

VIRGINIA:

BEFORE THE FIFTH DISTRICT SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF KELLY RALSTON DENNIS, ESQUIRE
VSB Docket No. 08-051-072652

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS

On the 14th day of October, 2009, a meeting in this matter was held before a duly convened subcommittee of the Fifth District Committee Section I consisting of John Coffey, Esquire, Harry L. Thomas, Lay Member, and Beth A. Bittel, Esquire, presiding.

Pursuant to Part 6, § IV, ¶ 13-15.B.4.c of the *Rules of Virginia Supreme Court*, a subcommittee of the Fifth District Committee Section I of the Virginia State Bar hereby serves upon the Respondent the following Agreed Disposition, a Public Reprimand with Terms.

I. FINDINGS OF FACT

1. At all times relevant hereto, Kelly Ralston Dennis (hereinafter the "Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In October, 2005, the Respondent undertook to represent Client A in several matters involving creditors' collection efforts against Client A.¹ This included an effort by one such creditor to attach certain monies owed to Client A by her customer, Mr. H, for construction work done by Client A on real property (hereinafter the "Stacey Road property") owned by Mr. H. Mr. H was in the process of trying to sell the Stacey Road property and intended to pay

¹ The identities of the clients are being protected given the public nature of this document.

Client A from the sale proceeds. The creditor was seeking a pre-judgment attachment of these proceeds in order to prevent Mr. H from turning the sums owed over to Client A.

3. In or around November, 2005, Client A contacted the Respondent and informed him that she had received a copy of the pre-judgment attachment pleadings referenced above wherein Mr. H was named as a party defendant.

4. Client A prevailed upon the Respondent to assist Mr. H, who was out of the country at the time. The Respondent concluded that it was necessary to file a defensive pleading on Mr. H's behalf in order to avoid Mr. H being found in default at the hearing the following week. The Respondent thus filed a defensive pleading on behalf of Mr. H on December 29, 2005. At the time the Respondent filed this pleading, Mr. H had not yet been served with process, and by filing this pleading, the Respondent entered Mr. H's general appearance as a party to the proceedings.

5. At no time prior to filing this pleading on Mr. H's behalf had the Respondent either met with, or spoken to, Mr. H. Further, at no time prior to filing this pleading did the Respondent disclose to either Client A or Mr. H the conflict of interest that existed with his concurrent representation of Client A and Mr. H, nor did he have either Client A or Mr. H execute a sufficient waiver of that conflict of interest.

6. Thereafter, on January 5, 2006, the Respondent met with Client A and Mr. H at Client A's office. Respondent informed Mr. H that he had filed a pleading on his behalf, thereby entering his appearance as his counsel. Mr. H testified that he was "startled" to hear this.² Mr. H expressed that his principal concerns, however, were being able to sell the Stacey Road property,

² The facts giving rise to the instant case were the subject of litigation in the Fairfax County Circuit Court incident to which the parties testified at a two (2) day hearing. Where a direct quote is ascribed to a party, that information is derived from the transcript of hearings which took place on August 3, 2006 and September 21, 2006.

and not becoming embroiled in the litigation in any way. Respondent advised him that he (the Respondent) would take the steps necessary to ensure that Mr. H was not involved in the litigation, and he advised Mr. H at that time that he should not pay any monies he (Mr. H) might owe to Client A upon the sale of the Stacey Road property until such time as the court determined the validity of the attachment.

7. At no time either at, or subsequent to, this meeting did the Respondent provide Mr. H with a copy of the pleading he had filed on his behalf.

8. On January 6, 2006, the Respondent appeared at the hearing on behalf of Mr. H. Mr. Conway, counsel for Client A's creditor, appeared and discussed the case with the Respondent. Mr. Conway and the Respondent agreed that the Respondent would prepare a document for Mr. H's signature directing him (Mr. H) to pay any proceeds from the sale of the Stacey Road property owed to Client A over to Mr. Conway or the court. Mr. Conway and the Respondent then approached the bench and advised the court that there was no objection to the attachment, and that an Order memorializing the agreement of counsel would be prepared and subsequently submitted. Accordingly, the court entered an Order noting that no party appeared to contest the attachment, and continued the matter until January 20, 2006 for entry of the Order memorializing the Respondent's and Mr. Conway's agreement concerning Mr. H, and to address other pending matters in the litigation. The Respondent never advised Mr. H of the outcome of this hearing, or of the agreement he reached with Mr. Conway on his behalf.

