

VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

IN THE MATTER OF  
CHARLES GREGORY PHILLIPS

CASE NO. CL17001629-00  
VSB DOCKET NOS.. 16-080-105744, 16-080-105771,  
17-080-105457, 17-080-108275 and 17-080-108549

AGREED DISPOSITION MEMORANDUM ORDER  
FOR A SUSPENSION WITH TERMS

This matter came to be heard on Friday, March 2, 2018, before a Circuit Court Three-Judge panel, upon the joint request of the parties for the Court to accept the Agreed Disposition endorsed by the parties and offered to the Court as provided by the Rules of the Supreme Court of Virginia. The panel consisted of the Honorable Anita D. Filson, Judge of the Twenty-fifth Judicial Circuit, Designated Chief Judge, the Honorable Joel C. Cunningham, Retired Judge of the Tenth Judicial Circuit, and the Honorable Marcus H. Long, Jr., Judge of the Twenty-seventh Judicial Circuit. Charles Gregory Phillips was present and was represented by counsel, Aaron B. Houchens. The Virginia State Bar appeared through its Assistant Bar Counsel, Paulo E. Franco, Jr. The Chief Judge polled the members of the panel 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 matter to which each judge responded in the negative. Court Reporter Tracy J. Stroh, 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, Certification, respondent's Answer, respondent's Disciplinary Record, the arguments of the parties, and after due deliberation,

It is **ORDERED** that the Agreed Disposition is accepted, and the Respondent shall receive a Ten Month Suspension with Terms. The Agreed Disposition is attached and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective June 1, 2018.

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 of the Revocation or Suspension of his or her 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 clients. The Respondent shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Revocation or 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 Revocation or Suspension, he shall submit an affidavit to that effect within 60 days of the effective date of the Revocation or Suspension 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

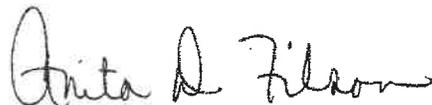
determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

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, certified mail, return receipt requested, to the Respondent, Charles Gregory Phillips, at his last address of record with the Virginia State Bar, Phillips & Phillips, 111 E. Clay Street, Salem, VA 24153, with an attested copy to Aaron B. Houchens, Stanley & Houchens, LLC, 13508 Booker T. Washington Hwy., Moneta, VA 24121, and to Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026, and to the Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED THIS 5<sup>th</sup> DAY OF MARCH, 2018

CIRCUIT COURT FOR THE COUNTY OF ROANOKE



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Anita D. Filson, Chief Judge Designate  
Three-Judge Circuit Court

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VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

VIRGINIA STATE BAR, EX REL. )  
EIGHTH DISTRICT COMMITTEE )

Complainant, )

v. )

Case No. CL17001629-00

CHARLES GREGORY PHILLIPS )

Respondent. )

IN THE MATTERS OF )  
CHARLES GREGORY PHILLIPS )

VSB Docket Nos. 16-080-105744;  
16-080-105771; 17-080-105457;  
17-080-108275; and 17-080-108549

**AGREED DISPOSITION**  
**SUSPENSION WITH TERMS**

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H. and Va. Code Ann. § 54.1-3935, the Virginia State Bar, by Paulo E. Franco, Jr., Assistant Bar Counsel and Charles Gregory Phillips, Respondent, and Aaron B. Houchens, Respondent's counsel, hereby enter into the following Agreed Disposition arising out of the referenced matter.

**VSB DOCKET NO. 16-080-105744**  
**COMPLAINANT: BLAKE M. STROOP**

**I. STIUPLATION OF FACT**

1. At all times relevant Respondent was an active member in good standing of the Bar of the Commonwealth of Virginia.

2. Respondent was admitted to the Bar of the Commonwealth of Virginia on September 30, 1991.

3. Sometime in October of 2015 Blake M. Stroop retained Respondent to represent his interests on certain criminal charges in the Rockingham County General District Court.

