

considered all the evidence before it, a majority of the Panel accepted the Agreed Disposition.

I. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

BACKGROUND

1. In 1987, the firm of Garrett & Garrett, P.C., was incorporated. Allan Garrett and Joseph Marshall Garrett (“Respondent”), father and son, were the attorneys in the practice. Anne Garrett, wife of Allan Garrett and Respondent’s mother, served as the firm’s bookkeeper, as she had previously done for her husband since 1982. Respondent’s brother, Martin Garrett, was and is employed as the firm’s paralegal. At the time the firm of Garrett & Garrett, P.C., was incorporated, the firm had three bank accounts, as follows: an escrow account, a real estate escrow account, and a general or operating account. Additionally, on July 1, 1987, before the creation of Garrett & Garrett, P.C., Respondent established a second operating account for cases in which Allan Garrett did not wish to participate. Anne Garrett acted as the bookkeeper for the accounts. The firm used the Safeguard system of bookkeeping with client cards, which were maintained in a central location, and which Respondent asserts he reviewed on a quarterly basis. Respondent asserts he reviewed the real estate escrow account on a monthly basis, and Respondent asserts he reviewed the statements for the general and escrow accounts on a monthly basis.

2. Allan Garrett passed away on April 13, 2004, leaving Respondent as the sole attorney in the firm. Anne Garrett continued as the firm’s bookkeeper. In late April 2006, Anne Garrett fractured her pelvis and injured her back. Respondent and his wife moved into his mother’s home to assist with her care. In May 2006, Anne Garrett had several medical visits, including on May 1; May 3; May 5; May 8; May 9; May 15; May 24; and May 25. During this time, Anne Garrett tried to maintain the firm’s account records from her home. Anne Garrett did

not recover from her fall. In December 2008, Respondent discharged his mother as the firm's bookkeeper.

A. IN THE MATTER OF MARY GRAVES ELMORE, CASE NO. 09-090-079759

1. In September 2006 Ms. Mary Graves Elmore hired Respondent to represent her in her divorce.
2. Respondent charged Ms. Elmore a \$3,500.00 flat fee to represent her in the divorce.
3. On September 8, 2006, Ms. Elmore paid Respondent \$500.00 of his fee. Respondent's subsidiary ledger reflects that he deposited the \$500.00 fee into the firm's escrow account.
4. On September 13, 2006, Ms. Elmore paid Respondent an additional \$1,000.00. Respondent's subsidiary ledger reflects that he deposited the \$1,000.00 fee into the firm's escrow account.
5. On September 13, 2006, Respondent filed Ms. Elmore's divorce, and his subsidiary ledger reflects that Respondent transferred \$1,409.00 of the \$1,500.00 paid by Ms. Elmore from the firm's escrow account to the firm's general account.
6. In 2007, Ms. Elmore paid Respondent the remaining \$2,000.00 of the \$3,500.00 fee. Respondent's only records of the payment of the \$2,000.00 fee are two receipts, which he located in his client file, one for \$800.00 dated January 12, 2007, and one for \$1,200.00 dated April 2007.
7. As reflected by Respondent's subsidiary ledger, Respondent did not deposit either the \$800.00 fee or the \$1,200.00 fee in his escrow account.
8. During his representation of Ms. Elmore, Respondent's bookkeeper was his mother. Respondent asserts his mother handled the fees from Ms. Elmore, and Respondent cannot account for what happened to the additional \$2,000.00 received from Ms. Elmore.
9. Other than the two receipts for the \$2,000.00 fee, and his subsidiary ledger which does not document receipt of the \$800.00 and \$1,200.00 payments, and an escrow account disbursement journal, which likewise does not account for receipt of the \$800.00 and \$1,200.00 payments, Respondent has no records, reconciliations, or documentation regarding the \$2,000.00 in funds from Ms. Elmore. In sum, Respondent did not maintain any records which identify and explain how these funds were handled.

