

VIRGINIA:

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

**IN THE MATTERS OF
JAMES A. WINSTEAD**

VS **Docket Nos. 04-010-0286; 04-010-2139; 04-010-2475 and 04-010-1781**

SUSPENSION ORDER

This matter came on June 21, 2005 to be heard on the Agreed Disposition between the Respondent, James A. Winstead, Esq. and the Virginia State Bar, based on a Certification by the First District Committee. The Agreed Disposition was considered by a duly convened panel of the Disciplinary Board consisting of Werner Quasebarth, lay member, Joseph R. Lassiter, Jr., Esq., Ann N. Kathan, Esq., Robert E. Eicher, Esq., and James L. Banks, Jr., Esq., Chair Presiding.

Richard E. Slaney, Assistant Bar Counsel, and James A. Winstead, Esq., the Respondent, *pro se*, presented an endorsed Agreed Disposition signed by the parties. The court reporter for the hearing was Donna Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

Having considered the Certification and the Agreed Disposition, it was the unanimous decision of the Board to accept the Agreed Disposition, and as such the Virginia State Bar Disciplinary Board finds the following by clear and convincing evidence:

I. FINDINGS OF FACT

1. At all times material to these matters, the Respondent, James A. Winstead (Winstead),

was an attorney licensed to practice law in the Commonwealth of Virginia.

Williams 04-010-0286

2. One Novella Williams (Williams) hired Winstead in early 2003 to represent her in a discrimination and civil rights suit against her employer, the U. S. Postal Service.

3. Williams paid Winstead \$3,000. Winstead acknowledges those funds were not deposited into his trust account.

4. Winstead filed suit for Williams in U. S. District Court. That Court dismissed the suit in an order dated October 20, 2003.

5. Williams would testify Winstead didn't inform her of the dismissal until a February 4, 2004 court date in a suit by Williams against Winstead for return of the \$3,000 she paid him. Winstead believes he informed her sooner of the dismissal but can offer no documentation in support of his belief. Williams filed her suit against Winstead in September of 2003, effectively ending the attorney-client relationship.

6. Williams would testify Winstead failed to return phone calls or respond to letters from mid-July of 2003 to September of 2003.

[Rules applicable: 1.4(a) and 1.15(a), (c)(3), (e) and(f)]

Turner 04-010-2139

7. In December of 2001, one Michael Turner (Turner) hired Winstead to file a habeas corpus petition.

8. Winstead was paid a total of \$3,600 for the habeas petition by Turner or by others on his behalf. Winstead acknowledges those funds were not deposited into his trust account.

9. Turner would testify that after the filing of the petition, in February of 2002, Winstead failed to return phone calls or respond to letters until February of 2004; however, Winstead would testify he communicated with Turner and others on his behalf during that time frame as appropriate.

[Rules applicable: 1.4(a) and 1.15(a), (c)(3), (e) and(f)]

Dolberry/Joe 04-010-2475

10. Winstead was requested by one Dr. Morgan Joe (Joe) to negotiate a settlement of a debt Joe owed to Damsey and Associates (Damsey). Winstead agreed to place \$1,200 in his trust account as a fund with which to negotiate the settlement with Damsey.

11. Although Winstead's trust account carried a balance of over \$1,200 during the relevant time frame, he has no periodic trial balance reconciliation to prove Joe's \$1,200 was maintained intact in the trust account; however, the Bar has no evidence of any misappropriation of those funds by Winstead.

12. Winstead also agreed to file an objection for Joe to a bankruptcy discharge in regard to one of Joe's clients. The objection was dismissed due to Winstead's failure to file witness and exhibit lists.

[Rules applicable: 1.3(a) and 1.15(f)(4)]

Rohan 04-010-1781

13. Winstead represented one Simone Rohan (Rohan) in regard to an automobile collision. Rohan's claim was settled in 2000 for \$4,000.

14. Rohan recently discovered a judgment against her for a medical bill arising from the

collision. She attempted to meet with Winstead about the matter, without success. She then filed a Bar complaint against Winstead.

15. Winstead responded to the complaint and met with Rohan, convincing her that he paid all medical bills related to the collision at the time of the settlement, with the exception of a bill Rohan agreed to pay directly to the medical care provider. Rohan told the Bar's investigator she was satisfied with Winstead's explanation. Rohan has not responded to several recent messages left for her by the Bar's investigator.

16. Winstead would testify Rohan's settlement funds were deposited into his trust account; however, he has no trial reconciliations or quarterly reconciliations reflecting those funds.

[Rules applicable: 1.4(a) and 1.15(a), (c)(3), (e) and(f)]

II. RULE VIOLATIONS

The Board finds by clear and convincing evidence that the conduct of the Respondent, as set forth above, constitutes a violation of the following Rules of Professional Conduct:

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.

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:....

- (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

- (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.
- (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;
 - (3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument.
 - (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.

III. DISPOSITION

Accordingly, it is hereby

ORDERED that the law license of the Respondent, James A. Winstead, Esq., be and hereby is **SUSPENDED** for a period of three (3) years from the date of this order, and further that, pursuant to his agreement, Mr. Winstead shall not thereafter practice law in the Commonwealth of Virginia.

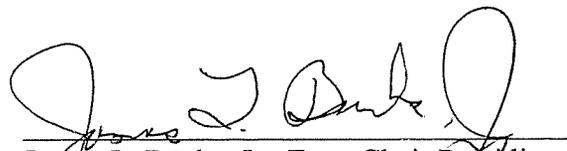
It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13(B)(8)(c).

It is further **ORDERED** that pursuant to the provisions of Part Six, Section IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia, as amended, that the 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. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Respondent shall give such notice within fourteen (14) days of the

date of this order, and shall make such arrangements as are required herein within forty-five (45) days of the date of this order. Respondent shall also furnish proof to the Clerk of the Virginia State Bar Disciplinary System within sixty (60) days of the date of this order that such notices have been timely given and such arrangements for the disposition of matters have been made. Issues concerning the adequacy of the notice and arrangements required shall be determined by the Disciplinary Board, which may impose a sanction of revocation or further suspension for failure to comply with the requirements of this paragraph.

It is further **ORDERED** that the Clerk shall mail a copy *teste* of this Order by Certified Mail, Return Receipt Requested, to the Respondent, James A. Winstead, Esq., at 308 Mapleshore Drive, Chesapeake, Virginia 23320-6920, his last address of record with the Virginia State Bar, and by hand delivery to Richard E. Slaney, Assistant Bar Counsel, 707 E. Main Street, Suite 1500, Richmond, Virginia 23219.

Entered this the 22^d day of June, 2005.


James L. Banks, Jr., Esq., Chair/Presiding
Virginia State Bar Disciplinary Board