

VIRGINIA:

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BEFORE THE CIRCUIT COURT OF THE CITY OF RICHMOND

MAY 10 2010

VIRGINIA STATE BAR EX REL  
THIRD DISTRICT COMMITTEE

VSB CLERK'S OFFICE

Complainant

v.

Case No. CL 09-5576

THOMAS MICHAEL BLANKS, JR.

Respondent

Memorandum Order of Public Reprimand With Terms

This matter came on to be heard on February 10, 2010, upon an Agreed Disposition between the parties that was presented this day in a telephone conference call to a Three-Judge Court impaneled by the Supreme Court of Virginia on January 27, 2010, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the Code of Virginia (1950) as amended, consisting of the Honorable Von L. Piersall, Jr., Retired Judge of the Third Judicial Circuit; the Honorable Joseph E. Spruill, Jr., Retired Judge of the Fifteenth Judicial Circuit; and the Honorable Aundria Deloris Foster, Judge of the Seventh Judicial Circuit, designated Chief Judge.

Harry M. Hirsch, Deputy Bar Counsel, appeared as counsel for the Virginia State Bar, and the Respondent Thomas Michael Blanks, Jr. appeared in person with his counsel, Michael L. Rigsby.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H., the Bar and Respondent entered into a written proposed Agreed

Disposition and presented same to the Court.

The Court swore the Court Reporter and polled the members of the Court to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chief Judge, verified they had no such interests.

The Court heard argument from counsel and, thereafter, retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Court accepted the Agreed Disposition.

### I. FINDINGS OF FACT

1. At all times relevant hereto Respondent Thomas Michael Blanks, Jr. [Blanks] has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Since 2006, Blanks has operated his own law firm known as T. Michael Blanks & Associates [the firm]. Complainant Mary Beth Long [Long] was one of two associates in the firm.
3. From 2006 until at least September 28, 2007, Blanks' wife, Shelley [Shelley] served as the firm's bookkeeper. Shelley, Blanks and the other associate had signatory authority on the firm's operating and escrow accounts.
4. By her letter dated September 17, 2007 to Blanks, Long resigned from the firm effective immediately. In the letter, Long indicated she was assembling releases for her clients so that Blanks would be authorized to release the clients' files and retainers to her. Long also listed the names of her clients who had retainer funds held by the firm.
5. On September 18, 2007, Long received an e-mail from Blanks. Although the addressee in the e-mail was Long's e-mail address, the body of the message was addressed to Shelley, his wife.
6. The subject of the e-mail was entitled, "escrow". In the e-mail, Blanks stated to Shelley, *inter alia*, the following:

...if I don't have escrow money when she left that I could end up disbarred –no-I absolutely would be disbarred if reported and yet you would not sell the shares to have the money

available for use to be wired....it needs to be available in cash so it could be wired immediately –in fact numerous times I told you I was not going to call MB because I could not bring this to a head without being able to transfer the money immediately. You knew that and put me in jeopardy anyway...

I really cannot believe this. You can be @#\$\$% a time but to place me at serious risk of losing my license and being prosecuted for taking the money is inexcusable to do to me because you are @#\$\$%.

7. On September 27, 2007, Long received from Blanks a check in the amount of \$9,180.21 which sum represented the amount of funds, as determined by the firm, held in escrow for Long's clients who were leaving the firm with Long. Blanks did not have sufficient funds in his escrow account to satisfy the escrow demands of Long's clients, and deposited personal funds in the escrow account in order to write the \$9,180.21 check.
8. On September 28, 2007, Long submitted a bar complaint along with a copy of the above e-mail.
9. According to Long, she had to rely on the firm's records regarding what the correct escrow balance was for each client. None of the clients involved disputed the escrow balances which were transferred to Long. Long had brought several of the clients and their escrow funds with her when she joined the firm. Since she did no work for these clients while at the firm, the sum in escrow for each client was easily determinable.
10. During the bar investigation and pursuant to a subpoena *duces tecum*, Blanks provided records of the firm's escrow account, number ending in -456. Based upon those records, Investigator Cam Moffatt compiled a spreadsheet analysis for the period December 2006 through September 2007. The analysis indicates the following:

- a. On six occasions funds were transferred from the firm's operating account, number ending in -449 to escrow account -456:

1/29/07	\$5,000.00
1/31/07	\$6,000.00
4/30/07	\$5,000.00
8/23/07	\$1,000.00
8/24/07	\$ 500.00
8/28/07	\$4,000.00

- b. Five of the above transfers were made by the internet or phone.

