

VIRGINIA:

BEFORE THE SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
KENNETH DANE MILLS

VS. Docket No. 16-021-104013

DISTRICT COMMITTEE DETERMINATION
(PUBLIC ADMONITION WITHOUT TERMS)

On March 25, 2015, a Second District Subcommittee issued a Private Admonition with Terms upon Respondent in VSB Docket No. 15-021-100009. On October 1, 2015, Bar Counsel served Respondent with notice requiring him to show cause why the alternative disposition of a Public Admonition should not be imposed due to his failure to comply with the Terms as set out in the Notice of Show Cause Hearing. Respondent has endorsed a Consent Order in which he conceded he failed to comply with the Terms, waived his right to a show cause hearing, and consented to the imposition of the alternative disposition of a Public Admonition.

Accordingly, pursuant to Part 6, Section IV, Paragraph 13-15.F and 13-16.BB of the Rules of the Virginia Supreme Court, the Second District Committee, Section I, of the Virginia State Bar hereby serves upon Respondent the following Public Admonition without Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. The bar received notice of an overdraft of Respondent's trust account at Heritage Bank in the amount of \$206.84 caused by the presentment of a check in the amount of \$400.00 on July 9, 2014.
3. Respondent explained that he had issued the \$400.00 check to his client Lewis Moore ("Mr. Moore") as and for a refund of the unearned portion of the \$700.00 in advance fees Mr. Moore had paid Respondent in late March 2014 for representation in a divorce case. Respondent's only explanation was that "apparently the balance [in his trust account] dropped below the \$400.00" he had refunded to Mr. Moore.

4. The investigation of this complaint revealed:

Respondent deposited Mr. Moore's \$700.00 advance fee payment into trust on March 26, 2014. His trust account checks indicate only a single disbursement of Mr. Moore's monies: \$200.00 on April 3, 2014. Yet, as a result of other withdrawals, the balance in his trust account was only \$193.16 by the end of June 2014. As Respondent provided Mr. Moore with a refund of unearned fees of \$400.00, prior to the issuance of that refund, he had prematurely disbursed from trust a portion of unearned fees belonging to Mr. Moore.

Respondent is not properly maintaining his trust account. A subpoena duces tecum issued to Respondent in this case required him to produce all of his trust account records from June 2013 to present. In response, he produced bank statements from December 2012 through June 2014 and two ledgers identifying, respectively, funds carried over from 2012 to 2013 and 2013 to 2014. He produced no cash receipts/disbursements journals, subsidiary ledgers or reconciliations. In a follow-up interview, Respondent said he had produced all of the trust account documents he believed he was required to maintain.

II. NATURE OF MISCONDUCT

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

RULE 1.15 SAFEKEEPING PROPERTY

(b) Specific Duties. A lawyer shall:

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

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

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(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

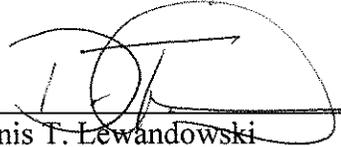
(ii) any unexpended balance.

III. PUBLIC ADMONITION WITHOUT TERMS

Accordingly, it is the decision of the 2-1 Committee to impose a Public Admonition without Terms and Respondent is hereby so admonished.

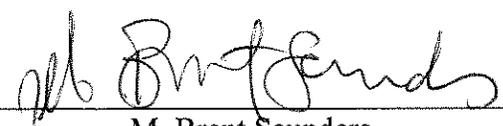
Pursuant to Paragraph 13-9.E of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT COMMITTEE, SECTION I
OF THE VIRGINIA STATE BAR

By 
Dennis T. Lewandowski
Chair

CERTIFICATE OF SERVICE

I certify that on the 30th day of OCTOBER, 2015, a true copy of the foregoing was sent by certified mail to Kenneth Dane Mills, Respondent, at K. Dane Mills Attorney At Law, P.L.L.C., 620 Virginius Dr, Virginia Beach, VA 23452, Respondent's last address of record with the Virginia State Bar.


