

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
MARC ERICSON DARNELL**

VS B DOCKET NO. 20-010-117018

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

On Thursday, March 18, 2021 this matter was heard, telephonically, 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 6, Section IV, Paragraph 13-6.H of the Rules of the Supreme Court of Virginia. The panel consisted of Thomas R. Scott, Jr., Second Vice Chair, Kamala H. Lannetti, Sandra M. Rohrstaff, Alexander Simon and Nancy L. Bloom. The Virginia State Bar was represented by Christine Corey, Assistant Bar Counsel. Marc Ericson Darnell 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 Answer, Respondent's Disciplinary Record and the arguments of the parties, the Board made a recommendation regarding an acceptable Agreed Disposition, to which the Respondent and counsel for the Bar agreed.

UPON CONSIDERATION of the Board's recommendation, the Respondent and the Bar agree that the Agreed Disposition is modified to state that the Agreed Disposition is as follows:

The Respondent shall enter into a written contract with JLAP and shall remain under that contract until his reinstatement with the Bar, at a minimum.

Accordingly, it is ORDERED that the Disciplinary Board accepts the Agreed Disposition, as modified; and that the Respondent shall receive a Nine (9) Month Suspension,

with Terms, as set forth in the Agreed Disposition, as modified, which is attached and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective September 19, 2022, following the expiration of the Respondent's current suspension period.

It is further **ORDERED** that:

The Respondent must comply with the requirements of Part 6, 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 6, Section IV, Paragraph 13-9.E. of the Rules.

It is further **ORDERED** that an attested copy of this Order be mailed to the Respondent

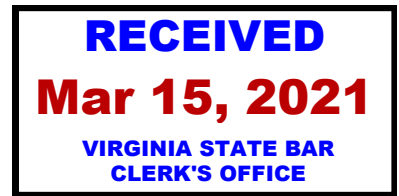
by certified mail, return receipt requested, at his last address of record with the Virginia State Bar, P.O. Box 1673, Newport News, VA 23601, and a copy by first-class mail to Respondent's alternate address of record at 106 Edith Wharton Square, Newport News, VA 23606 and a copy by electronic mail to Christine Corey, Assistant Bar Counsel.

Enter this Order this 18th day of MARCH, 2021

VIRGINIA STATE BAR DISCIPLINARY BOARD



Thomas R. Scott, Jr.
Second Vice Chair



VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
MARC ERICSON DARNELL

VS B Docket No. 20-010-117018

AGREED DISPOSITION
NINE-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 Christine Corey, Assistant Bar Counsel and Marc Ericson Darnell, Respondent, 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 (“VSB”) in 2007. At all relevant times, Respondent was a member of the VSB.

2. In February 2016, Amanda Wayno (“Mrs. Wayno”) hired Respondent to represent her in a personal injury matter after she was in a car accident in which she was not at fault. Mrs. Wayno’s medical bills totaled more than \$15,000.

3. Mrs. Wayno advised that Respondent told her the fee would be a percentage, but when Mrs. Wayno asked Respondent about a fee agreement, he did not respond to her or provide her with one. According to Mrs. Wayno, Respondent was to file claims against GEICO and the individual who caused the car accident.

4. By letter dated February 19, 2016, Respondent advised GEICO that he had been retained to represent Mrs. Wayno and that all future correspondence should be directed to him.

5. On February 29, 2016, Respondent had a conversation with the GEICO representative, Kristina Thompson, who was assigned to the case. Ms. Thompson’s notes indicate

that Respondent told her about Mrs. Wayno's injuries and Respondent told Ms. Thompson he would provide the medical bills and records after a medical release was executed. Ms. Thompson indicated she would send the medical release to Respondent.

6. On March 8, 2016, the medical release was sent to Respondent.

7. On March 28, 2016, Ms. Thompson called Respondent to discuss Mrs. Wayno's matter, but Respondent did not answer, and Ms. Thompson left a message.

8. On April 6, 2016, Respondent called Ms. Thompson and left a voicemail. Ms. Thompson called Respondent back that day, but Respondent did not answer, and Ms. Thompson left a message.

9. After the exchange of voicemails on April 6, Ms. Thompson called Respondent at least 25 times between April 6, 2016 and February 2018. Respondent did not respond to the calls.

10. Ms. Thompson also sent at least two letters to Respondent between April 2016 and February 2018. Respondent did not respond to the letters.

11. Respondent did not file a lawsuit on behalf of Mrs. Wayno within the two-year statute of limitations.

12. During the representation, Respondent did not obtain Mrs. Wayno's medical records from facilities where Mrs. Wayno was treated after the accident and Mrs. Wayno's medical bills were sent to collections.