- c. At various times during January, February, March, April, June and July of 2007, the escrow account balance was below \$9,180.21.
  - d. The escrow account balance was also below \$9,180.21 from August 23, 2007, until September 28, 2007.
  - e. The lowest balance in the account during the analysis occurred on September 20, 2007, when the balance was at \$1,495.09.
  - f. On September 27, 2007, a deposit of \$11,000.00 was made into the escrow account from Blank's personal account, number ending in - 443. That deposit funded the disbursement to Long of \$9,180.21.
11. During the bar investigation, Blanks was interviewed by Investigator Moffatt. Blanks informed Moffatt of the following:
- a. Blanks was the only person in the firm who transferred money into the firm's accounts.
  - b. There were times when billings were not completed timely and reports were not yet generated showing the amount of fees earned. Blanks would manually compute the amount of fees earned and then transfer those funds from the escrow account to the operating account.
  - c. There were times when the billings were finally run and a written report of the results generated showing the actual amount of fees earned for the billing period, which amount was smaller than the amount of fees which Blanks had already transferred from the escrow account to the operating account as earned fees. On those occasions, Blanks would transfer funds to the escrow account to restore the account balance.
  - d. In 2007, the escrow account record keeping and billings were not being done monthly. Blanks made transfers from the escrow account to the operating account without knowing what the balance should have been in the escrow account.
  - e. Blanks stated that because there were never large sums of money in the escrow account and not a lot of transactions, he had an attitude that it really wasn't that large of a discrepancy at any given time. Because it wasn't large sums of money, Blanks wasn't giving it the consideration that he should have. But it became an issue when Long resigned and wanted to receive all of her clients' escrowed funds at one time.

- f. After Long gave notice of her resignation, Blanks said he updated and reconciled the escrow account records and saw that the account was short.
  - g. Before the bar complaint, Blanks had never read the escrow account requirements in the Rules of Professional Conduct.
  - h. Shelley no longer has signatory authority or on line access to the firm's accounts and she no longer is the firm's bookkeeper. Blanks hired a CPA firm to handle his bookkeeping and billings.
12. Blanks failed to preserve the escrow funds of clients, failed to maintain proper records of said funds, failed to conduct periodic trial balances and reconciliations and generally failed to conduct his escrow account consistent with required escrow account requirements and procedures.
13. Blanks has no prior disciplinary record.

## II. NATURE OF MISCONDUCT

Such conduct by Thomas Michael Blanks, Jr. constitutes misconduct in 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:
  - (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
  - (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:
  - (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;

- (2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
  - (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.
- (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 be separate

columns or otherwise clearly 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 records required under this Rule;
  - (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
- (2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:
- (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;
  - (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
  - (iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
- (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;
  - (3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;

- (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
  - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
  - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
  
- (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.
  
- (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

**RULE 5.3 Responsibilities Regarding Nonlawyer Assistants**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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;
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Court **ORDERS** that the Respondent shall be publicly reprimanded with terms and the Respondent is herewith so **PUBLICLY REPRIMANDED WITH TERMS**. The terms and conditions which the Respondent must fulfill by the dates and time frames indicated, are as follows:

Term 1. By his signature to this agreed disposition, Respondent agrees to the following:

- a. that the Virginia State Bar may conduct random audits of Respondent's trust account(s) at any time during a period of two years from the entry date

of the disposition order in this case;

b. that the Respondent shall fully cooperate with the Virginia State Bar with respect to said random audits and failure to so cooperate will constitute a violation of this term.

c. In the event that a random audit(s) of Respondent's trust account(s) during the two year period reveals an alleged violation(s) of the Virginia Rules of Professional Conduct, said alleged violation(s) shall be the basis for a new disciplinary complaint.

d. in the event of a new disciplinary complaint arising from an alleged violation(s) revealed in a random audit(s) as stated above, and for the purpose of evidencing the authority of the Virginia State Bar to conduct said random audit(s), in addition to the usual investigative and subcommittee processes of the bar, the Virginia State Bar may reveal the disposition order in this case to any disciplinary body or court considering any such alleged violation(s) during the misconduct and sanction stages of such disciplinary proceedings. The disposition order in this case may also be revealed to any disciplinary body or court in an effort to enforce a subpoena *duces tecum* regarding Respondent's bank account(s) and any related files.

