

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JEFFREY BRIAN BAILEY**

VS. DOCKET NO. 19-032-111221

**AGREED DISPOSITION MEMORANDUM ORDER
SIX-MONTH SUSPENSION WITH TERMS**

On November 2, 2020, this matter was 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 Part Six, Section IV, Paragraph 13-6.H of the Rules of the Supreme Court of Virginia. The panel consisted of Yvonne S. Gibney, Chair; Robin J. Kegley; Donita M. King; Michael J. Sobey; and Nancy L. Bloom, Lay Person. The Virginia State Bar was represented by Laura Ann Booberg, Assistant Bar Counsel. Respondent Jeffrey Brian Bailey (“Respondent”) was present and was not represented by counsel. 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 matter, to which each member responded in the negative. Court Reporter Lisa Wright, 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, Respondent’s Disciplinary Record, the arguments of the parties, and after due deliberation, the Board rejected the Agreed Disposition and made certain recommendations regarding an acceptable disposition.

The panel thereafter reconvened on November 4, 2020, upon the joint request of the parties for the Board to accept a revised Agreed Disposition signed by the parties and offered to the Board

as provided by Part Six, Section IV, Paragraph 13-6.H of the Rules of the Supreme Court of Virginia.

WHEREFORE, upon consideration of the revised Agreed Disposition, the Certification, Respondent's Disciplinary Record, the presentations of the parties, and after due deliberation;

It is **ORDERED** that the Agreed Disposition is accepted and the Respondent shall receive a Six-Month Suspension with Terms, as set forth in the Agreed Disposition, which is attached and incorporated in this Memorandum Order and that, pursuant to Part Six, Section IV, Paragraph 13-18.O of the Rules of the Supreme Court of Virginia, an eighteen-month suspension shall be imposed as an alternative sanction if all the terms and conditions are not met by the deadlines imposed in the Agreed Disposition.

It is further **ORDERED** that the sanction is effective November 4, 2020.

It is further **ORDERED** that:

The Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail 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 clients. The 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 the Suspension, he shall submit an affidavit to that effect within 60 days of the effective date of the 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 Part Six, Section IV, Paragraph 13-9.E. of the Rules of the Supreme Court of Virginia.

It is further **ORDERED** that an attested copy of this Order be mailed to the Respondent by certified mail, return receipt requested, and via regular mail and electronic mail, at his last address of record with the Virginia State Bar at 1418 Huntland Road, Richmond, VA 23225, and a copy via electronic mail to Laura Ann Booberg, Assistant Bar Counsel, Virginia State Bar, Suite 700, 1111 E. Main Street, Richmond, VA 23219.

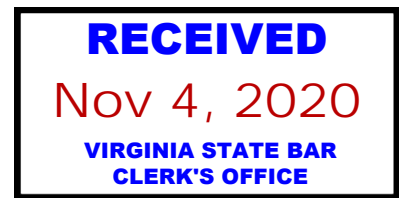
Entered this 4th day of November 2020

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney

Digitally signed by Yvonne S.
Gibney
Date: 2020.11.04 20:55:31 -05'00'

Yvonne S. Gibney
Chair



VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JEFFREY BRIAN BAILEY

VSB Docket No. 19-032-111221

AGREED DISPOSITION
(SIX-MONTH SUSPENSION WITH TERMS)

