

VIRGINIA:

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

**IN THE MATTER OF
KRISTEN DAWN DEAN, ESQUIRE**

VSB Docket Number 04-102-3065

ORDER OF SUSPENSION WITH TERMS

This matter came to be heard on December 6, 2005, upon an Agreed Disposition between the Virginia State Bar and the Respondent, Kristen Dawn Dean.

A duly convened Panel of the Virginia State Bar Disciplinary Board consisting of William C. Boyce, Jr, Esquire; Bruce T. Clark, Esquire; Robert E. Eicher, Esquire; W. Jefferson O'Flaherty, Lay Member; and James L. Banks, Jr., Second Vice-Chair Presiding, considered the matter by telephone conference. The Respondent, Kristen Dawn Dean, appeared with her counsel, Richard D. Kennedy, Esquire. Scott Kulp, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

Pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13.B.5.c, the Virginia State Bar, Ms. Dean, and Respondent's counsel entered into a written proposed Agreed Disposition and presented the 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 ability to be impartial in this matter. Each member, including the Chair, verified that he had no such conflict.

After hearing from both the Virginia State Bar and the Respondent, by counsel, and upon due deliberation, it is the unanimous decision of the Panel to accept the Agreed

Disposition. The Stipulations of Fact, Disciplinary Rule Violations, and Disposition agreed to by the Virginia State Bar and the Respondent are incorporated herein as follows:

I. Stipulations of Fact

1. The Respondent was licensed to practice law in the Commonwealth of Virginia on April 23, 1999 and at all times relevant hereto has been active and in good standing. Respondent has no prior disciplinary record.

2. The Complainant, Geraldine Beverley (hereinafter the “Complainant”), and her daughter, Phyllis Beverley, were involved in a motor vehicle accident in May 2002. The Complainant was treated at Bon Secours St. Mary’s Hospital in Norton, Virginia.

3. The Complainant and her daughter entrusted their personal injury cases to the Respondent for handling. No fee agreement was executed, but the Respondent contends that she advised the Complainant that a 35% contingency fee, plus costs, would be deducted from any amounts recovered on her behalf. The Respondent further contends that she advised the Complainant that an hourly rate would apply to all “extra-ordinary matters” that required her services.

4. The Respondent negotiated an insurance settlement that resolved both cases in May 2003. The personal injury settlement was \$15,000 for the Complainant and \$7,000 for Phyllis Beverley, for a total of \$22,000 that was deposited on May 2, 2003 at Farmers & Miners Bank in the IOLTA trust account for the Respondent’s then law firm, Baker & Dean, P.C. The Respondent advised her then law partner, Sue Baker Cox (hereinafter “Ms. Baker”), that some funds would remain in the trust account to satisfy

Medicare/Medicaid liens. The Complainant understood that she would get half of her settlement up front and the other half after the medical bills/liens were paid.

5. On May 2, 2003, the Respondent wrote Check No. 1011 from the Baker & Dean, P.C. IOLTA account for \$5,500 paid to Baker & Dean as a payment toward the contingency fee. Of this amount, the Respondent received \$1,375 as an immediate bonus.

6. On May 8, 2003, the Respondent wrote Check No. 1012 from the Baker & Dean, P.C. IOLTA account for \$5,231.25 to the Complainant. The Complainant received these funds.

7. On May 27, 2003, the Respondent wrote Check No. 1013 from the Baker & Dean, P.C. IOLTA account for \$1,000 paid to Baker & Dean with a memo section stating "Beverley." The Respondent then wrote Check No. 797 for \$1,000 from the Baker & Dean operating account to "Cash." The check ledger entry written by the Respondent indicates payment for "Beverly Partial PI Settlement." The Complainant did not receive these funds or any other funds from the Respondent after the initial \$5,231.25 distribution.

8. On May 30, 2003, the Respondent wrote Check No. 1014 for \$4,309.21 from the Baker & Dean, P.C. IOLTA account to Baker & Dean with a memo section stating "Beverly Phyllis (complete)." The operating account ledger entry indicates Check No. 814 in the same amount was then issued to Phyllis Beverley on the same date. Phyllis Beverley received these funds.

9. Also on May 30, 2003, the Respondent wrote Check No. 1015 for \$940.79 from the Baker & Dean, P.C. IOLTA account to Baker & Dean with a memo section

stating “Beverly Medicaid lien.” The check ledger entry written by the Respondent indicates payment for “Medicaid lien – Bev (Phyllis).” And on May 31, 2003, the Respondent issued Check No. 815 in the same amount from the Baker & Dean, P.C. operating account to “Department of Medical Assistance Services” with a memo section stating “Phyllis Beverly.”