4. Stroop initially paid Respondent \$5,000.00 in advance fees.
5. Stroop complained that Respondent had not returned unearned fees during the course of the representation. Mr. Stroop subsequently wrote to the Bar and advised that he had sorted the matter out with Respondent and wished to have the Complaint dismissed.
6. As a result of Mr. Stroop's complaint, the Virginia State Bar conducted an examination of the Respondent's IOLTA Trust Account and other records he is required to maintain pursuant to Rule 1.15 of the Virginia Rules of Professional Conduct.
7. The VSB issued a subpoena for Respondent's operating and trust account records for the period of May 1, 2013 to April 30, 2016.
8. Respondent provided bank statements for his Wells Fargo IOLTA account for the months of September, October and December of 2013, January of 2015 and June through November 2015, and January, April and May 2016.
9. Respondent also provided copies of bank statements from his Wells Fargo operating account for May through December 2013, January through December 2014, January through December 2015 and January through April 2016.
10. The VSB also issued a subpoena to Wells Fargo for Respondent's Trust Account records from October 1, 2014 through December of 2016.
11. Those records showed that Respondent only made deposits comprising of 6 checks and 2 cash deposits, into his trust account from August 2015 through December 2016.
12. The records also showed that during that same time period of August 2015 through December 2016 that Respondent was depositing client advance fee payments directly into his operating account.
13. During his interview with the Virginia State Bar's investigator, Respondent admitted that he was depositing advance client fees directly into his operating account regardless of whether such fees were earned or not.
14. For the deposits made into his trust account between August 2015 and December 2016 there were no subsidiary ledgers.
15. The Virginia State Bar's investigator requested that Respondent provide those subsidiary ledgers during Respondent's interview.
16. Respondent admits that there are no subsidiary ledgers for the various trust account deposits.

17. During the course of the investigation, the Bar's investigator showed Respondent 30 checks which appeared to be unearned client fees that had been deposited into his operating account.

18. Respondent had hired Cathy Keith and Emelia Jardim to assist with his trust account to ensure they were in compliance with Rule 1.15 of the Virginia Rules of Professional Conduct.

19. Ms. Keith stated affirmatively to the Bar's Investigator that Respondent did not keep client subsidiary ledgers despite her repeated requests to Respondent that he provide her with that information.

20. When asked by the Bar's investigator when he withdrew fees how he knew they were earned, Respondent stated he did so after the work was done and he had made mental notes to himself.

21. He further responded that he would tell his bookkeeper Ms. Keith that he was taking the money out.

22. When interviewed by an investigator for the Virginia State Bar, Ms. Keith disputed Respondent's assertion that he contacts her when he withdraws earned fees from the trust account.

23. Ms. Keith further stated when she met with Respondent and was given copies of the trust account statements prior to meeting with the Bar's investigator; she could tell that Respondent had stopped using his trust account because the balance remained the same for months.

24. On June 2, 2017 the Bar's investigator conducted an interview of Respondent's new assistant Whitney Anderson.

25. Ms. Anderson told the Bar's investigator that she had been hired to help put the trust account into order.

26. Ms. Anderson advised the Bar's investigator that she started working for Respondent on April 10, 2017.

27. She advised that she had no bookkeeping experience.

28. She further stated that she had received little guidance from Ms. Keith and was having to figure things out on her own.

29. She told the Bar's investigator that she believes little has changed from the way that Respondent maintains his trust account records prior to her arrival.

30. The Bar's investigator had to explain to Ms. Anderson what was meant by the term account reconciliation.

## **II. STIPULATIONS OF MISCONDUCT**

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

### **RULE 1.15 Safekeeping Property**

#### **(a) Depositing Funds.**

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

#### **(b) Specific Duties. A lawyer shall:**

(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(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 that such person is entitled to receive; and

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

**(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:**

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

\* \* \* \*

**RULE 5.3** Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

\* \* \* \*

**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:

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter;

(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.