10. On or about July 27, 2009, the Virginia State Bar subpoenaed all Respondent's trust account and operating account records, including cancelled checks, cash receipts journals, cash disbursement journals, subsidiary ledgers, bank statements, deposit tickets and evidence of reconciliations in Respondent's possession, custody or control. Respondent did not produce any records which documented or identified receipt and disposition of the \$2,000.00 in funds from Ms. Elmore.
11. As of the April 12, 2007, payment of \$1,200.00, Ms. Elmore paid the entire flat fee of \$3,500.00. As of this date, Respondent had not earned the entire fee. Respondent worked on the case over two more years before he was discharged.
12. In May 2009, after Respondent moved to withdraw as counsel and Ms. Elmore submitted a complaint to the Bar regarding Respondent's representation of her, Respondent reimbursed the \$3,500.00 to Ms. Elmore.

B. IN THE MATTER OF PAULINE H. BRUCE, CASE NO. 10-090-080731

1. In May 2006, Pauline H. Bruce hired Respondent to represent her in her divorce.
2. Respondent charged Ms. Bruce a \$5,000.00 flat fee to represent her in her divorce.
3. On May 18, 2006, Anthony Bruce, Ms. Bruce's son, paid Respondent \$4,000 by check.
4. On May 18, 2006, Ms. Bruce paid Respondent's office \$1,000.00 in cash.
5. On May 18, 2006, a receipt was generated by Respondent's firm which states "received \$4,000.00 (check # 958) and \$1,000.00 cash. Received by Yvette."
6. T. Yvette Miller, Respondent's assistant, received the funds from Ms. Bruce, and gave them to Anne Garrett, as was consistent with her practice of turning over funds received from the client to Mrs. Garrett, the bookkeeper.
7. On May 19, 2006, the check for \$4,000.00 was deposited into a firm operating account. The \$4,000.00 check was not deposited in the firm's escrow account. On May 18, 2006, the \$1,000.00 cash paid by Ms. Bruce was deposited into a firm operating account, not the firm's escrow account.
8. Respondent had not earned the \$5,000.00 fee at the time he received the fee.
9. Respondent did not make sure his bookkeeper deposited the \$5,000.00 fee in his escrow account.

10. Respondent could not locate his subsidiary ledger or any records to identify the account, if any, into which the fee was deposited. Respondent did not keep a subsidiary ledger regarding the funds received from Ms. Bruce's son, nor did he keep a cash receipts journal, which listed the date of receipt of the \$5,000.00 in funds or the source of the funds, nor did Respondent have other journals, records, reconciliations, or documentation regarding the \$5,000.00 in funds. In sum, Respondent did not maintain any records which identify and explain how these funds were handled.
11. On or about October 5, 2009, the Virginia State Bar subpoenaed all Respondent's trust account and operating account records, including cancelled checks, cash receipts journals, cash disbursement journals, subsidiary ledgers, bank statements, deposit tickets and evidence of reconciliations in Respondent's possession, custody or control. Respondent did not produce any records which documented or identified receipt and disposition of the \$5,000.00 in funds.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Joseph Marshall Garrett constitutes misconduct in violation of the following Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) A lawyer shall:
 - (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them;

- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
- (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
- (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;
 - (ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;
 - (iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
 - (iv) reconciliations and supporting records required under this Rule;
 - (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.
- (2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;
 - (3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;
 - (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
 - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
 - (5) Reconciliations.
 - (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;
 - (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;
 - (iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
 - (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** and **IMPOSES** a **PUBLIC REPRIMAND WITH TERMS** upon Respondent. The terms and conditions outlined below shall be met by November 30, 2011. The terms with which the Respondent must comply are as follows:

(1) Within fifteen (15) days of service of this Memorandum Order approving this Agreed Disposition for a Public Reprimand with Terms ("Memorandum Order") on Respondent, Respondent shall confirm in writing his review of Rule 1.15 of the Rules of Professional Conduct to Assistant Bar Counsel Renu M. Brennan, Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800;

