

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
DAVID BENJAMIN KENDALL**

VS B DOCKET NO. 23-070-129181

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

On December 9, 2024, 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 Jennifer D. Royer, First Vice Chair, Dawn E. Boyce, Adam M. Carroll, Yvonne S. Gibney, and Elisabeth Martingayle, Lay Member. The Virginia State Bar was represented by Richard W. Johnson, Jr., Assistant Bar Counsel. David Benjamin Kendall, Respondent, was present and was represented by counsel James M. McCauley, Esq. 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, the arguments of the parties, and after due deliberation,

It is **ORDERED** that the Disciplinary 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 December 9, 2024.

It is further **ORDERED** that the Clerk of the Disciplinary System shall assess costs pursuant to Part 6, Section IV, Paragraph 13-9.E of the Rules.

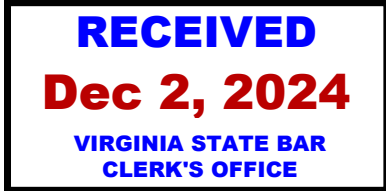
It is further **ORDERED** that an attested copy of this Order be mailed to the Respondent by electronic, first-class and certified mail, return receipt requested, at his last address of record with the Virginia State Bar being Kendall Law Firm, P. C., Albemarle Professional Court, 259 Hydraulic Ridge Rd., Suite 103, Charlottesville, VA 22901, and a copy by electronic mail to James McCauley, Respondent's counsel, and a copy by electronic mail to Richard W. Johnson, Assistant Bar Counsel.

ENTER THIS ORDER THIS 9th DAY OF DECEMBER 2024

VIRGINIA STATE BAR DISCIPLINARY BOARD



Jennifer D. Royer
First Vice Chair



VIRGINIA:

**BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
DAVID BENJAMIN KENDALL**

VSB Docket No. 23-070-129181

**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 Richard W. Johnson Jr., Assistant Bar Counsel, and David Benjamin Kendall, Respondent, and James Michael McCauley, Respondent’s counsel, enter into the following agreed disposition arising out of this matter.

I. STIPULATIONS OF FACT

- 1. Respondent was admitted to the Virginia State Bar (“VSB”) in 1984. At all relevant times, Respondent was a member of the VSB. Respondent maintains a high-volume personal injury practice in which most client funds are received after settlement.
- 2. On June 12, 2023, Carole Jones (“Jones”), a former employee of Respondent, submitted a bar complaint alleging multiple instances of misconduct against Respondent.

Medicaid Lien

- 3. The Department of Medical Assistance (“Medicaid”) notified Respondent of a lien on a client’s settlement multiple times, including April 6, 2023. Respondent’s staff notified him of the notice, and he instructed them to place the notice in a manilla envelope outside his office.
- 4. The settlement statement showed that Respondent intended to disburse \$865.71 from Mr. Cogle’s settlement funds.
- 5. In his response to the instant bar complaint, Respondent stated that he mailed Medicaid a reimbursement check on June 24, 2023, after receiving the instant bar complaint.
- 6. Respondent did not mail Medicaid a reimbursement check on June 24, 2023. On May 13, 2024, Respondent issued a reimbursement check to Medicaid, drawn from his operating account.

7. Respondent issued the check from his operating account, because all of the client funds were disbursed to the client in 2020. Respondent thought that the payment to Medicaid had been made when he filed his answer to the bar complaint in July 2023. Between the time that Respondent filed his Answer to the Complaint and his interview with Investigator Baker, Respondent realized the payment had not been made.

Reissued Settlement Check

8. On October 1, 2021, Respondent issued a settlement check to his client, Deva Millward (“Millward”).
9. In May 2023, Millward contacted Respondent’s office advising them she had misplaced her settlement check and needed a new check issued. Upon information and belief but without any personal knowledge, Respondent understands that Millward followed up several times with Respondent’s office staff.
10. Respondent acknowledged becoming aware of Millward’s request for weeks but did not issue a new check.
11. Respondent contacted her to advise that he was sending her a replacement check on June 26, 2023, and reissued a settlement check to Millward, after receiving the instant bar complaint.

Workers’ Compensation Underpayment

12. On January 26, 2023, Respondent disbursed \$35,572.39 to a client in a worker’s compensation matter (“WC Client”).
13. On January 31, 2023, Respondent learned that he underpaid the Workers’ Compensation insurance carrier by \$1,514.90, caused by Respondent reducing his attorney fee so that the client’s net share of the recovery would be increased
14. On June 26, 2023, after receiving the instant bar complaint, Respondent reimbursed the carrier from his own funds.

Returned Checks

15. Respondent did not organize and maintain trust account records for each client, oftentimes “filing” records in a miscellaneous file that he then ignored until the instant bar complaint.
16. In one instance, on February 11, 2023, Respondent, on behalf of a client, had sent an insurance company a payment in the amount of \$347.32. The insurance company did not pursue a subrogation claim and returned the check on March 27, 2023. Respondent did not disburse those funds to the client until June 24, 2023, after receiving the instant bar complaint.

17. In his interview with Baker, Respondent conceded that “it was something that needed to be done, I just hadn’t gotten around to it ... and this bar complaint helped me to ... accelerate the reaction to that ... I got 135 to 160 cases all ... over Virginia.”
18. Respondent acknowledged that he maintains a “miscellaneous accounting” folder which included some returned and voided checks. Upon receiving the instant bar complaint, Respondent discovered an \$80.00 check that was returned on “behalf of a client” and that the check was either an overpayment or refund. Respondent discovered that the check had been in the folder for approximately two years. Respondent disbursed the client their funds on June 24, 2023, after receiving the instant bar complaint.

