

VIRGINIA:

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

IN THE MATTER OF  
Stephen Meredith Farmer      VSB Docket No. 11-053-084446

SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITHOUT TERMS)

On the 29<sup>th</sup> day of January, 2013, a meeting in this matter was held before a duly convened subcommittee of the Fifth District Committee, Section III, consisting of Susan Stoney, Esquire, Daniel H. Aminoff, Lay Member, and Christie A. Leary, Esquire, presiding.

Pursuant to Part 6, § IV, ¶ 13-15.B.4.c of the *Rules of Virginia Supreme Court*, that subcommittee of the Fifth District Committee, Section III, of the Virginia State Bar hereby serves upon the Respondent the following Agreed Disposition, a Public Reprimand without Terms.

I. FACTS

1. At all times relevant hereto, Stephen Meredith Farmer (hereinafter "Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or around March 22, 2004, Respondent was retained to represent Cathy J. Smith (hereinafter the "Complainant") in a contested matrimonial matter.<sup>1</sup> Following a series of four-way meetings between the parties and their counsel, an agreement as to the matters at issue in the case was reached and a Property Settlement Agreement (hereinafter "PSA") was executed on or around December 20, 2004. An agreed final decree was filed with the Stafford Circuit Court in January 2005.

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<sup>1</sup> Respondent asserts that the representation began in March, 2004. Complainant's husband did not file suit for divorce, however, until July, 2004.

3. At a disputed point in time, but after the conclusion of negotiations over Complainant's Property Settlement Agreement, Complainant and Respondent entered into a personal and financial relationship which lasted for several years after the conclusion of the matrimonial representation.
4. During the course of their personal and financial relationship, Respondent represented Complainant regarding numerous other matters including a DUI charge, filing a slander and defamation suit on Complainant's behalf, filing a personal injury lawsuit on Complainant's behalf, and providing Complainant with a one page form "Articles of Incorporation" so she could set up a corporation named Big Diamond Enterprises (hereinafter "BDE") in December 2006. The majority of these services were provided on a *pro bono* basis.
5. The business of BDE was to advance funds to individuals with personal injury claims, which advances were to be repaid out of the proceeds derived from resolution of the claim, provided however, that if there was no recovery, then the individual owed nothing to BDE.
6. Respondent was the initial Registered Agent for BDE, serving in that capacity for about one (1) year, and loaned Complainant and BDE \$17,500.00, some of which funds were then advanced by Complainant through BDE to three (3) of Respondent's law firm's clients. Respondent concedes that at the commencement of BDE's existence, the arrangement he had with Complainant was that he would give her the capital to make advances to BDE clients until such time as she was able to build a capital reserve.

7. The "Transfer and Assignment of Proceeds and Security Agreement" (hereinafter the Agreement") tendered by BDE to its clients, which they were required to sign in order to obtain the advances, provided that the advances were actually a security interest in the outcome of the claim which BDE was "purchasing" and which BDE clients were "assigning" to BDE.
8. These Agreements required that BDE clients acknowledge that, due to the "inherent risk associated" with each advance, BDE was entitled to, "... will and should make a substantial profit on the Agreement" but that if there was no recovery, the client would owe BDE nothing. The Agreement further required that the attorney representing the client, in these three instances Respondent, pay over to BDE the "substantial profits" generated for BDE upon the favorable resolution of the client's personal injury case, after first paying attorneys' fees and costs with the understanding that in the absence of a recovery, the client would owe BDE nothing. In at least two instances in which clients of Respondent's firm received advances from BDE, Respondent substantially reduced his fees, in one case from \$5,000 to \$2,100, and in another, from \$10,000 to \$7,500.
9. One of the clients of Respondent's firm who was being represented by an associate attorney in Respondent's firm and who received advances from BDE was not advised of Respondent's business and personal relationship with the Complainant. The other two clients of Respondent's firm who received advances from BDW were, in fact, advised of Respondent's business and personal relationship with Complainant. Each of these clients signed an Agreement with BDE granting BDE a security interest in the litigation.

