VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE, SECTION II OF THE VIRGINIA STATE BAR

IN THE MATTER OF
Brent Alan Jackson **VSB Docket No. 14-032-096787**

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On April 18, 2014 a meeting was held in this matter before a duly convened Third District Subcommittee, Section II consisting of John J. Mable, lay member, Devika E. Davis, Esq., chair and Paul G. Gill, Esq., member. During the meeting, the Subcommittee voted to approve an agreed disposition for a Public Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-15.B.4. of the Rules of the Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Renu Mago Brennan, Assistant Bar Counsel; Brent Alan Jackson, Respondent; and William Joseph Doran, III, Esquire, counsel for Respondent.

WHEREFORE, the Third District Subcommittee, Section II of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times referenced herein, Respondent Brent Alan Jackson (Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Beginning in 2004, Respondent represented Brandon Thompson in various legal matters.

3. In August 2009, while Respondent represented Mr. Thompson in a child custody dispute, Respondent introduced Mr. Thompson to another client, Rodney Peterson. Mr. Thompson and Mr. Peterson engaged in a business transaction.

4. Some of the negotiations for the transaction took place in Respondent's office, and Respondent was present for some, but not all, negotiations.

5. Respondent verbally advised both Mr. Peterson and Mr. Thompson that he could not provide either with legal representation or advice in connection with the business transaction as each was his client.

6. Notwithstanding Respondent's admonition, Mr. Peterson and Mr. Thompson asked Respondent to draft an agreement or agreements by which Mr. Thompson could acquire a percentage of a business owned in part by Mr. Peterson.

7. The business which Mr. Peterson owned, at least in part, and in which Mr. Thompson sought to invest was "Have a Nice Day Café" in Richmond. Based on the documentation provided to the Bar, it appears that in August 2009, "Have a Nice Day Café" was an asset of Richmond 402, LLC, a Virginia limited liability company. Mr. Peterson's interest in Richmond 402 is unclear. The parties agreed that Respondent would incorporate a company, Beyond Horizons, Inc., in which Mr. Thompson would invest, and Beyond Horizons, Inc. would acquire "Have a Nice Day Café" from Richmond 402.

8. Respondent drafted a purchase agreement and a buy-sell agreement to effectuate the transaction. Respondent's drafting of these agreements to effectuate the business transaction between his existing clients constituted a concurrent conflict of interest. Respondent did not (1) identify and explain the nature of the concurrent conflict of interest to his clients; (2) warn his clients of the ramifications of his actions; (3) obtain his clients' consent to represent them despite the conflict; and (4) memorialize their consent in writing.

9. The purchase agreement drafted by Respondent is dated February 7, 2009, but it appears to have been signed by Messrs. Peterson and Thompson on August 7, 2009 (First Purchase Agreement). This First Purchase Agreement was between sellers Beyond Horizons, Inc., and its shareholders Mr. Peterson and Ramon Smith and Mr. Thompson as purchaser.

10. Beyond Horizons, Inc., did not exist as of August 7, 2009, but, as set forth below, Respondent filed the Articles of Incorporation for Beyond Horizons, Inc., with the State Corporation Commission (SCC) on August 17, 2009.

11. The First Purchase Agreement, drafted by Respondent, represented in the recitals and in the agreement to sell that Messrs. Peterson and Smith owned 85% of the common stock in Beyond Horizons, Inc. There are strikeouts over "85," in both the recitals and agreement to sell, with "100" written in above "85" in both places. The strikeouts and revisions are initialed RP, BT, and RS.

12. The First Purchase Agreement provided that Mr. Thompson would pay $45,000 to purchase 40% of the stock of Beyond Horizons, Inc. Mr. Thompson was to deposit $20,000 with Respondent upon execution of the First Purchase Agreement, and Mr. Thompson was to pay the balance of $25,000 on or before August 14, 2009.

13. Respondent also drafted a Buy-Sell Agreement dated August 7, 2009, between Beyond Horizons, Inc., and Messrs. Peterson, Smith, and Thompson, as stockholders (First Buy-Sell Agreement).

14. The First Buy-Sell Agreement represented that Messrs. Peterson, Thompson, and Smith composed the Board of Directors of Beyond Horizons, Inc., and that the three were also its officers, as follows: Mr. Peterson was President; Mr. Smith, Vice President; and Mr. Thompson, Secretary and Treasurer.

15. The First Buy-Sell Agreement represented that Messrs. Peterson and Smith owned either 55% or 60% of the stock of Beyond Horizons, Inc. There is a strikeout over "55", and "60" is written in.

16. The First Buy-Sell Agreement represented that Mr. Thompson owned either 40% or 45% of the stock. There is a strikeout over "45", and "40" is written in.

17. Although the agreements were signed by Messrs. Peterson and Thompson, Respondent states that each of the above-referenced agreements was a draft and was not intended to be the final version of the parties' agreement. There are strikeouts and incomplete blanks in the First Purchase Agreement and the First Buy-Sell Agreement.

18. Mr. Thompson asserts that Respondent never advised him of any problems or issues with the First Purchase Agreement and the First Buy-Sell Agreement.

