

VIRGINIA  
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF  
NEIL ORION REID

VSB DOCKET NO.: 13-033-093292

**ORDER OF SUSPENSION**

**THIS MATTER** came to be heard on Friday, August 22, 2014, before a panel of the Virginia State Bar Disciplinary Board consisting of Tyler E. Williams, III, Chair, Thomas O. Bondurant, Jr., Melissa W. Robinson, Samuel R. Walker and Stephen A. Wannall, Lay Member (collectively, the “Board”). The Virginia State Bar (“the VSB”) was represented by Edward L. Davis, Bar Counsel. The Respondent, Neil Orion Reid, appeared in person. He was represented by Michael L. Rigsby. Angela N. Sidener, a registered professional court reporter with Chandler & Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings. The Chair opened the hearing by polling the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the Panel, to which inquiry each member responded in the negative.

The matter came before the Board on the Subcommittee Determination of Certification by the Third District Subcommittee, Section III, of the Bar pursuant to Part 6, §IV, ¶¶ 13-18 of the Rules of the Supreme Court of Virginia.

**I. FINDINGS OF FACT**

Prior to the presentation of evidence, the Respondent stipulated to violations of Rule 1.5(c) and Rule 1.15(a)(e) and (f). VSB Exhibit 1, Parts 1-18 was then admitted without

objection, as were Respondent's Exhibits 1-8. The parties Joint Exhibits 1-3 were also admitted into evidence. The VSB in its case in chief also called as witnesses the Respondent and Cam Moffatt. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. During all times relevant hereto, the Respondent, Neil Orion Reid, has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about August 23, 2004, Paul Tillage and Anthony Alvarez were traveling on Interstate 95 in Fairfax, Virginia when their vehicle was disabled. Police responded, temporarily detained both men and seized more than \$4,000 cash from Mr. Tillage and more than \$5,000 cash from Mr. Alvarez for a total of about \$9,803. Reid avers that he understood that prior to the police stop, Alvarez held all the money – some \$9,000 to \$10,000 – in his possession and that Alvarez gave some \$4,000 to Tillage to hold. Alvarez has confirmed money was all his.

3. Police released the two men without charge but did not return the money. Instead, the Commonwealth filed an information and notice of seizure action in the Fairfax County Circuit Court in an attempt to gain the forfeiture of the money to the Commonwealth.

4. Within days of the incident, Mr. Tillage and Mr. Alvarez met with Mr. Reid who agreed to attempt to recover the money for them. Mr. Alvarez was a former client of Mr. Reid. Mr. Reid states that he understood that although the money was taken from Mr. Alvarez and Mr. Tillage, the money belonged to Mr. Alvarez. Mr. Alvarez also contends that all of the seized money belongs to him. Mr. Tillage, however, contends that some of the money belonged to him.

5. Mr. Tillage and Mr. Alvarez contend that Mr. Reid was paid \$1,000 when he was retained. Mr. Alvarez claims that he told Mr. Reid that he would pay him an additional \$1,000 if Mr. Reid recovered the money.

6. Mr. Reid denies receiving any advanced payment, and explained to the bar that he worked the case on a contingent fee basis. Mr. Reid, however, did not execute a written fee agreement with Mr. Tillage or Mr. Alvarez, and never prepared a written contingent fee disbursement record.

7. On November 4, 2004, Mr. Reid filed a response to the forfeiture action in the Fairfax County Circuit Court on behalf of both Mr. Tillage and Mr. Alvarez. His response, signed by both men, prayed for the return of \$9,803.00 in cash seized from both of them.

8. On April 17, 2007, the court entered an order of nonsuit endorsed by Mr. Reid on behalf of the defendants, Mr. Tillage and Mr. Alvarez.

9. On May 23, 2007, the State Police issued two checks to Mr. Reid in the amount of

\$5,174.63 each, one payable to Mr. Alvarez and the other to Mr. Tillage. An accompanying cover letter indicates that the checks were based upon a total of \$9,803 plus \$546.26 in accrued interest.

10. At this time, Mr. Alvarez was incarcerated. Mr. Reid testified to the Board that he was unaware of this and had no means to contact Mr. Alvarez after driving by his home and seeing that he was not living there.