MedPay

19. Respondent often received medical expense reimbursement (“MedPay”) from client’s automotive insurance carriers. MedPay is a benefit clients received to reimburse for medical expenses.
20. Respondent would place the MedPay checks in a manilla envelope, where they often expired. Respondent did not notify clients upon receipt of a MedPay check from their insurance provider.
21. Respondent admitted he was not timely depositing MedPay checks because it was “additional work.”

Trust Account Record Keeping

22. In March 2022, Respondent began using a new trust account as his primary trust account. Respondent admitted to Baker that he opened the new trust account because “I wasn’t practicing in accordance with Rule 1.15(c) ... and my record keeping was inadequate ... I wanted to ... start afresh.”
23. Respondent admitted that he had not maintained the required trust account records including individual client ledgers, a receipt and disbursements journal, and he was not performing monthly reconciliations of his trust account.
24. Respondent admitted to maintaining earned fees in his trust account as a “cushion.” On May 9, 2024, Respondent told Baker he had disbursed the “cushion” from his trust account and estimated the amount disbursed was “probably over \$60,000.” On May 29, 2024, Respondent provided Baker with an account statement which reflected Respondent disbursed \$16,195.93 on May 7, 2024.
25. Respondent admitted he did not create individual client ledgers until March 2022.

26. Respondent began performing monthly reconciliations of his trust account after receiving the instant bar complaint. Respondent acknowledged he was not in compliance with Rule of Professional Conduct 1.15(d).

II. NATURE 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.

By failing to update Millward about the status of her settlement proceeds, after she made multiple attempts to have a new check reissued, Respondent violated Rule 1.4(a).

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.

By not depositing client Med Pay funds into trust accounts within a reasonable amount of time of receipt, and by failing to deposit a reimbursement check for \$80 in client funds in his trust account after two years, Respondent violated Rule 1.15(a)(1).

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.

By maintaining personal funds in his trust account, Respondent violated Rule 1.15(a)(3).

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

(1) promptly notify a client of the receipt of the client's funds, securities, or other properties;

By failing to advise clients of his receipt of MedPay payments, Respondent violated Rule 1.15(b)(1).

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

(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

By failing to promptly pay Medicaid; by failing to promptly pay Millward her settlement when requested; by failing to timely deposit client's MedPay checks upon receipt; by failing to promptly pay Workmens Compensation for a lien underpayment on a client settlement; by failing to promptly pay his client for over two years while the check was in a manilla folder; by failing to promptly pay his client after an insurance carrier did not pursue a claim and returned the check, Respondent violated Rule 1.15(b)(4).

RULE 1.15 Safekeeping Property

(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.

By not maintaining a receipt and disbursement journal for his trust account, Respondent violated Rule 1.15(c)(1).

RULE 1.15 Safekeeping Property

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

- (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.

By not maintaining individual client ledgers, Respondent violated Rule 1.15(c)(2).

RULE 1.15 Safekeeping Property

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

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

By not maintaining receipt and disbursement journals and individual client ledgers for at least five years, Respondent violated Rule 1.15(c)(4).

RULE 1.15 Safekeeping Property

- (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) 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.

By not performing monthly reconciliations of his trust account, Respondent violated Rules 1.15(d)(1)- 1.15(d)(3).

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to the Disciplinary Board for its approval the agreed disposition of a Public Reprimand 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. Bar counsel and 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 Respondent must comply are as follows:

1. On or before December 1, 2025, Respondent will complete 6 (six) hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of legal ethics. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph will not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law. Respondent will certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance form (Form 2) to Bar Counsel, promptly following his attendance of each such CLE program(s).
2. Respondent will read in its entirety *Lawyers and Other People's Money*, 5th Edition, and *Legal Ethics Opinion 1606* and will certify compliance in writing to Bar Counsel not later than 90 days following the date of entry of this Order.
3. Within thirty (30) days from the date of the Disciplinary Board approving this Agreed Disposition, Respondent must engage the services of an accountant/financial professional, Mr. Greg Sobsey, and his firm Spot on Solutions ("accountant") who is familiar with the requirements of Rule 1.15 of the Rules of Professional Conduct to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. Respondent is obligated to pay when due Mr. Sobsey's fees and costs for services. Upon completion of Mr. Sobsey's review of Respondent's trust account record-keeping, accounting, and reconciliation methods and procedures, but no later than three months after the effective date of this Order, Respondent shall certify to Bar Counsel that he has engaged Mr. Sobsey and has revised his trust accounting methods and procedures based on Mr. Sobsey's recommendations and the requirements of Rule 1.15 of the Rules of Professional Conduct.

Upon satisfactory proof that all terms and conditions have been met, this matter shall be closed.

If, however, any of the terms and conditions are not met by the deadlines imposed above, Respondent agrees that the Disciplinary Board shall impose a suspension of Respondent's license to practice law for one year and a day, pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

The Virginia State Bar and Respondent agree that, should the panel of the Disciplinary Board reject this Agreed Disposition, the panel retains jurisdiction to hear this matter.

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

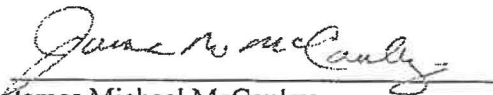
VIRGINIA STATE BAR



Richard W. Johnson Jr.
Assistant Bar Counsel



David Benjamin Kendall
Respondent



James Michael McCauley
Respondent Counsel