VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF MATTHEW B. MURRAY

VSB DOCKET NOS. 11-070-088405 and 11-070-088422

AGREED DISPOSITION MEMORANDUM ORDER

On July 17, 2013, these matters were 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 Robert W. Carter, lay member, John A. C. Keith, Jeffrey L. Marks, Melissa W. Robinson, and Pleasant S. Brodnax, III, Chair, presiding. The Virginia State Bar was represented by Alfred L. Carr, Assistant Bar Counsel. Matthew B. Murray, Respondent was present and was represented by his counsel, Thomas W. Williamson, Jr. 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 matters to which each member responded in the negative. Lisa A. Wright, Court Reporter, 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, and Respondent's Disciplinary Record,

It is **ORDERED** that:

The Board accepts the Agreed Disposition and the Respondent shall receive a Five-Year Suspension, as set forth in the Agreed Disposition, which is attached to this Memorandum Order.

It is further **ORDERED** that:

The sanction is effective:

July 17, 2013

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, return receipt requested, of the Five-Year Suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom his 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 Five-Year Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Five-Year Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Five-Year 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 Five-Year 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 a hearing before a three-judge court.

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 to Matthew B. Murray, at his last address of record 1852 Wayside Place, Charlottesville, VA 22903 with the Virginia State Bar, and by first-class mail to his counsel, Thomas W. Williamson, Jr., Esquire, Williamson Law LC, 3415 Floyd Avenue, Richmond, VA 23221 and to Alfred L. Carr, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED THIS 17th DAY OF July, 2013

VIRGINIA STATE BAR DISCIPLINARY BOARD

Pleasant S. Brodnax, III, Chair

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

JUL 9 2013

IN THE MATTER OF
MATTHEW B. MURRAY

VSB Docket Nos. 11-070-088405 and 11-070-088422

AGREED DISPOSITION
(FIVE YEAR 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 Alfred L. Carr, Assistant Bar Counsel and Matthew B. Murray, Respondent, and Thomas W. Williamson, Jr., 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 hereto, Respondent Matthew B. Murray (hereinafter "Respondent") was a duly licensed attorney in the Commonwealth of Virginia.

2. On March 26, 2009, Respondent and his legal assistant reviewed Respondent's client, Mr. Isaiah Lester's (hereinafter "Plaintiff"), Facebook page in response to Defendant's Request for Production of documents dated March 25, 2009.

3. On March 26, 2009, Respondent sent his client, Plaintiff, an email that suggested that Plaintiff deactivate his Facebook page on April 14, 2009. Respondent's legal assistant sent Plaintiff an email of March 26, 2009, stating: "The pic Zunka has is on your facebook. You have something (maybe plastic) on your head and are holding a bud with your I Love Hot Moms shirt on. There are 2 couples in the background ....both girls have long blond hair. Do you know the pic? There are some other pics that should be deleted."

4. Respondent's response to Defendant's March 25, 2009 Request No. 10 for documents stated that Plaintiff did "not have a Facebook page on the date this is signed, April 15, 2009."

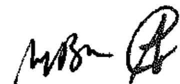
5. During a hearing on March 3, 2010, on Defendant's Second Motion for Continuance, Plaintiff's counsel, Respondent, maintained that Defense counsel, David Tafuri, Esq., had "hacked" into Plaintiff's Facebook account, or had otherwise accessed the account without permission. Respondent stated that he intended to use the word "hack" to be synonymous with "no-permission access." Respondent offered this evidence to the Court in support of his argument that the Defendants' Second Motion for Continuance should be denied.

6. In response to the Court's question with regard to the basis for his claim, Respondent stated that the evidence for his claim constituted the photograph attached to the Defendant's Request for Production of March 25, 2009.

7. During the hearing, Respondent told the Court that he did not know how Defense counsel had accessed the account, but that he "assumed" the account had been "hacked." Respondent stated further that he and his client "assumed" that opposing counsel "had" the Facebook page and that "the only purpose of the request for production was to legitimize that which they had acquired without permission."

8. During the March 3, 2010, hearing, Respondent repeatedly acknowledged that he had no familiarity with Facebook prior to the proceedings of this case.

9. On November 13, 2009, Defense counsel, Mr. Tafuri, informed Respondent that the Plaintiff had sent Mr. Tafuri a Facebook message on January 9, 2009.



10. Mr. Tafuri's facsimile correspondence with Respondent on November 13, 2009, confirmed a telephone conversation between Mr. Tafuri and Respondent during which Respondent had asked whether Plaintiff had sent a Facebook message to Defense counsel, since the Plaintiff remembered sending such a message.

11. On December 14, 2009, Mr. Tafuri sent Respondent a copy of the Facebook "message" of January 9, 2009, via facsimile and certified mail.

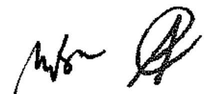
12. On February 23, 2010, John Zunka, Esq., counsel for Defendant, sent Respondent a letter referring Respondent to copies of the correspondence on November 13, 2009, and December 14, 2009, reiterating the basis for Mr. Tafuri's access to the photograph in question, and referencing the relevant Facebook privacy rule in effect on January 9, 2009.

