

VIRGINIA :

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

**VIRGINIA STATE BAR, *ex rel.*
FOURTH DISTRICT- SECTION I COMMITTEE,**

Complainant/Petitioner,

v.

CHARLES FREDERICK DAUM, ESQ,

Respondent.

Chancery No. 05-389

ORDER

This matter came before the Three-Judge Court empaneled on October 24, 2005, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to §54.1-3935 of the 1950 Code of Virginia, as amended. A fully endorsed Agreed Disposition, dated the 27th day of October, 2005, was tendered by the parties, and was presented by the parties in open court on November 8, 2005, to the Three-Judge Court, consisting of the Honorable James E. Kulp and Frank A. Hoss, Jr., retired Judges of the Fourteenth and Thirty-first Judicial Circuits, respectively, and by the Honorable Jonathan C. Thacher, Judge of the Nineteenth Judicial Circuit and Chief Judge of the Three-Judge Court.

Having considered the Agreed Disposition, it is the decision of the Three-Judge Court that the Agreed Disposition be accepted, and said Court finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Charles Frederick Daum, Esquire (hereafter

“Respondent”), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about the 12th day of January, 2004, Ms. Valerie Hawkins (hereafter “Complainant”) retained the Respondent in Respondent’s office in Arlington, Virginia, to represent her son, Rishawn Hawkins, in defense of three criminal charges then pending against Rishawn Hawkins in Prince William County, Virginia.

3. The agreed-upon fee for representation was the sum of Three Thousand Dollars (\$3,000.00), the total amount of which the Complainant paid to the Respondent in installments.

4. The sums tendered to the Respondent by the Complainant as legal fees were not fully earned by the Respondent as of the time they were tendered to him. The Respondent deposited all such fees in his operating account, and failed to deposit any such fees in an attorney trust account.

5. During the course of a personal interview of the Respondent conducted by a Virginia State Bar investigator on December 15, 2004, the Respondent stated that he did not use his trust account for deposits of criminal fees, and that he did not reconcile his trust account.

6. The Respondent was discharged as Rishawn Hawkins’s attorney in April of 2004, and successor counsel was engaged during that month. Through Respondent’s secretary, Mr. Hawkins’s new attorney requested a copy of the client file and an accounting of the time Respondent had devoted to Mr. Hawkins’s case.

7. Although the Respondent left Mr. Hawkins’s file with his secretary for the benefit of Mr. Hawkins’s new attorney, the file materials were not forwarded to the new attorney within a reasonable period of time, nor was an accounting of time devoted to the matter and/or a refund of any unearned fees promptly made. However, on September 24, 2004, the Respondent, through

counsel represented to defend him concerning the Bar Complaint filed in this matter, made a full refund of fees and provided certain file materials to the Complainant related to his representation of Rishawn Hawkins.

THE THREE-JUDGE COURT finds by clear and convincing evidence that such conduct on the part of the Respondent, Charles Frederick Daum, Esquire, constitutes a violation of the following provisions of the Rules of Professional Conduct:

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:
 - (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.
- (c) 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 accounts to the client regarding them; and
 - (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 which such person is entitled to receive.
- (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.

(5) 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;
- (iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

RULE 1.16 Declining Or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).
- (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.

UPON CONSIDERATION WHEREOF, the Three-Judge Court hereby ORDERS that the Respondent shall receive a **PUBLIC REPRIMAND, WITH TERMS**, subject to the imposition of the sanction referred to below as an alternative disposition of this matter should Respondent fail to comply with the Terms referred to herein. The Terms which shall be met in accordance with the deadlines set forth below are:

1. On or before the fifteenth (15th) day following the date of entry of this Order, the Respondent shall engage the services of one of the following law office management consultants:

Kathleen M. Uston, Esquire
127 South Fairfax Street, #152
Alexandria, Virginia 22314
Phone: (703) 683-0440

Janean S. Johnston, Esquire
250 South Reynolds Street, #710
Alexandria, Virginia 22304-4421
Phone: (703) 567-0088

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. In the event the consultant determines that Respondent is in compliance with the said Rule, the consultant shall so certify in writing to the Respondent and the Virginia State Bar. In the event the consultant determines that Respondent is not in compliance with Rule 1.15, then, and in that event, the consultant shall notify the Respondent and the Virginia State Bar, in writing, of the measures that Respondent must take to bring himself into compliance with the said Rule.

2. The Respondent shall be obligated to pay when due the consultant's fees and costs

for its services (including provision to the Bar and to Respondent of information concerning this matter).

3. In the event the Respondent is determined by the consultant to be not in compliance with Rule 1.15, he shall have sixty (60) days following the date the consultant issues its written statement of the measures Respondent must take to comply with Rule 1.15 within which to bring himself into compliance. The consultant shall be granted access to Respondent's office, books, and records, following the passage of the sixty (60) day period to determine whether Respondent has brought himself into compliance, as required. The consultant shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has brought himself into compliance with the said Rule within the sixty day (60) period, or that he has failed to do so. Respondent's failure to bring himself into compliance with Rule 1.15 as of the conclusion of the aforesaid sixty (60) day period shall be considered a violation of the Terms set forth herein.

4. The Respondent shall read *Lawyers and Other People's Money* by Frank A. Thomas, III, (Third Edition, Virginia CLE Publications), and he shall certify to Bar Counsel in writing that he has done so. Respondent's written certification shall be delivered, within thirty (30) days following the date of entry of this Order to: Seth M. Guggenheim, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

Upon satisfactory proof furnished by Respondent to the Virginia State Bar that the above Terms have been complied with, in full, a **PUBLIC REPRIMAND, WITH TERMS** shall then be imposed. If, however, Respondent fails to comply with any of the Terms set forth herein, as and when his obligation with respect to any such Term has accrued, then, and in such event, the

Virginia State Bar Disciplinary Board shall be authorized, by agreement of the parties, to conduct a show cause hearing to determine if a six (6) month suspension of Respondent's license to practice law in the Commonwealth of Virginia should be imposed as an alternative disposition to the Public Reprimand, with Terms provided for herein; and it is further

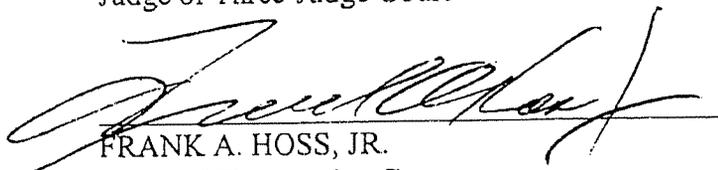
ORDERED that pursuant to Part Six, § IV, ¶ 13B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent; and it is further

ORDERED that four (4) copies of this Order be certified by the Clerk of the Circuit Court of Fairfax County, Virginia, and be thereafter mailed by said Clerk to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

ENTERED this 8th day of November, 2005.


JONATHAN C. THACHER
Chief Judge of Three-Judge Court


JAMES E. KULP
Judge of Three-Judge Court


FRANK A. HOSS, JR.
Judge of Three-Judge Court