**VSb DOCKET NO. 16-080-105771**

**COMPLAINANT: CYNTHIA C. GLENN**

**I. STIPULATIONS OF FACT**

1. At all times relevant Respondent was an active member in good standing of the Bar of the Commonwealth of Virginia.

2. Respondent was admitted to the Bar of the Commonwealth of Virginia on September 30, 1991.
3. Cynthia Glenn retained Respondent to handle a domestic case for her.
4. Ms. Glenn paid an initial advance fee of \$800.00 in December of 2014 and subsequently paid an additional \$3,000.00 on April 10, 2015.
5. Contemporaneous with the \$800.00 payment, Respondent presented Ms. Glenn with a legal fee agreement ("Fee Agreement").
6. The Fee Agreement contained the following language:

In addition to the hourly fee, I will pay a retainer fee of [\$800] which, when paid, immediately becomes a fee which had been earned by my attorney, in consideration of my attorney reserving and counting time to be available in representing me, thereby precluding the acceptance of other clients in other employment and in consideration of my attorney being precluded from accepting employment of adversary or conflicting matters.
7. At the time that Respondent made that representation, Respondent not only had other clients at time, he continued to accept new clients.
8. In his interview with the Virginia State Bar, Respondent admitted that he was working for clients other than Ms. Glenn at the time she signed the Fee Agreement.
9. In addition, Respondent had not performed \$800.00 worth of work at the time he had Ms. Glenn agree that he had earned the entire initial advance fee upon receipt.
10. Respondent filed a bill of complaint for divorce in May of 2015.
11. While the suit for divorce was pending, Ms. Glenn got into a fight with her husband which caused her to file for a protective order.
12. The court denied that motion on June 29, 2015.
13. The hearing on the appeal was set for July 2, 2015.
14. Ms. Glenn called Respondent's office on the morning of June 29<sup>th</sup> to advise of the hearing date.
15. Ms. Glenn indicated that Respondent's secretary advised that Respondent would be at the hearing on July 2.
16. Respondent did not appear at the July 2 hearing at the appointed time.

17. The Court called Respondent's office to find out if he was on his way, and someone at his office said that he was indeed on his way.
18. When the Respondent still did not appear, the court called his office a second time and was assured that Respondent was on his way.
19. Respondent never appeared on July 2, and Ms. Glenn was required to go forward without him.
20. Ms. Glenn went to Respondent's office to find out why he did not appear.
21. Respondent advised Ms. Glenn he had been in another court due to an error and he apologized for failing to appear.
22. Ms. Glenn tried following up unsuccessfully and on December 11 wrote Respondent stating his secretary would not return her calls to see if a hearing had been set.
23. Having heard nothing further, Ms. Glenn sent Respondent a letter of February 5, 2016 terminating his services.
24. In that correspondence, Ms. Glenn stated she left messages for Respondent on January 27, 28, 29 and February 1-3, none of which Respondent returned.
25. Ms. Glenn asked Respondent for an invoice, a return of unearned fees and the return of her file which she would pick up on February 9, 2015.
26. When Ms. Glenn called Respondent's office to pick up the file, she was told there was no sign of it in the office.
27. Glenn wrote to Respondent again on March 1 asking for her file, an invoice and a refund of unearned fees.
28. Ms. Glenn subsequently retained Dinny Skaff to represent her interests.
29. Ms. Glenn stated it took Mr. Skaff two months to obtain her file, despite Mr. Skaff sending letters and making calls to Respondent to get the file from him.

## **II. STIPULATION OF MISCONDUCT**

### **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 1.5** Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

\* \* \* \*

**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).

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the

property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

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**VSb DOCKET NO. 17-080-105457**  
**COMPLAINANT: JESSICA WHEELER**

### **I. STIPULATIONS OF FACT**

1. At all times relevant Respondent was an active member in good standing of the Bar of the Commonwealth of Virginia.
2. Respondent was admitted to the Bar of the Commonwealth of Virginia on September 30, 1991.
3. Jessica Wheeler retained Respondent to handle a divorce for her sometime in March 2016.
4. Respondent quoted an initial advance fee payment of \$2,500.00
5. Ms. Wheeler's parents wrote a check to Respondent in the amount of \$2,500.00 which Ms. Wheeler in turn delivered to Respondent.
6. Respondent provided the Bar a copy of a fee agreement bearing Ms. Wheeler's name.

7. Respondent deposited the \$2,500.00 advance fee check into his operating account and not his trust account.

8. Ms. Wheeler has complained of communication problems with Respondent.

9. Ms. Wheeler alleges that she called Respondent's office, each time she was told he was not present, but that someone would call back with information regarding the questions she had about her case.