13. In an email dated February 24, 2010, Respondent declined to comply with Defense counsel's requests to strike Mr. Tafuri from the Plaintiff's witness list and to retract the "hacking" comment.

14. On February 25, 2010, Mr. Tafuri sent an email to Respondent notifying him that Defense counsel would file a Motion for Sanctions if Respondent did not comply with the requests contained in Mr. Zunka's February 23, 2010, letter based on Defense counsel's explanations therein.

15. At the hearing on March 3, 2010, Respondent said that he first learned of his client's Facebook "message" during the hearing on February 8, 2010.

16. In the Plaintiff's Responses to the Defendant William D. Sprouse's Fifth Request for Production of Documents (Defendant Allied Concrete's Sixth Request), dated May



10, 2010, signed by Respondent, the Plaintiff twice asserted that Mr. Tafuri had made "unauthorized access" to the Plaintiffs Facebook account.

17. In the Plaintiffs Responses to Defendant William D. Sprouse's Second Request for Production of Documents (Allied Concrete's Third Request), dated May 10, 2010, signed by Respondent, the Plaintiff referred to "unauthorized access" of his Facebook account.

18. Aside from the photograph in question and the Plaintiffs bare assertion that he believed his account had been accessed without permission, Respondent presented no evidence to the Court as the basis for the claim of unauthorized access.

19. During the hearing on May 27, 2010, with regard to sanctions, Plaintiff's counsel did not address Facebook's default privacy settings or counsel's inquiry into any such matters.

20. Respondent argued that "hacking" is not a crime, that he did not intend the word "hacking" to be used to accuse Defense counsel of a crime, and that therefore "no harm to any reputation has been done and none can be claimed."

21. If Respondent and Mr. Tafuri, in fact, discussed Mr. Lester's Facebook "message" to Mr. Tafuri on or around November 13, 2009, Respondent would have had approximately three and a half months before the hearing on March 3, 2010, during which he could have investigated his "unauthorized access" or "hacking" claims.

22. Even if Respondent did not, as he said during the hearing, learn of his client's Facebook "message" until February 8, 2010, he would have had approximately one month before the hearing on March 3, 2010, during which he could have investigated his "unauthorized access" or "hacking" claims.

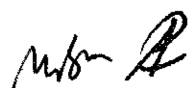
23. On November 17, 2010, the Court ordered Respondent to produce a privilege log, to include emails to and from Respondent and Plaintiff related to the Facebook spoliation issue, to be reviewed by the Court *in camera*. On November 18, 2010, Respondent filed the privilege log; however, the Court ruled Respondent's Privilege Log as inadequate and ordered Respondent to file an Amended Privilege Log by November 29, 2010. On November 29, 2010, Respondent filed the Amended Privilege Log.

24. Respondent by letter dated December 14, 2010, notified the court that his legal assistant had ". . . apparently overlooked [the March 26, 2009 9:54 a.m.] email" from the Privilege Logs that was enclosed with the letter to the Court. (See paragraph 3)

25. Respondent, however, had directed his legal secretary to remove the March 26, 2009 9:54 a.m. email in question from both privilege logs that he filed with the Court. On February 28, 2011, Respondent stated under oath in his deposition that he intentionally violated the Court's November 17, 2010 order when he caused the deletion of the March 26, 2009 9:54 a.m. emails from the privilege logs he filed with the Court.

26. Respondent stated under oath that he expects to be held accountable for his Misconduct in willfully concealing the March 26, 2009 email and falsely casting the blame upon another.

27. By Order entered October 21, 2011, the Court sanctioned and *personally* obligated Respondent to remit to Defendant, the sum of $542,000. The Court ordered Plaintiff to remit $180,000 to Defendant for his Misconduct during the trial.



28. On or about May 30, 2013, Respondent remitted $594,209.72 to Defendant. On June 7, 2013, Defendants executed an Acknowledgment of Payment In Full and released all claims for the sanction against Respondent and Plaintiff.

II. NATURE OF MISCONDUCT

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

RULE 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, subject to Rule 1.6;

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(a) Obstruct another party's access to evidence or alter, destroy or conceal a document or other material having potential evidentiary value for the purpose of obstructing a party's access to evidence. A lawyer shall not counsel or assist another person to do any such act.

(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

(e) Make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

(f) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.

RULE 8.4 Misconduct

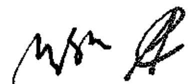
It is professional misconduct for a lawyer to:

> (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and the Respondent tender to the Disciplinary Board for its approval the agreed disposition of Five Year Suspension of Respondent's license as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board.

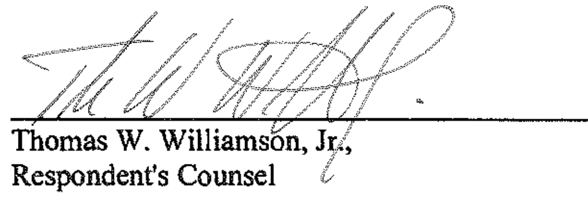
If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.



THE VIRGINIA STATE BAR

By:______________________________
Alfred L. Carr, Assistant Bar Counsel

Matthew B. Murray, Respondent



Thomas W. Williamson, Jr.,
Respondent's Counsel