

VIRGINIA:

**BEFORE THE THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
DENIS C. ENGLISBY**

VSB Docket No. 07-031-2018

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)**

On June 3, 2008 a hearing in this matter was held before a duly convened Third District Section I Subcommittee consisting of Graham C. Daniels, Chair, Larry Pochucha, Esquire and William Manns, lay member, to consider an Agreed Disposition tendered by the Respondent, Denis C. Englisby and Paulo E. Franco, Jr., Assistant Bar Counsel.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Third District Section I Subcommittee of the Virginia State Bar accepts the Agreed Disposition and hereby serves upon the Respondent the following PUBLIC Reprimand:

I. STIPULATIONS OF FACT

1. At all times relevant, Denis C. Englisby ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law in the Commonwealth of Virginia on September 21, 1972.
3. In August of 1997, Philip M. Aquilina was arrested in Chesterfield County, Virginia for underage possession of alcohol and driving under the influence.
4. Mr. Aquilina retained the law firm of Englisby and Englisby to represent him.
5. Respondent appeared on Mr. Aquilina's behalf at a court hearing in connection with those misdemeanor charges.
6. The misdemeanor charges against Mr. Aquilina were ultimately dismissed.

7. In 2006, Mr. Aquilina was involved in a custody dispute with Christina McGarry, the mother of his son.

8. Mr. Aquilina sought custody of his son and Ms. McGarry's daughter by another relationship.

9. Sharon Ten, Esquire represented Mr. Aquilina, and Respondent represented Ms. McGarry. The court appointed Sherry Gill, Esquire, guardian *ad litem* for the children.

10. On September 29, 2006, Ms. Ten wrote Respondent advising him of a conflict of interest due to his firm's prior representation of Mr. Aquilina.

11. On October 12, 2006, Ms. Ten replied to Respondent's request for clarification as to who represented Mr. Aquilina and on what charges.

12. Respondent was unable to locate Mr. Aquilina on their computer when he performed conflicts check, but a search of their older client cards revealed that his firm had previously represented Mr. Aquilina on the misdemeanor charges described in paragraph 3.

13. On October 19, 2006, Respondent wrote to Ms. McGarry disclosing the existence of a conflict that required his withdrawal from representation.

14. Respondent attached to that correspondence a copy of the client card kept by the firm.

15. The client card that Respondent provided Ms. McGarry disclosed that Respondent's firm represented Mr. Aquilina on DUI and possession of alcohol charges.

16. Prior to that disclosure, Mr. Aquilina had not disclosed that fact to Ms. McGarry.

17. At no time did Respondent ever confer, consult or obtain Mr. Aquilina's consent to disclose the information contained on the client card.

18. At no time relevant did Mr. Aquilina wish to have the information about his misdemeanor charges disclosed.

19. At no time prior to Respondent's disclosure of Mr. Aquilina's client card did Ms. McGarry raise any issues with respect to Mr. Aquilina and alcohol.

20. After Respondent's disclosure of Mr. Aquilina's client card, Ms. McGarry alleged that Mr. Aquilina had an alcohol problem at a custody hearing, but the case resulted in a resolution favorable to Mr. Aquilina.

21. On February 20, 2008, Virginia State Bar investigator Robert Heinzman interviewed Respondent in connection with the investigation of this matter.

22. During that interview, Respondent admitted that Mr. Aquilina did not authorize the disclosure of the card or the fact that his office had represented him in a DUI matter, but stated that the information of Mr. Aquilina's charges, all of which were dismissed, was, at the time, and still are today, matters of public record.

II. NATURE OF MISCONDUCT

Such conduct by Denis C. Englisby constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

* * * *

RULE 1.9 Conflict of Interest: Former Client

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

- (1) use information relating to or gained in the course of the representation to the disadvantage of the former client as except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or where the information has become generally known; or
- (2) reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to the client.

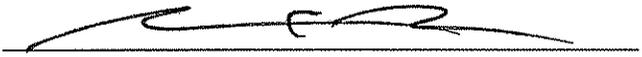
* * * *

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the subcommittee to impose a PUBLIC Reprimand and the Respondent is hereby so reprimanded.

Pursuant to Paragraph 13.B.8.c., the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By 
Graham Crawford Daniels
Chair

CERTIFICATE OF SERVICE

I certify that on this 12th day of June, 2008, I caused to be mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination PUBLIC Reprimand Without Terms to Denis C. Englisby, Esquire, Respondent, at, P.O. Box 85, Chesterfield, VA 23832-0085, his/her last address of record with the Virginia State Bar.


Paulo E. Franco, Jr.
Assistant Bar Counsel