

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JESSE BURKHARDT BEALE**

VSb DOCKET NO. 20-051-118711

**AGREED DISPOSITION MEMORANDUM ORDER
PUBLIC REPRIMAND WITH TERMS**

The Virginia State Bar Disciplinary Board (“Board”) heard this matter, telephonically, on October 12, 2021, 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 Designate; Bretta M.Z. Lewis; T. Tony H. Pham; Alexander Simon; and Martha J. Goodman, Lay Member. M. Brent Saunders, Senior Assistant Bar Counsel, represented the Virginia State Bar. Jeffrey H. Geiger was present and represented Respondent Jesse Burkhardt Beale (“Respondent”) who was also present. The Chair polled the members of the Board as to whether any of them was 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 A. 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 Answer, Respondent’s Disciplinary Record, the arguments of the parties, and after due deliberation by the Board,

It is **ORDERED** that the Board accepts the Agreed Disposition and the Respondent shall receive a Public Reprimand with Terms, as set forth in the Agreed Disposition, which is attached

and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective October 12, 2021.


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 electronic, regular first-class and certified mail, return receipt requested, at his last address of record with the Virginia State Bar at Boone Beale, 4391 Ridgewood Center Dr., Suite G, Woodbridge, VA 22192-5399, and a copy by electronic mail to Jeffrey H. Geiger, Respondent's counsel, and a copy by electronic mail to M. Brent Saunders, Senior Assistant Bar Counsel.

Entered this 12th day of October, 2021

VIRGINIA STATE BAR DISCIPLINARY BOARD

**Yvonne S.
Gibney**

 Digitally signed by Yvonne S.
Gibney
Date: 2021.10.12 11:00:27 -04'00'

Yvonne S. Gibney
Chair Designate

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JESSE BURKHARDT BEALE

VS B Docket No. 20-051-118711

AGREED DISPOSITION
(PUBLIC REPRIMAND 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 M. Brent Saunders, Senior Assistant Bar Counsel, and Jesse Burkhardt Beale (“Respondent”) and Jeffrey H. Geiger, Respondent’s counsel, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. Respondent was admitted to the Virginia State Bar in 1980. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was hired in the summer of 2018 to represent Chad C. Lovelace (“Mr. Lovelace”) in pursuing habeas corpus relief from his 15-year active prison sentence imposed by the Danville Circuit Court in October 2017 following his conviction of malicious wounding.
3. Respondent agreed to undertake the representation for a total fixed fee of \$15,000.00, which was paid by Mr. Lovelace’s parents in three installments as follows:

\$2,500.00 by check dated 8/1/18;
\$1,000.00 by check dated 10/1/18; and
\$11,500.00 by check dated 4/18/19
4. Those installment payments were paid in advance for Respondent to complete the following specific tasks: \$2,500.00 to conduct a case review, \$1,000.00 to meet with Mr. Lovelace at Green Rock Correctional Center¹, and \$11,500.00 to actually represent Mr. Lovelace in pursuing habeas corpus relief following the exhaustion of his direct appeal².
5. According to Respondent, he earned the \$2,500.00 and \$1,000.00 fees, respectively, by spending approximately 15 hours reviewing the case and conducting legal research and subsequently traveling over seven hours to and from Green Rock Correctional Center and

¹ The facility in Chatham, Virginia, where Mr. Lovelace was imprisoned.

² Mr. Lovelace was represented by his trial counsel in his direct appeal which remained pending at the time Respondent began representing Mr. Lovelace in August 2018.

meeting with Mr. Lovelace on October 15, 2018, to discuss his opinions regarding pursuing habeas relief.

6. After Respondent met with Mr. Lovelace on October 15, 2018, the representation either ended or went inactive pending exhaustion of Mr. Lovelace's direct appeal, which occurred when the Supreme Court of Virginia denied his appeal by order entered on March 28, 2019.

7. Shortly thereafter, Mr. Lovelace's parents contacted Respondent to resume the representation, and at his request, sent him the \$11,500.00 advance payment as and for the flat fee Respondent required for proceeding with filing a petition for writ of habeas corpus and pursuing habeas relief.

8. Respondent received the \$11,500.00 advance fee payment in April 2019.

9. Respondent never filed or prepared a petition for writ of habeas corpus and would testify that it was his opinion then that the request for habeas relief would not be successful.

10. Between May and August 2019, Mr. Lovelace's mother, Betty Lovelace, placed nine (9) telephone calls to Respondent for the purpose of discussing and obtaining information about the habeas. She was not able to speak to Respondent on any of those occasions. She left messages for him to return her calls and he never did so. Respondent would testify that he spoke with Ms. Lovelace on one occasion for 15-20 minutes and also spoke with Mr. Lovelace's father.

11. On or about September 23, 2019, Mr. Lovelace, unaware of whether Respondent had filed a habeas petition on his behalf, sent Respondent a letter terminating the representation and requesting his file and a refund of the unused portion of the \$11,500.00 advance fee.

12. In response to that letter, Respondent issued a refund in the amount of \$8,625.00³, by check dated October 9, 2019, made payable to Mr. Lovelace's father, David Wayne Lovelace, Sr. During the course of the bar's investigation, Respondent asserted he retained \$2,875.00 after determining he had earned that amount by spending time again evaluating the merits of pursuing a habeas in 2019. Respondent kept no logs or other documentation of when he spent time on the matter in 2019 and said he kept the numbers in his head which he estimates totaled 15 hours. Respondent admits his second review was duplicative, in part, of the first review he conducted in 2018 and was necessary because he had memory loss after sustaining traumatic injuries resulting from an accident he was involved in shortly after meeting with Mr. Lovelace in October 2018.

13. Despite receiving written requests from Mr. Lovelace for his file in his September 23, 2019 termination letter and two follow-up letters dated December 2, 2019 and December 30, 2019, Respondent did not provide Mr. Lovelace with his file until he finally sent it to him by letter dated July 31, 2020, approximately 10 months after Mr. Lovelace terminated the representation and first requested his file and almost three months after Respondent received this complaint in which Mr. Lovelace alleged, *inter alia*, Respondent had not provided him with his file.

³ Respondent has since refunded the \$2,875.00 balance of the legal fees.

II. STIPULATIONS OF MISCONDUCT

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

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.5 Fees

- (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.

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.

III. PROPOSED DISPOSITION

Accordingly, Senior Assistant Bar Counsel and Respondent and his counsel tender to the Disciplinary Board for its approval the agreed disposition of a Public Reprimand With Terms.


The terms are as follows:

For a period of three (3) years commencing on the date of the issuance of an order approving this agreed disposition, Respondent shall not engage in any 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 or the Supreme Court of Virginia, or similar tribunal of another jurisdiction, shall conclusively be deemed to be a violation of this Term.

If the terms are not met, Respondent agrees that the alternate sanction shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of six (6) months. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to ¶ 13-9.E of the Rules of the Supreme Court of Virginia.

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, _____

M Brent Saunders
Senior Assistant Bar Counsel



Jesse Burkhardt Beale
Respondent



Jeffrey H. Geiger
Respondent's Counsel