

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
WALTER WARE MORRISON

VS B Docket No. 10-021-083030

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On January 26, 2011, a meeting in this matter was held before a duly convened Second District Subcommittee consisting of Ellen C. Carlson, Esquire, Presiding Chair, Dennis T. Lewandowski, Esquire, Member, and Emmanuel W. Michaels, Lay Member, who unanimously approved the imposition of a Public Reprimand With Terms in this case.

Pursuant to Part 6, Section IV, Paragraph 13-15 of the Rules of the Supreme Court of Virginia, the Second District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with 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. In May 2008, Derrick C. Kessing ("Kessing") hired Respondent's firm to represent him in obtaining an uncontested divorce for a flat fee of \$750.00 plus costs as memorialized in a fee agreement prepared and signed by Respondent. The fee agreement also contained provisions stating that: i) Kessing would be charged "a base charge for legal services on an attorney hourly fee basis of \$295.00 per hour . . . for all . . . activities related to the matter;" ii) in the event of termination, Respondent's firm "is entitled to be paid for legal services rendered at its ordinary and customary fees as stated above;" and iii) Respondent's firm "reserves the right to renegotiate this Fee Agreement in your case in the event the case becomes more complex than originally anticipated."

3. Kessing paid the entire \$750.00 advance fee by early August 2008.
4. A complaint for a no-fault divorce was filed on behalf of Kessing in the Norfolk Circuit Court. A hearing was scheduled for the taking of *ore tenus* testimony and the presentation of a final decree on February 25, 2009. The hearing had to be rescheduled when Kessing failed to appear due to illness. In a letter to Kessing advising him of the new hearing date, an associate of Respondent advised Kessing that he would have to immediately pay \$300.00 “for the additional court appearance.” On the second hearing date, April 7, 2009, Kessing did not appear due to being incarcerated in a local jail following his arrest on April 3, 2009. In late April 2009, Kessing sent a letter to Respondent’s firm asking when the hearing would be rescheduled. On May 18, 2009, Respondent responded to Kessing by letter in which he notified Kessing that his case had been removed from the Court’s docket, told him he would reschedule the divorce hearing upon Kessing’s release from jail, and demanded that Kessing pay an additional \$300.00¹ which “must be paid in full prior to me docketing your case.” The case was reinstated on the Court’s docket by order entered on October 15, 2009. A final no-fault divorce decree was entered on April 29, 2010, shortly following Kessing’s release.
5. Disbursements of the advance fee monies paid by Kessing for the representation were periodically made from Respondent’s trust account beginning in late July 2008. On February 27, 2009, before *ore tenus* testimony had been taken and a final decree had been entered, Respondent caused \$415.10, the entire remaining balance of Kessing’s funds, to be disbursed from trust.

II. NATURE OF MISCONDUCT

Such conduct by Walter Ware Morrison constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.4 Communication

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

¹ Kessing never paid the additional monies, which Respondent ultimately waived.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable.

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

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

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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: On or before March 1, 2011, Respondent shall provide to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, written certification that he has fully reviewed the video replay of the following online seminar sponsored by Virginia CLE: *Fee Agreements/Fee Disputes: Going for Gold, Going for Broke* (Live Webcast: January 2009).

On or before March 1, 2011, Respondent shall provide to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, written certification that he has reviewed the Virginia State Bar publication titled Lawyers and Other People's Money, 4th Edition, available through the Virginia State Bar's website (www.vsb.org).

On or before March 1, 2011, Respondent shall, at his sole cost and expense, retain the services of a law office management consultant ("Consultant") approved by the Office of Bar Counsel to review the fee agreement that is the subject of this complaint and any and all other fee agreements being utilized by Respondent and provide written recommendations for bringing all fee agreements used by Respondent in compliance with the Virginia Rules of Professional Conduct. On or before April 1, 2011, Respondent shall provide to M. Brent Saunders, the Assistant Bar Counsel assigned to this case: i) copies of the fee agreements provided to the

Consultant; ii) a copy of the written recommendations of the Consultant; and iii) proof that Respondent has implemented all such recommendations.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If the terms and conditions are not met by the specified dates, the alternative disposition shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of thirty (30) days.

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

SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By Ellen C. Carlson
Ellen C. Carlson
Presiding Chair

CERTIFICATE OF SERVICE

MS I certify that on the 14th day of March, 2011, I mailed by Certified Mail, ~~Return Receipt Requested~~, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Walter Ware Morrison, Esquire, Respondent, at Suite 100, 2628 Barrett Street, Virginia Beach, VA 23452, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid, to Respondent's Counsel, Edward D. Barnes, Esquire, at Barnes & Diehl, P.C., Centre Court, Suite A, 9401 Courthouse Road, Chesterfield, VA 23832.

M. Brent Saunders
M. Brent Saunders
Assistant Bar Counsel