M. Brent Saunders
Assistant Bar Counsel

VIRGINIA:

BEFORE THE SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
KENNETH DANE MILLS

VSB Docket No. 16-021-104013

CONSENT ORDER FOR IMPOSITION OF PUBLIC ADMONITION

COME NOW the Virginia State Bar, by Assistant Bar Counsel M. Brent Saunders, and Respondent, and hereby stipulate and agree as follows:

1. In March 2015, Respondent and the bar entered into an Agreed Disposition imposing a Private Admonition with Terms as the sanction in a complaint involving trust account violations. (VSB Docket No. 15-021-100009). As part of the Agreed Disposition, Respondent: i) stipulated to violations of Rules of Professional Conduct 1.15(b)(5) and (c)(1) and (2); and ii) agreed to comply with the following terms as a predicate for a Private Admonition:

On or before April 1, 2015, Respondent shall, at his sole cost and expense, retain the services of a law office management consultant approved by the Office of Bar Counsel ("Consultant") to review and make written recommendations concerning Respondent's trust account policies, methods, systems, procedures and escrow account maintenance and record-keeping to ensure compliance with all provisions of the Virginia Rules of Professional Conduct and conformity with best practices. Respondent shall grant the Consultant full access to his law practice office, books, records, and files for the purposes of conducting the review and monitoring of Respondent's compliance with the Consultant's recommendations. The Office of Bar Counsel shall have access, through telephone and in-person communication and/or written reports and correspondence, to the Consultant's findings and recommendations and assessment of the Respondent's compliance with said recommendations.

Respondent shall ensure that M. Brent Saunders, the Assistant Bar Counsel assigned to this case, receives a copy of the written report of the Consultant's findings and recommendations on or before May 1, 2015. Respondent shall institute and follow any and all recommendations made to him by the Consultant as soon as practicable and in no event beyond thirty (30) days from the issuance of the Consultant's recommendations. Following the passage of that thirty (30) day period, and no later than sixty (60) days from the issuance of the Consultant's recommendations, the Consultant shall again review Respondent's policies, methods, systems, procedures and escrow account maintenance and record-keeping, and report in writing to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, Respondent's compliance with the consultant's recommendations.



Respondent shall provide proof of his compliance with the recommendations of the Consultant to the Office of Bar Counsel upon request . . .

(hereinafter collectively "Terms").

Respondent further agreed that in the event the Terms were not met by the completion dates set out above, Respondent would be required to show cause why the alternative disposition of a Public Admonition should not be imposed.

2. Pursuant to said Agreed Disposition, on March 25, 2015, a Second District Subcommittee issued a Private Admonition with Terms incorporating the Terms and providing for the alternative disposition of a Public Admonition in the event the Terms were not met.

3. On October 1, 2015, pursuant to Part Six, Section IV, Paragraph 13-15.F. of the Rules of the Virginia Supreme Court, Bar Counsel served Respondent with notice requiring him to show cause why a Public Admonition should not be imposed due to his failure to comply with the Terms as set out in the Notice of Show Cause Hearing. As indicated by his endorsement hereon, Respondent hereby: i) concedes he is in violation of the Terms as set out in the Notice of Show Cause Hearing and that he cannot show compliance with the Terms by clear and convincing evidence; ii) waives his right to a show cause hearing; and iii) consents to the imposition of the alternative disposition of a Public Admonition.

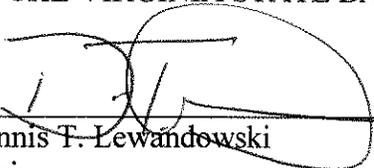
WHEREFORE, it is ORDERED that the Second District Committee, Section I, shall impose a Public Admonition on Respondent for his failure to comply with the Terms of the Private Admonition with Terms issued on March 25, 2015.

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



ENTERED:

SECOND DISTRICT COMMITTEE, SECTION I
OF THE VIRGINIA STATE BAR

By 
Dennis T. Lewandowski
Chair

SEEN AND AGREED:


Kenneth Dane Mills
Respondent

VIRGINIA STATE BAR


M. Brent Saunders
Assistant Bar Counsel

CERTIFICATE OF SERVICE

I certify that on the 30th day of October, 2015, a true copy of the foregoing was sent by certified mail to Kenneth Dane Mills, Respondent, at K. Dane Mills Attorney At Law, P.L.L.C., 620 Virginius Dr, Virginia Beach, VA 23452, Respondent's last address of record with the Virginia State Bar.


M. Brent Saunders
Assistant Bar Counsel