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar, by Laura Ann Booberg, Assistant Bar Counsel and Jeffrey Brian Bailey, Respondent, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. For all times relevant hereto, Respondent has been licensed to practice law in the Commonwealth of Virginia.
2. On August 29, 2017, Complainant, Joshua Malik Coleman ("Coleman") was convicted of armed robbery and other offenses in the Circuit Court for the City of Danville ("the circuit court"). He was sentenced to 60 years in jail with 47 years suspended.
3. On September 5, 2017, Coleman's trial counsel ("trial counsel") filed a Notice of Appeal in the circuit court. Trial counsel also moved to withdraw as counsel of record and requested that the circuit court determine Coleman's eligibility for court appointed counsel.
4. On September 7, 2017, the circuit court appointed trial counsel to represent Coleman on appeal.
5. On September 26, 2017, Coleman's mother, Carla Stevens ("Stevens") paid Respondent \$2,000.00 in cash to represent her son. Respondent provided her with a receipt for payment. He did not deposit the money in his trust account, but instead placed it in a safe.
6. On October 27, 2017, Stevens filed a bar complaint with the Virginia State Bar ("VSB") alleging that, as of October 24, 2017, the Court of Appeals of Virginia ("Court of Appeals") still listed Coleman's trial counsel as counsel of record. She alleged that Respondent's law license was suspended by the VSB. She further alleged that, almost a

month after accepting the fee from Stevens, Respondent had not sent a letter explaining the fee to Coleman as promised.

7. On October 30, 2017, Respondent had not taken any action on Coleman's case and was still not listed as counsel of record at the Court of Appeals. Instead, trial counsel filed a Motion for Extension of Time to file transcripts with the Court of Appeals. On November 2, 2017, the Court of Appeals granted the motion and extended the deadline to file transcripts to November 29, 2017.
8. On November 8, 2017, VSB Assistant Intake Counsel Mary Martelino ("Martelino") sent a copy of Stevens' bar complaint to Respondent and asked him to communicate with his client. In response, Respondent emailed Martelino on November 21, 2017, explaining that he had talked to Coleman on the phone "early when he was deciding whether to retain me." Respondent stated that he told Coleman that he would not send an engagement agreement until his trial counsel signed a Motion to Substitute Counsel, which he had not received, "even after reaching back out."
9. On November 28, 2017, Respondent wrote to Coleman, explaining the appeal process and the need to file a Motion to Substitute Counsel. Respondent also informed Coleman that Stevens had been calling the wrong number in her attempts to reach Respondent and provided him with the correct phone number. Respondent attached a copy of this letter to Martelino in his response to the October 27, 2017 bar complaint. Regarding his attempts to obtain the signed Motion to Substitute Counsel, Respondent told Coleman:

Unfortunately, [trial counsel] and I had a miscommunication when we spoke, and it appears I sent the Motion to his old office address. I was able to reach him on the phone today and have re-sent the Motion to him via email and mail. I will file it with the Court as soon as he returns a signed copy to me.

10. On December 4, 2017, Martelino wrote to Stevens, and stated:

The Virginia State Bar received a response from Mr. Bailey. Mr. Bailey explained that he has communicated with your son, Joshua Malik Coleman. Mr. Bailey cannot discuss the case directly with you unless your son gives Mr. Bailey permission to speak with you. If your son has any questions about his case, he should contact Mr. Bailey directly. Based on the response to our request to the lawyer, it is our decision to dismiss this matter.

11. On December 5, 2017, Coleman wrote to Respondent, expressing his concern that Respondent had been administratively suspended for nonpayment of dues.¹ This letter was not produced by Respondent in response to the VSB's subpoena. Coleman further stated, in part:

As of 12/4/17, we have only had one 20 minute phone call, and I struggled to get in touch with you afterwards. I had my mother reach out to you numerous times

¹ Respondent was administratively suspended for non-payment of dues from 10/11/2017 through 10/23/2017.

requesting a refund, seeing how the \$2000 was to be for my notice of appeal getting filed, but I already had one filed at the time, so it was not much legal preparation put into my appeal. I am perplexed as to what to do...I genuinely hope you understand what type of mind state this refund situation has me in. I really hope you see the severity of how important that \$2000 was to me, and just how far I'm willing to go to acquire my funds back securely...I'm explicitly stating I wish to get a full refund. Please respond back, letting me know of your decision, so I can also determine what my next moves will be regarding whatever decision you make.

