

VIRGINIA:

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

NOV 1 2012

IN THE MATTER OF
David Paul Morgan

VSB Docket No. 11-031-084547

SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION WITHOUT TERMS)

On October 24, 2012, a meeting in this matter was held before a duly convened Third District, Section I, Subcommittee consisting of Victoria Nathalie Pearson, Stephanie Elaine Grana, and Daniel Richard Greenwood, III.

Pursuant to Part 6, § IV, ¶ 13-15.B.4 of the Rules of the Supreme Court of Virginia, the Third District Subcommittee of the Virginia State Bar hereby serves upon the respondent David Paul Morgan ("Respondent"), the following Public Admonition Without Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, David Paul Morgan ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Keith Brown met with Respondent at Respondent's office on or about August 10, 2009, and paid him a consultation fee. Mr. Brown filed a petition for custody in the Hopewell Juvenile and Domestic Relations District Court, *pro se*, on August 24, 2009.
3. Mr. Brown decided to hire Respondent to represent him in the case. Respondent and Mr. Brown signed a fee agreement dated September 8, 2009. The agreement set forth a non-refundable payment of \$1,500, which Respondent characterized, in part, as a "retainer... to ensure the availability of Counsel to client." Respondent's agreed upon billing rate was \$275.00 per hour.
4. Mr. Brown paid Respondent \$1,500.00 on or about September 29, 2009. Despite Mr. Morgan's belief that the \$1,500.00 "retainer" was proper, it did not meet the requirements of a "true retainer" as required by the Rules of Professional Conduct and Legal Ethics Opinions.

Respondent did not deposit the money into a trust account, and did not apply that payment to the hourly fees he charged Mr. Brown.

4. A hearing was scheduled for April 7, 2010. Respondent, Mr. Brown, the opposing attorney (Travis Williams,) Mr. Brown's wife, and the Guardian ad Litem were all present at the hearing. The parties and attorneys represented to the court that they had reached an agreement. Judge Weymack directed Respondent to submit an order incorporating the agreement on or before May 5, 2010.

5. Respondent claims he drafted the order within 2 weeks and circulated it, however, the order was never sent to the court.

6. Judge Weymack's clerk called Mr. Williams in late May or early June 2010 to ask about the status of the order. As a result of the conversation, Mr. Williams drafted an order in accordance with the parties' agreement, and sent it to the Guardian ad Litem for her signature.

7. No order reflecting the agreement was ever entered. The parties eventually reconciled.

II. NATURE OF MISCONDUCT

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

Rule 1.3: Diligence

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

Rule 1.5: Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;

- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Rule 1.15: Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts or placed in a safe deposit box or other place of safekeeping as soon as practicable.

(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

III. PUBLIC ADMONITION WITHOUT TERMS

Accordingly, it is the decision of the subcommittee to impose a Public Admonition

Without Terms and David Paul Morgan is hereby so admonished. 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
OF THE VIRGINIA STATE BAR**

By: 
Stephanie Elaine Grana
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on November 18th, 2012 a true and complete copy of the Subcommittee Determination (Public Admonition Without Terms) was sent by certified mail to David Paul Morgan, Respondent, at Cravens & Noll, P.C., Suite 200, 9011 Arboretum Parkway, Richmond, VA 23236, Respondent's last address of record with the Virginia State Bar.


Kara L. McGehee
Assistant Bar Counsel