Term 2. By his signature to this agreed disposition, Respondent certifies that for the next two years commencing with the entry of the disposition order in this case, he shall continue to use the bookkeeping and billing services of a certified public accountant for purposes of conducting the bookkeeping and billings of his law firm, and complying with the requirements of Rule 1.15. Any failure to continue using such services of a certified public accountant during the two year time period shall constitute a violation of this term.

Term 3. By March 1, 2010, Respondent shall read the following:

a. Each of the disciplinary rules cited in this agreed disposition as well as the respective Comments to said rules, in their entirety;

b. "Lawyers and Other Peoples' Money", 4<sup>th</sup> Edition; and

c. Virginia Legal Ethics Opinion 1606, as well as other Virginia legal ethics opinions which cite LEO 1606.

Term 4. By March 1, 2010, Respondent shall certify in writing to Bar Counsel that he has read the materials listed in Term 3.

**IT IS FURTHER ORDERED**, upon entry of this Memorandum Order, this case shall be closed. If, however, the terms and conditions are not met as stated, a show cause proceeding will be initiated before the Virginia State Bar Disciplinary Board seeking imposition of the alternate sanction of a three year suspension of Respondent's license to practice law in the Commonwealth of Virginia pursuant to Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18.O. Any show cause proceeding(s) will be considered a new matter and, pursuant to Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E., the Respondent will be assessed costs with respect to the show cause proceeding(s).

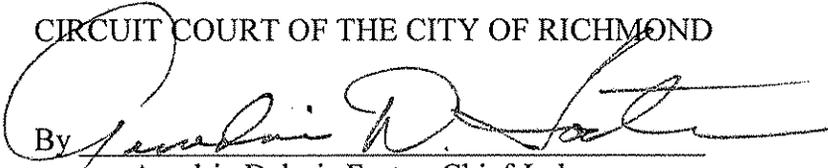
**IT IS FURTHER ORDERED**, that the Clerk of the Disciplinary System shall assess costs in this matter pursuant to Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

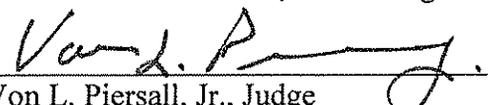
**IT IS FURTHER ORDERED**, that the Clerk of the Circuit Court shall send a certified copy of this order to the counsel of record, and to the Clerk of the Disciplinary System of the Virginia State Bar.

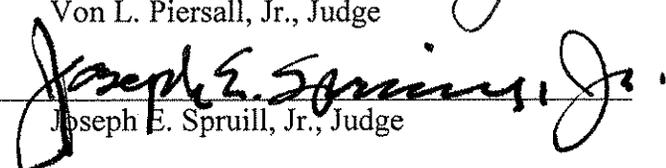
Terry S. Griffith, Court Reporter, of Chandler & Halasz, P.O. Box 9349,  
Richmond, VA 23227, telephone (804) 730-1222, transcribed the proceedings.

ENTERED: February 23, 2010

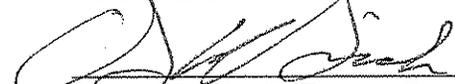
CIRCUIT COURT OF THE CITY OF RICHMOND

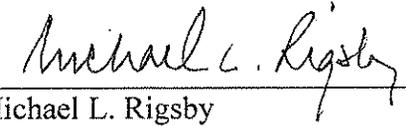
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Aundria Deloris Foster, Chief Judge

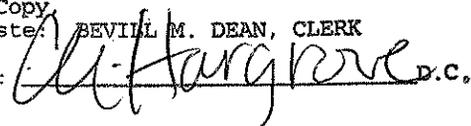
By   
Von L. Piersall, Jr., Judge

By   
Joseph E. Spruill, Jr., Judge

SEEN AND AGREED:

  
Harry M. Hirsch, Deputy Bar Counsel  
Bar No. 14906  
Virginia State Bar  
707 East Main Street, Suite 1500  
Richmond, VA 23219  
(804) 775-0560

  
Michael L. Rigsby  
Bar No.  
Counsel for the Respondent  
Michael L. Rigsby, PC  
7275 Glen Forest Drive, Suite 310  
Richmond, VA 23226  
(804) 285-7994

A Copy  
Teste: BEVILL M. DEAN, CLERK  
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