

VIRGINIA:

BEFORE THE TENTH DISTRICT, SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
Vincent John Carroll

VS B Docket Nos. 14-102-099454
14-102-099310

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On April 17, 2015 a meeting was held in these matters before a duly convened Tenth District, Section II Subcommittee consisting of James Eugene Rasnic, Esq.; Gregory Michael Stewart, Esq.; and Dawneda Fowler Williams. During the meeting, the Subcommittee voted to approve an Agreed Disposition for a Public Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-15.B.4 of the Rules of the Supreme Court of Virginia. The Agreed Disposition was entered into by the Virginia State Bar, by Edward James Dillon, Jr., Assistant Bar Counsel, and Vincent John Carroll, Respondent, and Tony Michael Hutchinson, Esq., counsel for Respondent.

WHEREFORE, the Tenth District, Section II Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

VS B Docket No. 14-102-099310

FINDINGS OF FACT

1. At all relevant times, Respondent Vincent John Carroll (“Respondent”) has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or about August 2014, during the course of the Virginia State Bar’s investigation of a Complaint against Respondent, the Bar issued a subpoena *duces tecum* to New Peoples Bank, Inc. for copies of monthly statements and other documentation related to the operating and trust accounts of Respondent’s law practice (the “Bank Records”) for the time period January 1, 2012 to present.
3. The Bank Records showed, among other things, the following payments unrelated to clients or client matters being made from Respondent’s trust account:

- a. \$48.82 to Chase Card Member Services on February 5, 2013;
 - b. \$349.89 to Chase Card Member Services on February 12, 2013;
 - c. \$260.74 to Chase on March 18, 2013;
 - d. \$1,269.26 to Chase Card Services on April 12, 2013;
 - e. \$260.74 to Chase Card Services on May 23, 2013;
 - f. \$1,127.14 to Chase Card Member Services on July 30, 2013;
 - g. \$366.26 to Chase Card Statement on August 30, 2013;
 - h. \$515.49 to Chase Card Member Services on September 23, 2013;
 - i. \$1,049.19 to Chase on February 19, 2014;
 - j. \$313.22 to Respondent's daughter on February 20, 2014;
 - k. \$250.00 to Respondent's daughter on March 11, 2014;
 - l. \$209.95 to Respondent's daughter on March 28, 2014; and
 - m. \$150.00 to Respondent's daughter on June 6, 2014.
4. Respondent was unable to offer any explanation to the Bar as to why the expenses referenced in paragraph 3 were paid from his trust account.
 5. The Bar's investigation revealed no evidence or allegation that Respondent had misappropriated any client funds despite the repeated payment of expenses unrelated to client matters from his trust account as evidenced by the payments listed in paragraph 3.
 6. The repeated payment of expenses unrelated to client matters from Respondent's trust account demonstrates that Respondent was co-mingling his personal funds with client funds in his trust account.
 7. The Subcommittee is aware that, during the relevant time period, Respondent suffered the loss of his spouse.
 8. Respondent further stated, during the course of the Virginia State Bar investigation of this matter, that he is in the process of winding down his law practice.

NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts or placed in a safe deposit box or other place of safekeeping as soon as practicable.

(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

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FINDINGS OF FACT

1. At all relevant times, Respondent Vincent John Carroll (“Respondent”) has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or about January 2013, Complainant Phyllis Lowe retained Respondent to represent her in regard to an appeal of the denial of social security disability benefits by the Social Security Administration (the “SSA”). At that time, Ms. Lowe signed a release allowing Respondent to obtain medical records that would support Ms. Lowe’s claim (the “Release”).
3. Approximately four times between January 2013 and January 2014, Ms. Lowe took medical records she had received during appointments with her doctor and left them with Respondent or Respondent’s assistant.
4. At various times during 2013, Ms. Lowe spoke with Respondent to check on the status of her case. Respondent told Ms. Lowe, on at least one occasion, that he was waiting to hear from the SSA about a hearing date on her appeal.
5. Ms. Lowe stated that, at one point during 2013, Respondent told her that he had sent her appeal to the Bluefield SSA Office. Ms. Lowe further stated that, in a subsequent conversation, Respondent told her that he sent her appeal to the Bristol SSA Office. Ms. Lowe stated that, when confronted about this inconsistency, Respondent was unable to confirm where he sent Ms. Lowe’s appeal.
6. In the fall of 2013, Ms. Lowe contacted the Bristol SSA Office by telephone to confirm for herself the status of her claim. According to Ms. Lowe, an SSA claims representative searched the SSA nationwide database and informed her that the SSA had no record of an appeal being filed on her behalf anywhere in its system.
7. When Ms. Lowe confronted Respondent with the information she learned from the SSA, Respondent still refused to admit that he had not filed an appeal on her behalf.

8. Throughout the course of his representation of Ms. Lowe, despite his representations to the contrary, Respondent never filed any appeal of the SSA's denial of Ms. Lowe's claim for social security disability benefits.
9. Ms. Lowe subsequently terminated Respondent's representation of her and requested the return of her file.
10. Despite assurances from Respondent's office that her file would be returned to her, the only document Ms. Lowe has received from Respondent's office is a variation of the Release executed by Ms. Lowe.
11. In or about June 2014, Ms. Lowe went to the Bluefield SSA Office and filed a new social security disability claim *pro se*.
12. The Subcommittee is aware that, during the relevant time period, Respondent suffered the loss of his spouse.
13. Respondent further stated, during the course of the Virginia State Bar investigation of this matter, that he is in the process of winding down his law practice.

NATURE OF MISCONDUCT

Such conduct by Respondent 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 1.16 Declining Or Terminating Representation

(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).

(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, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel 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. Also upon termination, the client, upon request, must also be provided within a reasonable time 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); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected 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. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

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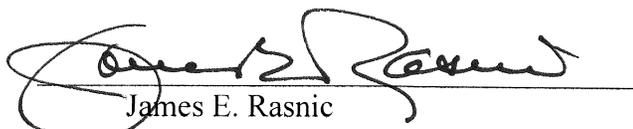
Accordingly, having approved the Agreed Disposition, it is the decision of the Subcommittee to impose a Public Reprimand with Terms. The terms are:

1. For a period of one year following service of the Public Reprimand with Terms in these matters, Respondent authorizes the Virginia State Bar to conduct unannounced personal inspections of his trust account books, records, and bank records to ensure his compliance with all of the provisions of the Rules of Professional Conduct. Respondent shall fully cooperate with the Virginia State Bar and its investigators during any such inspection.

If the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia, the District Committee shall hold a hearing and Respondent shall be required to show cause why a Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13-15.G of the Rules of the Supreme Court of Virginia should not be imposed. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed.

Pursuant to Part 6, § IV, ¶ 13-9.E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

TENTH DISTRICT, SECTION II
SUBCOMMITTEE OF THE
VIRGINIA STATE BAR


James E. Rasnic
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on May 5, 2015, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to Vincent John Carroll, Respondent, at 2518 Second Street, Richlands, VA 24641, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Tony Michael Hutchinson, counsel for Respondent, at Wolfe Williams & Rutherford, 2025 Meadowview Parkway, Suite 202, Kingsport, TN 37660.


Edward J. Dillon