10. In an interview with the Bar's Investigator during the investigation of this case, Respondent admitted speaking to Ms. Wheeler about his son and his ex-wife's drug problems.

11. Ms. Wheeler replaced Respondent as her counsel sometime in late August or early September of 2016.

12. Ms. Wheeler demanded a return of her unearned fee monies.

13. Respondent stated during his interview he was not aware of whether Ms. Wheeler was entitled to a refund because he never kept a proper accounting of what he was billing her.

14. During the course of the interview with the Bar's investigator, Respondent admitted that he was depositing advance fees directly into his operating account and that he was not keeping his trust account in compliance with Rule 1.15 of the Virginia Rules of Professional Conduct.

15. By way of example, and not limitation, Respondent admitted that he did not keep a client subsidiary ledger for Ms. Wheeler.

16. Moreover, Respondent deposited the \$2,500.00 fee into his operating account a few days after that account had two insufficient funds notices.

17. After terminating Respondent, Ms. Wheeler attempted to contact him to no avail to obtain a refund of unearned fees.

18. Respondent never provided her with a statement of earned fees or a refund of unearned fees.

19. Respondent did not file a timely answer to the initial complaint sent out by the Virginia State Bar, did not file a timely answer to the Bar's *subpoena duces tecum*, or the notice of non-compliance with the *subpoena duces tecum* that the Bar forwarded to his attention.

## **II. STIPULATIONS OF MISCONDUCT**

### **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 1.5**    Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

\*       \*       \*       \*

**RULE 1.15 Safekeeping Property**

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. A lawyer shall:

(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(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 that such person is entitled to receive; and

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and 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).

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to

this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

\* \* \* \*

**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

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**VSB DOCKET NO. 17-080-108275  
COMPLAINANT: SHAKEEM HUNT**

**I. STIPULATIONS OF FACT**

1. At all times relevant Respondent was an active member in good standing of the Bar of the Commonwealth of Virginia.
2. Respondent was admitted to the Bar of the Commonwealth of Virginia on September 30, 1991.
3. When Shakeem Hunt learned he was to be indicted on certain criminal charges in August of 2016, he retained Respondent to represent him.
4. Respondent quoted Mr. Hunt a flat fee of \$5,000.00.

5. Mr. Hunt's parents made the first payment towards the flat fee in advancements of \$1,000.00 cash August 16, 2016, and the family made additional payments of \$1,000.00 on August 25, 2016 and \$2,000.00 on October 3, 2016.

6. During the course of the investigation, Respondent admitted to the VSB's investigator that he intentionally deposited most of the advance fee monies directly into his operating account and not into his trust account.

7. Respondent made those deposits despite not having earned all of the fee.

8. Respondent further admitted to the Bar that with respect to the third cash payment of \$2,000.00 he only deposited \$1,500.00 and that he could not account for the other \$500.00.

9. Mr. Hunt and his parents attempted to contact Respondent.

10. Mr. Hunt and his parents allege that Respondent did not answer their calls and were told repeatedly by staff that he was not available.

11. Mr. Hunt alleges that Respondent did not advise him that the Commonwealth had amended the charges and instead had to learn of that information through his parents.

12. Mr. Hunt and his parents terminated Respondent as counsel for Mr. Hunt

13. Sometime in February of 2017, Mr. Hunt retained Mr. David Walker to represent his interests.

14. During the course of the transfer of the case, Mr. Hunt alleges that Respondent was not cooperative with Mr. Walker's office in transferring the file and in signing an order of substitution.

15. Mr. Walker's assistant, Emily Culley made numerous phone calls from February 14, 2017 for about three weeks.

16. When Respondent failed to respond to the calls or sign off on the order of substitution, Ms. Culley set the matter down for a hearing before the Court on March 28, 2017.

17. Respondent finally signed off on the order of substitution which obviated the need for the March 28, 2017 hearing.

18. Respondent did not file a timely answer to the initial complaint sent out by the Virginia State Bar, did not file a timely answer to the Bar's *subpoena duces tecum*, or the notice of non-compliance with the subpoena duces tecum that the Bar forwarded to his attention.

