

VIRGINIA:

**BEFORE THE SECOND DISTRICT COMMITTEE—SECTION II
OF THE VIRGINIA STATE BAR**

IN THE MATTERS OF TINYA LYNNETTE BANKS

**VSB Docket Nos. 04-022-3710 (Cuffee), 04-022-2651 (Michailow), and 04-022-2501
(Pretlow)**

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On September 14, 2005, a meeting in these matters was held before a duly convened Subcommittee of the Second District Committee - Section II, consisting of Bobby Wayne Davis, Esquire, Mr. David M. Jones, (Lay Member), and Bretta Zimmer Lewis, Attorney at Law, Chair presiding.

Pursuant to an Agreed Disposition of the parties and Part 6, Section IV, ¶13G1c.(3) of the Virginia Supreme Court Rules of Court, the Second District - Section II Subcommittee of the Virginia State Bar hereby serves upon the Respondent, Tinya Lynette Banks, the following Public Reprimand :

VSB Docket No. 04-022-3710 (Cuffee)

I. FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, Tinya Lynette Banks, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Following Respondent's appointment as counsel for Guy R. Cuffee in January, 2004, Cuffee filed a complaint with the Virginia State Bar alleging Respondent's lack of diligence and failure to communicate.
3. In the course of its investigation, the Virginia State Bar wrote Respondent on June 29, 2004 to advise that the matter was referred for a Committee investigation. It further advised Respondent that "an investigator's demands for information constitute lawful demands under Rule 8.1(c)."
4. On August 13, August 19, and August 28, 2004, the bar's investigator left messages with Respondent at her office in the form of a voice mail message, a note, and a letter requesting that Respondent contact him regarding this and the other matters pending with Respondent.
5. Notwithstanding said notice and said demands for information, Respondent failed to respond to the bar until the bar moved to suspend Respondent's license for failure to respond to the bar's subpoena duces tecum.

II. NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rule of the Virginia Rules of Professional Conduct :

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

- (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;

VSF Docket No. 04-022-2651 (Michailow)

I. FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, Tinya Lynnette Banks, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was retained by George Michailow on February 24, 2003 for post-divorce representation against Michailow's former spouse. At that time, Michailow paid Respondent \$1,500, which she deposited into trust.
3. Michailow last had substantive contact with Respondent in an office visit on August 18, 2003 at which time Respondent agreed to proceed on a show-cause. Shortly thereafter Michailow asked Respondent for a copy of a letter from adverse counsel which Respondent never provided.
4. On October 22, 2003, Michailow wrote Respondent advising that he was terminating her, requesting that Respondent forward his file to successor counsel David Good, requesting a refund of unearned fees, and requesting that Respondent call him. Michailow's successor counsel repeated the request to Respondent for his client file on November 19, 2003 and on January 9, 2004. Through August 31, 2004, Respondent had not contacted Michailow, had not provided his file, and had not provided a refund or an explanation of his account balance.
5. Respondent's July 31, 2003 statement of account for Michailow reflected a credit balance of \$882.50. Her final statement of account, dated September 10, 2004, reduced the credit balance to \$732.50. Notwithstanding said balances, Respondent's trust account bank statements reflect balances dropping below the credit balance for the months of December, 2003--\$211.03 total balance for the trust account, January, 2004--\$203.51, February, 2004--\$196.01, and March, 2004--\$188.51. When Respondent finally issued a refund of \$732.50 to Michailow, she paid it from her operating account.

6. After August, 2003, Respondent failed to maintain her trust account records. This included failing to reconcile her trust account.
7. With the notice of referral of this matter to the Second District Committee—Section II, Respondent was further advised that “an investigator’s demands for information constitute lawful demands under Rule 8.1(c).”
8. The bar’s investigator attempted to contact Respondent by leaving messages requesting that she contact him, with messages left on May 11, 2004, May 20, 2004, June 2, 2004, August 13, 2004, August 19, 2004, and August 28, 2004.
9. Notwithstanding said notice and said demands for information, Respondent failed to respond to the bar investigator until the bar moved to suspend Respondent’s license for failure to respond to the bar’s subpoena duces tecum.

II. NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rules of the Virginia 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.

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

RULE 1.15 Safekeeping Property

- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

(1) Insufficient fund check reporting.

- (i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;
- (ii) Overdraft notification agreement required. A financial institution shall be approved as a depository for lawyer escrow accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against a lawyer escrow account containing insufficient funds, irrespective of whether or not the instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

No escrow account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled by the financial institution except upon thirty (30) days notice writing to the Virginia State Bar, or as otherwise agreed to by the Virginia State Bar. Any such agreement may be canceled without prior notice by the Virginia State Bar if the financial institution fails to abide by the terms of the agreement;

- (ii) Overdraft reports. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:
 - (a) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;
 - (b) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby;
 - (c) such reports shall be made simultaneously with and within the time provided by law for notice of dishonor to the

depositor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds;

- (iv) Financial institution cooperation. In addition to making the reports specified above, approved financial institutions shall agree to cooperate fully with the Virginia State Bar and to produce any lawyer escrow account or other account records upon receipt of a subpoena therefor.

