

VIRGINIA:

BEFORE THE THIRD DISTRICT, SECTION TWO, SUBCOMMITTEE
OF THE
VIRGINIA STATE BAR

IN THE MATTER OF
ARNOLD REGINALD HENDERSON, V

VS. DOCKET NO. 04-032-2883

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On March 11, 2005, a meeting in this matter was held before a duly convened Third District, Section Two, Subcommittee consisting of John B. Daly, Lay Member; Mary Kathryn Burkey Owens, Esq.; and Richard K. Newman, Esq., Chair, presiding.

Pursuant to Part 6, Section IV, Paragraph 13.G.1.c.(3) of the Rules of the Supreme Court, the Third District, Section Two, Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT:

1. At all times relevant hereto the Respondent, Arnold Reginald Henderson, V, [Henderson] has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or about September of 2002, Reginald Hayspell retained Henderson regarding a criminal investigation involving Reginald and any charges against Reginald which might result from the investigation [representation]. Complainant Alvin Hayspell, Reginald's father, paid Henderson \$5,000.00 on September 23, 2002 on behalf of Reginald for the representation.
3. By letter to Reginald dated September 26, 2002, Henderson confirmed the representation and enclosed a retainer agreement for signature. Reginald signed the retainer agreement on September 29, 2002. The agreement specifically stated that the \$5,000.00 sum might not be the entire fee.
4. In August of 2003, Reginald was arrested on a federal criminal complaint alleging conspiracy to distribute and to possess with the intent to distribute crack cocaine.

5. By letter dated August 25, 2003 to Reginald, Henderson summarized the situation and indicated that he would require a fee of \$17,000.00 for the representation, of which \$5,000.00 had already been paid, leaving a balance owed of \$12,000.00.

6. On August 27, 2003 and September 3, 2003, Alvin paid Henderson the respective amounts of \$6,000.00 and \$2,000.00. As of September 3, 2003, Alvin had paid Henderson a total of \$13,000.00 in the representation.

7. In September of 2003, Reginald was indicted on charges of conspiracy to distribute cocaine and possession of marijuana with intent to distribute. Arraignment was set for September 25, 2003. A trial date was set for December 1, 2003.

8. At some point prior to October 13, 2003, Reginald fired Henderson.

9. On or about October 13, 2003, Alvin retained Steve Benjamin [Benjamin] for the representation.

10. Benjamin wrote Henderson a letter dated October 15, 2003, in which, inter alia, he enclosed a motion for substitution of counsel for Henderson's endorsement and return; and he asked Henderson for any file materials Henderson had regarding Reginald's case.

11. Henderson wrote Reginald a letter dated October 16, 2003, stating, inter alia, that he had forwarded an endorsed motion for substitution of counsel to Benjamin, and that the file materials were available for pick up at the convenience of Reginald's family and a statement of the costs of copying would be enclosed with the file.

12. On October 20, 2003, Alvin wrote Henderson stating, inter alia, it was the understanding of Reginald and his family that Henderson was forwarding Reginald's files to Benjamin. Alvin also requested Henderson to provide an account for his time and expense and return any "unused" money. The letter was sent to Henderson by certified mail return receipt requested.

13. On October 21, 2003, Benjamin wrote a letter to Henderson thanking him for sending the endorsed substitution of counsel order which had been filed with the court, and indicating that he would appreciate Henderson's assistance in providing Reginald's case file. Benjamin received no response to the letter.

14. Benjamin also left telephone messages for Henderson about Reginald's case but received no response to those messages.

15. Reginald's girlfriend, Ericka Saunders, delivered Alvin's October 20, 2003 letter to Henderson's office on or about December 15, 2003.

16. Sometime in or about the last week of December 2003, Alvin called Henderson and spoke with him. Henderson agreed he would respond to Alvin's October 20, 2003 letter. Alvin received no response to his October 20, 2003 letter from Henderson.

17. Neither Reginald, Alvin or Benjamin received Reginald's file from Henderson. Neither Reginald nor Alvin received an accounting from Henderson of his use of the funds paid to Henderson by Alvin on Reginald's behalf. Neither Reginald nor Alvin received a refund of unearned fees.

18. Alvin filed a bar complaint with the Virginia State Bar dated March 14, 2004.

19. On April 8, 2004, a letter was sent to Henderson from Assistant Bar Counsel Linda Mallory Berry [Berry] along with a copy of the bar complaint as part of the bar's preliminary investigation of the bar complaint. In the letter Berry, inter alia, demanded that Henderson provide a written response to the bar complaint within 21 days of the date of the letter. Henderson did not respond to the letter.