10. On September 2, 2003, the Respondent wrote Check No. 1016 for \$882.96 from the Baker & Dean, P.C. IOLTA account to Baker & Dean with the memo section stating “Geraldine Beverly.” The check ledger entry written by the Respondent indicates payment for “Medicare lien-Geraldine.” Then on September 3, 2003, the Respondent wrote Check No. 1014 for \$882.96 from the Baker & Dean, P.C. operating account to herself with a memo section stating “reimburse fees and costs.”

11. On September 5, 2003, Respondent received a faxed version of a letter dated September 3, 2003 from Bon Secours St. Mary’s Hospital re: Geraldine (Beverley) Beverly informing the Respondent of the absence of a Medicare lien and demanding direct payment of the medical bill from the settlement proceeds.

12. On October 24, 2003, the Respondent wrote Check No. 1017 for \$3,650 from the Baker & Dean, P.C. IOLTA account to Baker & Dean. The check ledger entry written by Respondent reflects that the \$3,650 payment was for “Baker & Dean Beverley fee/cost.”

13. On October 27, 2003, the Respondent wrote Check No. 1137 for \$2,720.94 from the Baker & Dean, P.C. operating account to herself. The check ledger entry written by the Respondent indicates payment for “Beverly-S/L SM.”

14. The Complainant will testify that the Respondent told her that she had to pay a Medicare lien but that the Complainant should file bankruptcy so she would not have to pay any of her other bills. In this regard, the Complainant understood that approximately \$4,900 was being withheld from disbursement to cover the amount of the medical bills owed to St. Mary's Hospital and that she would receive this amount [\$4,900] once the bankruptcy was completed.

15. The Complainant agreed to file bankruptcy. After assisting the Complainant to draw up the bankruptcy papers, the Respondent referred the Complainant to her partner, Ms. Baker, who was admitted to practice in the bankruptcy court.

16. Contrary to the Respondent's representations, the Complainant did not receive further distribution after the bankruptcy was completed.

17. Ms. Baker will testify that the attorney's fees associated with the Complainant's bankruptcy (\$600) would serve as the Respondent's vacation bonus. Accordingly, on October 27, 2003, the Respondent wrote Check No. 1136 from the Baker & Dean, P.C. operating account in the amount of \$600 paid to "petty cash." Respondent cashed this check. The Complainant was never told that she would have to pay for the bankruptcy; rather, she was under the impression that the bankruptcy would be at no charge.

18. Before mailing the bankruptcy petition to the Court, Ms. Baker reviewed the information on the petition and specifically asked the Respondent if any proceeds remained from the personal injury settlement in May 2003. The Respondent advised that all funds had been disbursed and that the Complainant had received her full settlement.

19. On December 3, 2003, the Complainant's bankruptcy petition was mailed to the bankruptcy court. St. Mary's Hospital is listed as an unsecured creditor with \$3,000 as the listed amount of the claim.

20. On December 8, 2003, the Respondent wrote Check No. 1027 for \$516.20 from the Baker & Dean, P.C. IOLTA account to Baker & Dean with a memo section stating "earned fees." The Respondent negotiated this check on December 9, 2003.

21. While Ms. Baker was preparing the Complainant for the creditor's meeting held on January 28, 2004, the Complainant asked when she could expect to receive the remainder of her settlement per the Respondent's representations. Ms. Baker was surprised having previously confirmed with the Respondent that the Complainant had received all the settlement proceeds. When she returned to the office, Ms. Baker asked the Respondent in the presence of two employees, Susannah Wells and Teena Ray, if the Complainant had received all proceeds from the personal injury settlement. The Respondent advised that all funds had been paid to the Complainant and that no funds remained to be disbursed. The Respondent advised that she would contact the Complainant to advise her that she had been paid in full.

22. On or about March 1, 2004, the Respondent and Ms. Baker dissolved their law practice via written agreement. Pursuant to the agreement, the Respondent was to receive the originals of all files in which she had provided legal services for clients. The Respondent maintained a key to the office for the following week in order to remove her furnishings and files.

23. On March 30, 2004, the Complainant's bankruptcy case was discharged. The Complainant then sought to collect the balance of her settlement per the Respondent's

representations. The Complainant learned that the Respondent had moved offices and had taken her file with her. After unsuccessful attempts to reach the Respondent by phone, the Complainant went to the Respondent's residence. Despite promising to straighten things out, the Respondent never did so.

24. The Complainant went back to the Respondent's residence several more times and demanded \$4,900, the amount she understood was due and owing after the discharge in bankruptcy. Shortly thereafter, the Complainant returned to the Respondent's office with her daughter, and they demanded the Complainant's file. The Respondent could not produce the file; however, she advised the Complainant that the remaining settlement proceeds were billed as fees for work the Respondent performed in connection with the Complainant's case. Notwithstanding, the Respondent advised the Complainant that in the event she was unable to locate the file and justify the time billed and charged, she would be willing to satisfy the amount the Complainant felt she was owed to her, approximately \$5,000.00.

