

VIRGINIA :

BEFORE THE FIFTH DISTRICT--SECTION III SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF BRIAN MERRILL MILLER, ESQ.  
VSB Docket # 04-053-2586

SUBCOMMITTEE DETERMINATION  
PUBLIC REPRIMAND

On July 22, 2005, a meeting in this matter was held before a duly convened Fifth District-Section III Subcommittee consisting of ~~Angela Lemmon Horan~~, <sup>Kathleen L. Farrell, Esq.</sup> Esq., Joyce S. Stoney, lay member, and H. Jan Roltsch-Anoll, Esq., presiding, to review an Agreed Disposition reached by the parties. 

Pursuant to the provisions of the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶13(G), the Fifth District--Section III Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand, as set forth below:

I. FINDINGS OF FACT

1. At all times relevant Brian Merrill Miller, Esq. (hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about July 23, 2002, Laura S. Lorence (hereafter "Complainant") retained the Respondent to represent her, as plaintiff, in a landlord-tenant suit that Complainant had instituted in the Fairfax County, Virginia, General District Court on a *pro se* basis against her tenant and the cosigner of the tenant's lease.
3. The Respondent represented the Complainant at trial, and judgment was entered

in the Complainant's favor on August 23, 2002, for possession of the rental premises, rent in the sum of \$359.89, and court costs.

4. An appeal to the judgment was noted and an appeal bond was posted by the tenant and/or the cosigner with the Clerk of the Fairfax County, Virginia, Circuit Court in the sum of \$2,612.00. A trial date for the appeal was originally set for December 5, 2002, but was continued to January 9, 2003. Pending appeal, the Respondent filed a written opposition to a motion filed by the tenant's counsel and responded to discovery propounded by the tenant's counsel.

5. On January 8, 2003, the Respondent injured his back. Due to the nature of his injury, the Respondent could not attend the trial of the matter set for the following day and, accordingly, contacted the Court and the tenant's counsel, who consented to have the matter removed from the Court's trial docket for January 9, 2003.

6. The Respondent failed to take any further action in the matter following January 9, 2003. The Complainant left telephone messages for the Respondent on February 6, June 23, October 17, and October 20, 2003, to which he made no response. The Complainant wrote to the Respondent on September 15, 2003, to which letter he made no response. The Respondent did not communicate with the Complainant until February of 2004, following her institution of a Complaint with the Virginia State Bar.

7. The Circuit Court entered an Order on June 19, 2003, directing the Clerk to disburse bond proceeds in the sum of \$359.89 to the Complainant in care of the Respondent and in the sum of \$2,186.11 to the tenant. The Respondent did not take any action on the Complainant's behalf to oppose distribution of the bond proceeds to the tenant.

8. The Respondent failed to prosecute Complainant's claim for damages against the tenant and/or co-signer discovered and assessed following the tenant's vacation of the premises, to which the proceeds of the bond could have been applied. Moreover, the Respondent failed to forward the sum of \$359.89 to the Complainant following its disbursement to him by the Clerk of the Circuit Court. The Respondent did not advise the Complainant that the aforesaid payment Order had been entered, and the legal implications thereof.

9. The Respondent eventually contacted the Complainant in mid-February, 2004, by sending her a copy of his letter to Virginia State Bar in response to a Bar Complaint that the Complainant had filed. The Respondent at that time offered to resume services to the Complainant or otherwise "honor her request for her file," which file he had not to that point returned to the Complainant.

10. An investigation into these matters conducted by the Virginia State Bar revealed that in negotiating a resolution of subject matter of the Bar Complaint, the Respondent presented the Complainant with a written agreement containing confidentiality provisions, and reciting as consideration for the undertakings contained therein Complainant's "full, complete and permanent withdrawal and dismissal of any and all complaints, present and/or future, or other investigations that may be or will be underway that the [Complainant] may have initiated with the Virginia State Bar with regard to Brian M. Miller. . . ."

11. The Respondent also dictated to the Complainant for presentation to the Virginia State Bar the contents of a letter respecting suspension of the Bar's investigation of the Complaint she had filed.

## **II. NATURE OF MISCONDUCT**

The Subcommittee finds that the following Rules of Professional Conduct have been violated:

### **RULE 1.3 Diligence**

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

### **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.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

### **RULE 1.15 Safekeeping Property**

- (c) A lawyer shall:
  - (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
  - (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.

**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).

**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:

- (d) obstruct a lawful investigation by an admissions or disciplinary authority.

**RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another[.]

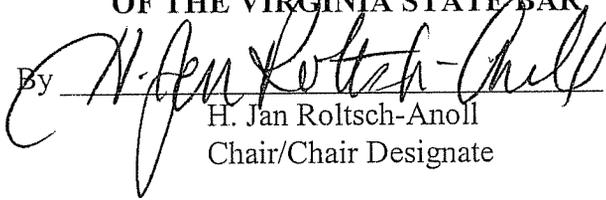
**III. PUBLIC REPRIMAND**

Accordingly, it is the decision of the Subcommittee to impose a PUBLIC REPRIMAND on Respondent, Brian Merrill Miller, Esquire, and he is so reprimanded.

**IV. COSTS**

Pursuant to Part Six, § IV, ¶ 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.

FIFTH DISTRICT - SECTION III SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

By   
H. Jan Roltsch-Anoll  
Chair/Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this 25<sup>th</sup> day of July, 2005, mailed a true and correct copy of the Subcommittee Determination (PUBLIC REPRIMAND) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Brian Merrill Miller, Esq., at 10482 Armstrong Street, Fairfax, Virginia 22030, his address of record with the Virginia State Bar.

  
Seth M. Guggenheim  
Assistant Bar Counsel