

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
CHRISTOPHER JASON AGRESTO

VSB Docket No. 08-070-072679 and 09-070-076620

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND, WITH TERMS)**

Pursuant to the Rules of the Virginia Supreme Court Rules of Court Part 6, Section IV, Paragraph 13-15.B.4, on October 5, 2009, a subcommittee of the Seventh District was duly convened to approve this Agreed Disposition. The subcommittee members are David A. Penrod, Esq., attorney member, Minor Eager, lay member, and William H. Atwill, Esq., presided as Chair. The Virginia State Bar is represented by Alfred L. Carr, Assistant Bar Counsel, and Christopher Jason Agresto, Esquire, Respondent, *pro se*, hereby enter into the following Agreed Disposition arising out of the referenced matters.

I. FINDINGS OF FACT

1. At all times relevant hereto, the Respondent, Christopher Jason Agresto, has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket No. 09-070-076620(Sara L. Asiama)

2. The attorney for Sara L. Asiama filed and noticed a Motion for Sanctions against the Respondent for "causing unnecessary delay" in the divorce proceedings. The sanction hearing took place on August 6, 2008 in the Circuit Court of Fairfax County.

3. The Respondent did not appear in court on August 6, 2008.

4. On August 6, 2008, Judge Gaylord Finch of the Fairfax County Circuit Court entered an Order For Sanctions against the Respondent, personally, for the sum of Three Thousand Thirty Two dollars and Fifty-Five cents (\$3,032.55), to cover a portion of Sara Asiama's legal fees.

5. On December 22, 2008, the Virginia State Bar (hereinafter the VSB), served the Respondent with a subpoena *duces tecum* requesting his billing records of his client, Daniel Asiama.

6. The Respondent did not comply with the subpoena *duces tecum* in a timely fashion.

7. On May 15, 2009, the VSB Disciplinary Board delayed a Non-Compliance/Interim Suspension hearing for several hours to allow the Respondent more time to arrive at the hearing.

8. After the VSB Disciplinary Board reconvened the hearing and the Respondent had not appeared, the Board imposed an Interim Suspension of the Respondent's license to practice law, effective May 15, 2009, for his failure to comply with the subpoena *duces tecum*.

9. The Respondent does not perform monthly, quarterly, or annual reconciliations of his IOLTA escrow account.

10. The Respondent does not reconcile his cash balances to the client's subsidiary ledgers.

11. The Respondent does not maintain cash receipts and disbursement journals.

12. The Respondent does not promptly withdraw earned legal fees from his IOLTA escrow account.

13. The Respondent in a letter addressed to Bar Counsel dated May 19, 2009, stated that he has not been in full compliance with Rule of Professional Conduct 1.15(c) and (e).

14. On May 19, 2009, Bar Counsel notified the Clerk of the Disciplinary System that the Respondent had complied with the subpoena and requested that the VSB lift the Interim Suspension of his license.

VSB Docket No. 08-070-072679(Leo U. Shorts)

15. On September 12, 2007, the Virginia Court of Appeals dismissed Leo U. Shorts' appeal filed by the Respondent on his behalf because "Neither a transcript nor a statement of facts was timely filed in [the] case."

16. Although the Respondent had a judge enter an order for the production of the transcript and delivered said order to the court reporting service, he did not follow up to ensure that the transcript was timely filed.

17. The Respondent did not notify Mr. Shorts that the Virginia Court of Appeals had dismissed his case.

18. The VSB issued a subpoena *duces tecum* to the Respondent requesting his trust account records of his client, Mr. Shorts.

