

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
ROBERT P. DWOSKIN

VS B Docket No. 08-070-072379

**SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)**

On December 4, 2009, a meeting in this matter was held before a duly convened Seventh District Subcommittee consisting of David A. Penrod, Esq., attorney member, Richard E. Lyons, lay member, and Lois G. Pearson, Esq., presided as Chair.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Seventh District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following PUBLIC Reprimand, With Terms:

**I. FINDINGS OF FACT**

1. At all relevant times, Respondent Robert P. Dwoskin, has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On August 9, 2005, the Complainant hired Respondent to file an EEOC lawsuit against the U.S. Postal Service and paid him an advance legal fee of \$1,250.
3. On August 9, 2005, Complainant Roger D. Walker, delivered a copy of his EEOC right to sue letter to Respondent. The letter gave the Complainant ninety (90) days in which to file his lawsuit against the U.S. Postal Service. The ninety-day right to sue window closed on August 15, 2005.
4. On August 9, 2005, the Respondent made representations to the Complainant that he was competent to handle his legal issue as he had filed numerous EEOC lawsuits before.

5. The Respondent filed the EEOC lawsuit ten (10) months after the ninety-day right to sue window had closed. On or about June 6, 2006, Respondent filed Complainant's EEOC lawsuit against the U.S. Postal Service.

6. Respondent did not serve the lawsuit on the U.S. Postal Service until November of 2006, five months later.

7. On November 8, 2006, the U.S. District Court for the Western District of Virginia dismissed the case because Respondent failed to serve Defendant within the 120-day time period as mandated by Fed. R. Civ. Proc. 4.m. Respondent could have served the Defendant, the U.S. Postal Service, by USPS certified mail.

8. Respondent did not timely inform Complainant that the court had dismissed his case because it was not served within 120 days of filing it.

9. On December 29, 2006, Respondent re-filed the lawsuit and appealed the dismissal of the case filed on June 6, 2006.

10. On May 7, 2007, the U.S. District Court for the Western District of Virginia dismissed the second case filed on December 29, 2006, because Respondent, again, failed to serve Defendant within the 120-day time period as mandated by Fed. R. Civ. Proc. 4.m.

11. Respondent states that he was unaware of Fed. R. Civ. Proc. 4.m that required service of Defendant within 120 days of filing the lawsuit.

12. Respondent refunded \$1,000 and apologized to Complainant.

13. Respondent did not timely respond to the Virginia State Bar October 16, 2007 letter lawfully demanding a response to the bar complaint within 21 days of the date of the letter.

## II. NATURE OF MISCONDUCT

Such conduct by Robert P. Dwoskin constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

### **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 8.1 Bar Admission And Disciplinary Matters**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

## 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 will be a predicate for the disposition of a PUBLIC Reprimand, With Terms of this complaint. The terms and conditions are:

1. The Respondent shall engage the following law office management consultant:

**Sensei Enterprises, Inc.**  
**Computer Forensics/Legal IT**  
3975 University Drive  
Suite 225  
Fairfax, VA 22030  
703.359.0700 (phone)  
703.359.8434 (fax)

on or before the fifteenth (15<sup>th</sup>) day following the date of issuance of the Subcommittee Determination. The consultant's engagement shall be for the purposes of reviewing and auditing the Respondent's law practice policies, methods, information technology systems including, but not limited to, hardware and software, and escrow account maintenance and record-keeping to ensure compliance with all provisions of Rules 1.3 and 1.15 of the Virginia Rules of Professional Conduct (hereafter "the said Rules").

2. Not later than sixty (60) days after the contract ratification date of the consultant engagement contract, the consultant shall issue a report of its findings. In the event the consultant determines that Respondent is in compliance with the said Rules, the consultant shall so certify in writing to the Respondent and the Virginia State Bar. In the event the consultant determines that Respondent is not in compliance with the said Rules, then, and in that event, the consultant shall notify the Respondent and the Virginia State Bar, in writing, of the measures that Respondent must take to bring himself into compliance with the said Rules.

3. In the event the Respondent is determined by the consultant to be not in compliance with the said Rules, he shall have ninety (90) days following the date the consultant issues a written statement of the measures Respondent must take to comply with the said Rules within which to bring himself into compliance. The consultant shall be granted access to Respondent's office, books, records, information technology systems including but not limited hardware and software, and files following the passage of the ninety (90) day period to determine whether Respondent has brought himself into compliance, as required. The consultant shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has brought himself into compliance with the said Rules within the ninety day (90) period, or that he has failed to do so. Respondent's failure to bring himself into compliance with

the said Rules as of the conclusion of the aforesaid ninety (90) day period shall be considered a violation of the Terms set forth herein.

4. The consultant shall again examine the Respondent's law practice policies, methods, information technology systems including, but not limited to, hardware and software, and escrow account maintenance and record-keeping at a time not earlier than six (6) months following the date of the consultant's initial certification of compliance pursuant to the terms hereof, and not later than nine (9) months following such date. The consultant shall thereafter either recertify Respondent's compliance with said Rules or issue a report to the Virginia State Bar and the Respondent stating that the Respondent is not in compliance, and the basis for such a determination. The Respondent shall be deemed to have violated the Terms hereof in the event the consultant, upon such re-examination of Respondent's said law practice policies, methods, information technology systems including but not limited hardware and software, and escrow account maintenance and record-keeping, reports any material noncompliance with the requirements of any provision of Rules 1.3 and/or 1.15 of the Virginia Rules of Professional Conduct.

5. The Respondent shall be obligated to pay when due the consultant's fees and costs for their services (including provision to the Bar and to Respondent of information concerning these matters). The Respondent shall be deemed to have violated the Terms hereof in the event the consultant proves that he has failed to pay the consultant's fees and costs for their services.

6. Upon Respondent's compliance with the Terms set forth herein, a PUBLIC REPRIMAND WITH TERMS, shall be imposed.

7. Respondent shall submit a Durable Special Power of Attorney A/K/A a Contingency Plan appointing a lawyer attorney-in-fact for the limited purpose of dealing with his

law practice, in the event of his disappearance, disability, incapacity, incompetence, or inability to act on his own behalf, to Assistant Bar Counsel Alfred L. Carr within sixty (60) days following the date of issuance of the Subcommittee Determination.

#### IV. ALTERNATIVE DISPOSITION

If, however, Respondent violates any of the Terms set forth herein, then, and in such event, pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-15.G. ("Alternative Disposition for Public Reprimand with Terms"), the Committee shall, as an alternative disposition to a Public Reprimand, With Terms, certify this matter to the Virginia State Bar Disciplinary Board for proceedings to be conducted.

If the Respondent does not meet this burden of proof to show compliance with the Terms set forth herein by clear and convincing evidence, by agreement of the undersigned parties, the Virginia State Bar Disciplinary Board shall impose a **sixty (60) day suspension** of the Respondent's license to practice law in the Commonwealth of Virginia.

#### V. COSTS

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

SEVENTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

By *Lois Graninger Pearson*  
Lois Graninger Pearson, Esq.  
Chair

CERTIFICATE OF SERVICE

I certify that on ~~December~~ <sup>January</sup> 7, 2009, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (PUBLIC Reprimand, With Terms) to Robert P. Dvoskin, Esquire, Respondent, at 205 East High Street, Charlottesville, VA 22902, Respondent's last address of record with the Virginia State Bar.



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