

VIRGINIA :

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF FREDERICK ROSS COATES
VSB DOCKET NO. 03-070-3493

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND BY AGREED DISPOSITION)

On October 1, 2004, a meeting in this matter was held before a duly convened Seventh District Subcommittee consisting of Grant A. Richardson, Esquire, Anne C. Hall, lay member, and Frederick W. Payne, Esquire, presiding.

Pursuant to the provisions of the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.G.1.c.(3), the Seventh District Subcommittee of the Virginia State Bar hereby serves upon Frederick Ross Coates the following **Public Reprimand** by agreed disposition, as set forth below:

I. FINDINGS OF FACT

1. Frederick Ross Coates (Mr. Coates or Respondent) was admitted to the practice of law in the Commonwealth of Virginia in 1959, and, since October 4, 2002, his status with the Virginia State Bar has been retired, in good standing. At all times relevant hereto, Mr. Coates has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In 1998, Joan and Robert Taylor reached an agreement with Robert Tyler, an out-of-state owner, to purchase a home and property in Madison County. The Taylors were asked by Mr. Tyler to get and pay an attorney to draw up the deed.
3. The Taylors explained their situation to Frederick Ross Coates, a lawyer they had known all of their lives, and engaged Mr. Coates to do "all the paperwork" for the Taylors to buy the home and property from Mr. Tyler.

4. Initially, the Taylors paid Mr. Coates \$264.40 of his quoted fee and agreed to pay the remaining \$233.60 when the work was completed. While the Taylors were in Mr. Coates's office, Mr. Coates went next door to the Office of the Clerk of the Circuit Court, returned and told the Taylors that everything was okay. Mr. Coates did not discuss with the Taylors the potential conflict of interest in representing both parties to the closing of a real estate transaction.

5. Mr. Tyler, when called by Mr. Coates, also stated that he wanted a deed of trust drawn by Mr. Coates. Mr. Coates exchanged at least three drafts of the deed with Mr. Tyler, the seller. Mr. Coates told the Taylors that Mr. Tyler "thought he was a lawyer". Once the deed language was finalized, the buyers, Mr. and Mrs. Coates came into Mr. Coates's office on April 17, 1998, and signed a "Bond" agreeing to pay the seller, Robert Tyler, \$70,000.00 in monthly installments of \$645.00, for four years at 11.25% rate of interest.

6. The Bond was a Deed of Trust and was executed on April 3, 1998, from the Taylors to Mr. Coates, acting as trustee. The Deed of Trust conveyed the property in trust to secure the loan under the above referenced terms. The Deed of Trust was not recorded by Mr. Coates.

7. Madison County Deed Book 237, page 410 shows a deed of trust of May 26, 1995 to secure payment by Robert Tyler of a loan of \$66,200.00 on the property deeded to him on May 26, 1995 by Jesse and Odell Carter on the same date.

8. After living in the home on the property and spending an estimated \$12,000.00 to improve it, the Taylors found out that Mr. Tyler owed a mortgage on the property, and that Mr. Tyler defaulted on the mortgage. In late 2001 and early 2002, the Taylors sought legal assistance about the possible loss of their home and property from several attorneys. Consistently, they were advised that, by not disclosing the prior deed of trust, which is a violation of the warranty of the general warranty deed, Mr. Coates might have engaged in malpractice. The Taylors were also advised that the statute of limitations, three years for malpractice if there is no written contract, as in this case, had expired.

9. On January 31, 2002, Franklin B. Reynolds, Jr., Esquire, with whom Mr. and Mrs. Taylor consulted, followed up a telephone conversation with a letter in which he stated to Mr. Coates, "You did not appear to be very interested in hearing about Mr. and Mrs. Taylor's dilemma when I called you.... I would think that you would be quite interested in assisting the Taylors in resolving this mess, due to the possibility that your services could be the subject of some inquiry."

10. Mr. Coates, in an undated, hand-written facsimile addressed to Mr. Reynolds stated that he did not search titles at the time in question and said, "If the Taylors do not have a title policy then no search was done." Mr. Taylor went on to say that, Mr. Tyler gave a General Warranty Deed, drafted by Mr. Coates to the Taylors.

11. Local attorney, John G. Berry, advised the Taylors, whom he had represented previously, that he would not participate in a case against Mr. Coates due to his friendship with Mr. Coates. The Taylors signed an Agreement Regarding Legal Representation acknowledging, "Mr. Berry has

explained to us that we may have a claim against F. Ross Coates, the attorney who represented us in the Tyler transaction, for failing to advise us to get the title insurance or a title search, or for not addressing the existence of the deed of trust Tyler had on his property.” The agreement went on to acknowledge that the Taylors declined to bring claims against Mr. Coates and that Mr. Berry’s personal relationship with Mr. Coates had been disclosed.

12. In Law Case 1818, the Taylors, represented by Mr. Berry, filed a motion for judgment against Mr. Tyler and his note holder on April 29, 2002. The suit alleged that Mr. Tyler concealed from the Taylors the existence of the deed of trust. Mr. Tyler, by counsel, answered that the Taylors were aware of the deed of trust, and that it was public knowledge. By Order, entered on August 27, 2003, in the Circuit Court of Madison County, the case was continued generally on the court’s docket to permit service of process on Robert Tyler. To date, no further proceedings have been scheduled.

13. Mr. Tyler filed a Chapter 7 Bankruptcy on September 23, 2002, in the United States Bankruptcy Court for the District of South Carolina, which was discharged on January 13, 2003.

14. The Taylors attempted to do a “workout” with the lender but were unable to do so. The home and property were sold at public auction on December 30, 2002. A Deed of Foreclosure, instrument number 030000446, was recorded on February 20, 2003, in which Samuel I. White, substitute trustee with the original deed of trust, makers being Robert Tyler and Federal Home Loan Mortgage Corporation, conveyed the property with Special Warranty to First Horizon Home Loan Corporation.

II. NATURE OF MISCONDUCT

Such conduct on the part of the Respondent constitutes misconduct in violation of the following Disciplinary Rule of the Virginia Code of Professional Responsibility:

DR 5-101. Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

* * * * *

(C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

III. IMPOSITION OF PUBLIC REPRIMAND

The subcommittee of the Seventh District Committee, duly convened on October 1, 2004, approved the agreed disposition for a **Public Reprimand** as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Seventh District Committee.

IV. COSTS

Pursuant to Part 6, Section IV, Paragraph 13(B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

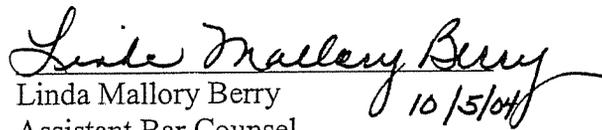
SEVENTH DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR

By 
Frederick Warren Payne, Chair Presiding

CERTIFICATION

I certify that on this 5th day of October, 2004 , I mailed by Certified Mail,
Return Receipt Requested, a true copy of the foregoing Subcommittee Determination

(Public Reprimand by Agreed Disposition) issued by the Seventh District Subcommittee of the Virginia State Bar, to Respondent, Frederick Ross Coates, at his last address of record with the Virginia State Bar, Post Office Box 328, Madison, VA 22727-0328.


Linda Mallory Berry
Assistant Bar Counsel

10/5/04