

VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE CITY OF PORTSMOUTH

**IN THE MATTER OF
LEO FRANCIS SHARPE, JR**

**CASE NO. CL20-5180
VSB DOCKET NOS. 19-010-099989 & 20-010-118800**

**AGREED DISPOSITION MEMORANDUM ORDER
FOR A ONE YEAR SUSPENSION WITH TERMS**

This matter came to be heard telephonically, on Monday, February 22, 2021, 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 Bryant L. Sugg, Judge of the Seventh Judicial Circuit, Designated Chief Judge, the Honorable Michael E. McGinty, Judge of the Ninth Judicial Circuit, and the Honorable Stephen C. Mahan, Judge of the Second Judicial Circuit. Leo Francis Sharpe, Jr., was present and was represented by counsel, Jeffrey H. Geiger. 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, 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, the arguments of the parties, and after due deliberation,

It is **ORDERED** that the Circuit Court accepts the Agreed Disposition and the Respondent shall receive a One-Year Suspension with Terms. The Agreed Disposition is attached to and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective February 22, 2021.

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 Suspension of his or her license to practice law in the Commonwealth of Virginia, to all clients for whom he or she 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 or her 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.

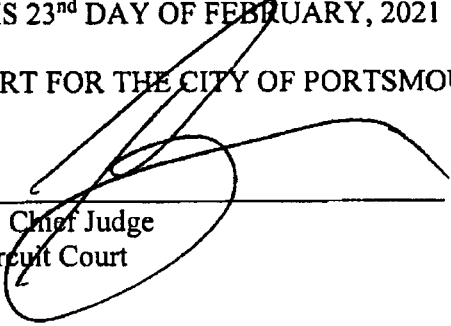
It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the Suspension, he or she shall submit an affidavit to that effect within 60 days of the effective date of the Suspension to the Clerk of the Disciplinary System at the Virginia State Bar. All 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 ¶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, regular and electronic mail; Leo Francis Sharpe, Jr., at his last address of record with the Virginia State Bar, Leo Francis Sharpe, Jr., Esq., P.O. Box 1513, Portsmouth, VA 23705-1513, and a copy by electronic mail to: Jeffrey H. Geiger, Esq., Paulo E. Franco, Jr, and a copy by electronic mail to Paulo E. Franco, 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 23rd DAY OF FEBRUARY, 2021

CIRCUIT COURT FOR THE CITY OF PORTSMOUTH



Bryant L. Sugg, Chief Judge
Three-Judge Circuit Court

VIRGINIA :

IN THE CIRCUIT COURT FOR THE CITY OF PORTMOUTH

VIRGINIA STATE BAR EX REL)
FIRST DISTRICT COMMITTEE)
VS B Docket No. 19-010-099989)
VS B Docket No. 20-010-118800)
)
Complainant,)
)
v.)
)
Leo Francis Sharpe, Jr.)
)
Respondent.)

Case No. CL20-5180

AGREED DISPOSITION
ONE YEAR SUSPENSION WITH TERMS

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13-15.B.4, the Virginia State Bar, by Paulo E. Franco, Jr., Assistant Bar Counsel, and Leo Francis Sharpe, Jr., Respondent, and Jeffrey H. Geiger, Esquire, counsel for Respondent, hereby enter into the following agreed disposition arising out of the referenced matter.

I.
STIPULATIONS OF FACT

1. On May 7, 1975, Respondent was licensed to practice law in the Commonwealth of Virginia and he has been licensed at all times relevant.

2. Over the past several years, the Respondent has been in the process of retiring from the active practice of law. The Respondent would testify that his efforts have been frustrated in significant respects, which has been exacerbated by the current COVID-19 pandemic. Specifically, he arranged for the closing of his law office where he had practiced for over thirty years which included the moving of his files; unfortunately, the first moving company failed to orderly transport the files, resulting in disruption to the organization of his files. In addition, the Respondent has had significant technical issues in accessing his electronic records. In the midst of the transition, Respondent's wife endured certain medical issues that required his care and attention.

VSb DOCKET NO. 19-010-099989
COMPLAINANT: David S. Bailey

3. On May 6 and June 12 of 2002, David Bailey was assaulted by private security guards and suffered personal injuries.

4. Mr. Bailey retained Respondent to represent his interests in pursuing a claim for personal injuries against the security service responsible for the assaults.

