Courtroom 3[2]; ii) he heard Respondent tell White that he would receive a three to five year sentence and that he should accept the plea deal; and iii) after returning from the courtroom, White was upset and crying and expressed he did not want the deal. Smith further testified that he did not know White, and the two had not been held in the same cell block nor discussed the situation or his testimony.

b. The Commonwealth recalled Respondent as a witness. He testified that after the September 20, 2012 hearing, he looked at his file "trying to make sense" of his "three to five" discussion with White and concluded "it just didn't make any sense" and he has "no idea what that refers to or what my answer was referring to."

9. By letter opinion dated December 18, 2012, Judge Martin denied White's motion to withdraw the guilty plea on the grounds that White failed to demonstrate the existence of a reasonable defense, that being one of the requirements for setting aside a guilty plea under

[2] This is the courtroom where, on February 16, 2012, White's guilty plea hearing was heard and Smith was arraigned on his charges.

Virginia law[3]. Judge Martin further found that the motion to withdraw the guilty plea was filed in good faith in that Respondent had promised White that he would receive a three to five year sentence if he entered into the Plea Agreement. In making that finding, Judge Martin rejected Respondent's testimony and explanations as not credible and specifically found:

- Respondent's testimony at the September 20, 2012 hearing that his discussion with White about three to five years related to White's prior gun conviction was not credible given that during the February 15, 2012 telephone call, there was no discussion about prior crimes and Respondent used the future tense, i.e., "It's only going to be three;" and
- The alternate possible explanation Respondent provided to him *ex parte* on September 21, 2012 that he may have been referring to the courtroom the hearing would be held in the following day was not credible given White's use of the term "years" and further that Respondent could not have known that they would only be in either courtroom 3 or 5.

10. On January 4, 2013, Judge Martin sentenced White to 14 years imprisonment with 10 years suspended, and explained on the record that his significant downward departure from the midpoint sentencing guidelines of over 19 years was due to the fact that Respondent had "effectively tied my hands" by promising White he would receive no more than five years if he pled guilty.

13-021-094595
(Complainant Elizabeth T. Malkemus)

11. The complainant, Elizabeth T. Malkemus ("Malkemus"), hired Respondent in 2009 to pursue an appeal on behalf of her son, David E. Woodfin, Jr. ("Woodfin"), who had been convicted in the Powhatan County Circuit Court of second degree murder and use of a firearm in the commission of a felony and sentenced to a total active period of imprisonment of 20 years. Appeals were timely filed and perfected in both the Virginia Court of Appeals and Supreme Court of Virginia, but were denied. All state appellate remedies were exhausted as of the entry of an order on June 3, 2010 by the Supreme Court of Virginia refusing Woodfin's appeal.

12. Respondent subsequently undertook the pursuit of *habeas corpus* relief on Woodfin's behalf on the basis of alleged ineffective assistance of counsel by Woodfin's trial attorney.

a. On June 1, 2011, two days prior to the expiration of the filing deadline, Respondent filed a Petition for Writ of *Habeas Corpus* ("Petition") in the Powhatan County Circuit Court. The Petition was not signed by Woodfin, but instead by Malkemus as Woodfin's power of attorney under a Power of Attorney document Respondent prepared in 2009.

b. By letter dated August 16, 2011, the Commonwealth filed a Motion to Dismiss on the basis that the Petition had not been signed by Woodfin under oath before a notary as required by § 8.01-655 of the Code of Virginia, 1950, as amended. The Commonwealth also sent a proposed dismissal order to Respondent.

[3] This finding was based on the fact that White had admitted to committing the robbery, and was relying only on a "claim of right" defense.

c. Following the filing of the Motion to Dismiss, Respondent never filed an amended Petition with Woodfin's signature nor made any effort to secure Woodfin's signature on an amended Petition.

d. By letter dated September 6, 2011, the Commonwealth submitted the proposed dismissal order to the Court with the request that it be entered without Respondent's endorsement.

e. By order entered on September 28, 2011, the Petition was dismissed on the basis that Woodfin had not signed it under oath as required by §8.01-655 of the Code of Virginia, 1950, as amended. Because the deadline for filing a proper writ of *habeas corpus* was June 3, 2011, the dismissal order also contains the specific finding that Woodfin's *habeas corpus* claims had become time barred. Respondent's endorsement on the order was waived pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia. A copy of the order was mailed to Respondent on September 28, 2011.

