

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF  
JOHN WESLEY BONNEY

VSB Docket No. 08-021-074831  
VSB Docket No. 09-021-075690  
VSB Docket No. 09-021-079170

SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)

On September 30, 2009, a meeting in this matter was held before a duly convened Second District Subcommittee consisting of James T. Lang, Esquire, Presiding Chair, Robert J. Krask, Esquire, Member, and Nancy L. Bloom, Lay Member, and unanimously authorized the imposition of a Public Reprimand With Terms.

Pursuant to Part 6, Section IV, Paragraph 13-15.B.4 of the Rules of the Supreme Court of Virginia, the Second District Subcommittee of the Virginia State Bar hereby accepts the Agreed Disposition entered into in this matter and serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Respondent, John Wesley Bonney (“Respondent”), was an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket No. 08-021-074831

2. Stuart H. Katz (“Katz”) hired Respondent in June 2006 to defend him against six (6) charges of sexual assault and/or possession of child pornography. Katz paid Respondent a flat fee of \$5,000 for representation on the charges in the Norfolk Juvenile and Domestic Relations District Court. Five (5) of the charges were certified, and Respondent agreed to represent Katz on those five (5) charges through trial in the Norfolk Circuit Court for an additional flat fee of \$60,000. Katz agreed and paid Respondent the entire \$60,000 in full by March 2007.

3. In September 2007, Katz was arrested on an additional 25 related charges and was held in jail. Katz has remained incarcerated since that time.
4. While in jail awaiting trial, Katz requested that Respondent represent him on the additional charges. Respondent agreed to represent Katz on the additional charges on the condition that his fees would be based on his firm's hourly rates ranging from \$200-275 per hour. Katz asserts that he objected to the hourly fee structure, but agreed to it because he "had already given [Respondent] all my savings so I wouldn't be able to get another lawyer." Katz signed a Representation Agreement on September 20, 2007 agreeing to the hourly fee structure as to the additional charges. Katz was tried in January 2008, convicted of three (3) of the charges, and sentenced to a six-year period of incarceration.
5. Between July 2007 and May 2008, Katz paid Respondent approximately \$46,000 in legal fees. The total amount paid by Katz for Respondent's representation was in excess of \$110,000. Respondent has claimed that Katz still owes him in excess of \$85,000 for the representation based on the amount of time Respondent and his staff spent on the representation and the hourly rates charged. Respondent's time records include entries for: i) work performed on all of the charges on which Respondent represented Katz, including those for which Katz had paid Respondent the \$60,000 flat fee; and ii) time spent preparing documents securing the payment of Respondent's fees and other billing matters, including the following:
- A \$250.00 charge on 12/8/07 for preparing a promissory note and deed of trust for the benefit of Respondent's firm;
  - A \$75.00 charge on 12/12/07 "to finalize documents for visit [with client];
  - A \$50.00 charge on 12/27/07 to "run credit card balances";
  - A \$625.00 charge on 1/8/08 for Respondent's paralegal to "work on T.B.";
  - A \$2,700.00 charge on 1/10/08 which included time to "draft confession of judgement" and "reconfigure closing in accordance with trial occurrences";
  - Charges of \$50.00 on 1/16/08 and 1/18/08 for time apparently spent on the refinancing of Katz' property which was pursued for the benefit of Respondent's firm;
  - A charge of \$200.00 on 1/21/08 which included time for "confession of judgment";
  - A charge of \$125.00 on 1/24/08 to "confer with JWB re: Deed of Trust, home in Lynn, MA";
  - A charge of \$50.00 on 1/30/08 to "review confession amount, deed of trust";
  - A charge of \$75.00 on 1/31/08 for matters "re: deed of trust";

- Charges totaling \$531.00 on 2/4/08 related to the recording of a deed of trust;
- A charge of \$50.00 on 3/3/08 to “check credit cards”;
- A charge of \$200.00 on 3/11/08 which included time to “draft promissory note/deed”;
- A charge of \$75.00 on 3/12/08 which included time to “work on DOT”;
- “Interest Rate” charges billed on 1/15/08 in the amount of \$158.45, on 2/25/08 in the amount of \$1,000.89 and on March 15, 2008 in the amount of \$101.96;
- A charge of \$2,450.00 on 3/27/08 to “Finalize DOT promissory note, to HRRJ to visit client with MML”;
- A charge of \$50.00 on 3/31/08 to “review DOT with Attorney JWB”; and
- A charge of \$250.00 on 5/5/08 to “Review payments per client”.

