

JAN 8 2014

**VIRGINIA:**

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

**IN THE MATTER OF  
Stephen John Saunders**

**VSB Docket No. 13-041-094537**

**SUBCOMMITTEE DETERMINATION  
PUBLIC REPRIMAND WITH TERMS**

On January 2, 2014, a meeting was held in this matter before a duly convened Fourth District Subcommittee consisting of Sudeep Bose, Member; Edward M. Johnson, Lay Member; and Elizabeth L. Tuomey, Subcommittee Chair. During the meeting, the Subcommittee unanimously voted to approve an agreed disposition for a Public Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-15.B.4 of the Rules of the Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Renu Mago Brennan, Assistant Bar Counsel, and Stephen John Saunders, Respondent, *pro se*.

WHEREFORE, the Fourth District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

**I. FINDINGS OF FACT**

1. At all times referenced herein Respondent Stephen John Saunders (Respondent) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent is a solo practitioner who was licensed to practice law in the Commonwealth of Virginia in 1993.
3. Respondent asserts that his practice currently focuses on court-appointed Guardian Ad Litem (GAL) cases, but he also represents two personal injury clients, and he represents workers' compensation clients. Respondent asserts that he has practiced personal injury law for 15 years.
4. During the time period of these facts, Respondent had three bank accounts which he used in his professional practice. Two of the accounts are business checking

accounts, and the third is a noninterest-bearing checking account designated "Client's Trust Fund."

5. The account designated "Client's Trust Fund" is the account Respondent considered his trust account.
6. From February 2012 to December 2013 Respondent asserts that did not deposit client funds in his trust account.
7. As of October 2011, Respondent was handling at least two personal injury cases, referred to herein as Case A and Case B.
8. On March 26, 2012, Respondent received \$25,000 in settlement funds on Case A.
9. Respondent did not deposit the \$25,000 in his trust account; rather, he deposited the entire \$25,000 in his business checking account.
10. On March 30, 2012, the client in Case A received \$15,000 from Respondent.
11. Upon termination of the case, and at the time Respondent remitted payment to the client, Respondent did not provide the client with a written statement stating the outcome of the matter and showing the remittance to the client and the method of its determination.
12. Respondent asserts that he spoke to the client and advised this client of the settlement, and it was agreed that the amount due the client was \$15,000.00.
13. Chiropractor Cameron Hatam rendered services to the client and was entitled to \$3,242.00 of the remaining \$10,000 held by Respondent in his business checking account.
14. Respondent did not tender any sums to Dr. Hatam.
15. On January 22, 2013, Dr. Hatam filed a complaint with the Virginia State Bar (bar).
16. By check dated February 4, 2013 drawn on Respondent's home equity line and made payable to Virginia Family Chiropractic in the amount of \$5,152.00, Respondent attempted to pay Dr. Hatam's lien of \$3,242.00; however, this check bounced.
17. On February 13, 2013, almost one year after he received the funds and one day prior to filing his response to the bar complaint, Respondent tendered \$5,152.00 in certified funds from his business checking account to Dr. Hatam. The \$5,152.00 included repayment of Dr. Hatam's lien of \$3,242.00.
18. Respondent paid Dr. Hatam with funds drawn out of Respondent's home equity line of credit.

19. Respondent did not preserve the funds due Dr. Hatam in any bank account or otherwise.
20. Respondent's business checking account, where he held the funds due Dr. Hatam, dropped below the amount due Dr. Hatam between March 26, 2012 and February 13, 2013.
21. On July 20, 2012, Respondent received \$11,000 in settlement funds on Case B.
22. Respondent did not deposit the \$11,000 in his trust account; rather, he deposited the entire \$11,000 in his business checking account.
23. On July 26, 2012, Respondent paid the client in Case B \$5,000.
24. Upon termination of the case, and at the time Respondent remitted payment to the client, Respondent did not provide the client with a written statement stating the outcome of the matter and showing the remittance to the client and the method of its determination.
25. Respondent asserts that he spoke to the client and advised this client of the settlement, and it was agreed that the amount due the client was \$5,000.00.
26. Dr. Hatam rendered services to the client in Case B and was entitled to \$1,910.00 of the remaining \$6,000 held by Respondent in his business checking account.
27. Respondent did not tender any sums to Dr. Hatam.
28. As stated, on January 22, 2013, Dr. Hatam filed a bar complaint.
29. By check dated February 4, 2013, payable to Virginia Family Chiropractic, in the amount of \$5,152.00, Respondent attempted to pay Dr. Hatam's lien of \$1,910.00; however, this check drawn on Respondent's home equity line, bounced.
30. On February 13, 2013, almost one year after he received the funds and one day prior to filing his response to the bar complaint, Respondent tendered \$5,152.00 in certified funds from his business checking account to Dr. Hatam. The \$5,152.00 included repayment of Dr. Hatam's lien of \$1,910.00.
31. Respondent paid Dr. Hatam with funds drawn out of Respondent's home equity line of credit.
32. Respondent did not preserve the funds due Dr. Hatam in any bank account or otherwise.