12. On December 11, 2017, Coleman filed a complaint with the VSB which repeated the concerns he had expressed to Respondent. Coleman alleged that, shortly after Stevens retained Respondent on his behalf, Respondent's law license was suspended. Coleman tried to reach Respondent on his office and cell phone numbers to request a refund but could not reach him. Coleman told the VSB that he did not receive a letter explaining Respondent's fee ("engagement letter") from Respondent until after Stevens filed the October 27, 2017 bar complaint.
13. The engagement letter, which Respondent referenced as "Professional Relationship," dated November 28, 2017, stated that the Respondent's fee for the Petition for Appeal phase would be \$2,500.00, with another \$2,500.00 due if the appeal was accepted by the Court of Appeals. It further stated, "In this case, the Notice of Appeal was filed on September 5, 2017 by your trial attorney, so the \$2,500.00 fee for the Petition for Appeal phase is due immediately."
14. Respondent told Investigator Marshall that, after preparing a Petition for Appeal, he went to withdraw the \$2,000.00 fee from his trust account. He realized that the money from Stevens was still in his safe and had never been deposited in trust. Respondent withdrew the \$2,000.00 from the safe. Respondent did not have a client ledger card showing the amount of the fee. Respondent added that he was not sure that he was keeping trust records very well at the time. Respondent later told Coleman via telephone that he would not provide him with a refund because he had already written the Petition for Appeal.
15. On December 29, 2017, more than a month after Respondent told Coleman that he had mailed and emailed the Motion to Substitute Counsel to trial counsel's correct address, Respondent emailed trial counsel the Motion to Substitute Counsel. He stated, "The motion I first sent you was mistakenly captioned for filing in the Circuit Court for Floyd County. This motion is properly addressed to the Court of Appeals."
16. On January 3, 2018, over 3 months after Respondent accepted the \$2,000.00 fee from Stevens, he filed the signed Motion to Substitute Counsel with the Court of Appeals. On January 16, 2018, the Court of Appeals granted the Motion and substituted Respondent as retained counsel of record.
17. On January 17, 2018, trial counsel emailed Respondent, inquiring what he needed from Coleman's file. Respondent replied, "Transcript is all I need for right now. The sooner

the better, I'd like to get a jump on this petition." Trial counsel responded, "Once the weather permits it will be mailed immediately."

18. On January 18, 2018, Assistant Intake Counsel Jane Fletcher ("Fletcher") wrote to Respondent and enclosed the December 11, 2017 complaint. Fletcher asked Respondent to, "...communicate with Mr. Coleman as to what legal services you have provided him, the status of his case and respond to his request for a refund."
19. On January 22, 2018, Respondent wrote to Coleman and stated, "I have already completed much of the work on the Petition for Appeal..." and, "Of course I will work with you on a refund."
20. On January 24, 2018, Coleman wrote to the Court of Appeals and requested, among other things, that he be provided a court appointed attorney since he was dissatisfied with the services provided by Respondent.
21. On January 30, 2018, Respondent replied to Fletcher and enclosed the January 22, 2018 letter in which he stated that he would work with Coleman on a refund. He also stated:

Attached is a letter I sent to Mr. Coleman regarding his inquiry today, January 29, 2018. As I informed him (sic) the letter, I have received no communication from him since he retained me last year, despite at least 3 letters that I have sent to him. It appears we are unable to communicate so I believe it is best that he find another attorney.

22. On February 12, 2018, the Court of Appeals provided Respondent with a copy of Coleman's January 24, 2018 letter. The Court of Appeals further stated, "other than forwarding it to you to take any action you deem appropriate, the Court will take no further action with regard to said correspondence." Respondent was still counsel of record.
23. On February 26, 2018, Respondent filed a Motion for Extension of Time to file the Petition for Appeal in the Court of Appeals. In the Motion, he stated:

Petitioner has communicated with the Court that he wishes to be appointed a new attorney, however, current Counsel has, as of yet, been unable to confirm with Petitioner that Petitioner wishes current Counsel to file the Petition for Appeal. Petitioner requests additional time to communicate his wishes with current Counsel and for the court to appoint a new attorney to represent Petitioner on appeal.