20. On May 6, 2004, a subpoena duces tecum was issued to Henderson by Berry, by certified mail, return receipt requested, on behalf of the Third District Committee. The subpoena required the production on or before May 20, 2004, of all bank records, cancelled checks, bank statements and deposit tickets for any and all trust accounts and all files, records, reports and correspondence in Henderson's possession, custody or control, relating to Henderson's representation of Reginald. The U.S. Postal Service domestic return receipt for the mailing shows that Mr. Henderson's office staff received the mailing on May 7, 2004.

21. On May 18, 2004, Investigator Cam Moffatt met with Henderson having previously asked him to bring Reginald's file to the meeting. At the meeting Henderson indicated that he had not received a copy of the bar complaint or the subpoena duces tecum. Moffatt provided Henderson with a copy of the bar complaint and agreed with Henderson that he could produce Reginald's file by May 24, 2004.

22. In response to the subpoena duces tecum, Henderson partially complied by producing a copy of his file as well as a subsidiary ledger.

23. Upon being assigned to this case, undersigned counsel sent Henderson a letter dated July 29, 2004 pertaining to the partial compliance with the subpoena duces tecum. In the letter Henderson was given until August 16, 2004, to produce:

(1) the monthly bank statements and deposit tickets which reflect the deposits made to Henderson's trust account(s) of the funds paid to him by or on behalf of Reginald, i.e., the payments of \$5,000.00, \$6,000.00 and \$2,000.00 by Alvin;

(2) the monthly statements of the trust account(s) in which said funds were deposited from the dates of deposit to date; and alternatively as applicable

(3) if one or more of the three payments were deposited into an account other than a trust account, then so state in writing which payment(s) were deposited into an account other than a trust account.

The letter included the language stating, "Your failure to comply with this letter shall be considered further noncompliance with the originally issued subpoena duces tecum."

24. The July 29, 2004 letter was sent to Henderson by certified mail, return receipt requested. The envelope with the July 29, 2004 letter was returned to the bar stamped, "Unclaimed."

25. On August 27, 2004, undersigned counsel filed with the Virginia State Bar Clerk of the Disciplinary System a Notice of Noncompliance and Request for Interim Suspension, and served Henderson the notice by certified mail, return receipt requested.

26. On September 10, 2004, an interim order of suspension was entered by the Virginia State Bar Disciplinary Board upon Henderson's failure either to complete production pursuant to the subpoena duces tecum and the bar's July 29, 2004 letter, or to petition the Board to withhold entry of a suspension order and hold a hearing to give Henderson the opportunity to show good cause for the noncompliance. The order was served by certified mail, return receipt requested to Henderson by the Clerk of the Disciplinary System.

27. On September 14, 2004, Henderson appeared in the Circuit Court of Henrico County in representation of Deborah Mae Hatcher in case numbers CR04003251-00 and CR04003252-00. Henderson's license to practice law in the Commonwealth of Virginia was suspended at the time he made these appearances as Hatcher's attorney. If this matter were to be tried before the district committee, Mr. Henderson would testify that on September 14, 2004, he was unaware that his license to practice law had been suspended on September 10, 2004.

28. On September 15, 2004, Henderson met with undersigned counsel about the interim suspension. On that date Henderson completed production in accordance with the subpoena duces tecum.

29. On September 15, 2004, the Board entered an order terminating the interim suspension.

30. The U.S. Postal Service domestic return receipt corresponding to the certified mailing to Henderson of the interim suspension order by the Clerk of the Disciplinary System reflects receipt by Mr. Henderson's office staff on September 22, 2004.

31. The trust account subsidiary ledger provided by Henderson to the bar in response to the subpoena duces tecum does reflect entries for Alvin's first two payments of \$5,000.00 and \$6,000.00. The ledger does not reflect an entry for Alvin's last payment of \$2,000.00 made on September 3, 2003, for which Henderson provided Alvin with a handwritten receipt. The balance shown on the subsidiary ledger is \$3,500.00, which does not include the additional \$2,000.00 payment.

32. According to Henderson, as stated in his September 15, 2004 letter to undersigned counsel, the \$2,000.00 payment was not deposited into the trust account because he considered the payment as earned fees.