13. Over the course of the representation, Mrs. Wayno and Respondent communicated via text message. Mrs. Wayno provided the VSB with copies of approximately 40 pages of text messages between herself and Respondent. These text messages evidence that Respondent did not keep Mrs. Wayno reasonably informed about the matter, did not promptly respond to requests for information, did not inform Mrs. Wayno about communications from GEICO, and was not honest with Mrs. Wayno regarding the status of her case or what he was doing in furtherance of her matter.

14. In several text messages, Respondent told Mrs. Wayno he was going to be contacting GEICO, and in another message in December 2017, Respondent told Mrs. Wayno that he called the GEICO claims representative. Based on the subpoena *duces tecum* response from GEICO, Respondent did not contact GEICO about Mrs. Wayno's case after April 2016.

15. During the investigation, Respondent told the VSB investigator that he sent Mrs. Wayno's medical records to GEICO by fax or e-mail and that he communicated with Ms. Thompson. The VSB investigator asked Respondent to provide documentation to substantiate his claims, but Respondent did not provide any documentation.

16. The VSB issued a subpoena *duces tecum* to Respondent for his client file for Mrs. Wayno, but Respondent did not provide any documentation responsive to the subpoena *duces tecum*.

17. The VSB also issued a subpoena *duces tecum* to GEICO for all communications between GEICO and Respondent. According to the subpoena response, GEICO did not receive any medical records from Respondent. The VSB investigator also confirmed with Ms. Thompson that GEICO received no medical records from Respondent.

18. Sometime in early 2018, Mrs. Wayno's husband contacted another law firm and the Waynos learned that the statute of limitations had run, and the lawsuit could not be filed.

19. Respondent is currently subject to a three-year suspension for four matters that involved conduct between October 2015 and June 2018. The three-year suspension was effective on September 18, 2019.

20. Respondent submits that the underlying cause of the misconduct that resulted in the current three-year suspension of his license to practice law was Respondent's prolonged alcohol addiction which worsened between early 2015 and March 2018. Respondent provided the VSB with affidavits from his wife and a friend. These affidavits discuss Respondent's alcohol

addiction. According to Respondent, his wife, and his friend, Respondent ceased using alcohol “cold turkey” in April 2018 and has been sober ever since.

21. As discussed in more detail herein, the misconduct at issue in this case generally occurred between February 2016 and February 2018 – the same time period during which Respondent asserts he suffered from ongoing alcohol addiction and the same time period during which the misconduct that resulted in Respondent’s current three-year suspension occurred. While the evidence proffered does not meet the standard for “mental disability” it does constitute “personal or emotional problems” which may be considered mitigating and support a reduced sanction. Respondent has also expressed remorse for his actions and has cooperated with Assistant Bar Counsel.

II. NATURE OF MISCONDUCT

Such conduct by the 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.

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

* * *

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

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;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

* * *

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and the Respondent tender to the Disciplinary Board for its approval the agreed disposition of a NINE-MONTH SUSPENSION with TERMS 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 September 19, 2022, following the expiration of Respondent's current suspension period. The terms with which the Respondent must comply are as follows:

1. During the remaining suspension period left on Respondent's three-year suspension that was imposed on September 18, 2019, and for the NINE-MONTH suspension required in this Agreed Disposition, and for a period of TWO (2) years following his reinstatement to the practice of law, the Respondent shall not engage in any conduct that violates the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which the Respondent may be admitted to practice law. The terms contained in this paragraph shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against the Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the Rules of Professional Conduct and that such conduct occurred and was initially reported following the execution of this agreed disposition; and,
2. Not later than April 15, 2021, the Respondent shall participate in an evaluation conducted by the 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 the contract, including, inter alia, meeting with JLAP and its professionals as directed. The Respondent shall authorize JLAP (i) to provide periodic reports to the Office of Bar Counsel stating whether Respondent is in compliance with JLAP's contract with Respondent, and (ii) to notify the Office of Bar Counsel promptly if the Respondent fails to follow the JLAP-prescribed program, or ends participation in the JLAP-prescribed program sooner than the expiration of the JLAP contract. The Office of Bar Counsel shall be bound by JLAP's contract with the Respondent with respect to confidentiality and disclosure of information. If Respondent fails to comply with the JLAP recommendations, the JLAP contract, or any other requirement in this term, it will be considered a violation of the terms of this Agreed Disposition.


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 a TWO-YEAR SUSPENSION 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: Christine M. Corey
Christine Corey, Assistant Bar Counsel



Marc Ericson Darnell, Respondent