5. In 2004, Respondent filed suit on behalf of Mr. Bailey and, following extensive litigation, the case settled for \$50,000.00 in 2011.

6. In connection with the settlement, Mr. Bailey and Respondent signed various documents in March of 2011 addressing, among other things, the handling of payments to health care providers. Respondent calculated a total of anticipated claims from Mr. Bailey's health care providers in the amount of \$12,242.44 that was set out in the settlement statement Respondent prepared and Mr. Bailey signed on March 4, 2011 ("Settlement Statement").

7. The Virginia State Bar's ("Bar") evidence would show that Respondent paid \$511.52 to the Department of Medical Assistant Services on December 19, 2013 and made no other payments to any of the health care providers set forth in the Settlement Statement leaving a balance of \$11,730.92 remaining from the settlement proceeds he collected.

8. In July of 2014, Mr. Bailey filed a complaint with the Bar, complaining that Respondent had not disbursed funds he was continuing to hold on his behalf to for Mr. Bailey's health care providers. The Respondent would testify that before and after the settlement, he and Mr. Bailey discussed on numerous occasions the compromising of payments owed to Mr. Bailey's health care providers and Mr. Bailey's aim to avoid making such payments to the extent the funds would be paid to himself. This had involved the Respondent's discussions and efforts to seek assistance with payment of the medical bills and potential forgiveness.

9. On July 22, 2014, Respondent wrote Mr. Bailey with a copy of the letter sent to the Bar, stating the actions taken and the options they had discussed in attempting to settle the outstanding medical claims.

10. Specifically, in the July 22, 2014 letter, the Respondent stated: "I pointed out as before I would proceed on payment of the medical bills if you wished although I was concerned that would not leave any funds if handled that way and there appeared to be bills, substantial other medical bills potentially outstanding and would not be adjusted. Awaiting your request or reply as to how you ask I proceed."

11. Mr. Bailey would testify that he thereafter made several unsuccessful attempts to verify the status of the funds that Respondent still retained.

12. Based on Respondent's representations that he was still attempting to compromise the claims of Mr. Bailey's health care providers to the Virginia State Bar's Intake Department, the Complaint was dismissed with no action taken at that time.

13. Mr. Bailey would testify that he and the lawyer he retained to assist him made attempts to get paid the remaining funds held by Respondent in October of 2018.

14. In November of 2018, Mr. Bailey filed another complaint with the Bar. At that time, medical bills incurred by Mr. Bailey had still not been paid or compromised. The Bar's evidence would show that the statute of limitations on the claims of Mr. Bailey's health care providers had expired before Mr. Bailey renewed his complaint with the Bar.

15. In December of 2018, Respondent's counsel wrote to the Bar and Mr. Bailey suggesting that the funds remaining in Respondent's custody and control be interpled into court for resolution.

16. On February 11, 2019, Respondent filed an interpleader action in the General District Court for the City of Portsmouth ("Interpleader Action") naming as parties Mr. Bailey and each of his health care providers.

17. In connection with the Interpleader Action, Respondent submitted a check from his attorney trust account, payable to the Clerk of the Portsmouth General District Court in the amount of \$11,730.92.

18. On March 15, 2019, Respondent filed an amended motion for judgment in the Interpleader Action to include Mr. Bailey's date of birth and a partially redacted social security number.

19. Notwithstanding communications with various healthcare providers named in the Interpleader Action (including an agent for one of the providers appearing in court), none of the named healthcare providers entered an appearance, filed a response or otherwise took action to be paid from the funds that Respondent had been holding on Mr. Bailey's behalf. Accordingly, and at the request of counsel for Mr. Bailey and counsel for the Respondent, the General District Court for the City of Portsmouth entered an order on May 9, 2019, directing that Mr. Bailey be paid all of the \$11,730.92.

20. The Bar's evidence would show that from the period of July of 2014 through May 9, 2019, Respondent did not disburse the remaining settlement funds he was holding either to Mr. Bailey or to his health care providers.

21.

22. Respondent would testify that he and Mr. Bailey had insufficient communications related to the handling of payments to health care providers following the settlement and Mr. Bailey would testify that he disputes that assertion.

Respondent's Trust Account

23. As part of the investigation into Mr. Bailey's claims, the Bar began an investigation into Respondent's trust account, which was the account from which Respondent paid the funds to the Clerk of the General District Court for the City of Portsmouth.