19. The Respondent did not provide the VSB with evidence of IOLTA escrow account reconciliations.

II. NATURE OF MISCONDUCT

VSB Docket No. 09-070-076620 and 08-070-072679

Such conduct by Christopher Jason Agresto constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

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;

- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current

basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

(1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:

(i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;

(ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

(iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise early identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;

(iv) reconciliations and supporting record required under this Rule;

(v) the records required under this subsection shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

III. PUBLIC REPRIAMND, WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain Terms, compliance with which shall be a predicate for the

disposition of this complaint by imposition of a PUBLIC REPRIMAND, WITH TERMS. The

Terms are as follows:

1. The Respondent shall engage the following law office management consultant:

Sensei Enterprises, Inc.
Computer Forensics/Legal IT
3975 University Drive
Suite 225
Fairfax, VA 22030
703.359.0700 (phone)
703.359.8434 (fax)

on or before the fifteenth (15th) day following the date of issuance of this Subcommittee Determination. The consultant's engagement shall be for the purposes of reviewing and auditing the Respondent's law practice policies, methods, information technology systems including but not limited hardware and software, and escrow account maintenance and record-keeping to ensure compliance with all provisions of Rules 1.3 and 1.15 of the Virginia Rules of Professional Conduct (hereafter "the said Rules").

2. Not later than sixty (60) days after the contract ratification date of the consultant engagement contract, the consultant shall issue a report of its findings. In the event the consultant determines that Respondent is in compliance with the said Rules, 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 the said Rules, 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 Rules.

3. In the event the Respondent is determined by the consultant to be not in compliance with the said Rules, he shall have ninety (90) days following the date the consultant issues a written statement of the measures Respondent must take to comply with the said Rules

within which to bring himself into compliance. The consultant shall be granted access to Respondent's office, books, records, information technology systems including but not limited hardware and software, and files following the passage of the ninety (90) 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 Rules within the ninety day (90) period, or that he has failed to do so. Respondent's failure to bring himself into compliance with the said Rules as of the conclusion of the aforesaid ninety (90) day period shall be considered a violation of the Terms set forth herein.

4. The consultant shall again examine the Respondent's law practice policies, methods, information technology systems including but not limited hardware and software, and escrow account maintenance and record-keeping at a time not earlier than six (6) months following the date of the consultant's initial certification of compliance pursuant to the terms hereof, and not later than nine (9) months following such date. The consultant shall thereafter either recertify Respondent's compliance with said Rules or issue a report to the Virginia State Bar and the Respondent stating that the Respondent is not in compliance, and the basis for such a determination. The Respondent shall be deemed to have violated the Terms hereof in the event the consultant, upon such re-examination of Respondent's said law practice policies, methods, information technology systems including but not limited hardware and software, and escrow account maintenance and record-keeping, reports any material noncompliance with the requirements of any provision of Rules 1.3 and/or 1.15 of the Virginia Rules of Professional Conduct.

5. The Respondent shall be obligated to pay when due the consultant's fees and costs for their services (including provision to the Bar and to Respondent of information concerning these matters). The Respondent shall be deemed to have violated the Terms hereof in the event the consultant proves that he has failed to pay the consultant's fees and costs for their services.

6. Upon Respondent's compliance with the Terms set forth herein, a PUBLIC REPRIMAND, WITH TERMS, shall be imposed.

IV. ALTERNATIVE DISPOSITION

If, however, Respondent violates any of the Terms set forth herein, then, and in such event, pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-15.G. ("Alternative Disposition for Public Reprimand with Terms"), the Committee shall, as an alternative disposition to a Public Reprimand, with Terms, certify this matter to the Virginia State Bar Disciplinary Board for proceedings to be conducted.

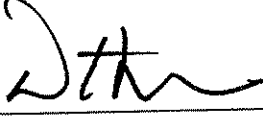
If the Respondent does not meet this burden of proof to show compliance with the Terms set forth herein by clear and convincing evidence, by agreement of the undersigned parties, the Virginia State Bar Disciplinary Board shall impose a **sixty (60) day suspension** of the Respondent's license to practice law in the Commonwealth of Virginia.

V. COSTS

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

Pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-30.B., the Respondent understands that his prior disciplinary record shall be furnished to the subcommittee considering this agreed disposition.

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By 

William H. Atwill, Esq.
Subcommittee Chair

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2009 I caused to be mailed by Certified Mail, Return Receipt Requested, a true and complete copy of the Subcommittee Determination (Public Reprimand, With Terms) to Christopher Jason Agresto, Esq., 8 Royal Street SE, Leesburg, Virginia 20175.



ALFRED L. CARR
Assistant Bar Counsel