19. Mr. Thompson signed both agreements, and he paid $45,000 to Mr. Peterson in exchange for a 40% share of Beyond Horizons, Inc.

20. Respondent was aware of Mr. Thompson's payment of $45,000.00 to Mr. Peterson to purchase an interest in Beyond Horizons, Inc.

21. As of August 7, 2009 Beyond Horizons, Inc., was not a Virginia corporation.

22. Ten days later, by letter dated August 17, 2009, Respondent submitted Articles of Incorporation for Beyond Horizons, Inc., for filing with the State Corporation Commission (SCC), along with the filing fee. Respondent was the registered agent of Beyond Horizons, Inc., and Mr. Peterson was the incorporator.

23. On August 18, 2009, the SCC issued a Certificate of Incorporation to Beyond Horizons, Inc.

24. On August 20, 2009, Respondent drafted another Purchase Agreement.

25. This Purchase Agreement dated August 20, 2009 (Second Purchase Agreement), drafted by Respondent, was by and between Beyond Horizons, Inc., as seller, and Rodney Peterson and Eric Jewel as stockholders.

26. The Second Purchase Agreement represented that Mr. Peterson owned 85% of the common stock of Beyond Horizons, Inc., and it purported to convey a 15% interest in Beyond Horizons, Inc., to Eric Jewel. There is no reference to the respective interests of Ramon Smith and Mr. Thompson.

27. Respondent also drafted a second Buy-Sell Agreement dated August 20, 2009, between Beyond Horizons, Inc., Mr. Peterson, and Eric Jewel (Second Buy-Sell Agreement).

28. The Second Buy-Sell Agreement, dated 13 days after the First Buy-Sell Agreement, represented that Mr. Peterson owned 85% of Beyond Horizons, Inc., and Mr. Jewel owned the remaining 15%. The Second Buy-Sell Agreement did not reference Mr. Smith or Mr. Thompson as owners or shareholders of Beyond Horizons, Inc.

29. The Second Buy-Sell Agreement represented that Mr. Peterson was President of Beyond Horizons, Inc., and it referenced that Mr. Jewel was Vice President. It did not reference Mr. Thompson or Mr. Smith as officers or directors of the corporation.

30. Respondent did not notify Mr. Thompson that Respondent drafted the Second Purchase Agreement and the Second Buy-Sell Agreement and that Respondent acted as counsel to Mr. Peterson by drafting these second agreements. Respondent did not notify Mr. Thompson that these second agreements did not reference the First Purchase Agreement and the First Buy-Sell Agreement or, critically, that these second agreements did not reference or acknowledge Mr. Thompson's payment of $45,000 to Mr. Peterson in exchange for a 40% interest in Beyond Horizons, Inc. Respondent did not advise Mr. Thompson of his conflict of interest in drafting the second agreements.

31. Respondent disputes that Mr. Thompson was unaware of the Second Purchase Agreement and the Second Buy-Sell Agreement because Respondent understands that Messrs. Thompson and Peterson were discussing their own dealings, and Respondent believes that Mr. Thompson was aware that Mr. Jewel was to act as manager of the club.

32. Respondent's drafting of the Second Purchase Agreement and Second Buy-Sell Agreement was directly adverse to his client Mr. Thompson's interests and constituted a non-waivable conflict of interest.

33. Respondent contends that his drafting of the Second Purchase Agreement and Second Buy-Sell Agreement was not adverse to Mr. Thompson because these agreements purported to convey only 15% of Beyond Horizons, Inc. to Mr. Jewel, leaving Mr. Peterson with a 45% interest and Mr. Thompson with a 40% interest. Per Respondent, Mr. Peterson retained sufficient interest to convey Mr. Thompson's 40% interest to Mr. Thompson once they resolved their disputes. Respondent does not dispute that the Second Purchase Agreement and Second Buy-Sell Agreement, which he drafted, represented that Mr. Peterson owned 85% of the shares and did not

reference Mr. Thompson's known interest or payment of $45,000 for 40% of the shares in Beyond Horizons, Inc.

34. The business relationship between Mr. Thompson and Mr. Peterson deteriorated, and Mr. Thompson requested his file regarding the transaction from Respondent.

35. Mr. Thompson asserts that Respondent refused to provide Mr. Thompson with his file regarding the business transaction. Respondent asserts that he provided both Mr. Thompson and Mr. Peterson with the opportunity to review the file, which he sent to each when they sought other counsel.

36. Mr. Thompson alleges that he spoke to Respondent about the deteriorating business relationship, and Respondent threatened to terminate his legal representation of Mr. Thompson if Mr. Thompson sued Mr. Peterson. As of this time, Respondent still represented Mr. Thompson in his custody dispute. According to Respondent, he represented Mr. Thompson in the custody dispute from 2009 to December 2011.

37. Respondent denies that he threatened to terminate his relationship of Mr. Thompson if Mr. Thompson sued Mr. Peterson. Respondent alleges that he advised Mr. Thompson that he could not represent either side in any dispute and further that he urged Mr. Peterson and Mr. Thompson to seek separate counsel regarding the business dispute as their relationship deteriorated.