13. Malkemus contacted Respondent by telephone in September, October, November and December 2011 to check on the status of the Petition. On each occasion, Respondent told her that he had "not heard anything" and made no mention of the Motion to Dismiss or dismissal of the Petition.

On or about December 15, 2011, Malkemus visited Respondent's office to check on the status of the Petition and Respondent again told her that he had "not heard anything" and made no mention of the Motion to Dismiss or dismissal of the Petition.

In January 2012, when she still had not received any status report from Respondent, Malkemus went to his office again and asked to look at her son's file. Upon review of the file, Malkemus observed the letters from the Office of the Attorney General to Respondent and the Powhatan County Circuit Court dated August 16, 2011 and September 6, 2011, referencing a motion to dismiss and dismissal order having been sent to Respondent.

14. During the course of his representation of Woodfin, Respondent never: i) visited Woodfin at the Augusta Correctional Center where he was being housed; ii) sent Woodfin the Petition to sign or advised him of the necessity of his signature on the Petition; nor iii) advised Woodfin or Malkemus of the filing of the Motion to Dismiss or dismissal of the Petition.

15. In 2009, Respondent prepared a Power of Attorney document ("POA") appointing Malkemus as Woodfin's son's attorney-in-fact. Respondent sent it to Woodfin for execution. Woodfin signed it on September 30, 2009, but did not have it notarized, and mailed it back to Respondent. Upon receiving the POA back from Woodfin, Virginia H. Loeffler, a long-time non-lawyer employee of Respondent's firm who is a notary, signed a notary attestation falsely stating that Woodfin had personally appeared before her and acknowledged his signature in Norfolk on September 30, 2009. Respondent sent the improperly notarized POA to Malkemus. When asked by the bar's investigator if he believed the notarization was proper and effective, Respondent responded he is unfamiliar with notary rules.

13-021-094637
(Complainant Eric Byers)

16. In 2003, the complainant, Eric Byers ("Byers"), was convicted in the United States District Court for the Eastern District of Virginia of seven counts of distributing cocaine, cocaine base and marijuana, and possessing a machine gun, and was sentenced to a total active period of imprisonment of 360 months (Case No. 2:02-cr-00077).

17. In March 2010, Byers' family hired Respondent for assistance in pursuing a reconsideration of Byers' prison sentence.

18. Byers spoke with Respondent twice in April 2010. Following April 2010, Byers received no communications from Respondent until November 2011, when Respondent sent Byers a letter advising him he had no basis to pursue a sentence reduction.

19. Respondent never filed a sentence reduction request.

20. Respondent explained to the bar that he determined that a request for a sentence reduction would not be viable since the change in the sentencing guidelines was not retroactive[4].

21. Respondent was paid $4,389.88 for the representation in April 2010. After initially depositing those advance fee monies into trust, he transferred all of the monies out of trust by December 2010, approximately a year prior to the conclusion of the representation. Between the last disbursement in December 2010 and the conclusion of the representation, Respondent performed work by preparing and sending to Byers releases allowing Respondent to obtain records, reviewing records, researching the viability of a sentence reduction, and rendering his opinion to Byers.

13-021-095356
(Complainant Barbara Esterline)

22. In September 2011, Vasilios Dourdoumis ("Vasilios") was sentenced in the United States District Court for the Eastern District of Virginia (Norfolk) to an active period of imprisonment of 156 months following his convictions of possession with intent to distribute cocaine and possession of a firearm by a felon. (Case No. 2:11CR00055-001).

23. Following Vasilios' sentencing, his sister, the complainant, Barbara Esterline ("Esterline"), and other family members, consulted with Respondent about hiring him to pursue a reduction of Vasilios' sentence. In conjunction with securing that representation, Respondent guaranteed he could secure a sentence reduction and that Vasilios would be released within several months and not have to serve more than a couple of years after receiving credit for time

[4] Byers was convicted of crack cocaine offenses. At the time of his convictions, there existed under the federal sentencing guidelines much longer sentences for crack cocaine versus powder cocaine offenses. The Fair Sentencing Act of 2010, which removed the sentencing disparity between crack and powder cocaine offenses committed prospectively, was enacted into law in August 2010. Effective November 1, 2011, the U.S. Sentencing Commission amended the Sentencing Guidelines to expand application of the new FSA Sentencing Guidelines to offenses committed before the law was enacted.

served. Based in part on those promises, Vasilios' family hired Respondent for assistance in pursuing a sentence reduction.

