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VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JAMES PATRICK HODGES

VSB Docket No. 09-070-076748

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On April 14, 2011, a hearing in this matter was held before a duly convened Seventh District Subcommittee consisting of William Atwill, Esquire, Richard Lyons, Lay Member, and David Penrod, Esquire, Chair.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Seventh District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. At all times relevant hereto, James Patrick Hodges (hereinafter "the Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Mark E. Combs, Esquire, (hereinafter "the Complainant") hired the Respondent in May of 2007 for representation against a condominium developer regarding a unit to be occupied by the Complainant's son. He paid an advanced fee of \$5000. One of the goals of the representation was to achieve settlement of the matter.

3. For various reasons, the Complainant terminated representation by the Respondent on July 18, 2008. Included in the July 18th termination letter, the Complainant made a demand for a refund of the \$5000.

4. On August 6, 2008, the Complainant made the first request for the return of the client file. Subsequent requests followed, in addition to a trip to the Respondent's office and a request for the assistance of a former associate of the Respondent's all to no avail.

5. In an effort to obtain his file, the Complainant first contacted VSB Intake Counsel James Bodie on September 18, 2008. Mr. Bodie sent a copy of the complaint to the Respondent on the same date, requesting that the Respondent return the file, unearned fees, and provide a billing statement to the Complainant. Mr. Bodie further requested that the Respondent provide Mr. Bodie by September 29, 2008, a copy of correspondence to the Complainant indicating that the requested actions had been taken. The Respondent failed to respond to Intake Counsel.

6. A second letter was sent from Mr. Bodie to the Respondent on September 30, 2008, asking for a response within 5 days. The Respondent responded on October 1 that the file "has been prepared for delivery, along with the unexpended balance of his retainer" which he would send via overnight delivery.

7. No action was taken by the Respondent by October 16, 2008, and the file was formally opened on October 17th.

8. The Complainant's client file was eventually sent to the Complainant after approximately 4 months, with a partial refund.

9. In his November 10, 2008 response to the bar complaint and during the November 1, 2010 interview by Virginia State Bar investigator James Whitener, the Respondent admitted lack of diligence, failure to timely return the client file, and making prohibited deposits into his operating account rather than his trust account.

II. NATURE OF MISCONDUCT

Such conduct by James Patrick Hodges constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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 [...]
- (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; and
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

RULE 1.16 Declining Or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).
- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable

time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

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:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; [or]

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 13-9.E. the Clerk of the Disciplinary System shall assess costs.

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By David A. Penrod
David A. Penrod, Esquire
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that on the 27th day of May, 2011, I caused to be mailed by certified mail a true and correct copy of the Subcommittee Determination (Public Reprimand Without Terms) to James Patrick Hodges, Esquire, Respondent, at Hodges & Associates, P.C., Suite 316, 19415 Deerfield Avenue, Leesburg, VA 20176, his last address of record with the Virginia State Bar, and by first class mail to James Patrick Hodges, Esquire, 11350 Random Hills Road, Suite 700, Fairfax, VA 22030.

Marian L. Beckett

Marian L. Beckett
Assistant Bar Counsel