33. By letter dated September 29, 2004, to Reginald, Alvin and Benjamin, counsel for Henderson stated that Henderson holds funds in his escrow account for the benefit of Reginald and Henderson wishes to disburse the funds to the rightful owner. Alvin responded on behalf of Reginald by letter to the law firm of Henderson's counsel dated October 6, 2004, asking for an itemized statement to be sent to Alvin before the disbursement of any funds.

34. The trust account deposit slips presented by Henderson to the bar as evidence of deposits of the \$5,000.00 and \$6,000.00 payments are not sufficiently detailed to show the identity of each item.

35. Upon termination of the representation of Reginald, Henderson failed to provide Reginald with his file upon request, failed to refund unearned advance fees, failed to account for his use of the funds paid by Alvin on behalf of Reginald.

36. During the bar investigation of the instant bar complaint, Investigator Cam Moffatt left telephone messages for Henderson on June 4, 2004; June 14, 2004; June 17, 2004; June 21, 2004; June 28, 2004; and June 29, 2004. In response Moffatt received one return call from a secretary indicating that Henderson would be out of the office until June 25, 2004. Moffatt sent Henderson a letter dated June 30, 2004, indicating her efforts to contact him, seeking to talk with Henderson about the instant bar complaint, and indicating if she did not hear from Henderson by July 9, she would turn in her report noting that Henderson declined to be interviewed. Moffatt did not hear from Henderson by July 9, 2004.

37. Moffatt's June 30, 2004 letter; Berry's April 8, 2004 letter to Henderson; and the bar's subpoena duces tecum each constituted a lawful demand for information from a disciplinary authority in connection with a disciplinary matter. Henderson failed to answer either letter and timely failed to comply fully with the subpoena duces tecum.

38. Henderson's appearances on September 14, 2004, in the Henrico Circuit Court on behalf of Deborah Mae Hatcher while his license to practice law in the Commonwealth of Virginia was suspended constituted the unauthorized practice of law.

39. In these facts, all mailings by the bar to Henderson by certified mail return, receipt requested were mailed to his last address on record for membership purposes with the bar and such mailings constituted effective service when mailed, pursuant to Rule of Court, Part Six, Section IV, Paragraph 13.E.2. Service of the subpoena duces tecum to Henderson by certified mail, return receipt requested at Henderson's last address of record for membership purposes with the bar was also made pursuant to Paragraph 13.B.7.a.(5) and Paragraph 13.B.6.a.(4).

II. NATURE OF MISCONDUCT:

Such conduct on the part of the Respondent constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

(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.

(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;

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.

RULE 5.5 Unauthorized Practice Of Law

- (a) A lawyer shall not:
 - (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

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

III. PUBLIC REPRIMAND WITH TERMS:

Accordingly, it is the decision of the subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand With Terms of this complaint. The terms and conditions shall be met by the dates indicated below. The terms with which the Respondent must comply are as follows:

1. By May 15, 2005, Respondent shall obtain from Virginia CLE, at his own expense, a copy of Lawyers And Other People's Money by Frank A. Thomas, III, read same, and certify in writing to the Virginia State Bar that he has done so.

2. By March 15, 2005, Respondent shall certify in writing to the Virginia State Bar that as of March 15, 2005, he, and any of his office staff under his supervision and control, (a) shall accept all mailings from the Virginia State Bar sent by certified mail return receipt requested and (b) shall no longer refuse mailings from the bar sent by certified mail return receipt requested.

3. By May 15, 2005, Respondent shall

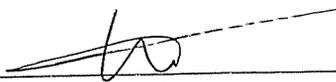
(a) provide to Deputy Bar Counsel an accounting of the funds paid to Respondent by Alvin or Reginald Hayspell;

(b) after contacting Reginald Hayspell and determining to whom to pay any funds remaining, pay to said person any of said funds which the accounting reflects as being unearned fees and unexpended costs.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met as stated herein, the Third District Committee, Section Two, shall impose a Certification for Sanction Determination.

The Clerk of the Disciplinary System shall assess costs pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.

Third District, Section Two, Subcommittee
Of The Virginia State Bar

By 
Richard K. Newman
Chair

CERTIFICATE OF SERVICE

I certify that I have this 18th day of March, 2005, caused to be mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Arnold Reginald Henderson, V, Esq., Arnold Henderson & Associates, Suite 102, 116 East Franklin Street, Richmond, VA 23219, his last address of record with the Virginia State Bar.