11. Although the two checks represented funds recovered for Mr. Alvarez and Mr. Tillage, on June 1, 2007, Mr. Reid deposited both checks, totaling \$10,349.26, into a non-trust account styled "Law Offices of Neil O Reid PC General Account" at SunTrust Bank.

12. On June 4, 2007, Mr. Reid withdrew \$6456 of the funds and of those funds, paid \$300 in cash to himself. He deposited the remaining \$6156 into a Virginia Uniform Transfers to Minors Act (VUTMA) account owned by Mr. Reid for the benefit of Mr. Reid's minor son, styled "Evan O Reid, Neil O Reid Cust VUTMA," also at SunTrust Bank.

13. Mr. Reid explained to the VSB and testified to the Board that he used a VUTMA account to hold funds belonging to his clients. The rest of the money that he kept in his general account (\$3893.26) Reid explained was his one-third contingent fee plus costs. There was no written contingent fee agreement, however, and no disbursement sheet for either client to review reflecting Reid's proposed distribution of the funds as required by the Rules of Professional Conduct. In addition, despite the one-third contingent fee agreement, Reid testified that his contingency fee increased thereafter based on his work on the case.

14. On an unknown date in 2008, Mr. Tillage and Mr. Reid had a chance encounter at the Richmond Manchester courthouse. Mr. Reid asked Mr. Tillage to ask Mr. Alvarez to contact him.

15. Mr. Alvarez contacted Mr. Reid sometime after Mr. Reid and Mr. Tillage met. Mr. Reid and Mr. Alvarez discussed the recovery of the money. Mr. Reid contends that they also discussed Mr. Reid's fee. Mr. Reid admits that he told the bar during the course of its investigation that he thought his (Reid's) fee was one-third of the amount recovered plus costs incurred. Mr. Reid testified to the Board that, although he does not recall the details, he believes he explained to Mr. Alvarez during their subsequent conversation that he was charging more than one-third of the amount recovered for his fee due to his repeated efforts to locate Mr. Alvarez. Mr. Reid testified that Mr. Alvarez did not voice any objection to the increased fee during the conversation.

16. Mr. Alvarez asked Mr. Reid to transfer Mr. Alvarez' share of the funds to Laverne Garvey, the mother of Mr. Alvarez' children.

17. In response to this request, on April 17, 2008, Mr. Reid disbursed \$5500 from the VUTMA account to Ms. Garvey by certified check, a sum which was significantly less than two-thirds of the amount recovered.

18. Mr. Reid told Ms. Garvey by cover letter that the \$5,500 represented full and final

settlement.

19. Mr. Reid also explained by letter to VSB investigator Moffatt that Mr. Alvarez "... agreed to the \$5,500, more than what was taken from him according to them; more than what was returned to him in his name from the State, and an indicator that I thought the money was his without him countering at all, my above expenses and costs should not matter."

20. Mr. Reid, by written stipulation in the parties' Joint Exhibits 1 and 2, agreed to seek restitution of the confiscated funds for one-third of the amount recovered plus costs. However, Mr. Reid testified to the Board that he initially told Mr. Alvarez and Mr. Tillage that his fee would be "at least one-third."

21. Mr. Tillage complained to the VSB that he never received his share of the recovered funds and that Mr. Reid never contacted him about the money.

22. In response, Mr. Reid explained to the VSB that Mr. Tillage was not his client and that all of the money belonged to Mr. Alvarez anyway, that Mr. Tillage was just holding some of the money for Mr. Alvarez when the police detained them.

23. Mr. Reid did not pay any of the recovered funds to Mr. Tillage.

24. Further, despite his assertion that he did not represent Mr. Tillage, in his response to the Fairfax seizure action, endorsed by both men, Mr. Reid's endorsement indicates that he was counsel for both men.

25. Additionally, the nonsuit order indicates that Mr. Reid consented to the nonsuit on behalf of the defendants (plural), and that the property shall be returned to the defendants (plural) through counsel.

26. In addition to having neither a written contingent fee agreement nor a contingent fee disbursement statement, Mr. Reid maintained no required escrow account records or reconciliations pertaining to his receipt of funds from or on behalf of these two men or his use of the funds. In response to subpoena, however, he provided copies of the pertinent bank statements and VUTMA statements that reflect his deposit, transfer and disbursement of the funds as indicated above.