38. Mr. Thompson retained separate counsel to represent him in his dispute with Mr. Peterson. In December 2011, represented by other counsel, Mr. Thompson filed suit in the Richmond City Circuit Court, Case No. CL11-5454, against Beyond Horizons, Inc., and Mr. Peterson. This case was dismissed. On November 18, 2013, Mr. Thompson as Plaintiff filed suit against Messrs. Peterson and Smith as defendants, in Richmond City Circuit Court, Case No. CL13-5178. This suit is still pending.

39. Per Mr. Thompson, it was only through discovery in one of the two suits that he learned of the Second Purchase Agreement and the Second Buy-Sell Agreement.

40. Mr. Thompson believes that Respondent breached his duty of loyalty to him as his client by drafting the Second Purchase Agreement and the Second Buy-Sell Agreement without advising Mr. Thompson or obtaining his consent. Despite the fact that Respondent knew that Mr. Thompson paid $45,000 to Mr. Peterson to purchase a 40% interest in Beyond Horizons, Inc., Respondent drafted agreements which did not reference Mr. Thompson's investment and interest in Beyond Horizons, Inc., of which Respondent was aware, and Respondent drafted these agreements without advising Mr. Thompson of his conflict.

41. Respondent contends that he was not required to advise Mr. Thompson of his legal representation of Mr. Peterson on and prior to August 20, 2009, or of the Second Purchase Agreement and Second Buy-Sell Agreement because Respondent contends the First Purchase Agreement and First Buy-Sell Agreements were draft documents,

which were not intended to be the final versions. Respondent further contends that the sale of a 15% interest in Beyond Horizons, Inc. did not implicate Mr. Thompson's ownership interest.

42. Mr. Thompson has also alleged that Respondent did not provide him with accountings of legal fees paid in his various cases. Accordingly, the bar investigated the issue. During the course of the bar's investigation, Respondent conceded that he did not maintain a client subsidiary ledger for Mr. Thompson.

II. NATURE OF MISCONDUCT

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

RULE 1.7 Conflict of Interest: General Rule.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph(a), a lawyer may represent a client if each affected client consents after consultation, and:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) the consent from the client is memorialized in writing.

Pre June 15, 2011 Amendments:
RULE 1.15 Safekeeping Property

(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:

(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;

Post June 15, 2011 Amendments:
Rule 1.15 Safekeeping Property

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a Public Reprimand with Terms. The terms are:

1. For a period of two years following the date of service of the Public Reprimand with Terms on Respondent, Respondent shall not engage in any conduct that violates Virginia Rules of Professional Conduct 1.7 or 1.15 and any subpart of each Rule, including any amendment thereto, and/or which violates any analogous provisions of these Rules, and any amendment thereto, of any other 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 Rule 1.7 or 1.15 of the Rules of Professional Conduct or any subpart of any of these Rules or any analogous provisions of the Rules of any other jurisdiction in which Respondent may be admitted to practice law, provided however, that the conduct upon which such finding was based occurred within the two-year period following the date of service of the Public Reprimand with Terms on Respondent, and provided, further, that such ruling has become final.

2. Respondent shall read in its entirety *Lawyers and Other People's Money* and Rule 1.15 of the Virginia Rules of Professional Conduct in its entirety and shall certify compliance in writing to Assistant Bar Counsel Renu M. Brennan or her designee by January 15, 2015.

3. From June 1, 2014 to June 1, 2016, Respondent hereby authorizes a Virginia State Bar Investigator to conduct unannounced personal inspections of his trust account books, records, and bank records to ensure his compliance with all of the provisions of Rule 1.15 of the Rules of Professional Conduct, and Respondent shall fully cooperate with the Virginia State Bar investigator.

If the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia, the District Committee shall hold a hearing, and the alternative disposition shall be a Certification for Sanction Determination, as set forth at Part 6, § IV, ¶ 13-15.G of the Rules of the Supreme Court of Virginia. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to ¶ 13-9.E of the Rules of the Supreme Court of Virginia.

As agreed by Respondent and his counsel, any order approving this Agreed Disposition for a Public Reprimand with Terms and imposing the agreed-upon sanction is non-appealable.

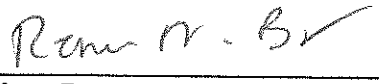
Pursuant to Part 6, § IV, ¶ 13-9.E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT SUBCOMMITTEE, SECTION II
OF THE VIRGINIA STATE BAR

Devika E. Davis
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on April 23, 2014, 2014, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail, return receipt requested to Brent Alan Jackson, Esq., Respondent, at Brent A. Jackson & Associates, PC, PO Box 12069, Richmond, VA 23241-0069, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to William Joseph Doran, III, Esq., counsel for Respondent, at Wm. J. Doran, III J.D., Suite 100, 4914 Radford Avenue, Richmond, VA 23230.



Renu Mago Brennan
Assistant Bar Counsel