24. During the course of the representation, Respondent told Esterline and/or other family members that: i) he had spoken with the investigators and prosecutor involved in Vasilios' case and they were "on board" with the sentence reduction Respondent had promised; and ii) Judge Rebecca Beach Smith ("Judge Smith"), who had presided over Vasilios' case, was a good friend of his wife, and he had spoken with her and she was sympathetic to the family's situation and would do what she could to help.

Contrary to Respondent's statements: i) the investigators and prosecutor involved in Vasilios' case were not amenable to any reduction of Vasilios' sentence; and ii) Judge Smith had not discussed Vasilios' case with Respondent.

25. After months of no progress or status reports, and learning that Respondent had not filed a sentence reduction request or any other pleading on behalf of Vasilios, Esterline terminated the representation in late 2012.

26. Respondent charged a flat fee of $5,000.00 for the sentence reduction representation, which was fully paid in advance by the end of December 2011. Respondent did not deposit the $5,000.00 advance fee monies into his trust account and instead immediately took those monies. Following termination of the representation, Respondent refused to refund any of the $5,000.00 fee.

27. In the spring of 2012, Respondent was also retained to represent Vasilios' father, Thomas Dourdoumis, in defending a civil lawsuit and handling the sale of a business. Those representations took place approximately between April 2012 and December 2012. During the course of those representations, Respondent received a total of $12,000.00 in fee payments. One such payment was made via a $2,500.00 check written on September 20, 2012. All or a portion of that $2,500.00 payment represented advance fee monies. Respondent did not deposit that payment into his trust account and instead cashed the check on or about September 24, 2012.

14-021-097215
(Complainant Virginia State Bar)

28. Respondent represented Marcus S. Young ("Young") on second degree murder and use of a firearm in the commission of a felony charges in the Norfolk Circuit Court. The case was assigned to the Honorable Mary Jane Hall ("Judge Hall"). Prior to trial, the Commonwealth offered Young a plea deal pursuant to which he would plead guilty to both charges and the Commonwealth would agree to a maximum active period of incarceration of 17 years. In August 2012, Young, after consulting with Respondent, entered into the plea agreement which the Court accepted. In November 2012, Young was sentenced to a total period of active incarceration of 14 years.

29. Following his sentencing, Young filed motions to withdraw his guilty plea and for the modification of his sentence on the basis of, *inter alia,* Respondent's alleged ineffective assistance of counsel in advising him whether to accept the plea offer.

On May 17, 2013, a hearing was conducted on the motions.

a. Young testified that before entering into the plea agreement, Respondent told him that while the plea agreement called for a maximum prison sentence of 17 years, Respondent would be able to get Young a prison sentence of only three to five years if he accepted the plea offer.

b. Young's mother, Shawna Baines, testified Respondent had told her and others that because of his connections "in the system" and the fact Young did not have a record, he would be able to get Young a sentence in the range of three to five years.

c. After Young's mother testified, Young withdrew his motion to withdraw his guilty plea.

d. Following arguments, Judge Hall granted the motion for the modification of Young's sentence and reduced Young's active period of incarceration from 14 years to 13 years. In making her ruling, Judge Hall found the testimony of Young and Baines was credible and stated that she had "no reason to doubt that, in fact, Mr. Young was led to believe that his sentence would be something quite different than the one that he ultimately ended up with."

30. Prior to Young's initial sentencing, Respondent: i) told Young that he knew Judge Hall personally and that would positively impact his sentencing; and ii) told Young's mother that it was good that Judge Hall was assigned to the case as he was "very close" to her.

14-021-098924
(Complainant Virginia State Bar)

31. In May 2013, Elizabeth Edna Bryant ("Bryant") consulted with Respondent regarding representation of her in a custody dispute involving her three grandchildren. At the time of the consultation: i) Bryant's daughter had filed petitions requesting joint legal custody with her mother and physical custody to herself; and ii) the father of the children had filed petitions requesting joint legal and physical custody of the children be awarded to him and the paternal aunt of the children. During the initial consultation, Respondent told Bryant that he and the presiding judge, the Honorable Michelle J. Atkins ("Judge Atkins") of the Norfolk Juvenile and Domestic Relations District Court, were neighbors and attend cookouts and drank wine together and that she had no worries since in Norfolk "it's all on who you know." Based in part on those statements, Bryant hired Respondent.