Respondent did not ask the Court of Appeals to allow him to withdraw as counsel, and thus he remained counsel of record

24. On February 27, 2018, Fletcher, relying on Respondent's assertions, including that he would work with Coleman on a refund, closed the file. In a letter to Coleman which was copied to Respondent, she stated:

We asked Mr. Bailey to communicate with you as to the status of your case. We received a copy of Mr. Bailey's letter to you in which he informed you that he had been working on the petition for appeal that was due to be filed in the Court of Appeals by February 26, 2018; that he would be glad to turn your file over to a new attorney of your choosing, and that he would work with you regarding a refund of fees. We trust that Mr. Bailey's response provided you with the information you needed. We believe that Mr. Bailey has complied with the applicable ethical rules. Therefore, we do not have authority to prosecute the attorney for misconduct. We will close our file.

25. On February 28, 2018, the Court of Appeals granted Respondent an extension of time to file the Petition for Appeal until March 28, 2018. The court denied the request to appoint counsel, and Respondent remained counsel of record.
26. On May 8, 2018, the Court of Appeals dismissed the appeal because, despite the extension of time, Respondent did not file the Petition for Appeal. Respondent received a copy of this order via email and did not send it to Coleman. Coleman found out that the appeal was denied by looking online.
27. On August 26, 2018, Respondent wrote to Assistant Bar Counsel Booberg on another matter arising out of the instant representation of Coleman. He stated:

I sent Mr. Coleman a letter notifying him that he could easily terminate our professional relationship should he wish to do so, and warning him that his Petition for Appeal was due on February 26, 2018. Mr. Coleman called me a week later and indicated he did not want to pursue an appeal. I told Mr. Coleman to let me know if he retained another attorney to handle his case and he indicated that if he decided to go forward he would let me know where to forward his case file. Mr. Coleman did not contact me again.

Based on this assertion, Assistant Bar Counsel took no further action on the matter.

28. On April 8, 2019, Coleman filed another bar complaint against Respondent. He stated:

The Virginia State Bar contacted [Respondent] and instructed him to either give us a refund or show them what exactly he had done for the case. He told them he would work with me and my mother regarding a refund, but it's been a year and he hasn't given us anything back from the \$2,000. His name is still attached to the case, but he hasn't filed a single motion, so most of my deadlines have already passed.

29. Respondent did not produce a copy of the Petition for Appeal in response to the VSB's subpoena because he could not find it. He stated that he also could not find Coleman's paper file. He thought that he had backed up Coleman's paper file to a hard drive, but he could not find those files either. The documents that Respondent produced were retrieved from emails, and he was able to find a copy of the trial transcript.
30. Respondent told Investigator Marshall that he did not file the Petition for Appeal with the Court of Appeals because he was in the middle of the process with the VSB and Coleman wanted a refund and did not want him to file the Petition. He concluded that, despite the filing deadline, he should hold onto the Petition and wait for Coleman to tell him what to do.
31. Respondent admitted that he did not call or visit Coleman for the duration of the representation.
32. Respondent stated that he thought he had transferred all of Coleman's files from his old computer to his new one. He stated that he could not look for the files on his old computer because he tossed the computer over the balcony into the trash, stating, "good riddance."
33. Coleman explained to Investigator Marshall that since he did not receive a refund as promised, he could not afford to hire new counsel to replace Respondent. He explained that he told Respondent in February 2018 that he needed the refund to hire a new attorney. Coleman did not tell Respondent that he was deciding whether to go forward with the appeal, only that he needed the refund to hire someone else to handle it.
34. Despite his representation to Coleman and the VSB that he would work with Coleman on a refund, Respondent never provided one. He told Investigator Marshall that since he wrote the Petition for Appeal, he would not issue a refund.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

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

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

RULE 1.4 Communication

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

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

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:

(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

RULE 1.16 Declining Or Terminating Representation

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

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(3) the lawyer is discharged.

(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).

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:

(a) knowingly make a false statement of material fact;

(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; or

(d) obstruct a lawful investigation by an admissions or disciplinary authority.

