

VIRGINIA:

**BEFORE THE NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTERS OF
PETER CAMPBELL SACKETT**

**VSB Docket Nos.: 07-090-2130
07-090-070324**

SUBCOMMITTEE DETERMINATION

(Approval of Agreed Disposition for Public Reprimand with Terms)

On August 14, 2007, a duly convened Ninth District Subcommittee consisting of James R. McGarry, Esquire (Chair presiding), Tyler E. Williams, Esquire, and Frances J. Giles, lay member, met and considered these matters.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.d(3) of the Rules of the Supreme Court of Virginia, the Ninth District Subcommittee of the Virginia State Bar hereby approves the Agreed Disposition entered into between Respondent Peter Campbell Sackett ("Respondent") and Assistant Bar Counsel Scott Kulp, and hereby serves upon Respondent the following Public Reprimand with Terms:

VSB Docket No.: 07-090-2130

FINDINGS OF FACT

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. The Virginia State Bar received real estate trust account overdraft notices from Respondent's bank, American National Bank and Trust Company ("American National Bank").
3. Specifically, on January 16, 2007, the American National Bank notified Respondent that the item presented for payment exceeded the balance in his account.

Check #3664 was presented in the amount of \$750 and was paid, leaving a negative balance of \$760.05.

4. Then, on January 17, 2007, the American National Bank notified Respondent that the item presented for payment exceeded the balance in his account. Check #3619 was presented in the amount of \$6,858.67 and was paid, leaving a negative balance of \$1,542.05.

5. The bar's Investigation revealed that when he was notified of the overdrafts, Respondent made an appropriate deposit from his own funds and paid American National Bank's return fee.

6. In addition to the above-referenced overdraft notices, Larry Palmer, Clerk of the Lynchburg Circuit Court, called the Virginia State Bar on or about January 17, 2007 to report that Respondent gave him a bad check for real estate recording fees in the amount of \$551. The check was returned for insufficient funds and marked "account closed."

7. Respondent explained he picked up the wrong checkbook from a closed trust account with Community First Bank. When notified of the problem, Respondent gave the Clerk a good check written on his American National Bank trust account.

8. During the course of the bar's Investigation, the bar's Investigator discovered instances since May 2006 in addition to the aforementioned overdrafts in which Respondent's real estate trust account had insufficient funds and negative balances.

9. Respondent informed the bar's Investigator he was responsible for maintaining his own trust account and general account.

10. Respondent admitted there have been instances when he has had insufficient funds in his trust account to pay checks he wrote from the account.

11. The bar's Investigator detected --and Respondent acknowledged-- a deficiency in complying with required trust account procedures.

12. Respondent admitted he was not consistently doing monthly reconciliations of his trust accounts, and, in fact, was several months behind in his reconciliations.

13. In connection with this complaint, the bar issued Respondent a subpoena *duces tecum* demanding he provide his American National Bank trust account records for the period October 1, 2005 to the present. Respondent's failure to timely comply with this demand resulted in his administrative suspension from the practice of law for approximately three weeks (May 15, 2007 to June 4, 2007) until he produced such records that he had in response.

14. Respondent provided a check register entitled "Real Estate Trust Account" for the period January 6, 2005 to August 25, 2006. The check register shows negative balances between July 14, 2006 and August 24, 2006. These negative balances were corrected by subsequent deposits.

15. The bar's Investigator reviewed a second set of documents in response to the bar's subpoena *duces tecum*. These documents included handwritten client subsidiary ledgers and several pages of handwritten ledgers the bar's Investigator assumed were for real estate transactions. In part, the ledgers show deposits and disbursements but do not have dates or the complete name of clients. The handwritten ledgers are incomplete, again lacking the name of the client and sufficient information to identify the

transactions. Additionally, no time records were provided to determine how and when Respondent earned a fee.

16. In connection with his review of the foregoing overdrafts, the bar's Investigator found no readily available evidence that clients had been harmed or that Respondent was using his trust account for purposes unrelated to client business.

[Rule 1.15]

VSB Docket No.: 07-090-070324:

FINDINGS OF FACTS

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. The Virginia State Bar received overdraft notices from Respondent's bank, American National Bank and Trust Company ("American National Bank"), regarding the same real estate trust account No. 13334 implicated in complaint VSB Docket number 07-090-2130.

3. Specifically, on April 18, 2007, American National Bank notified Respondent that the item presented for payment exceeded the balance in his account. Check #3669 was presented in the amount of \$2,470 and was returned, leaving a balance of \$22.49.

4. Then, on April 23, 2007, American National Bank notified Respondent that the item presented for payment exceeded the balance in his account. Check #3669 in the amount of \$2,470 was presented again and was paid, leaving a negative balance of \$9.51.

5. Upon interview by the bar's Investigator, Jane Baynes, Deputy Operations Manager for the American National Bank, said Respondent made a deposit on April 24, 2007 to cover the \$2,400 overdraft, plus the \$32 return check fee.

6. During the course of the bar's Investigation, the bar's Investigator discovered instances since May 2006 in addition to the aforementioned overdrafts in which Respondent's real estate trust account had insufficient funds and negative balances.

7. Respondent informed the bar's Investigator he was responsible for maintaining his own trust account and general account.

8. The bar's Investigator detected --and Respondent acknowledged-- a deficiency in complying with required trust account procedures.

