

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD

IN THE MATTER OF TIMOTHY ALLEN WARD

VSB Docket Nos. 10-053-084192, 10-053-084357, 11-053-086132, and 11-053-086798

ORDER OF SUSPENSION

This matter came to be heard on August 23, 2013 before a duly convened panel of the Virginia State Bar Disciplinary Board (“Board”) consisting of John Casey Forrester, Chair Designate, Lisa A. Wilson, James L. Banks, Jr., Jeffrey L. Marks, and Jody D. Katz, lay member. The Virginia State Bar (the “Bar”) was represented by Prescott L. Prince, Assistant Bar Counsel. The Respondent, Timothy Allen Ward appeared without counsel. Terry S. Griffith, court reporter, Chandler and Halasz, Inc., P.O. Box 9439, Richmond, Virginia 23227, 804-683-8779, after having been duly sworn, reported the hearing and transcribed the proceeding. The Chair polled members of the Panel as to whether any of them was aware of any personal or financial interest they might have which would preclude them from fairly hearing the matter before them. Each member, including the Chair, responded in the negative. All required notices were sent by the Clerk of the Disciplinary System to Respondent by Certified Mail at 6415 Steeple Chase Lane, Manassas, VA 20111, his last address of record with the Virginia State Bar.

## Procedural History

The matter came before the Board on a Subcommittee Determination (Certification) from a duly convened Fifth District Section III Subcommittee of the Virginia State Bar consisting of William E. Jarvis, Dr. James J. Fletcher, lay member, and Casey R. Stevens, presiding. The Fifth District Section III Subcommittee made its certification pursuant to Part 6, Section IV, Paragraph 13-15.B.3. of the Rules of the Virginia Supreme Court.

## Evidence Presented to the Board

Respondent and the Bar jointly entered into written Stipulations of Fact and Misconduct which were presented to the Board and entered into evidence without objection. In addition, the Bar moved its exhibits 1 through 66 into evidence which the Board received without objection. No further evidence was offered or received.

## Findings of Fact

1. At all times relevant to the conduct set forth herein, Timothy Allen Ward ("Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia.

**As to VSB Docket No. 10-053-084192 (Complainant; John Howson Rust, Jr.)**

2. Respondent qualified as Administrator of the Estate of Paul Klein before the Fairfax County, Virginia, Circuit Court on May 16, 2002.

3. Between 2005 and 2008 Respondent was delinquent in filing the second through fifth accountings due in the office of the Commissioner of Accounts. The Commissioner's office sent Respondent three delinquency letters dated August 13, 2009, addressed to Respondent's office on Mosby Street in Manassas, Virginia. The letters were returned as undeliverable because Respondent's office was closed.

4. A summons was issued by the Commissioner of Accounts to Respondent on November 10, 2009, for Respondent's failure to make proper filings. The summons could not be served because Respondent's office on Mosby Street in Manassas, Virginia, was closed. Another such summons was issued on January 28, 2010, and served upon Respondent by posting at his place of residence in Manassas, Virginia, on February 23, 2010.

5. Respondent failed to respond to the latter summons, and a Rule to Show Cause was issued by the Fairfax County, Virginia, Circuit Court on June 16, 2010, with a return date of November 5, 2010. As of November 5, 2010, the second through seventh accounts due to be filed with the Commissioner were delinquent, and a claim had been filed against the Estate as to which Respondent failed to satisfy the Commissioner that the claim had been settled, satisfied, or otherwise released. On November 5, 2010, the Commissioner filed a petition seeking removal of Respondent as the fiduciary of the Estate.

6. As a result of the actions taken by the Commissioner, Respondent engaged competent counsel to assist him in properly administering the Estate, thus avoiding the necessity that he be removed as Administrator.

7. On July 23, 2010, Bar Counsel sent Respondent a letter enclosing a copy of a bar complaint filed by the Commissioner of Accounts regarding Respondent's deficient performance in administering the Estate. Bar Counsel's letter demanded a response to the complaint within 21 days, and identified Respondent's duty to provide lawfully demanded information to the Virginia State Bar pursuant to Rule 8.1(c) of the Rules of Professional Conduct. Respondent failed to provide the demanded written answer to the bar complaint within 21 days or at any time thereafter.

8. A Virginia State Bar investigator interviewed Respondent in person on February 3 and 22, 2012, concerning the matters set forth above. Among other things, Respondent identified personal circumstances and a mental health condition which impaired his ability to practice law between February and December of 2009.

**As to VSB Docket No. 10-053-084357 (Complainant: Virginia State Bar)**

9. In June of 2010, the Virginia State Bar was notified that two appeals noted by Respondent on behalf of two clients for whom the Respondent had been court-appointed to represent in criminal matters had been dismissed for failure to file petitions for appeal within the time prescribed by law. *Keith John Anderson v. Commonwealth of Virginia*, Court of Appeals Record No. 0653-09-4, was dismissed on July 20, 2009, and *Michael Shane St. Clair v. Commonwealth of Virginia*, Court of Appeals Record No. 0576-10-4 was dismissed on May 21, 2010.