32. In late July 2013, just a few days prior to the hearing in the custody case, Respondent's firm told Bryant the firm had discovered the existence of a conflict of interest that required the firm to withdraw from the representation. Upon learning that she would be without representation at the custody hearing, Bryant became very distraught and visited Respondent, who told her not to worry, that he and Judge Atkins were friends. Respondent also told Bryant that someone from the firm would be present with her at the custody hearing. That did not occur. Rather, Respondent's firm moved to withdraw as counsel due to the conflict of interest and Ms. Bryant proceeded pro se at the hearing, which ended with a physical custody ruling in favor of the father and paternal aunt.

II. NATURE OF MISCONDUCT

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

13-021-094129

(Complainants the Honorable Everett A. Martin, Jr., and Jennifer Stanton)

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

RULE 1.4 Communication
(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 3.3 Candor Toward The Tribunal
(a) A lawyer shall not knowingly:
(1) make a false statement of fact or law to a tribunal;

RULE 3.5 Impartiality And Decorum Of The Tribunal
(e) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:
(1) in the course of official proceedings in the cause;
(2) in writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party who is not represented by a lawyer;
(3) orally upon adequate notice to opposing counsel or to the adverse party who is not represented by a lawyer; or
(4) as otherwise authorized by law.

RULE 8.4 Misconduct
It is professional misconduct for a lawyer to:
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;
(d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

13-021-094595
(Complainant Elizabeth T. Malkemus)

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 1.3 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.

(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 5.3 Responsibilities Regarding Nonlawyer Assistants
With respect to a nonlawyer employed or retained by or associated with a lawyer:
(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

13-021-094637
(Complainant Eric Byers)

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.

13-021-095356
(Complainant Barbara Esterline)

RULE 1.15 Safekeeping Property
(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

(b) Specific Duties. A lawyer shall:
(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and
(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

RULE 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 . . . refunding any advance payment of fee that has not been earned . . .

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;

(d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

14-021-097215
(Complainant Virginia State Bar)

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 1.4 Communication
(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 8.4 Misconduct
It is professional misconduct for a lawyer to:
(d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

14-021-098924
(Complainant Virginia State Bar)

RULE 8.4 Misconduct
It is professional misconduct for a lawyer to:
(d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to the Disciplinary Board for its approval the agreed disposition of the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of 18 months with terms, effective upon the date of the approval of this agreed disposition. The terms with which the Respondent must comply are as follows:

1. Respondent shall issue a refund to Thomas Dourdoumis in the amount of $5,000 within twelve (12) months of the approval of this agreed disposition.

2. Respondent is placed on probation for a period of three (3) years commencing upon the reinstatement of Respondent's license to practice law in the Commonwealth of Virginia following the termination of the 18-month suspension agreed-upon herein and any impairment suspension. During such probationary period, Respondent will not engage in professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which the Respondent is admitted to practice law. Any final determination that Respondent engaged in professional misconduct during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia shall conclusively be deemed to be a violation of this Term.

3. Respondent shall create and implement a docket control system which will insure Respondent periodically reviews the status of all pending matters as an advance reminder of key deadlines and other obligations so as to avoid missed deadlines.

Respondent shall create and implement a written office policy mandating regular and informative communications to clients of information affecting their cases, including but not limited to (a) the mailing to clients of copies of all pleadings and court orders to clients upon receipt (if the document is generated by another) or upon mailing (if the document is generated by Respondent), and (b) meeting with clients in person or by telephone to discuss progress on the matter being handled for the client and to respond to status inquiries.

Respondent shall provide proof of the foregoing to the Office of Bar Counsel within 30 days of the reinstatement of his license to practice law in the Commonwealth of Virginia.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, all the terms and conditions are not met by the deadlines imposed above, the Respondent agrees that the Disciplinary Board shall impose an alternative sanction of the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of three years, pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

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

[SIGNATURES ON FOLLOWING PAGE]

THE VIRGINIA STATE BAR

By: _____
M. Brent Saunders, Assistant Bar Counsel

_____
Duncan Robertson St. Clair, III, Respondent

_____
Michael F. Fasanaro, Jr., Respondent's Counsel