25. When Complainant, *pro se*, later sued the Respondent in the Wise County General District Court for \$5,000, rather than pay over the funds as indicated, the Respondent defended the Warrant-in-Debt which was subsequently dismissed on July 15, 2004.

26. On or about April 5, 2004, the Complainant and Phyllis Beverley came to Ms. Baker's office with a copy of the bankruptcy discharge notice and requested payment of the remainder of the Complainant's personal injury settlement. Ms. Baker and Teena Ray, an employee of the firm, examined the operating and trust account ledgers and determined that based on the ledger entries, the Complainant was owed \$485.79. Ms.

Baker advised the Complainant of her conversation with the Respondent on January 28, 2004, regarding whether the Complainant was owed any proceeds from the personal injury case, and the Complainant advised that she had not received any communication from the Respondent after the creditor's meeting. Later that day, Ms. Baker and Teena Ray determined that check nos. 814, 815, 796, 1014, 1136, and 1137 were missing from bank statements for the Baker & Dean operating account. In an attempt to reconcile the trust and operating accounts, Ms. Baker requested and received microfilm copies of those checks from Farmers and Miners Bank, as well as microfilm copies of all Trust Account checks related to the settlement of the Complainant's personal injury case.

27. On August 2, 2004, Ms. Baker forwarded a certified letter to the Respondent regarding the Complainant's demand for the remainder of her personal injury settlement funds.

28. The Respondent was unable to produce either the Complainant's file or a settlement statement.

29. To date, the Respondent has not reimbursed Complainant or anyone else for the balance of funds owed.

II. Disciplinary Rule Violations

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

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.

RULE 1.5 Fees

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

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.

RULE 4.1 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness to practice law;
- (b) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

III. Agreed Disposition

In accordance with the Agreed Disposition, it is **ORDERED** that Kristen Dawn Dean's license to practice law in the Commonwealth of Virginia is hereby **SUSPENDED**

for a period of **five (5) years**, effective upon entry of this Order, subject to the following terms and conditions:

1. The Respondent will pay restitution in the principal amount of \$4,268.75 and accrued interest in the amount of \$554.00 for a total of \$4,822.75 by June 1, 2006 in the following manner: \$3,500 to Sue Baker Cox, P.C., 120-B Roberts Avenue, Wise, VA 24293, and the balance, \$1,322.75, to Ms. Geraldine Beverley, 10722 Maple Grove Road, Wise, VA 24293. Interest will continue to accrue on the principal at the rate of 6% for all amounts unpaid after December 31, 2005. All such accrued interest shall be paid to Ms. Geraldine Beverley.
2. The Respondent will sign a Rehabilitation/Monitoring Agreement with Lawyers Helping Lawyers and comply with all the treatment recommendations, including, but not limited to, continuing care and aftercare. During the term of the Rehabilitation/Monitoring Agreement, Respondent will comply with the Virginia State Bar's requests for information and execute releases necessary for the bar to obtain information from third parties. In no event shall Respondent return to the practice of law in the Commonwealth of Virginia upon expiration of the suspension period without a report from a treating professional approved by Lawyers Helping Lawyers stating that Respondent is fit to resume the practice of law.

Further, and pursuant to the agreement of the parties, Respondent's failure to comply with the Rehabilitation/Monitoring Agreement or one or more of the agreed terms and conditions will result in **REVOCATION** of her license to practice law in the

Commonwealth of Virginia. If the Virginia State Bar discovers that Respondent has failed to comply with the Rehabilitation/Monitoring Agreement, or any of the other agreed terms and conditions, it will serve notice requiring Respondent to show cause why the alternate disposition of **REVOCATION** should not be imposed.

It is further **ORDERED** that the five (5) year Suspension with terms shall become part of Respondent's disciplinary record.

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.B.8.c.

It is further **ORDERED** that, the Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) 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 her license to practice law in the Commonwealth of Virginia, to all clients for whom she 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 her care in conformity with the wishes of her 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 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, she 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 (M) shall be determined by the

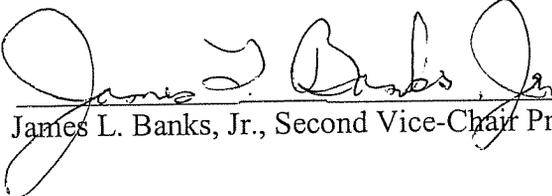
Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order by certified mail, return receipt requested, to the Respondent, Kristen Dawn Dean, Esq., at P.O. Box 743, Norton, VA 24273, her last address of record with the Virginia State Bar, and by regular mail to Richard D. Kennedy, 944 Norton Road, P.O. Box 3458, Wise, Virginia 24293, and by hand to Scott Kulp, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Donna Chandler, Chandler and Halasz, Inc. Court Reporters, P.O. Box 9349, Richmond, VA, 23227, (804) 730-1222, was the reporter for the hearing and transcribed the proceedings.

Entered this 16th day of December, 2005.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
James L. Banks, Jr., Second Vice-Chair Presiding