10. On July 15, 2010, Bar Counsel sent Respondent a letter enclosing a copy of a bar complaint regarding the two dismissed appeals. Bar Counsel's letter demanded a response to the

complaint within 21 days, and identified Respondent's duty to provide lawfully demanded information to the Virginia State Bar pursuant to Rule 8.1(c) of the Rules of Professional Conduct. Respondent failed to provide the demanded written answer to the bar complaint within 21 days or at any time thereafter.

11. During an investigation of this matter, Mr. St. Clair, Respondent's client, was informed by a Virginia State Bar investigator that the appeal filed on his behalf by the Respondent had been dismissed. Mr. St. Clair informed the investigator that he did not request that his case be appealed, that he did not know that an appeal had been noted, and that he was theretofore unaware that the appeal had been dismissed. The client further advised the investigator that in December of 2009 he personally discussed with the Respondent filing a motion for reconsideration in the case. The conversation took place while the client was outside of the detention facility on work release. According to the client, Respondent was to have visited the client in the detention facility in approximately one week following their conversation, but Respondent never contacted the client again.

12. During an interview concerning the St. Clair case, Respondent advised a Virginia State Bar investigator that he had no recollection of Mr. St. Clair requesting a motion for reconsideration and that Mr. St. Clair at first wished to have his case appealed, but later wished to have his appeal withdrawn because he qualified for work release and would be kept in the local detention facility. Respondent admitted to the investigator that he failed to follow the Court's procedure for withdrawing an appeal by filing a written request therefor, accompanied by an affidavit signed by the client/appellant.

13. During an interview concerning the Anderson case, Respondent acknowledged to the investigator that although he believed that there were no grounds for appeal he was nonetheless

obligated to proceed with an appeal if desired by his court-appointed client. He thus filed a notice of appeal, but, according to Respondent, he thereafter did not file a petition for appeal because he was told by Mr. Anderson that Mr. Anderson would handle the appeal himself.

14. Respondent advised the Virginia State Bar investigator that as of the time he filed the notice of appeal on behalf of Mr. Anderson, Respondent was unaware of the opportunity to file an *Anders* brief on behalf of Mr. Anderson. Respondent first learned about an *Anders* brief and the obligation to file a petition for appeal at a continuing legal education program which he attended in November or December of 2009. The Prince William County, Virginia, Circuit Court appointed new counsel to handle a delayed appeal on behalf of Mr. Anderson on February 23, 2010.

15. A Virginia State Bar investigator interviewed Respondent in person on February 3 and 28, 2012, concerning the matters set forth above. Among other things, Respondent identified personal circumstances and a mental health condition which impaired his ability to practice law between February and December of 2009.

**As to VSB Docket No. 11-053-086132 (Complainant: Kwame Agyenim Boateng)**

16. Respondent represented Kwame Agyenim Boateng (hereafter "Complainant") as court-appointed counsel in the Prince William County, Virginia, Circuit Court. Following his conviction on two charges, Complainant informed Respondent that he wished to appeal his convictions, for which appeal, in the event Complainant so elected, Respondent had been appointed by court order entered on April 16, 2008.

17. Respondent filed a notice of appeal with the Clerk of the Prince William County, Virginia, Circuit Court on April 30, 2008, which notice was received by the Clerk of the Virginia Court of Appeals on May 6, 2008. Respondent sent a copy of the notice of appeal to Complainant.

18. Following Complainant's receipt of the copy of the notice of appeal, Complainant heard nothing further from Respondent as of the time he filed a bar complaint against Respondent, dated November 25, 2010, and received by the Virginia State Bar on December 2, 2010. Respondent made no reply to Complainant's written requests and the entreaties of others made on his behalf regarding the status of the appeal. Complainant requested a copy of his file, to which Respondent failed to reply as of the time the bar complaint was filed.

19. The Virginia Court of Appeals dismissed Complainant's appeal on October 6, 2008, because no petition for appeal was filed within the time prescribed by law. Respondent failed to advise Complainant that the appeal had been dismissed. With the assistance of an institutional attorney where Complainant was housed, Complainant obtained a copy of the order dismissing his appeal.

20. On December 14, 2010, Bar Counsel sent Respondent a letter enclosing a copy of Complainant's bar complaint. Bar Counsel's letter demanded a response to the complaint within 21 days, and identified Respondent's duty to provide lawfully demanded information to the Virginia State Bar pursuant to Rule 8.1(c) of the Rules of Professional Conduct. Respondent failed to provide the demanded written answer to the bar complaint within 21 days or at any time thereafter.

21. During interviews concerning Complainant's complaint conducted on February 8 and 22, 2012, Respondent stated to the investigator that although he believed that there were no

grounds for appeal he was nonetheless obligated to proceed with an appeal if desired by his court-appointed client. He stated that he did not file a petition for appeal because he believed that any such petition would be frivolous.

22. Respondent advised the Virginia State Bar investigator that as of the time he filed the notice of appeal on behalf of Complainant, Respondent was unaware of the opportunity to file an Anders. Respondent first learned about an Anders brief and the obligation to file a petition for appeal at a continuing legal education program which he attended in November or December of 2009.

