

VIRGINIA:

BEFORE THE FOURTH DISTRICT SUBCOMMITTEE, SECTION 1
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DANIELE EUBANKS HERNDON

VSB Docket No. 11-041-084426

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

On September 8, 2010, a meeting in this matter was held before a duly convened Fourth District Subcommittee, Section I consisting of Lisa A. Wilson, Esq., Chair, Brendan K. Feeley, Esq., member and Edward M. Johnson, layperson.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Fourth District Subcommittee, Section I of the Virginia State Bar hereby serves upon the Respondent Daniele Eubanks Herndon the following Public Reprimand with Terms:

I. STIPULATIONS OF FACT

1. At all times material Respondent Daniele Eubanks Herndon ("Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia.
2. The year 2009 was a difficult and personally challenging year for Respondent. Among other personal trials, Respondent lost her father.
3. In mid-November 2009, after attending her father's funeral, Respondent reviewed her 2009 Mandatory Continuing Legal Education (MCLE) Form 1 End of Year Report (MCLE Report). Prior to reviewing the MCLE Report, Respondent mistakenly believed she had exceeded the MCLE requirement because she had 54.5 hours of Continuing Legal Education (CLE) credit. Upon her review of the MCLE Report, Respondent realized she required one more hour of ethics credit to satisfy her 2009 MCLE requirement.
4. On December 15, 2009, Respondent attended a course, which was pre-approved for ethics credit. The course, however, was not ultimately approved for credit because the printed materials were insufficient.

5. On January 8, 2010, the MCLE Board mailed Respondent a 60-day Notice of Impending MCLE Suspension. The Notice stated that Respondent lacked one hour of ethics credit and that her MCLE suspension deadline was March 9, 2010. The Notice required Respondent to attend one hour of ethics CLE and so certify to the MCLE Board by March 9, 2010.
6. Additionally, the Notice of Impending MCLE Suspension stated that Respondent would be assessed a \$100 additional late filing fee if she did not certify compliance by February 1, 2010.
7. Upon receipt of the Notice, Respondent contacted the MCLE Board and learned that the December 15, 2009, course had not been approved for ethics credit because the printed course materials were insufficient.
8. On January 20, 2010, Respondent registered for a CLE teleconference through the National Business Institute entitled "Ethical Management of Client Trust Accounts". The CLE teleconference was scheduled for January 28, 2010.
9. Respondent reviewed the course materials, but Respondent did not attend the January 28, 2010, CLE teleconference because she was in a mediation which took longer than she had anticipated.
10. On January 28, 2010, Respondent falsely certified to the MCLE Board that she did attend the January 28, 2010, CLE teleconference.
11. On January 28, 2010, Respondent also returned to the MCLE Board the Notice of Impending MCLE Suspension in which she also misrepresented that she attended the January 28, 2010, CLE teleconference.
12. The MCLE Board received Respondent's certification of attendance on February 1, 2010.
13. On February 2, 2010, an MCLE late fee of \$100.00 was assessed, but Respondent avoided the assessment with her false certification.

14. Additionally, by misrepresenting to the MCLE Board that she attended an MCLE course, which she did not attend, Respondent avoided the March 10, 2010, administrative suspension of her license.
15. From January 28, 2010 to May 2010, Respondent did not advise the MCLE Board of her misrepresentation and false certification.
16. In May 2010, a secretary from the firm where Respondent was employed disclosed to Respondent's superiors that Respondent had falsely certified her attendance at the January 28, 2010, course to the MCLE Board.
17. On May 13, 2010, Respondent attended in person the one-hour ethics portion of the 19th Annual Employment Law Update.
18. In May 2010, Respondent's firm suspended her without pay for one month.
19. Respondent returned to the full-time practice of law on June 13, 2010.
20. By letter dated June 18, 2010, Respondent advised Ms. Gale M. Cartwright, MCLE Director, that Respondent's January 28, 2010, certification was filed in error. Respondent requested Ms. Cartwright substitute in its stead a Certification of Attendance confirming her attendance at the one-hour ethics portion of the 19th Annual Employment Law Update on May 13, 2010. Additionally, Respondent paid the \$100.00 late filing fee.
21. On June 23, 2010, Ms. Cartwright received Respondent's letter. By e-mail sent June 23, 2010, to Respondent, Ms. Cartwright asked Respondent to explain her letter further as Ms. Cartwright was confused by Respondent's previous submission of the January 28, 2010, certificate of attendance indicating that she attended the January 28, 2010, CLE teleconference.
22. On June 28, 2010, Respondent responded to Ms. Cartwright's e-mail stating that she did not attend the January 2010 CLE teleconference and that the certification should not have been filed.