9. The Respondent testified that, after this hearing, he attempted to prepare a document for Mr. H's signature detailing the amounts owed by Mr. H to Client A. The Respondent testified further, however, that before he could do so, he needed Client A to provide him with an accounting of what was owed her by Mr. H, but she was never forthcoming with this

information, thus preventing the Respondent from finalizing this document. The Respondent informed Mr. Conway of the difficulties he was experiencing in obtaining the necessary information, but did not so advise Mr. H.

10. On January 13, 2006, the Respondent wrote to Client A and informed her that he was withdrawing from any further representation of her. The Respondent also advised Client A that he would nevertheless, "[C]ontinue to make sure that Mr. [H] is removed from the action in Fairfax, without charge to you or him, also as we discussed." The Respondent did not send a copy of this letter to Mr. H.

11. Following the hearing on January 6, 2006, the Respondent never contacted Mr. H to obtain his signature on the document referenced above. Further, the Respondent failed to appear at the hearing on January 20, 2006.

12. Following the January 20, 2006 hearing, and unable to get any response from the Respondent, Mr. Conway noticed a Motion for Default Judgment against Mr. H and set the matter for hearing on February 10, 2006. A copy of that Motion was served upon the Respondent as Mr. H's counsel. At no time did the Respondent provide Mr. H with a copy of this Motion, inform him that it had been filed, or advise him that it was set for hearing on February 10, 2006.

13. The Respondent failed to appear at the hearing on the Motion for Default Judgment on February 10, 2006, and an Order of Default was entered against Mr. H. Both Mr. Conway and the Respondent subsequently testified, however, that this Order essentially embodied the terms of their original agreement in that it directed Mr. H to pay any proceeds from the sale of the Stacey Road property that Mr. H owed to Client A over to Mr. Conway, and thus Mr. Conway "wasn't that upset" about the Respondent's non-appearance.

14. Mr. H testified that he was unaware of any of the above proceedings, and also that, after meeting with the Respondent on January 5, 2006, he received no communications of any form from the Respondent whatsoever. Mr. H testified that he made no effort to contact the Respondent himself beyond looking his telephone number up in the phone book. Mr. H further testified that he never contacted Mr. Conway's office, nor checked the court file itself to determine the status of the case.

15. Mr. H testified further that, on or around February 13, 2006, he received a telephone call from Client A who informed him that the court had "thrown the whole thing out," including the attachment proceeding, and that he (Mr. H) was therefore free to pay Client A amounts owed her by Mr. H from the proceeds from the sale of the Stacey Road property. Based upon this representation, Mr. H paid to Client A the sum of \$68,799.00 upon the sale of the Stacey Road property, which took place on February 28, 2006. At the time that he made this payment, Mr. H did not know that an Order had been entered directing that the proceeds be paid to Mr. Conway.

16. Mr. Conway learned of the payment to Client A by Mr. H in or around March, 2006, and filed a Motion for Proof of Debt, in response to which successor counsel to Mr. H, Complainant herein, filed a Plea in Bar. The Plea in Bar sought to dismiss the case entirely against Mr. H on the grounds that the Respondent had acted without his authority, and failed to inform him of critical issues in the proceedings.

17. Following a two (2) day hearing at which the Respondent, Client A, Mr. Conway, Mr. Conway's client, and Mr. H testified, the court found that, "Mr. [H] had no understanding at all of what was going on here or the significance of what [the Respondent] had done. He did not have really even a basic knowledge of the relevant facts. And in addition to that, I don't

understand how there was any benefit to Mr. [H] by [the Respondent's] representation. . . That simply, I don't think, can rise to the level of ratification."

18. On that basis, the court nullified the February 10, 2006 Order of Default against Mr. H, and sanctioned the Respondent in the amount of \$37,000.00, which represented the attorneys' fee incurred by both Mr. H and Mr. Conway's client in the proceeding.