6. In conjunction with securing the payment of his fees, Respondent requested Katz to execute several documents, including an acknowledgment of indebtedness and confession of judgment document in favor of Respondent’s law firm in the principal amount of \$63,284.42, plus interest at the rate of 21% per annum from the date that Katz signed it, January 15, 2008.

7. On February 2, 2009, Respondent filed with the Norfolk Circuit Court a Confession of Judgment/Certificate of Clerk form confessing judgment on behalf of Katz as Katz’ attorney in fact in the principal amount of \$63,284.42, plus interest at the rate of 21% per annum from January 15, 2008. As a result of the foregoing filing, on February 5, 2009, judgment was entered against Katz and entered of record in the amount of \$63,284.42 plus interest at the rate of 21% per annum from January 15, 2008. Respondent was not authorized to sign the Confession of Judgment/Certificate of Clerk form as attorney-in-fact for Katz.

VSB Docket No. 09-021-075690

8. Rose-Marie J. Gurdon (“Gurdon”) hired Respondent’s firm in July 2007 to represent her in an employment matter. The matter was initially assigned to attorney Kelly G. Roberts (“Roberts”), who was an associate at Respondent’s law firm at the time. In April 2008, Gurdon advised Roberts that Gurdon had been able to resolve the employment dispute directly with her employer, and requested that Roberts assist her with a new matter, specifically the securing of a protective order and conviction against Gurdon’s former boyfriend whom Gurdon had charged with stalking in violation of Section 18.2-60.3 of the Code of Virginia, 1950, as amended. Roberts agreed to the new representation and requested per Respondent that Gurdon pay an additional advance fee of \$1,500. No written fee agreement was prepared, but Roberts sent

Gurdon a letter in which she stated that “we anticipate that this retainer will carry you through the litigation.”

9. Roberts made two court appearances on behalf of Gurdon on the protective order matter.

A Preliminary Protective Order was issued and set for hearing in the Virginia Beach General District Court on May 23, 2008, the same date as the trial of the companion stalking charge.

10. Roberts left Respondent’s firm effective May 15, 2008.

11. On the date of the trial, another attorney with Respondent’s firm, Diane J. Manning (formerly Diane M. Jeffries)(“Manning”), appeared in court and advised Gurdon that: i) Roberts had left the firm; ii) Manning would be taking over the representation; iii) the trial needed to be continued to give Manning the opportunity to adequately prepare; and iv) Gurdon would not be billed for Manning’s time in preparing for the matter. The trial was rescheduled for June 4, 2008.

12. Manning left Respondent’s firm effective May 30, 2008.

13. On June 3, 2008, Respondent’s office advised Gurdon that Manning had left the firm, and asked her to come into the office to meet with Respondent to discuss her case. Gurdon met with Respondent that same day, and during the meeting, Respondent advised Gurdon that he would be taking over the representation, and that she needed to immediately pay additional monies for the representation. Gurdon protested, but reluctantly paid another \$500. The next day, Respondent appeared with Gurdon in the Virginia Beach General District Court.

14. Respondent prepared and sent to Gurdon invoices for the representation which included: i) charges for the time of multiple attorneys (Roberts, Manning and Respondent) in preparing for the same hearing necessitated by the departure of Roberts and Manning from the firm (5/23/08 (Manning) and 6/3/08 (Respondent) – Total: \$967.50); and ii) charges for time spent by Respondent on Gurdon’s employment matter some three (3) months after Gurdon had resolved the matter herself and had so advised Roberts (7/10/08 – Total: \$275.00).

15. During the course of the investigation of this complaint, it was discovered that Respondent continued to list Roberts and Manning on his law firm letterhead and website for approximately three (3) months after each had departed from the law firm.

VSB Docket No. 09-021-079170

16. Quintin L. Baker, Sr. (“Baker”) hired Respondent to represent him in an easement dispute relative to a lot owned by Baker in Suffolk, Virginia.

17. In February 2008, a lawsuit was filed in the Suffolk Circuit Court against Baker and another party. Respondent made an appearance as Baker’s counsel of record.

18. The parties entered into a written settlement agreement on August 15, 2008 pursuant to which Baker granted a perpetual easement over the lot in exchange for payment of \$15,000.00 (later adjusted to \$13,743.00), the payment of certain judgments and the dismissal of the lawsuit.

19. Pursuant to Baker’s authority, Respondent promptly deposited the settlement proceeds into his law firm’s trust account and disbursed the funds.