23. During interviews with the investigator, Respondent acknowledged receipt of letters from Complainant to which he did not respond, and stated that he could offer no reason or excuse for not responding. He further stated that he was unaware that Complainant desired a copy of his file, and stated to the investigator that he would provide the file to Complainant.

**As to VSB Docket No. 11-053-086798 (Complainant: John Howson Rust Jr.)**

24. On February 4, 2011, the Virginia State Bar received a report, mandated by statute, from the Fairfax County, Virginia, Commissioner of Accounts, stating that Respondent qualified as Administrator of the Estate of Richard N. Hamilton on March 31, 2003, that the Commissioner had issued a summons to Respondent for having failed to file an accounting, that Respondent had failed to respond to the summons, and that the Commissioner had requested issuance of a show cause order by the Fairfax County, Virginia, Circuit Court.

25. The Virginia State Bar opened a formal bar complaint against Respondent based on the Commissioner's report. On February 15, 2011, Bar Counsel sent Respondent a letter

enclosing a copy of the bar complaint. Bar Counsel's letter demanded a response to the complaint within 21 days, and identified Respondent's duty to provide lawfully demanded information to the Virginia State Bar pursuant to Rule 8.1(c) of the Rules of Professional Conduct. Respondent failed to provide the demanded written answer to the bar complaint within 21 days or at any time thereafter.

26. An investigation conducted by the Virginia State Bar established, *inter alia*, that following his qualification as Administrator, Respondent failed to respond to notices sent by the Commissioner's office regarding deficiencies in the first accounting filed regarding the Estate, Respondent's failures to file the second through sixth accountings due for the Estate, and a claim against the Estate for an alleged failure to pay a premium due upon the surety bond posted with regard to the Estate.

27. On June 17, 2011, the Commissioner filed a Petition to Remove Fiduciary based on Respondent's failure as of that date to correct deficiencies in the first accounting and to file the second through seventh accountings. Respondent appeared in person on June 17, 2011, pursuant to a summons personally served upon him, to respond to a Rule to Show Cause returnable to that date. The matter was thereupon and thereafter continued at least twice to allow time for Respondent to comply with the instructions of the Commissioner in as much as Respondent had engaged competent counsel as of June 17, 2011, to represent him and to assist in properly administering the Estate.

28. In personal interviews of Respondent conducted by a Virginia State Bar investigator on February 3 and 22, 2012, Respondent identified personal circumstances and a mental health condition which impaired his ability to practice law between February and December of 2009.

## Disposition

Upon hearing and reviewing all the evidence entered herein, the Board finds by clear and convincing evidence that Respondent violated the Rules of Professional Conduct as follows:

**As to VSB Docket No. 10-053-084192 (Complainant: John Howson Rust, Jr.)**

Rules 1.3(a), 1.16(a)(2), and 8.1(c).

**As to VSB Docket No. 10-053-084357 (Complainant: Virginia State Bar)**

Rule 1.1, 1.3(a), 1.4(a),(b), and (c), 1.16(a)(2), and 8.1(c).

**As to VSB Docket No. 11-053-086132 (Complainant: Kwame Agyenim Boateng)**

Rule 1.1, 1.3(a), (b), and(c), 1.4(a),(b), and (c), and 8.1(c).

**As to VSB Docket No. 11-053-086798 (Complainant: John Howson Rust, Jr.)**

Rules 1.3(a), 1.16(a)(2), and 8.1(c).

**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.

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

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

**RULE 1.4 Communication**

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

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

**RULE 1.16 Declining Or Terminating Representation**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client[.]

**RULE 8.1 Bar Admission And Disciplinary Matters**

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[.]

Upon such finding and following due deliberation of the facts of the case at hand, Respondent's previous disciplinary record, and the joint recommendation for disposition presented orally by the Bar and Respondent, the Board **ORDERS** that Respondent's license to practice law within the Commonwealth of Virginia be SUSPENDED for a period of two years effective August 23, 2013.

It is further ORDERED that Respondent must comply with the requirements of Part Six, § 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 Respondent's license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. Respondent shall also make appropriate arrangements for the disposition of matters then in Respondent's care in conformity with the wishes of Respondent's clients. Respondent shall give such notice within fourteen (14) days of the effective date of this order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day of this order that such notices have been timely given and such arrangements made for the disposition of matters.

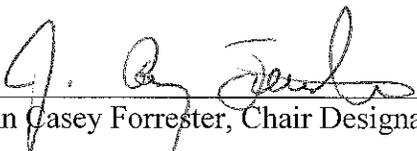
It is further ORDERED that if Respondent is not handling any client matters on the effective date of this order, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 shall be determined by the Virginia State Bar Disciplinary Board, unless Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that, pursuant to Part 6, §IV, Paragraph 13-9 (E) (l) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall send a certified copy of this Order by Certified Mail, to Respondent at his last address of record with the Virginia State Bar, Timothy Allen Ward, 6415 Steeple Chase Lane, Manassas, VA 20111, and a copy by regular mail to Prescott L. Prince, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 17<sup>th</sup> day of September, 2013

VIRGINIA STATE BAR DISCIPLINARY BOARD

  
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John Casey Forrester, Chair Designate