9. Respondent admitted there have been instances when he has had insufficient funds in his trust account to pay checks he wrote from the account.

10. Respondent admitted he was not consistently doing monthly reconciliations of his trust accounts, and, in fact, was several months behind in his reconciliations.

11. In connection with his review of the foregoing overdrafts, the bar's Investigator found no readily available evidence that clients had been harmed or that Respondent was using his trust account for purposes unrelated to client business.

[Rule 1.15]

NATURE OF MISCONDUCT

The foregoing Findings of Fact for VSB Docket Nos. 07-090-2130 and 07-090-070324 give rise to the following violations of the Rule of Professional Conduct:

RULE 1.15 Safekeeping Property

- (c) A lawyer shall:
 - (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and
- (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.
- (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.

SUBCOMMITTEE DETERMINATION

It is the decision of the Ninth District Subcommittee to accept the Agreed Disposition of the parties. Accordingly, a hearing is not necessary to resolve this matter

and Respondent shall receive a Public Reprimand with Terms pursuant to Part Six, Section IV, Paragraph 13.G.1.d(3) of the Rules of the Supreme Court of Virginia. This Public Reprimand with Terms is public discipline under the Rules of the Supreme Court of Virginia.

WHEREFORE, the Respondent is hereby issued a single Public Reprimand for the foregoing matters (VSB Docket Nos. 07-090-2130 and 07-090-070324) with the following Terms:

(1) Within 15 days of the date of the Subcommittee Determination, Respondent shall confirm in writing review of Rule 1.15 of the Rules of Professional Conduct to Assistant Bar Counsel Scott Kulp, Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800;

(2) Within 30 days of the date of the Subcommittee Determination, Respondent shall engage the services of a CPA (Certified Public Accountant) (a) who will certify familiarity with the requirements of Rule 1.15 of the Rules of Professional Conduct, and (b) who has been pre-approved by Assistant Bar Counsel to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the CPA determines that Respondent is in compliance with Rule 1.15, the CPA shall so certify in writing to Respondent and the Virginia State Bar. In the event the CPA determines Respondent is NOT in compliance with Rule 1.15, the CPA shall notify Respondent and the Virginia State Bar, in writing, of the measures Respondent must take to bring himself into compliance with Rule 1.15. Respondent shall provide the CPA with a copy of the Agreed Disposition at the outset of his engagement of the CPA.

(3) Respondent shall be obligated to pay when due the CPA's fees and costs for services (including provision to the bar and to Respondent of information concerning this matter);

(4) In the event the CPA determines that Respondent is NOT in compliance with Rule 1.15, R shall have forty-five (45) days following the date the CPA issues a written statement of the measures Respondent must take to comply with Rule 1.15 within which to bring him into compliance. The CPA shall then be granted access to Respondent's office, books, and records, following the passage of the forty-five (45) day period to determine whether Respondent has brought himself into compliance as required. The CPA shall thereafter certify in writing to the Virginia State Bar and to Respondent either that Respondent has brought himself into compliance with Rule 1.15 within the forty-five (45) day period or that he has failed to do so. Respondent's failure to bring himself into

compliance with Rule 1.15 as of the conclusion of the forty-five (45) day period shall be considered a violation of the Terms set forth herein.

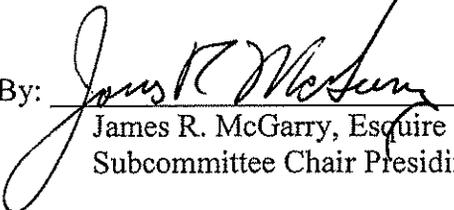
(5) Unless an extension is granted by the bar for good cause shown to accommodate the CPA's schedule, the Terms specified in paragraphs 2, 3, and 4, shall be completed no later than February 15, 2008.

(6) On or about February 2009, the CPA engaged pursuant to paragraph 2 shall reassess Respondent's attorney's trust account record-keeping, accounting, and reconciliation methods and procedures to ensure continued compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the CPA determines that Respondent has NOT remained in compliance with this Rule, such non-compliance will be considered a violation of the Terms set forth herein.

If, however, ANY of the foregoing Terms are not met by the dates specified, this District Committee shall impose as an Alternate Sanction a Certification For Sanction Determination as defined by Part Six, Section IV, Paragraph 13.A of the Rules of the Virginia Supreme Court and set forth in Part Six, Section IV, Paragraph 13.G.5.b. of the Rules of the Virginia Supreme Court. If there is disagreement as to whether the Terms were fully and timely completed, the Ninth District Committee will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the Terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

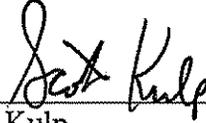
Pursuant to Part Six, Section IV, Paragraph 13.b.8.c.(1) of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs.

**NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

By: 
James R. McGarry, Esquire
Subcommittee Chair Presiding

CERTIFICATE OF SERVICE

I certify I have, this the 12th day of OCTOBER, 2007, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and complete copy of the Subcommittee Determination (Public Reprimand with Terms) to Respondent Peter Campbell Sackett, at his last address of record with the Virginia State Bar, Peter C. Sackett, P.C., 714 Court Street, Lynchburg, VA 24504.



Scott Kulp
Assistant Bar Counsel