24. The Bar issued a subpoena to BB&T Bank for the records of Respondent's IOLTA Trust account ending in #5456 ("5456 Account") from January of 2011 through July of 2019.

25. BB&T responded and provided records for the 5456 account for the period of June 2012 through July 31, 2019, because the bank's stated record retention period is only seven years.

26. The Bar's review revealed that the balance in the 5456 Account in June of 2011 was \$283,101.00 and in the seven year period for which BB&T produced records, the balance never went below \$191,000.00.

27. Through the records provided by BB&T, the Bar was able to identify nine other clients that at one time or another had, or continue to have, funds owed to them by Respondent.

28. The Respondent does not have the receipts and disbursements journal or client ledgers related to the funds maintained in the 5456 Account as required by Rule 1.15(c) of the Virginia Rules of Professional Conduct, nor does he have the reconciliations required by Rule 1.15 (d) of the Virginia Rules of Professional Conduct.

29. The Respondent would testify that he has been continuing to work to determine with precision to whom the money belongs.

30. To date, Respondent has not closed the 5456 Account, nor has he submitted to the Bar a report of the funds held in the 5456 Account despite representing that he intended to do so as far back as July of 2019.

31. While a number of personal and other issues have delayed him from doing so, Respondent understands the need to address the funds remaining in his trust account to make certain that the amounts attributed to clients are made and has agreed to undertake the actions set forth in this Agreed Disposition to properly disburse the funds remaining in the 5456 Account.

VSb DOCKET NO. 20-010-118800 COMPLAINANT: Elijah Sharp, III

32. Elijah Sharp, III, retained Respondent to represent his interests in pursuing a claim for personal injuries arising out of a motor vehicle accident occurring on January 30, 2007.

33. In 2010, Respondent filed suit on behalf of Mr. Sharp and, following extensive litigation, the case settled for \$40,000.00 in 2011.

34. In connection with the settlement, Mr. Sharp and Respondent signed various documents addressing, among other things, the handling of payments to health care providers. Respondent calculated a total of anticipated claims from Mr. Sharp's health care providers in the amount of \$9,016.04.

35. According to records provided by Respondent, he was able to provide checks for two payments made to Mr. Sharp's healthcare providers dated October 24, 2011, totaling \$5,772.75. In addition, the Respondent would testify that it was his understanding that three payments to three additional healthcare providers in the amount of \$662.29 had been made, but that he has not yet found a record of such payments.

36. The Bar's evidence would be that a review of the bank statements and other trust account records of the 5456 Account produced by Respondent's financial institution did not indicate that the \$662.29 payments, if made, came from the 5456 Account.

37. In April of 2020, the Respondent left a message with Mr. Sharp regarding the status of the remaining funds and the amount he believed owed to Mr. Sharp. Mr. Sharp disagreed with the amount, and believed he was owed additional funds.

38. Respondent would testify that he and Mr. Sharp had insufficient communications related to the handling of payments to health care providers following the settlement.

39. Mr. Sharp would testify that he made efforts to resolve the issues with Respondent concerning the remaining funds held from the settlement of his case without satisfaction and thereafter filed the Complaint giving rise to this action.

II. **NATURE OF MISCONDUCT**

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

RULE 1.3 Diligence

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

* * * *

RULE 1.4 Communication

(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.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

(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....

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

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(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) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(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.

III.
PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to the Three-Judge panel for its approval the agreed disposition of a **ONE YEAR SUSPENSION with TERMS** (“Suspension”) of his 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. The terms shall be met within the deadlines specified herein and are as follows:

1. The Suspension shall begin upon entry of the Memorandum Order accepting this Agreed Disposition.
2. Within sixty (60) days of approval of this Agreed Disposition, Respondent shall engage at his own cost, a Virginia Certified Public Accountant (“Accountant”) for the purposes of identifying the source and ownership of all remaining funds in the 5456 Account, so to assist Respondent in fully disbursing all remaining funds and thereafter closing out that account. The engagement of the Accountant shall be subject to the approval of Bar Counsel, which approval shall not be unreasonably withheld.
3. To the extent that any funds from the 5456 Account have been paid out from May of 2019 to the present, the Accountant shall identify and report the amount of the payment and to whom such payments were made.
4. The Respondent individually and through his counsel will work and cooperate with the Accountant in assisting in the Accountant’s efforts to identify the source and ownership of all remaining funds in the 5456 Account.
5. Once the Accountant has identified and determined the source and ownership of the funds being held in the 5456 Account, Respondent shall promptly and properly disburse those funds so identified. The Respondent shall report to the Office of Bar Counsel the amount of such disbursements, the date of such disbursements and to whom such disbursements were made, within ten days from the date of each such disbursement.
6. Within three (3) months following his or her engagement, the Respondent shall cause the Accountant to provide a preliminary written report to Bar Counsel for the purpose of reporting the progress on the identification of the source and ownership of all remaining funds in the 5456 Account (“Preliminary Report”).