(2) Within thirty (30) days of the date of the service of the Memorandum Order on

Respondent, Respondent shall engage the services of a CPA (Certified Public Accountant) (a) who will certify familiarity with the requirements of Rule 1.15 of the Rules of Professional Conduct and (b) who has been pre-approved by Assistant Bar Counsel to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the CPA determines that Respondent is in compliance with Rule 1.15, the CPA shall so certify in writing to Respondent and the Virginia State Bar. In the event the CPA determines Respondent is NOT in compliance with Rule 1.15, the CPA shall notify Respondent and the Virginia State Bar, in writing, of the measures Respondent must take to bring himself into compliance with Rule 1.15. Respondent shall provide the CPA with a copy of the Memorandum Order at the outset of his engagement of the CPA.

(3) Respondent shall be obligated to pay when due the CPA's fees and costs for services (including provision to the bar and to Respondent of information concerning this matter).

(4) In the event the CPA determines that Respondent is NOT in compliance with Rule 1.15, Respondent shall have forty-five (45) days following the date the CPA issues a written statement of the measures Respondent must take to comply with Rule 1.15 within which to bring him into compliance. The CPA shall then be granted access to Respondent's office, books, and records, following the passage of the forty-five (45) day period to determine whether Respondent has brought himself into compliance as required. The CPA shall thereafter certify in writing to the Virginia State Bar and to Respondent either that Respondent has brought himself into compliance with Rule 1.15 within the forty-five (45) day period or that he has failed to do so. Respondent's failure to bring himself into compliance with Rule 1.15 as of the conclusion of the forty-five (45) day period shall be considered a violation of the terms set forth herein.

(5) Unless an extension is granted by the bar for good cause shown to accommodate the CPA's schedule, the terms specified in paragraphs 2, 3, and 4, shall be completed no later than October 31, 2010.

(6) On or about October 31, 2011, the CPA engaged pursuant to paragraph 2 shall reassess Respondent's attorney's trust account record-keeping, accounting, and reconciliation methods and procedures to ensure continued compliance with Rule 1.15 of the Rules of Professional Conduct. By November 30, 2011, the CPA shall notify Respondent and the Virginia State Bar in writing of his assessment. In the event the CPA determines that Respondent has NOT remained in compliance with this Rule, such non-compliance will be considered a violation of the terms set forth herein.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, it appears that Respondent has not complied with the above-stated terms by the stated time periods, Bar Counsel shall serve notice requiring Respondent to show cause

why the alternative disposition of a suspension of Respondent's license to practice law in the Commonwealth of Virginia for thirty (30) days should not be imposed. The burden of proof shall be on Respondent to show compliance with the terms by clear and convincing evidence. If Respondent has failed to comply with the terms within the stated time periods as determined by the Board, the alternative disposition of a suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of thirty (30) days shall be imposed.

It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

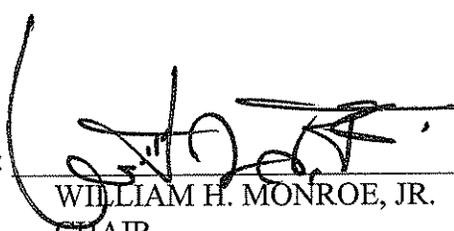
It is further **ORDERED** that an attested copy of this order shall be mailed to Joseph Marshall Garrett, by certified mail, return receipt requested, at his address of record with the Virginia State Bar, 770 Main Street, Danville, VA 24541-1804, and hand delivered to Renu M. Brennan, Assistant Bar Counsel, Virginia State Bar, Eighth and Main Building, Suite 1500, Richmond, Virginia 23219.

Terry S. Griffith, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227 was the court reporter for the hearing and transcribed the proceedings.

ENTER THIS ORDER THIS 13th DAY OF MAY, 2010

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: _____


WILLIAM H. MONROE, JR.
CHAIR