

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JAMES AMERY THURMAN**

VS B DOCKET NO. 14-022-099259

AGREED DISPOSITION MEMORANDUM ORDER

On December 4, 2015, 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 Esther J. Windmueller, 2nd Vice Chair, Michael A. Beverly, Richard J. Colten, Anderson Wade Douthat, IV, Lay Member and T. Tony H. Pham. The Virginia State Bar was represented by Paul D. Georgiadis, Assistant Bar Counsel. James Amery Thurman was present and was represented by Ann K. Sullivan. 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 Angela N. Sidener, 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 five month suspension, as set forth in the Agreed Disposition, which is attached to this Memorandum Order.

It is further **ORDERED** that the Five Month Suspension is effective Friday, December 11, 2015 at 5:00 p.m.

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

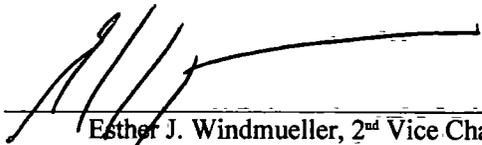
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the Suspension, he shall submit an affidavit to that effect within 60 days of the effective date of the Suspension to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

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

A copy teste of this Order shall be mailed by Certified Mail, return receipt requested, to James Amery Thurman at his last address of record Suite 302, 3330 Pacific Avenue, Virginia Beach, VA 23451-2983, a copy by regular mail to Anne K. Sullivan, Sullivan Law Group, P.L.C., 440 Monticello Avenue, Suite 1810, Norfolk, VA 23510, and handdelivered to Paul D. Georgiadis, Assistant Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED THIS 16th DAY OF DECEMBER, 2015

VIRGINIA STATE BAR DISCIPLINARY BOARD



Esther J. Windmueller, 2nd Vice Chair

VIRGINIA:

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

**IN THE MATTER OF
JAMES AMERY THURMAN**

VS **Docket No. 14-022-099259**

**AGREED DISPOSITION
(5 Month Suspension)**

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 Paul D. Georgiadis, Assistant Bar Counsel and James Amery Thurman, Respondent, and Ann Katherine Sullivan, 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.
- 2) Respondent represented Ginger Conner in divorce proceedings that commenced on or about June 1, 2009 and concluded on November 24, 2013.
- 3) Respondent also represented Conner and her daughter, Katrina Conner, as a crime victim and witness arising from criminal charges filed against Conner's estranged husband, with the representation spanning from December 27, 2010 through June 20, 2011.
- 4) On or before November 16, 2010, Respondent received \$31,599.72 as Conner's proceeds from the sale of marital real estate. By letter to Conner dated November 22, 2010, Respondent wrote, "This will confirm that I am holding \$11,599.72 in trust to cover attorney's fee through trial." Therein, he forwarded to Conner a check for \$20,000. Conner did not cash the \$20,000, but advised Respondent to hold \$5,000 for the criminal case.
- 5) On January 18, 2011, Respondent forwarded to Conner a check for the balance, \$15,000. Conner did not cash this check either, and instead advised Respondent to hold the funds. Respondent did not thereafter attempt any further disbursements to Conner.

Failure to Account for Funds

- 6) In the course of the two representations, Respondent has received approximately \$44,000 from Conner or on behalf of Conner.
- a. In the divorce representation, Conner paid Respondent \$13,234. Additionally, Respondent held \$26,599.72 which he received on or about November 16, 2010 as proceeds from the sale of Conner's marital property.¹
 - i. Respondent provided the first statement of account on August 26, 2010.
 - ii. Although Conner repeatedly requested updated statements of account, Respondent failed to provide a further statement of account until he issued a final statement of account on June 30, 2015—after the issuance of the Certification in this case. Therewith, he enclosed his firm's refund check from his operating account in the amount of \$894.00.
 - b. In the criminal representation of Conner and her daughter, Respondent received \$8,540 from Conner.
 - i. Respondent issued his first statement of account to Conner on January 18, 2011 and issued his second statement of account to Conner on May 18, 2014, nearly three years after the end of the representation.

Failure to Safe-Keep Client Funds

- 7) On June 1, 2009, the first day of his representation of Conner in the divorce matter, Respondent received \$3,600 from Conner, and deposited the funds into his operating account in anticipation that such funds would be promptly earned.
- 8) Respondent earned the initial payment of \$3,600.00 by July 2, 2009.
- 9) Prior to depositing Conner's funds into his trust account, Respondent made two payments from the trust account to pay Conner's litigation expenses. These were a court filing fee of \$84.00 on June 8, 2009 and a process server fee of \$50.00 on June 15, 2009.

Failure to Maintain Trust Account Records

¹ Respondent received a total of \$31,599.72, of which \$5,000 Connor directed him to apply to the separate matter of the criminal representation.

- 10) Respondent's records for his trust account consisted of entries on stubs from a check register and trust account ledgers that did not consistently include all pertinent information.
- 11) Respondent has no client subsidiary ledger for Conner's funds and during the relevant time period has failed to maintain client subsidiary ledgers for any clients.
- 12) Respondent has failed to conduct monthly reconciliations of his trust account.
- 13) Respondent has occasionally made payments for his personal and law firm expenses directly from his trust account from client funds he believed he had earned at that point. Said disbursements on occasion did not reflect the account from which the funds had been earned.
- 14) In mitigation, Respondent would offer evidence that following the issuance of the Committee's Certification, he issued a final statement of account for all representation of Conner which also provided a refund of \$894.00, documenting his hours. Further, he would present evidence that he is currently and has been in substantial compliance with the trust accounting rules. When Respondent prepared the final accounting, he did not include telephone calls and other services provided to the client for which he did not have specific supporting documentation.

II. NATURE OF MISCONDUCT

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

Rule 1.15 Safekeeping of Property (2009 edition)

(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 the 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.

(b) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(c) A lawyer shall:

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

...

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate 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.

...

(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) 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;

(v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

...
(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;

...
(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.

(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.

RPC 1.15 Safekeeping Property (2012 edition)

(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 advance 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.

...

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

...

(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 promptly withdrawn from the trust account.

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

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

...

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

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

...

(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, 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.

...

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(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:

...

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.

- (i) At least quarterly, a reconciliation shall be made that reflects the trust account balance for each client, person or 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.
- (4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

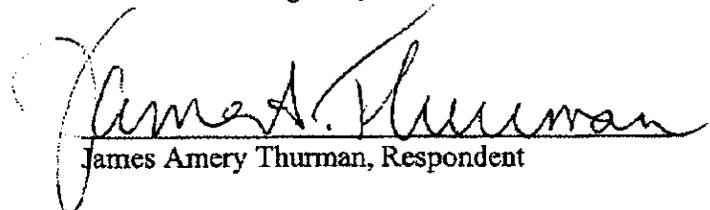
III. PROPOSED DISPOSITION

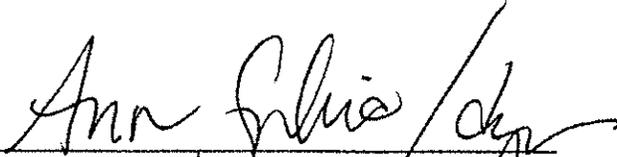
Accordingly, Assistant Bar Counsel and the Respondent tender to the Disciplinary Board for its approval the agreed disposition of an five (5) month suspension of his license to practice law in the Commonwealth of Virginia, with a delayed effective date, as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board.

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

THE VIRGINIA STATE BAR

By: 
Paul D. Georgiadis, Assistant Bar Counsel


James Amery Thurman, Respondent


Ann Katherine Sullivan, Respondent's Counsel