7. Within six (6) months following the engagement of the Accountant, the Respondent shall cause the Accountant to provide a final written report to the Office of Bar Counsel fully summarizing the identification of the source and ownership of the funds in the 5456 Account (“Final Report”). The Accountant may include a request for additional time to complete the Final Report as circumstances warrant, which may be granted by Bar Counsel for good cause shown. The Respondent shall cause the Accountant to provide monthly progress reports to Bar Counsel from the date of the Preliminary Report to the filing of the Final Report.
8. To the extent the 5456 Account is not able to be closed by the deadline for the filing of the Final Report, based either upon a dispute or specific claim related to an amount believed to be owed to a client, a third-party or to the Respondent, or on an inability to determine the source and ownership of funds remaining in the 5456 Account, the Respondent shall interplead the funds into the appropriate court within thirty days of the earlier of either the issuance of the Final Report or the deadline for the filing of the Final Report. Respondent shall provide written notice to the Office of Bar Counsel of the filing of the interpleader action within ten days of such filing, and shall thereafter promptly provide to the Office of Bar Counsel copies of all pleadings and orders filed in that action. Respondent shall, with the court’s approval, if necessary, provide the requisite notice or notices to properly adjudicate the interpleader action. Respondent shall cooperate fully in the interpleader action.
9. Upon resolution of any such interpleader action, Respondent shall within thirty days of entry of the final order of such interpleader action, certify to the Office of Bar Counsel that he has closed out the 5456 Account.

If Respondent has not complied with any of the terms set forth in this Agreed

Disposition, Bar Counsel shall issue a Rule to Show Cause in accordance with Part 6, § IV, Para. 13.18-O of the Rules of the Supreme Court of Virginia.

Respondent certifies that he has had the assistance of counsel reviewing this Agreed Disposition. Respondent agrees that the alternative sanction for failure to comply with any of these terms, or to certify compliance with any of these terms within the time period required shall be a three (3) year suspension. The alternative sanction shall be for a total of three years, retroactive to the imposition of the Suspension.

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.

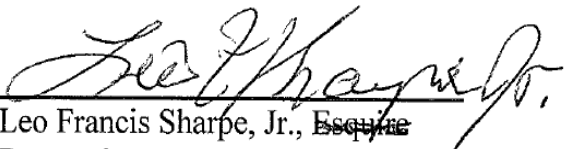
The Respondent and his counsel agree further that if, for any reason, the Three-Judge Panel designated to hear this matter declines to approve this Agreed Disposition, then the same Three-Judge Panel shall hear, preside over and conclude the hearing of this matter in accordance with the designation by the Supreme Court of Virginia as previously scheduled, and the Respondent waives any challenge to the composition of the Three-Judge Panel based on its consideration and/or rejection of this Agreed Disposition.

If the agreed disposition is approved, the Clerk of the Disciplinary System shall assess costs.

Pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of the Supreme Court of Virginia, Respondent's prior disciplinary record shall be furnished to the Three Judge Panel considering this agreed disposition.

THE VIRGINIA STATE BAR

Paulo E. Franco, Jr.
Assistant Bar Counsel



Leo Francis Sharpe, Jr., Esquire
Respondent



Jeffrey Hamilton Geiger
Counsel for Respondent

The Clerk of the Disciplinary System shall assess costs pursuant to ¶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, regular and electronic mail; Leo Francis Sharpe, Jr., at his last address of record with the Virginia State Bar, Leo Francis Sharpe, Jr., Esq., P.O. Box 1513, Portsmouth, VA 23705-1513, and a copy by electronic mail to: Jeffrey H. Geiger, Esq., Paulo E. Franco, Jr, and a copy by electronic mail to Paulo E. Franco, 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 23rd DAY OF FEBRUARY, 2021

CIRCUIT COURT FOR THE CITY OF PORTSMOUTH

Bryant L. Sugg, Chief Judge
Three-Judge Circuit Court