19. Respondent further admitted that he did not keep a client subsidiary ledger for Mr. Shakeem Hunt.

20. Respondent further admitted that he had never provided an accounting of how the fees paid were spent.

21. Respondent further admitted that he was unsure whether Mr. Hunt had any remaining unearned fees to which he would be entitled to a refund after he terminated Respondent as his counsel.

22. During the course of the interview, Respondent told the VSB he would perform an accounting of Hunt's funds and notify the VSB by August 1, 2017 whether Hunt would be entitled to a return of unearned fees.

23. As of the date of this Certification, Respondent had not provided the VSB with that information.

## II. STIPULATIONS OF MISCONDUCT

### **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 1.5** Fees

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

\* \* \* \*

### **RULE 1.15** Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. A lawyer shall:

(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(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 that such person is entitled to receive; and

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and 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).

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by

furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

\* \* \* \*

**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

\* \* \* \*

**VSb DOCKET NO. 17-080-108549**  
**COMPLAINANT: JOANN BLASER**

**I. STIPULATIONS OF FACT**

1. At all times relevant Respondent was an active member in good standing of the Bar of the Commonwealth of Virginia.
2. Respondent was admitted to the Bar of the Commonwealth of Virginia on September 30, 1991.
3. Ms. Blaser hired Respondent to represent her interests in a divorce sometime in March of 2015.
4. At the initial consultation, Ms. Blaser paid Respondent an advance fee of \$5,000.00 for him to commence work on the divorce.
5. Respondent had Ms. Blaser sign a legal fee agreement, but she did not receive a copy of it.
6. Respondent told her he would sign and mail her a copy but he never did.
7. Respondent produced an unsigned copy of a legal fee agreement dated March 3, 2015 with Ms. Blaser's name written on it in block letters ("Fee Agreement").
8. The Fee Agreement contained the following language:

In addition to the hourly fee, I will pay a retainer fee of \$5,000.00 which, when paid, immediately becomes a fee which had been earned by my attorney, in consideration of my attorney reserving and counting time to be available in representing me, thereby precluding the acceptance of other clients in other employment and in consideration of my attorney being precluded from accepting employment of adversary or conflicting matters.

9. At the time that Respondent made that representation, Respondent not only had other clients at time, he continued to accept new clients.

10. Despite asking for an itemized statement on five or six occasions, Respondent never provided Ms. Blaser with a detailed statement of how he spent her money.

11. Ms. Blaser alleges that Respondent's office notified her of the pre-trial hearing just one business day before it was scheduled to take place.

12. At the time Respondent's office gave her notice, Ms. Blaser was living in Texas and could not attend the hearing on the short notice Respondent provided.

13. With respect to another hearing connected with her case, Respondent failed to timely notify Ms. Blaser, and failed to notify her of the outcome of that hearing.

14. In the course of the investigation of this case, Respondent admitted to the Bar's investigator that he had not done everything he should have done to move the case along, including but not limited to, hiring valuation experts and engaging in discovery with the opposing party.

15. From October to November of 2015, Ms. Blaser made 13 phone calls to Respondent looking to set up a meeting to discuss the case, all of which went unreturned.

16. Ms. Blaser finally terminated Respondent.

17. During the course of the investigation of this Complaint, Respondent failed to provide a timely response to the Bar's initial demand for information and failed to comply with the Bar's *subpoena duces tecum* in a timely fashion.

18. When the Bar finally received the records in connection with its subpoena, those records revealed that Respondent did not maintain a client subsidiary ledger for Ms. Blaser.

**II. STIPULATIONS OF MISCONDUCT**

**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.

(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 1.5    Fees**

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the

client, preferably in writing, before or within a reasonable time after commencing the representation.

\* \* \* \*

**RULE 1.15 Safekeeping Property**

(a) Depositing Funds.

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(b) Specific Duties. A lawyer shall:

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(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 that such person is entitled to receive; and

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

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The ledger should clearly identify:

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(ii) any unexpended balance.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

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\* \* \* \*

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\* \* \* \*

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(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

**PROPOSED DISPOSITION**

Accordingly, Assistant Bar Counsel and the Respondent tender to this Court for its approval the agreed disposition of **Suspension (Ten Months) with Terms** as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Court.

