

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTER OF
ASHRAF WAJIH NUBANI

VS. Docket Nos. 06-051-0381, 06-051-0713 and
06-051-1961

ORDER OF PUBLIC REPRIMAND

This matter came on the 19th day of May, 2008, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent based upon the Certification of the Fifth District, Section 1 Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of William H. Monroe, Jr., 2nd Vice Chair, Sandra L. Havrilak, Glenn M. Hodge, Michael S. Mulkey and V. Max Beard, lay member.

Kathleen M. Uston, Assistant Bar Counsel, represented the Bar. The Respondent, Ashraf Wajih Nubani, was not present, however, was represented by Timothy J. Battle, and presented an endorsed Agreed Disposition reflecting the terms of the Agreed Disposition.

The court reporter for the proceeding, Jennifer L. Hairfield, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, telephone (804) 730-1222, was duly sworn in by the Chair.

Having considered the Agreed Disposition, it is the decision of the Disciplinary Board Panel that the Agreed Disposition be accepted, and the Panel finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Ashraf Wajih Nubani, Esquire (hereinafter, the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On July 22, 2005, Wachovia Bank sent a "not sufficient funds" notice to the Respondent regarding his lawyer's trust account. The Respondent had overdrawn his trust

account by \$136.95, but stated that he did not know what caused the overdraft, speculating that there was a discrepancy between what he “thought” a client had paid and the amount actually paid. (VSB Docket No. 06-051-0381)

3. On September 1, 2005, Wachovia Bank sent a second “not sufficient funds” notice to the Respondent regarding his trust account. Respondent had overdrawn his account by \$1,711.24. Respondent stated that he thought he had sufficient funds in the account to cover the check. VSB Docket No. 06-051-0713)

4. On December 8, 2005, Wachovia Bank sent a third “not sufficient funds” notice to the Respondent regarding his lawyer’s trust account. The Respondent had overdrawn his account by \$38,517.07.

5. Respondent began even before the July 22, 2005 notice to begin practice with another attorney and to close his sole practice. His efforts led to the law firm known as Nubani & Ahmad, P.C. located at 5029-A Backlick Road, Annandale, Virginia 22003.

6. Respondent also states that he has made special efforts throughout his legal career in New York and Virginia to compensate for his significant visual handicap. Respondent is legally blind and his vision is very weak. He is unable to determine colors and extremely sensitive to light. He uses a specially made computer screen with print that a person with normal vision can read from across the room. There was only a short period of time when he was a sole practitioner. For most of his career, he has had the assistance of staff members or other attorneys who were not visually handicapped.

7. Respondent has enlisted the assistance of Janean Johnston, a well respected expert on law office management and ethics. His law firm has engaged Ms. Johnston to visit the office

in Annandale to evaluate all aspects of handling money and to recommend any improvements.

Her written report indicates that practices and systems are currently in place at Nubani & Ahmad, P.C. to minimize any chance of future errors in accounting.

8. Respondent has attended extra classes in ethics and law office management in addition to his yearly requirement of 12 hours continuing legal education. He has also read the Virginia State Bar publication, Lawyers and Other People's Money.

The aforementioned conduct on the part of the Respondent constitutes a violation of the following Rules of Professional Conduct:

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 into 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 except as follows:
 - (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (e) Record-Keeping Requirements, Required Books and Records.
- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.
 - (1) Insufficient fund check reporting.
 - (i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified

account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;

- (2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;
- (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
 - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (5) Reconciliations.
 - (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;
 - (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;
 - (iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

Upon consideration whereof, it is ORDERED that the Respondent shall receive,

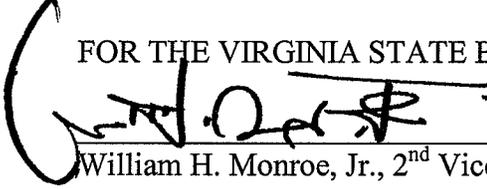
effective May 19, 2008, a PUBLIC REPRIMAND.

IT IS FURTHER ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c.1 of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs; and

IT IS FURTHER ORDERED that an attested copy of this Order be mailed by Certified Mail, Return Receipt Requested, to the Respondent, Ashraf Wajih Nubani, at his address of record with the Virginia State Bar, Nubani & Ahmad, Suite 222, 1568 Spring Hill Road, McLean, VA 22102, and to Timothy J. Battle, counsel for the Respondent, at P.O. Box 19631, Alexandria, VA 22320, and by regular mail to Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, 100 N. Pitt Street #310, Alexandria, VA 22314.

ENTERED THIS 20~~th~~ day of MAY, 2008.

FOR THE VIRGINIA STATE BAR DISCIPLINARY BOARD


William H. Monroe, Jr., 2nd Vice Chair