

VIRGINIA:

BEFORE THE SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JAMES PEARCE BRICE, JR.

VS. Docket No. 13-022-095840

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On the 29th day of May, 2013, a show-cause hearing in this matter was held before a duly convened Second District Committee panel consisting of Leslie F. Spasser, Esquire, Charise Lee Black, Esquire, Dennis Lewandowski, Esquire, Ms. Debra McLaughlin, lay member, and Michael A. Beverley, Esquire, Chair presiding.

Respondent, having been noticed, waived his appearance by e-mail to Assistant Bar Counsel Paul D. Georgiadis dated May 21, 2013. Respondent previously endorsed this order as "seen and agreed" indicating his consent to the entry of this order. Paul D. Georgiadis, Assistant Bar Counsel appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, Section IV, Paragraph 13-15.F. and Part 6, Section IV, Paragraph 13-16.Z of the Rules of the Virginia Supreme Court, the Second District Committee of the Virginia State Bar hereby serves upon the Respondent the following Alternate Sanction of Public Reprimand without Terms, to which imposition the Respondent agrees:

I. FINDINGS OF FACT

1. In February, 2012, Respondent and the bar entered into an Agreed Disposition imposing a Private Admonition with Terms as the sanction in a complaint involving an overdraft in Respondent's trust account.
2. Pursuant to said Agreed Disposition, on February 16, 2012, the Second District Subcommittee issued its Determination of Private Admonition with Terms.
3. The terms of the Private Admonition with Terms required

- a. The Respondent to install and use a software-based accounting system or reformat his existing ledgers to comply with the Rules of Professional Responsibility by April 16, 2012 and to provide written proof of said compliance to bar counsel by May 16, 2012.
 - b. The terms further required the Respondent to provide to bar counsel by October 16, 2012 certain documentation from his trust account, including ledgers and reconciliations for the six month period following Respondent's installation or revision of his trust accounting system.
4. As the Respondent has failed to comply with said terms, the District Committee hereby makes further findings as follows:
 5. At all times relevant hereto, James Pearce Brice, Jr. ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
 6. On January 25, 2011, Respondent wrote check no. 1765 in the amount of \$800.00 payable to "Siebert" from his attorney trust account with Wachovia Bank. This check was for a personal expense of a rental payment on a house in Sandbridge, Virginia.
 7. In this transaction, Respondent's trust account check, trust account procedures, and trust account record-keeping violated numerous trust accounting requirements including but not limited to the following:
 8. The \$800.00 check fails to reveal the client or matter source of funds earned.
 9. Respondent's trust account general ledger for that period of time reflects balances well in excess of the \$800.00 payment.
 10. On February 8, 2011, Wachovia Bank issued an NSF Report to the Virginia State Bar reporting that when the aforesaid \$800.00 check was presented for payment on February 4, 2011, there were insufficient funds to pay the \$800.00 check as the account had a balance of only \$692.07, and therefore Respondent was out of trust.
 11. Respondent's January, 2011 general ledger for the trust account fails to include the \$800.00 check.
 12. Respondent's January and February, 2011 general ledgers for the trust account fail to include check numbers for the listed disbursements.

13. Subsidiary client ledgers provided for clients "M" and "W" for the period in question fail to clearly set forth the balance of funds held in trust for each client. In the instance of a disbursement of client funds, the "M" subsidiary ledger fails to reflect the means of disbursement—be it by check or counter withdrawal. Further, Respondent failed to reflect said disbursement on the trust account general ledger.

II. NATURE OF MISCONDUCT

Such conduct by James Pearce Brice, 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:
- (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
- (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 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.
- (f) (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.

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, it is the decision of the district committee, to which the Respondent agrees, to impose a Public Reprimand Without Terms and the Respondent is hereby so reprimanded.

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

SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By



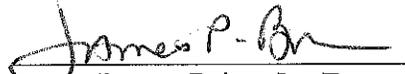
Chair

I Ask For This:



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Seen and Agreed:



James Pearce Brice, Jr., Esq.
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CERTIFICATE OF SERVICE

I certify that on the 5th day of JUNE, 2013, a true copy of the District Committee Determination (Public Reprimand) was sent by certified mail to James Pearce Brice, Jr., Respondent, at Law Office of James P. Brice, Jr., Suite 217, 3500 Virginia Beach Boulevard, Virginia Beach, VA 23452, Respondent's last address of record with the Virginia State Bar.



Paul D. Georgiadis
Assistant Bar Counsel