10. At no time were the clients of Respondent's firm to whom BDE advanced money advised: that Respondent was the initial Registered Agent for BDE and had provided the form to the Complainant to fill out to incorporate BDE; that Respondent had personally loaned money to Complainant and BDE to capitalize BDE; that some of those funds were used to fund some of the advances of these individuals received from BDE; or that Respondent expected to be repaid for the funds he had loaned to the Complainant. In addition, at no time were clients of Respondent's firm who had received funds from BDE offered the opportunity to consult with independent legal counsel concerning the terms incident to the advances they had received from BDE, and none of them consented to this arrangement in writing.<sup>2</sup>
11. After the relationship between Complainant and Respondent terminated, Respondent filed suit against both her and BDE in the Circuit Court for Stafford County alleging that, "The agreement between Farmer and Smith was that when Big Diamond contracted with personal injury clients to advance them money on their cases, Farmer would be paid back what he had loaned to Big Diamond first when the cases were concluded and Big Diamond would keep whatever profits were thereafter obtained." a fact not disclosed in writing to those clients of Respondent's firm who had received advances from BDE.
12. In this suit, Respondent alleged further that, "[T]he McGrady case (one of Respondent's clients) has settled and part of the settlement proceeds are (*sic*) being held in Plaintiff Stephen M. Farmer, PC's attorney escrow account and the Defendant Smith has now denied the loans to Big Diamond by the Plaintiff Farmer and refuses to repay them from

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<sup>2</sup> Paragraph 6 of the Agreement recited that clients of BDW who were also clients of Respondent's firm "ha[ve] sought and obtained the advice of legal counsel," but the language of the Agreement indicates

the escrowed funds.” Respondent further alleged that the total amount loaned by him to his client, McGrady, through BDE was \$9,050.00.

13. By letter dated September 23, 2010, prior to filing the above referenced lawsuit, and prior to the State Bar’s notice to Respondent of this complaint, Respondent wrote to Complainant and took issue with Complainant’s contention that Respondent owed her any funds from the McGrady settlement and advised that he was holding said disputed funds in trust pending resolution of Complainant’s claim, an action which might force his client, Ms. McGrady, to litigation with BDE if Complainant could not produce valid contracts establishing DBE’s claim on the funds. The lawsuit discussed above then followed. It is not clear who, if anyone, has received the funds being held by Respondent.

14. In the above referenced lawsuit, Respondent also sought recovery of sums he loaned to her during the course of his representation of her in various legal matters. Specifically, Respondent alleged that Complainant owed him \$7,281.21 for costs, settlement costs and “filing fees, service fees, private investigator fees, pay off medical bills [Complainant] was being sued for etc.” During the course of the investigation of this case, Respondent stated that he had no written fee agreement with Complainant regarding these legal matters.

#### NATURE OF MISCONDUCT

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

**RULE 1.8 Conflict of Interest: Prohibited Transactions**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(c) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, provided the client remains ultimately liable for such costs and expenses[.]

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case, unless prohibited by Rule 1.5.

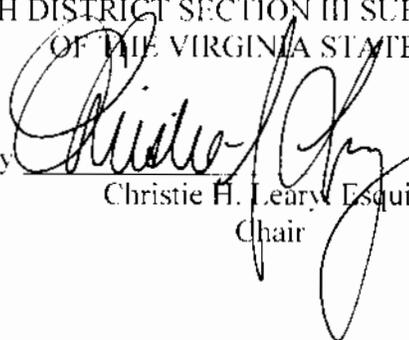
**III. PUBLIC REPRIMAND WITHOUT TERMS**

Accordingly, it is the decision of the Subcommittee to impose upon the Respondent a Public Reprimand without Terms as an appropriate sanction if this matter were to be heard through an evidentiary hearing.

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 SECTION III SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

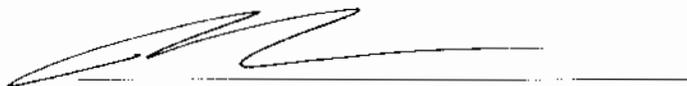
By



Christie H. Leary, Esquire  
Chair

CERTIFICATE OF SERVICE

I certify that I have on this 11<sup>th</sup> day of February, 2013, mailed a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) by CERTIFIED MAIL to Respondent, Stephen Meredith Farmer, Esquire, Stephen M. Famer, P.C., 206 Commerce Street, P.O. Box 243, Occoquan, VA 22125, his last address of record with the Virginia State Bar, and to David Ross Rosenfeld, Esquire, Respondent's Counsel, David Ross Rosenfeld, P.C., 1602 Belle View Boulevard, #655, Alexandria, Virginia 22307.



Kathleen M. Uston  
Assistant Bar Counsel