

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
RICHARD JAMES OULTON

VSB Docket No. 05-032-3243

SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION WITH TERMS)

On September 19, 2008, a meeting in this matter was held before a duly convened Third District Subcommittee consisting of John B. Wake, Jr., Lay Member; Mary Burkey Owens, Esq.; and Steven Colin McCallum, Esq., Vice Chair, presiding.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Third District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Richard James Oulton ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about May 18, 2004, Complainant Kirstin Evans [Evans] entered into a written fee agreement with Oulton [fee agreement], for representation in a Chapter 7 bankruptcy. Pursuant to the fee agreement, Evans paid Oulton approximately \$700.00 in fees and costs for the representation.

3. On or about July 5, 2004, Oulton filed a Chapter 7 bankruptcy for Evans in the U.S. Bankruptcy Court for the Eastern District of Virginia, Richmond Division, in case number 04-36442-DOT. The case was closed on or about December 6, 2004.

4. The fee agreement in the representation contained, *inter alia*, the following provisions¹:

(a) Page 111, 17th bullet from the top – “Fees are ‘earned’ as they are paid.” [Rules 1.5(a), 1.15(c)(4), 1.16(d) and 8.4(a)]

(b) Page 111, 7th bullet from the bottom – “Oulton may end representation if continuing violates his ethics and fees paid will be earned” [Rules 1.5(a), 1.15(c)(4), 1.16(d) and 8.4(a)]

¹ Allegedly applicable provisions of the Rules of Professional Conduct are shown in brackets. Page numbers are those entered on the fee agreement by the bar.

(c) Page 116, paragraph 26 – “Services included in the agreed bankruptcy fees and what service will be provided if needed for additional fees: These services are included in the agreed fee. As this contract is for filing bankruptcy or seeking in the alternative a non-bankruptcy solution all fees are earned as they are paid up to the non-bankruptcy solution agreed fee of \$995.” [Rules 1.5(a), 1.15(c)(4), 1.16(d) and 8.4(a)]

(d) Page 116, paragraph 28 – “It is my lawyer’s standard practice in every case to bring a filed copy of my petition, schedules, statement of financial affairs and certificate of case filing to my trustee meeting. My attorney will give me a copy after my case has been reviewed by the trustee. If I wish to claim that I did not receive this copy then I must make the request for a copy within 30 days after my granted discharge (my case is closed) after that the fee is \$35 (prepaid only)” [Rule 1.16(e) and 8.4(a)]

(e) Page 118, paragraph 43 – “...By refusing to sign and record a Homestead Deed and pay the related \$99 fee when my petition was signed I agreed to release my lawyer from responsibility for later having to deal with this in a dangerously short time limits [sic] of only five days after the trustee meeting.” [Rule 1.8(h) and 8.4(a)]

(f) Page 120, paragraph 53 – “...Some clients INSIST and DEMAND to reaffirm debts in spite of contrary advice from their attorney. The attorney will not sign these [sic] at the TRUSTEE meeting and will require that the client come to the office and sign a release of liability stating that this debt is being reaffirmed AGAINST THE ADVICE OF THE ATTORNEY...” [Rule 1.8(h) and 8.4(a)]

(g) Page 120, paragraph 56 – “It is agreed that all attorney fees are earned as they are paid. Only ‘filing fees’ that are to be paid to courts will be held in a trust escrow account. These typically include the bankruptcy case (\$209) filing fee and any other court fees such as the typical \$19 recording fee for a Homestead Deed.” [Rules 1.5(a), 1.15(a), 1.15(c)(4), 1.16(d) and 8.4(a)]

(h) Page 123, paragraph 72 – “While the agreed fee for my lawyer to seek settlements with my creditors is a fixed and agreed \$995, should I file Chapter 7 ‘Bankruptcy’ my fees will vary depending on the complexity of my case. This is explained further in sections that follow. I agree that there are **NO FREE CONSULTATIONS** and there **WILL NOT BE ANY REFUNDS** if I cancel this contract.” [Rules 1.5(a), 1.15(c)(4), 1.16(d) and 8.4(a)]

(i) Page 126, starting at 21st line from the bottom – “Provided the client has agreed to seek a non-bankruptcy solution all attorney fee payments will be paid to my lawyer as they are made as they are agreed to have been earned as they are paid...” [Rules 1.5(a), 1.15(c)(4), 1.16(d) and 8.4(a)]

(j) Page 126, 12th line from the bottom– “It is agreed that all payments are earned as they are made...” [Rules 1.5(a), 1.15(c)(4), 1.16(d) and 8.4(a)]

5. Each instance of the language set forth in Paragraph 4 of this Charge of Misconduct may amount to one or more of the following attempts: to make attorney's fees nonrefundable, to obtain unreasonable attorney's fees, to require prepayment for copying of pleadings after termination of the representation, to prospectively limit the Respondent's liability to the client for malpractice, to forego the legal ethics requirement that unearned attorney's fees be held in a trust account until the fees are earned.

II. NATURE OF MISCONDUCT

Such conduct by Richard James Oulton constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

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 1.8 Conflict of Interest: Prohibited Transactions

- (h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice, except that a lawyer may make such an agreement with a client of which the lawyer is an employee as long as the client is independently represented in making the agreement.

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 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.
- (c) A lawyer shall:
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

RULE 1.16 Declining Or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

RULE 1.16 Declining Or Terminating Representation

- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this

paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

III. PUBLIC ADMONITION 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 Admonition with Terms of this complaint. The terms and conditions, which shall be completed by September 30, 2008 are:

Term 1. Respondent shall immediately cease use of any written fee agreement which contains the language cited in the Stipulations of Fact herein, or any similar language, and refrain from doing so in the future.

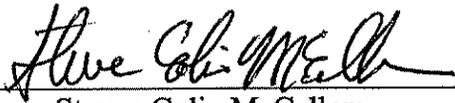
Term 2. Respondent shall read Virginia Legal Ethics Opinion 1606 and all other Virginia legal ethics opinions which cite Legal Ethics Opinion 1606.

Term 3. Respondent shall certify under oath in writing to Deputy Bar Counsel that he has complied with Terms 1 and 2.

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 date, the district committee shall impose a Public Reprimand pursuant to Part Six, Section IV, Paragraph 13.G.5 of the Rules of Court.

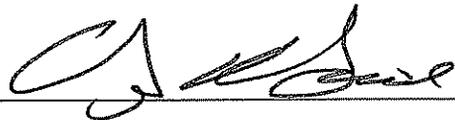
Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By  _____
Steven Colin McCallum
Vice Chair and Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on Sept. 26, 2008 caused to be mailed by Certified Mail, Return Receipt Requested, a true and complete copy of the Subcommittee Determination (Public Admonition With Terms) to Richard James Oulton, Respondent, at Suite 13, 1106 West Main Street, Charlottesville, VA 22903.

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