27. Mr. Reid explained to the VSB and testified to the Board that he was not in compliance with Rule 1.15 of the Rules of Professional Conduct and that he was subject to federal tax liens totaling \$112,000, according to the records he furnished to the bar. Reid states that he entered a Payment Arrangement with the Internal Revenue Service in 2006, that he is current with his tax obligations to the United States Government, that he informed the bar that his tax obligation was about \$20,000, and that the tax liability was not of his making.

28. Mr. Reid did not provide an explanation during his testimony before the Board regarding how he calculated his increased fee, nor did he provide specific details regarding any costs he incurred in representing Mr. Alvarez and Mr. Tillage.

## II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

### **RULE 1.4 Communication**

(a) lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information

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

(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

### **RULE 1.5 Fees**

(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.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination

### **RULE 1.15 Safekeeping Property** *(Pre -June 21, 2011 Version)*

(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:
- (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
  - (2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
  - (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them,
  - (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.

(e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

- (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
  - (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;
  - (ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements,

- (iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained.

The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts,

- (iv) reconciliations and supporting records required under this Rule;
- (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

(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.

- (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,
- (3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;
- (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

#### **RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

#### **III. DISPOSITION**

Upon review of the foregoing findings of fact, upon review of exhibits presented by VSB counsel on behalf of the VSB as Exhibit 1, Parts 1-18, and the stipulations of facts admitted as Joint Exhibits 1-3, upon review of exhibits presented by Respondent as Exhibits 1-8, upon evidence from witnesses presented on behalf of the VSB, upon evidence presented by Respondent in the form of his own testimony, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its findings as follows:

1. The Board determined that the VSB failed to prove by clear and convincing evidence any violation of Rule 1.4(a)(b) or (c), Rule 1.15(c)(1)(2) or (4), or Rule 8.4 (c).
2. In addition to Respondent's stipulation as to his violation of Rule 1.5(c) and Rule 1.15 (a),(e) and (f), the Board determined that the VSB did prove by clear and convincing

evidence that the Respondent was in violation of Rule 1.5(b), Rule 1.15 (c) and Rule 8.4(b).

Thereafter, the Board received further evidence of aggravation and mitigation from the VSB and Respondent, including Respondent's prior disciplinary record, admitted as VSB Exhibit 2. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by respondent. After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as a six month suspension, effective August 29, 2014 at 5:00 p.m., subject to the following terms:

1. At the conclusion of his suspension and for one year thereafter, Respondent shall employ at his own expenses the services of a Mentor approved by the VSB to provide advice on the appropriate protocol for handling client funds and creating appropriate records regarding the same, including written fee agreements;
2. At the conclusion of his suspension and for a period of one year thereafter, Respondent shall be responsible for submitting quarterly reports prepared by his Mentor to the VSB verifying his compliance with Rule 1.15

**WHEREFORE**, in accordance with Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia, it is further ORDERED that Neal Orion Reid shall forthwith give notice, by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and for all opposing attorneys and presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within fourteen (14) days of the effective date of the suspension, and makes such arrangements as now required herein within forty-five (45) days of the effective date of this Order. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective date of the suspension that such notices have been timely given and such arrangements made for the

disposition of matters.

It is further ORDERED that if Respondent is not handling any client matters on the effective date of the suspension, he shall submit an Affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by ¶ 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for a hearing before a three-judge Court.

It is further ORDERED that pursuant to Part 6, § IV, ¶ 13-9E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent, Neal Orion Reid, at his address of record with the Virginia State Bar, being 4914 Radford Avenue, Suite 308, Richmond, Virginia 23230, by certified mail and by first class mail to Respondent's Counsel, Michael L. Rigsby, 163 West Square Place, Garden Level, Richmond, Virginia 23238 and Edward L. Davis, Bar Counsel, Virginia State Bar, 1111 E. Main Street, Suite 700, Richmond, Virginia, 23219.

ENTERED this 29<sup>th</sup> day of August, 2014.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: \_\_\_\_\_

  
Tyler E. Williams, III, Chair