The terms with which the Respondent must comply are as follows:

1. Respondent's license to practice law in the Commonwealth shall be suspended for a period of 10 (ten) months ("Suspension"), in accordance with the date set forth in the Court's Order.

2. Respondent shall take all steps necessary to comply with Rule of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-29, duties of a suspended lawyer, once the term of his suspension begins.

3. During the period of suspension, Respondent shall keep current his CLE obligations. As part of that obligation, Respondent shall complete an additional CLE in law office management which may count towards his CLE obligations while on suspension. Respondent shall submit a certificate of compliance to the Membership Department along with a copy to the office of Bar Counsel within 30 days of the completion of each such MCLE course.

4. Upon expiration of the Suspension, Respondent shall be on a period of probation for a term of 5 years ("Probation Period").

5. In the event that Respondent is found in violation of Rule 1.15 of the Virginia Rules of Professional Conduct with such violation having occurred during the Probation Period, the alternative sanction for failure to comply with this term shall be a period of suspension of 5 years. Such suspension will be in addition to any other sanction imposed by either a District Committee, the Board or a Three Judge Panel for the rule violation, and shall be served concurrently with any other such sanction imposed.

6. In the event that Respondent is found in violation of any other Rule of the Virginia Rules of Professional Conduct during the Probation Period, the alternative sanction for failure to comply will be a period of suspension of 18 months. Such suspension will be in addition to any other sanction imposed by either a District Committee, the Board or a Three Judge Panel for the rule violation and shall be served concurrently with any other such sanction imposed.

7. At the end of the Suspension, Respondent shall provide the Office of Bar Counsel a report from a Virginia Certified Public Accountant that his trust account records are in compliance with the requirements of Rule 1.15 of the Virginia Rules of Professional Conduct (1.15 Report). The 1.15 Reports shall be sent on a quarterly basis to the Office of Bar Counsel. The first report shall be due within 45 days at the conclusion each quarter beginning with the first quarter after the termination of the Suspension.

8. To the extent that Respondent intends to use an advance fee agreement for future clients once he returns to practice, he shall submit such agreement to the Virginia State Bar's Ethics Counsel. Mr. Phillips agrees to waive the confidential nature of such consultation, in writing, to allow Bar Counsel to verify that such consultation has taken place.

9. Respondent shall maintain all records required to be kept under Rule 1.15 of the Virginia Rules of Professional at his law office. The Office of Bar Counsel reserves the right to require Mr. Phillips to allow a representative of the Virginia State Bar to randomly inspect such books and records to ensure compliance. Respondent may allow for the transfer of such records to the accountant in order to allow such person(s) the ability to conduct audits and reports for purposes of Paragraph 7 of these Terms.

9. If Respondent fails to comply with the Terms of this Agreed Disposition, Bar Counsel shall request that the Disciplinary Board of the Virginia State Bar issue a Rule to Show Cause requiring Mr. Phillips to show clear and convincing evidence of his compliance. Respondent agrees that he shall bear the burden of proof and agrees to the Jurisdiction of the Board to determine compliance with the terms.

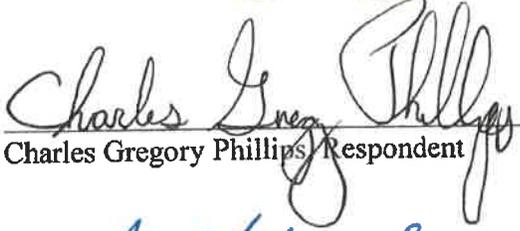
10. In the event that the Board finds that Respondent has failed to comply with any of the terms of the Agreed Disposition, other than the terms related to the Probation Period, the Board shall impose an alternate sanction of two years.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, all the terms and conditions are not met by the deadlines imposed above, the Respondent agrees that the Disciplinary Board shall impose the Alternative Sanctions set forth in these Terms pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

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

**THE VIRGINIA STATE BAR**

By:   
Paulo E. Franco, Jr., Assistant Bar Counsel

  
Charles Gregory Phillips, Respondent

  
Aaron B. Houchens, Respondent's Counsel