

VIRGINIA:

**BEFORE THE TENTH DISTRICT, SECTION II, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
THOMAS WILLIAM GOODMAN, JR.**

VSB Docket No.: 07-102-1553

SUBCOMMITTEE DETERMINATION

(Approval of Agreed Disposition for Public Reprimand without Terms)

On December 27, 2007, a duly convened Tenth District, Section II, Subcommittee consisting of Elsey A. Harris, III, Esquire (Chair presiding), Scott W. Mullins, Esquire, and Linda F. Rasnick, lay member, met and considered this matter.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.d(3) of the Rules of the Supreme Court of Virginia, the Tenth District, Section II, Subcommittee of the Virginia State Bar hereby approves the Agreed Disposition entered into between Respondent Thomas William Goodman, Jr. ("Respondent") and Assistant Bar Counsel Scott Kulp, and hereby serves upon Respondent the following Public Reprimand without Terms:

FINDINGS OF FACT

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In his written response to the bar Complaint, Respondent contends he was hired to represent Complainant Dreama Sue Blankenship to set aside a misdemeanor guilty verdict and 12-month sentence she received as a result of a conviction for drug distribution as a principal in the second degree. Because Ms. Blankenship had several years left on parole from another felony drug conviction, Respondent believed Ms. Blankenship needed to have the misdemeanor conviction overturned or face a parole violation resulting in an obligation to serve the balance of her prior sentence.

3. On July 18, 2002, Respondent provided a receipt for the \$5,000 tendered to him on Ms. Blankenship's behalf that reads, "Appeal –Dreama Sue Blankenship CK# 1800." No fee agreement further defining the scope of the representation was memorialized.

4. Respondent's entry of appearance as counsel of record for Complainant was filed in the Buchanan County Circuit Court on July 22, 2002.

5. Respondent filed a Notice of Appeal on September 16, 2002.

6. On September 19, 2002, Respondent wrote to Complainant's trial counsel, James Wayne Childress, stating, in part, that he appeared in court the day before to secure bond for Complainant's pending appeal.

7. Respondent filed a two-page Statement of Facts on November 18, 2002.

8. On December 11, 2002, the Commonwealth objected to the Statement of Facts on the grounds it was not timely filed in compliance with Rule 5A:8(C)(1) of the Rules of the Supreme Court of Virginia, and it noticed a hearing in the Circuit Court for December 18, 2002.

9. On December 16, 2002, Respondent filed with the Court of Appeals a Motion for Extension of Time to file the Statement of Facts.

10. Respondent's Motion for Extension of Time was denied by Order dated December 19, 2002. The Motion was denied because the Court of Appeals had no jurisdiction to grant such a request. The Court of Appeals also noted that any trial court order extending the time to file a Statement of Facts, pursuant to Rule 5A:3(b), must be entered prospectively, not retroactively.

11. On August 15, 2003, the Court of Appeals issued an Order to Show Cause as to why the appeal should not be dismissed because, upon preliminary examination, the Court concluded neither a transcript nor statement of facts was timely filed.

12. On or about August 28, 2003, Respondent filed a Response to Show Cause, stating “that the Clerks’ assessment of the status of this Appeal is correct, and that said Appeal should be dismissed.”

13. On September 5, 2003, the Court of Appeals issued an Order dismissing Complainant’s appeal.

14. Respondent and Complainant disagree about whether Complainant authorized Respondent to abandon the appeal. Respondent contends Complainant asked that the appeal be dismissed because she learned the Commonwealth would not pursue a parole violation charge. Complainant contends, however, Respondent had no discussion with her either about the appeal or that the appeal had been dismissed. Nothing in Respondent’s case file demonstrates that he corresponded with Complainant or copied Complainant on his filings with either the Buchanan County Circuit Court or the Court of Appeals.

15. By August 31, 2006 correspondence, Complainant demanded a refund of at least \$3,000 from Respondent.

16. Upon receipt of the \$5,000 tendered to him at the commencement of the representation, Respondent deposited the funds into his operating account rather than into an attorney trust account.

17. Respondent contends he was entitled to handle the funds in this manner because of freedom of contract to enter into a non-refundable out-of-state retainer given that he lived and practiced in Kentucky and Complainant lived in Virginia.

18. Additionally, Respondent believes he earned the fee, in part, because he kept Complainant out of jail and helped her avoid a probation violation. The record shows, however,

that Respondent had no role in the Commonwealth's ultimate decision to forego pursuit of a probation violation charge against Complainant.

19. A non-refundable legal fee is improper because it compromises the client's unqualified right to terminate the attorney-client relationship. Retention of a non-refundable fee violates the attorney's responsibility to refund any unearned advanced fee, and a fee that has not been earned is per se unreasonable. Respondent was obligated to deposit the \$5,000 tendered for Complainant's representation into his trust account until it was actually earned.

NATURE OF MISCONDUCT

The foregoing Findings of Fact give rise to the following violation of the 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:

SUBCOMMITTEE DETERMINATION

It is the decision of the Tenth District, Section II, Subcommittee to accept the Agreed Disposition of the parties. Accordingly, a hearing is not necessary to resolve this matter and Respondent shall receive a Public Reprimand without Terms pursuant to Part Six, Section IV, Paragraph 13.G.1.d(3) of the Rules of the Supreme Court of Virginia. This Public Reprimand without Terms is public discipline under the Rules of the Supreme Court of Virginia and it shall remain a permanent part of Respondent's disciplinary record with the bar.

WHEREFORE, the Respondent is hereby issued a Public Reprimand without Terms.

The Clerk of the Disciplinary System shall assess the appropriate administrative fees pursuant to Part Six, Section IV, Paragraph 13.b.8.c.(1) of the Rules of the Virginia Supreme Court.

**TENTH DISTRICT, SECTION II, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

By: Elsy A. Harris, III
Elsy A. Harris, III, Esquire
Subcommittee Chair Presiding

CERTIFICATE OF SERVICE

I certify I have, this the 19th day of February, 2008, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and complete copy of the Subcommittee Determination (Public Reprimand without Terms) to Respondent Thomas William Goodman, Jr., at his last address of record with the Virginia State Bar, 119 Caroline Avenue, P.O. Box 775, Pikeville, Kentucky, 41502.

Scott Kulp
Scott Kulp
Assistant Bar Counsel