

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF  
TIMOTHY JAMES WALL

VS B Docket Nos. 10-060-082012  
11-060-087939

MEMORANDUM ORDER  
(30 DAY SUSPENSION WITH TERMS)

This matter came on to be heard on February 8, 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 Timothy A. Coyle, Samuel R. Walker, Peter A. Dingman, Stephen A. Wannall, Lay Member, and Paul M. Black, Acting Chair presiding (the Panel).

Kathryn R. Montgomery, Deputy Bar Counsel, appeared as counsel for the Virginia State Bar, and Respondent appeared in person with counsel, Mark S. Gardner.

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 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 or her ability to be impartial in these matters. Each member, including the Chair verified they had no such interests.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having

considered all the evidence before it, a majority of the Panel accepted the Agreed Disposition.

### I. FINDINGS OF FACT

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

1. On April 30, 1992, Respondent was licensed to practice law in the Commonwealth of Virginia. At all times relevant to these matters, Respondent has been a member in good standing with the Virginia State Bar.

#### VSB Docket No. 10-060-082012

2. In or about January 2006, Aaron D. Peters ("Complainant") retained Respondent to represent him in a criminal matter.
3. On or about January 26, 2006, Complainant paid Respondent an advanced legal fee of \$5000.
4. On or about November 28, 2008, Complainant paid Respondent an advanced legal fee of \$500.
5. On or about February 19, 2009, Complainant paid Respondent an advanced legal fee of \$2000.
6. On or about February 23, 2009, Complainant advised Respondent that he had hired new counsel and requested a refund of unearned fees.
7. On or about March 6, 2009, Respondent sent Complainant a letter stating the following:
  - a. that he had received a total of \$7500 from Complainant;
  - b. that he had performed \$1200 worth of legal work for Complainant over the course of the representation;
  - c. that he was enclosing refund checks drawn on his trust account in the amounts of \$1637.50 and \$175;
  - d. that he thought he had previously refunded \$4487.50 to Complainant, but he had no proof;
  - e. that he agreed the amount in dispute was \$4487.50; and

- f. that he would “settle” with Complainant by paying him \$124.65 per month until the debt was paid off.
8. Complainant did not cash or deposit the refund checks Respondent enclosed in his March 6, 2009 letter.
  9. Complainant and Respondent now agree that Respondent performed \$1200 worth of legal services on Complainant’s behalf, and that the proper amount for refund is \$6300.
  10. On or about November 3, 2011, Respondent, by his attorney, sent Complainant a refund in the amount of \$6300.
  11. Respondent failed to provide Complainant with a full refund from February 2009, the time Complainant demanded a refund, until November 2011.
  12. Respondent has failed to provide Complainant with an accurate accounting of his account.
  13. Respondent failed to maintain a subsidiary ledger for Complainant’s account.
  14. From at least 2009 until December 2010, Respondent failed to reconcile his trust account in accordance with the Rules of Professional Conduct.
  15. Respondent admits he was out of trust during the time he owed Complainant a refund.

VSB Docket No. 11-060-087939

16. Respondent established a trust account in 2003-2004 and his staff maintained the account.
17. In or about 2006, Respondent retained an accountant to help him organize his trust account. On the accountant’s recommendation, Respondent began using a software program to manage his trust account and maintain his records.
18. Respondent was not proficient in the software program he used for maintaining his trust account.
19. In 2009, Respondent stopped maintaining a check register.
20. In December 2010, Respondent was scheduled to meet with a Virginia State Bar Investigator. Respondent claims that his computer crashed before the meeting resulting in the loss of all of his trust account records.

21. Other than bank statements, Respondent has no trust account records for the time period prior to January 2011.
22. In July 2011, Respondent met with an investigator for the Virginia State Bar and provided access to his current trust account records, which included a new cash receipts/disbursements journal and subsidiary ledger. At that time, Respondent's trust account was accurate and in balance.

## II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Timothy James Wall constitutes misconduct in violation of the following Rules of Professional Conduct:

### RULE 1.15 Safekeeping Property

- (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.
- (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;
  - (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.
- (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.

**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, the Disciplinary Board ORDERS that Respondent's license to practice law be suspended for thirty (30) days beginning at 5:00 p.m. on February 17, 2012. The Board also imposes terms as follows:

- Respondent must allow the bar to inspect periodically his trust account records for compliance with Rule 1.15 for the period of one year following termination of the suspension imposed by this Order.

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. 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 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. 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 an attested copy of this order by certified mail to Timothy James Wallat his last address of record with the

Virginia State Bar, The Law Office of Timothy J. Wall, Suite 213, 150 Riverside Parkway, Fredericksburg, VA 22406, a copy by regular mail to his counsel, Mark S. Gardner, Gardner, Maupin, Sutton & Haney P.C., P. O. Box 129, Spotsylvania, VA 22553-0129 and a copy hand-delivered to Kathryn R. Montgomery, Deputy Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

Tracey Stroh of Chandler and Halasz ((804) 730-1222) was the court reporter for the hearing and transcribed the proceedings.

ENTERED: 2/10/12

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:   
Paul M. Black  
Acting Chair Presiding