19. The Respondent paid that sanction in full.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct have been violated:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 1.7 Conflict of Interest: General Rule

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;
or
 - (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyers' responsibilities to another client, a former client or a third person by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client consents after consultation, and:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal;
 - (4) the consent from the client is memorialized in writing.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which shall be a predicate for the disposition of this complaint by imposition of a Public Reprimand. The terms and conditions which shall be met by Kelly Ralston Dennis are:

1. The Respondent shall, within thirty (30) days of the issuance of this Determination, certify in writing to Assistant Bar Counsel Kathleen M. Uston that he has scheduled an appointment with a licensed mental healthcare provider, either a licensed Clinical Psychologist or a Board Certified Psychiatrist (hereinafter "the Provider"), for the purpose of obtaining a full assessment of the Respondent's ability to practice law and represent clients in the private practice of law without impairment.

2. The Respondent shall, within thirty (30) days of the issuance of this Determination, provide to Assistant Bar Counsel Kathleen M. Uston the name, address and other contact information for the Provider with whom he has scheduled the assessment referenced in

Paragraph 1, above. The Respondent shall also provide the mental healthcare Provider, and all health care providers to whom Respondent may be referred, with a copy of this Agreed Disposition and a Release which authorizes and directs any and all Providers assessing the Respondent to furnish to the Virginia State Bar c/o Kathleen M. Uston, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, a written report of the evaluation which states whether, in the professional opinion of the Provider writing the report, the Respondent's physical or mental condition materially impairs the Respondent's ability to represent clients in the full time private practice of law. Such report(s) shall detail the basis for such opinions rendered.

3. In the event that the Provider recommends that Respondent undertake a course of treatment and/or therapy, Respondent shall cooperate fully, and comply with all treatment recommendations made by the Provider. Such compliance shall include, but not be limited to, attending all therapy, counseling, and evaluation sessions with the Provider and/or other providers to whom Respondent may be referred, and submitting to such further testing, evaluation, and clinical assessments as may be required by the Provider and any providers to whom Respondent has been referred.

4. In the event any written report issued by the Provider does not state that Respondent is in compliance with the terms hereof, such Provider shall present written facts (e.g., missed appointments, failure to provide information required for continued treatment/assessments, and failure to pay a provider's bills) to the Virginia State Bar sufficient to permit Bar Counsel's assessment of whether Respondent is in compliance with the terms hereof.

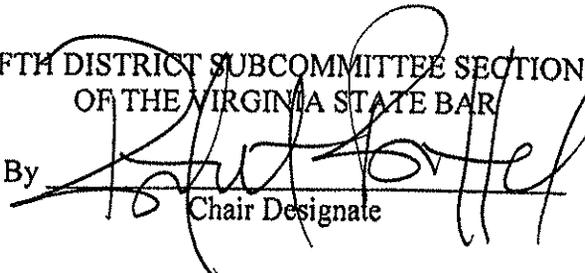
5. The Respondent shall bear the cost and expense of compliance with the terms set forth herein, including, but not limited to, the cost of the assessments, therapy, counseling and all

health care contemplated by the terms hereof, and the costs imposed, if any, by the Provider and all other Providers in preparing and furnishing any and all reports submitted to the Virginia State Bar pursuant to the terms hereof.

6. The Respondent shall refrain from committing any violations of the Rules of Professional Conduct cited above for a period of three (3) years. If, during that three (3) year probationary period, a finding is made by any disciplinary tribunal that the Respondent has violated any of the Rules of Professional Conduct cited above, then the Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of three (3) years, which shall begin at the conclusion of a show cause hearing wherein the Respondent has failed to prove by clear and convincing evidence that he did not violate any of the terms set forth above.

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand with Terms shall then be imposed. If, however, the terms and conditions have not been met by the Respondent, then the alternative sanction of a three (3) year suspension shall be imposed.

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

FIFTH DISTRICT SUBCOMMITTEE SECTION I
OF THE VIRGINIA STATE BAR
By 
Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this 5th day of November, 2009, mailed a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Kelly Ralston Dennis, Esquire, Suite 310, 6723 Whittier Avenue, McLean, Virginia 22101, his last address of record with the Virginia State Bar.



Kathleen M. Uston
Assistant Bar Counsel