

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
SPENCER DEAN AULT, ESQ.

VSB Docket No. 07-070-1279

**SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITHOUT TERMS)**

Pursuant to Part Six, Section IV, Paragraph 13.G.1.c of the *Rules of the Supreme Court*, the Virginia State Bar, by Assistant Bar Counsel Alfred L. Carr, Esq., and the Respondent, Spencer Dean Ault, Esq., *pro se*, hereby enter into an Agreed Disposition arising out of the above-referenced matter.

Both parties affirm that the proposed Subcommittee Determination of a PUBLIC REPRIMAND WITHOUT TERMS, reflects the stipulated facts, violations, and disposition for the above-referenced matter.

Respondent understands that should the Subcommittee accept this agreed disposition by a unanimous vote, the Subcommittee Determination will be signed by the Chair or Chair Designate and thereafter mailed without the necessity of any hearing or further notice to the parties.

Further, it is understood and agreed by the parties hereto that should the Subcommittee refuse the agreed disposition neither party shall be bound by the stipulations or findings contained herein and this matter shall be forthwith scheduled for a hearing by the full Committee.

On February 12, 2009, a hearing in this matter was held before a duly convened Seventh District Subcommittee consisting of Richard E. Carter, Esq., Minor Eager, lay member and Samuel R. Walker, Esq., presiding.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Supreme Court, the Seventh District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following PUBLIC REPRIMAND WITHOUT TERMS:

**I. FINDINGS OF FACT**

1. At all times relevant hereto, Spencer Dean Ault ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On September of 2001, John McSwain, the Complainant, suffered a job related injury. He asked the Respondent for legal representation. The Respondent, however, declined to accept him as a client because he did not practice Worker's Compensation law and referred him to Douglas Landau, Esquire.
3. The Worker's Compensation matter settled in February of 2003. Mr. McSwain returned to the Respondent for legal representation in a related civil lawsuit against Mr. McSwain's employer for retaliation because he filed a worker's compensation claim, misappropriation of identity, and for breach of the employment contract.
4. On October 1, 2003, the Respondent filed a Motion for Judgment on behalf of Mr. McSwain against his employer in the Circuit Court of Loudoun County.
5. On October 28, 2003, the Defendants filed their Grounds of Defense and Counterclaim.
6. On January 7, 2004, the Respondent filed Mr. McSwain's Answer to Counterclaim.
7. On October 1, 2004, the Loudoun County Circuit Court entered a Uniform Pretrial Scheduling Order setting down a two day hearing trial to commence on March 15, 2005.

8. On February 7, 2005, the Defendant's attorney noticed the Respondent of a scheduled deposition of Mrs. McSwain, asking to continue Mr. McSwain's deposition started on January 11, 2005, and asking for the documents previously requested on January 11, 2005.
9. On February 10, 2005, the court entered an Agreed Order for Continuance of Trial Date and Further Discovery, wherein the parties had agreed to submit the matter to arbitration.
10. In March of 2005, the employer submitted a settlement offer to Mr. McSwain. Mr. McSwain rejected the offer and wanted to go to trial.
11. In June of 2005, Mr. McSwain relocated his family to South Carolina. Several months after his move, he notified the Respondent of his new address and phone number.
12. Mr. Ault informed Mr. McSwain that he did not have time to work on his file. He had informed Mr. McSwain that he had moved his office to his residence for personal reasons. Mr. McSwain asked the Respondent to return his file, specifically, his original documents so he could hire another attorney to end the litigation.
13. The Respondent did not provide the client file as requested to Mr. McSwain because he could not immediately find it. The Respondent informed Mr. McSwain he had placed the file in storage during the relocation of his office.
14. Between June of 2005 and October of 2006, the Respondent did little or no work on behalf of Mr. McSwain to settle the case.
15. Between June of 2005 and October of 2006, the Respondent did not respond to numerous requests for status updates of the case from Mr. McSwain.

17. On or about October 20, 2006, Mrs. McSwain, in a phone conversation with the Respondent, complained to him that three (3) years had lapsed with no progress on the case.
18. The Respondent told Mrs. McSwain that they should find another attorney.
19. Mrs. McSwain said they could not find another attorney because he, the Respondent, did not and could not return the file and the original documents.
20. By letter dated November 21, 2006, Douglas Landau, Esquire, Mr. McSwain's Worker's Compensation attorney, contacted the Respondent. The letter informed the Respondent that Mr. McSwain complained that he could not get him to return phone calls, he did not know the status of his case, and he had asked for a copy of his file and the Respondent has not provided said file to him.
21. The November 21, 2006, letter asked the Respondent to provide Mr. McSwain with a copy of his file so he could get his case back on track. The letter asked the Respondent to respond to him, Mr. Landau, with a response. The Respondent did not respond to Mr. Landau's letter. The Respondent, however, located the file in storage, copied the file, and returned it to Mr. McSwain.
22. Mr. McSwain contacted the employer's legal counsel, Jonathan C. Fritts, Esquire, of Morgan, Lewis & Bockius, LLP, directly, to negotiate a settlement.
23. Mr. Fritts contacted the Respondent to ask whether he remained legal counsel for Mr. McSwain.
24. In a letter dated November 30, 2006, the Respondent informed Mr. Fritts that he "... had requested Mr. McSwain to find other counsel. You are free to speak directly to him. I will prepare a withdrawal order for circulation and entry."

## II. NATURE OF MISCONDUCT

Such conduct by Spencer Dean Ault, Esq., 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 1.4 Communication**

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

### **RULE 1.16 Declining Or Terminating Representation**

- (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.

## III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and the Respondent tender to a subcommittee of the Seventh District Committee for its approval the agreed disposition of a Public Reprimand Without Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Seventh District Committee.

Pursuant to Rules of Supreme Court, Part Six, Section IV, Paragraph 13.N.2, the Respondent understands that his prior record shall be furnished to the subcommittee considering this agreed disposition.

**IV. PUBLIC REPRIMAND WITHOUT TERMS**

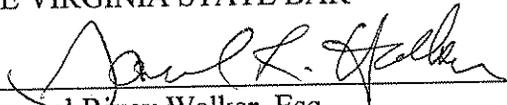
Accordingly, it is the unanimous decision of the subcommittee to impose Public Reprimand Without Terms and the Respondent is hereby so reprimanded.

**COSTS**

Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

SEVENTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

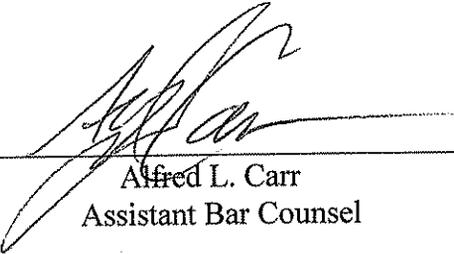
By

  
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Samuel Rixey Walker, Esq.  
Chair

CERTIFICATE OF SERVICE

I certify that on February 24<sup>th</sup>, 2009, I caused to be mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (PUBLIC REPRIMAND WITHOUT TERMS) to Spencer Dean Ault, Esq., Respondent, at, Law Office of Spencer D. Ault, 13193 Mountain Road, Lovettsville, VA 20180, his last address of record with the Virginia State Bar.

  
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Alfred L. Carr  
Assistant Bar Counsel