20. After Baker filed this bar complaint, Respondent sent Baker a letter dated June 5, 2009 advising him that the lawsuit had been dismissed with prejudice per the settlement agreement, and that his representation of Baker had ended.

21. As of the time of the sending of the June 5, 2009 letter, the lawsuit had not been dismissed and remained pending, and Respondent had not moved to withdraw as Baker’s counsel. The lawsuit was eventually dismissed by Order entered on August 6, 2009.

II. NATURE OF MISCONDUCT

Such conduct by John Wesley Bonney constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

**RULE 1.3 Diligence (Baker Matter)**

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

**RULE 1.5 Fees (Katz and Gurdon Matters)**

(a) A lawyer’s fee shall be reasonable.

**RULE 1.16 Declining Or Terminating Representation (Baker Matter)**

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

(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 7.5 Firm Names And Letterheads (Gurdon Matter)**

(a) A lawyer or law firm may use or participate in the use of a professional card, professional announcement card, office sign, letterheads, telephone directory listing, law list, legal directory listing, website, or a similar professional notice or device unless it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

**RULE 8.4 Misconduct (Katz Matter)**

It is professional misconduct for a lawyer to:

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

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to accept the Agreed Disposition of a Public Reprimand with Terms. The terms and conditions with which Respondent must comply are as follows:

1. Respondent shall complete eight (8) hours of ethics courses sponsored by Virginia CLE, the hours for which shall not be credited toward Respondent's compliance with his annual mandatory CLE requirement. The Respondent shall, on or before July 1, 2010, certify in writing completion of this requirement to M. Brent Saunders, the Assistant Bar Counsel assigned to this case.
2. Respondent shall issue a refund to Stuart H. Katz in the amount of \$9,117.30 on or before December 1, 2009. Respondent shall also prepare and send to Stuart H. Katz a signed statement waiving the right of Respondent and Respondent's firm to collect any additional fees for any and all legal services provided to Stuart H. Katz to date. Respondent shall also immediately file a motion with the Norfolk Circuit Court asking

that the judgment entered against Stuart H. Katz on February 5, 2009 in the amount of \$63,284.42 plus interest at the rate of 21% per annum from January 15, 2008 be vacated, and take all other action necessary to secure the vacating of that judgment. Respondent shall provide proof of compliance with each of the foregoing terms set out in this paragraph 2 to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, by December 7, 2009.

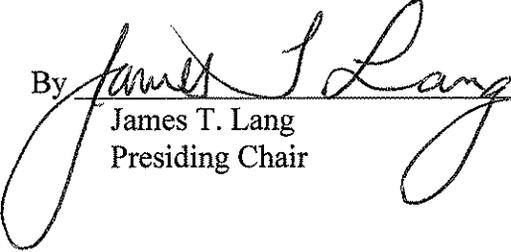
3. Respondent shall issue a refund to Rose-Marie J. Gurdon in the amount of \$500.00 on or before December 1, 2009. Respondent shall also prepare and send to Rose-Marie J. Gurdon a signed statement waiving the right of Respondent and Respondent's firm to collect any additional fees for any and all legal services provided to Rose-Marie J. Gurdon to date. Respondent shall provide proof of compliance with each of the foregoing terms set out in this paragraph 3 to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, by December 7, 2009.

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 by the respective completion dates set out above, the Respondent agrees that the alternative disposition shall be a Certification for Sanction Determination pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-15.G. of the Rules of Court.

Pursuant to Part Six, Section IV, Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

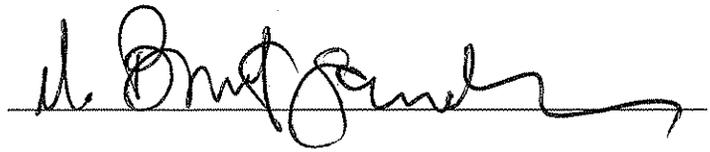
SECOND DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

By

  
James T. Lang  
Presiding Chair

CERTIFICATE OF SERVICE

I certify that on the 16<sup>th</sup> day of OCTOBER, 2009, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to John Wesley Bonney, Esquire, Respondent, at 5442 Tidewater Drive, Norfolk, VA 23509, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to David Ross Rosenfeld, Esquire, Respondent's Counsel, at 118 South Royal Street, 3<sup>rd</sup> Floor, Alexandria, VA 22314-3392.

A handwritten signature in black ink, appearing to read "D. Rosenfeld", is written over a horizontal line. The signature is cursive and includes a long, sweeping tail.