A financial institution may charge for the reasonable costs of producing the records required by this Rule.

- (v) Lawyer cooperation. Every lawyer or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule;
- (ii) Definitions. "Lawyer" means a member of the Virginia State Bar, any other lawyer admitted to regular or limited practice in this State, and any member of the bar of any other jurisdiction while engaged, pro hac vice or otherwise, in the practice of law in Virginia;

"Lawyer escrow account" or "escrow account" means an account maintained in a financial institution for the deposit of funds received or held by a lawyer or law firm on behalf of a client;

"Client" includes any individual, firm, or entity for which a lawyer performs any legal service, including acting as an escrow agent or as legal representative of a fiduciary, but not as a fiduciary. The term does not include a public or private entity of which a lawyer is a full-time employee;"Dishonored" shall refer to instruments which have been dishonored because of insufficient funds as defined above;

"Financial institution" and "bank" include regulated state or federally chartered banks, savings institutions and credit unions which have signed the approved Notification Agreement, which are licensed and authorized to do business and in which the deposits are insured by an agency of the Federal Government;

"Insufficient Funds" refers to an overdraft in the commonly accepted sense of there being an insufficient balance as shown on the bank's accounting records; and does not include funds which at the moment may be on deposit, but uncollected;

"Law firm" includes a partnership of lawyers, a professional or nonprofit corporation of lawyers, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, these Rules apply to the offices in this State, to escrow

accounts in other jurisdictions holding funds of clients who are located in this State, and to escrow accounts in other jurisdictions holding client funds from a transaction arising in this State;

"Notice of Dishonor" refers to the notice which, pursuant to Uniform Commercial Code Section 3-508(2), must be given by a bank before its midnight deadline and by any other person or institution before midnight of the third business day after dishonor or receipt of notice of dishonor. As generally used hereunder, the term notice of dishonor shall refer only to dishonor for the purpose of insufficient funds, or because the drawer of the bank has no account with the depository institution;

"Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under Uniform Commercial Code Section 4-104, if sufficient funds were available.

- (2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;
- (3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;(4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
 - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (2) Reconciliations.
 - (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;
 - (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;
 - (ii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

- (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

RULE 1.16 Declining Or Terminating Representation

- (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 shall be returned to the client 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. Upon request, the client must also be provided 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); pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared 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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

- (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

VSJ Docket No. 04-022-2501 (Pretlow)

I. FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, Tinya Lynnette Banks, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent was retained by Richard Pretlow on or before June 18, 2003 to pursue a used car dealer regarding a note pay-off. Pretlow paid Respondent a total of \$1,500.00 by August 24, 2003, being the full initial payment requested in the retainer agreement.
3. Notwithstanding Pretlow's payment and Respondent's agreement to proceed, Respondent did not proceed in this matter. Ultimately Pretlow resolved the matter himself after his repeated messages to Respondent after Respondent failed to respond to Pretlow's repeated requests for information on the matter.
4. With the notice of referral of this matter to the Second District Committee—Section II, Respondent was further advised that "an investigator's demands for information constitute lawful demands under Rule 8.1(c)."
5. The bar's investigator attempted to contact Respondent by leaving messages requesting that she contact him, with messages left on May 11, 2004, May 20, 2004, June 2, 2004, August 13, 2004, August 19, 2004, and August 28, 2004.
6. Notwithstanding said notice and said demands for information, Respondent failed to respond to the bar investigator until the bar moved to suspend Respondent's license for failure to respond to the bar's subpoena duces tecum.

II. NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following rule of the Virginia 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

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

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

- (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;

III. PUBLIC REPRIMAND

The Subcommittee notes some mitigating evidence, including refunds in full of all

unearned fees in VSB Docket No. 04-022-2651 (Michailow) and in VSB Docket No. 04-022-2501 (Pretlow), and the absence of any prior discipline record. Accordingly, it is the decision of the Subcommittee to impose a PUBLIC REPRIMAND on Respondent, Tinya Lynette Banks, and she is so reprimanded.

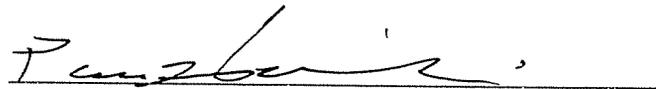
The Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT - SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: 
Bretta Zimmer Lewis
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that I have this 18th day of October, 2005, mailed by CERTIFIED MAIL - RETURN RECEIPT REQUESTED, a true and correct copy of the executed Subcommittee Determination (Public Reprimand) to Respondent Tinya Lynette Banks, Attorney at Law, Janaf Office Building, Suite 508, 5900 East Virginia Beach Blvd., Norfolk, VA 235024, her last known address of record with the Virginia State Bar.


Paul D. Georgiadis
Assistant Bar Counsel