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and the Respondent tender to the Disciplinary Board for its approval the agreed disposition of SIX-MONTH SUSPENSION of Respondent's license to practice law in the Commonwealth of Virginia as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. Assistant Bar Counsel and the Respondent agree that the effective date for the sanction shall be the date of entry of the Disciplinary Board Order approving this Agreed Disposition. The terms with which the Respondent must comply are as follows:

1. Respondent is placed on probation for a period of one (1) year commencing upon the termination of the six-month suspension of Respondent's license to practice law in the Commonwealth of Virginia agreed upon herein. During such probationary period, Respondent will not engage in professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which the Respondent is admitted to practice law. Any final determination that Respondent engaged in professional misconduct during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel, Supreme Court of Virginia, or similar tribunal in another jurisdiction shall conclusively be deemed to be a violation of this Term.

2. Not later than thirty (30) days from the date of entry of the Disciplinary Board Order approving this Agreed Disposition the Respondent shall fully participate in an evaluation conducted by Virginia Judges and Lawyers Assistance Program ("JLAP") and shall implement all of JLAP's recommendations. The Respondent shall enter into a written contract with JLAP for a minimum period of one (1) year and shall comply with the terms of such contract, including, inter alia, personally meeting with JLAP and its professionals, as directed. The Respondent authorizes JLAP to provide periodic reports to the Office of Bar Counsel stating whether the Respondent is in compliance with JLAP's contract with the Respondent. The Office of Bar Counsel shall be bound by JLAP's contract with the Respondent with respect to confidentiality and disclosure of information.

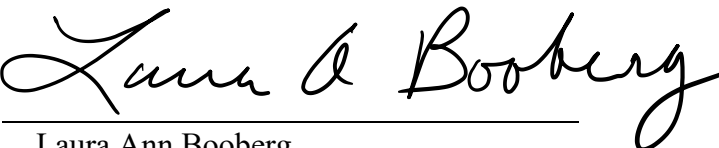
3. Within one (1) year from the date of entry of the Disciplinary Board Order approving this Agreed Disposition, Respondent shall enroll and attend six (6) hours of continuing legal education (CLE) in the substantive area of trust account management and/or procedures which hours shall not be credited toward Respondent's compliance with his annual mandatory CLE requirement. Upon completion of this Term, Respondent shall so certify in writing to Laura Ann Booberg, Assistant Bar Counsel.
4. Within 30 days from the date of entry of the Disciplinary Board Order approving the Agreed Disposition, Respondent shall review the Virginia State Bar publication Lawyers and Other People's Money, 5th Edition, available on the Virginia State Bar's website at www.vsb.org, and shall certify that he has done so in writing to Laura Ann Booberg, Assistant Bar Counsel.
5. No later than March 4, 2021 or four (4) months from the date of entry of the Disciplinary Board Order approving this Agreed Disposition, Respondent agrees to provide a refund of the \$2,000 fee paid to him by Stevens. Respondent agrees to provide the refund as follows:
 - a. \$500.00 to be paid to Stevens within one month of the date of entry of the Disciplinary Board Order approving this Agreed Disposition. Upon completion of this Term, Respondent shall so certify in writing to Laura Ann Booberg, Assistant Bar Counsel.
 - b. Thereafter, Respondent will make three (3) additional \$500.00 payments to Stevens every month until the balance of \$1,500.00 is paid in full (no later than March 4, 2021 or four (4) months from the date of entry of the

Disciplinary Board Order approving this Agreed Disposition). After making each additional payment and after payment has been made in full, Respondent shall so certify in writing to Laura Ann Booberg, Assistant Bar Counsel.

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 an 18-MONTH SUSPENSION of the Respondent's license to practice law in the Commonwealth of Virginia pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9.E of the Rules.

THE VIRGINIA STATE BAR

By: 

Laura Ann Booberg
Assistant Bar Counsel

By: Jeffrey Brian Bailey

Jeffrey Brian Bailey
Respondent, *pro se*