II. NATURE OF CONDUCT

Such conduct by Daniele Eubanks Herndon constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 8.1 Bar Admission And Disciplinary Matters

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

- (a) knowingly make a false statement of material fact;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

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. On or before October 1, 2012, Respondent shall complete ten (10) hours of continuing legal education (CLE) credits by personally attending courses approved by the Virginia State Bar in the subject matter of legal ethics. Respondent's CLE attendance obligation set forth in this paragraph shall not be applied toward her Mandatory Continuing Legal Education (MCLE) requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law. Respondent shall certify her compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance form to Bar Counsel, promptly following her personal attendance of each such CLE programs.
2. Respondent shall read in their entirety Rules 8.1 and 8.4 and shall certify compliance in writing to Bar Counsel no later than October 15, 2010.
3. From October 1, 2010, and continuing throughout the duration of Respondent's licensure as an attorney in the Commonwealth of Virginia, Respondent must attend all CLE in person. From October 1, 2010, throughout her licensure as an attorney in the Commonwealth of Virginia, Respondent cannot submit for approval any CLE course presented by "distance learning methods." A "course presented by distance learning methods" includes any course in which the participant seeking credit received the instruction at a location different from the location from which the instruction was

presented or at a time different from the time when the instruction was presented. Thus, all courses presented to participants from pre-recorded media (e.g. videotape, DVD or CD-ROM presentations, audiotape or CD presentations, pre-recorded telephone seminars or webcasts, on-demand online courses, etc.) are "courses presented by distance learning methods." Similarly, any course taken by a participant at a location separate from the instructor (e.g. live telephone seminars, live webcasts, live videoconferences, etc.) is a "course presented by distance learning methods."

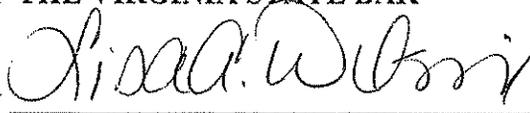
4. From October 1, 2010, to October 1, 2013, Respondent shall not engage in any conduct that violates Rules 8.1 and 8.4 of the Rules of Professional Conduct, including any and all subparts and any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which Respondent may be admitted to practice law. The terms contained in this paragraph shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of Rules 8.1 and 8.4 of the Rules of Professional Conduct, provided, however, that the conduct upon which such finding was based occurred from October 1, 2010, to October 1, 2013, and provided, further that such ruling has become final.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by October 1, 2013, the alternative disposition for this public reprimand with terms is a ninety (90) day suspension pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-15.G. Additionally, if it is determined that at any date in the future, Respondent falsely certified to the MCLE Board that she attended a course which she did not attend or if it is determined that Respondent submitted for credit a course she did not personally attend, the alternative disposition for this public reprimand with terms is a ninety (90) day suspension pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-15.G.

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

**FOURTH DISTRICT SUBCOMMITTEE,
SECTION I
OF THE VIRGINIA STATE BAR**

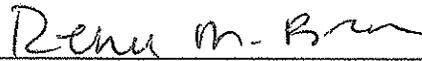
By



Lisa Ann Wilson
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that on September 22, 2010, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Daniele Eubanks Herndon, Esquire, Respondent, at Jackson & Campbell, P.C., 1120 20th Street, NW, South Tower, Washington, DC 20036-3437, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Respondent's Counsel, David Ross Rosenfeld, Esq., at David Ross Rosenfeld, P.C., 118 South Royal Street, Alexandria, Virginia 22314-3218.



Renu Mago Brennan
Assistant Bar Counsel