33. Additionally, another medical provider provided services to the client in Case B and was entitled to fees from Respondent, which Respondent did not pay to this provider until March 22, 2013.
34. Respondent did not preserve the funds due this medical provider in any bank account or otherwise.
35. Respondent's business checking account, where he held the funds due Dr. Hatam and the other medical provider, dropped below the amounts due Dr. Hatam and the medical provider between July 20, 2012 and February 13, 2013.
36. According to Respondent's trust account bank statement, on November 1, 2012, Respondent had a negative balance of -\$3.70 in his trust account.
37. As stated, Respondent currently has two active personal injury cases, in addition to his GAL work.
38. Respondent maintains that from February 2012 to December 2013 he did not use his trust account because he did not receive any fees from clients until they are earned.
39. In January and February 2013, Respondent withdrew funds from his trust account for personal use.
40. Respondent maintains that the funds in the client trust account were not client funds but were part of a \$1,000 minimum required balance. Respondent did not maintain a \$1,000 minimum balance in his trust account from November 2012 to October 31, 2013.
41. Respondent acknowledges that he has not properly handled the funds received in the two cases referenced herein; that he did not properly deposit client and third party funds in his trust account as required; and that he did not reconcile his trust account as required.

## **II. NATURE OF MISCONDUCT**

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

### **RULE 1.5 Fees**

(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**

##### **(a) Depositing Funds.**

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts or placed in a safe deposit box or other place of safekeeping as soon as practicable.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

- (i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or
- (ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be promptly withdrawn from the trust account.

##### **(b) Specific Duties.** 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 that such person is entitled to receive; and

(d) **Required Trust Accounting Procedures.** In addition to the requirements set forth in 1.15(a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts:

##### **(3) Reconciliations.**

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

### **MITIGATING FACTORS**

The subcommittee considered Respondent's assertion that he worked extensively in the past with Virginia Family Chiropractic as well as his assertion that due to family difficulties, Respondent sought an extension to pay Dr. Hatam and Virginia Family Chiropractic. The subcommittee considered as applicable mitigating factors the following, contained in the *Standards for Imposing Lawyer Sanctions*, published by the American Bar Association, as follows:

- a. Absence of a prior disciplinary record;
- b. Absence of a dishonest or selfish motive;
- c. Personal or emotional problems;
- d. Full and free disclosure to the bar and cooperative attitude toward proceedings; and
- e. Remorse.

### **III. IMPOSITION OF SANCTION**

Accordingly, the subcommittee imposes upon Respondent a Public Reprimand with Terms. The terms shall be met by the dates specified below and are as follows:

1. For a period of two years following the date of service of the Public Reprimand with Terms on Respondent, Respondent shall not engage in any conduct that violates Virginia Rule of Professional Conduct 1.15 and all subparts, including any amendments thereto,

and/or which violates any analogous provisions of the Professional Rules of Conduct or Disciplinary Rules governing the safekeeping of property, and any amendments thereto, of any other jurisdiction in which Respondent may be admitted to practice law. The terms contained in this paragraph shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated Rule 1.15 of the Rules of Professional Conduct or any analogous provisions of any other jurisdiction in which Respondent may be admitted to practice law, provided however, that the conduct upon which such finding was based occurred within the two-year period following the date of service of the Public Reprimand with Terms on Respondent, and provided, further, that such ruling has become final.

2. On or before June 1, 2014, Respondent shall either attend in person or view the videotape of the CLE "The Devil Wears Green," presented by Leslie A.T. Haley, Esq., and Jeanne Dahnk, Esq. Respondent shall not submit these hours of CLE toward his annual MCLE compliance in Virginia or any jurisdiction in which he is admitted. Respondent shall certify compliance to Renu M. Brennan or her designee.
3. Respondent shall read in their entirety *Lawyers and Other People's Money* and Rule 1.15 of the Virginia Rules of Professional Conduct and shall certify compliance in writing to Assistant Bar Counsel Renu M. Brennan or her designee by January 15, 2014.
4. From the date of service of this Public Reprimand with Terms on Respondent through January 1, 2016, Respondent hereby authorizes a Virginia State Bar Investigator to conduct unannounced personal inspections of his trust account books, records, and bank records to ensure his compliance with all of the provisions of Rule 1.15 of the Rules of Professional Conduct, and Respondent shall fully cooperate with the Virginia State Bar investigator.

As agreed by Respondent, if Respondent does not meet these terms by the specified deadlines, the matter will proceed as set forth at Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia, and the alternative disposition shall be a Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13-15.G of the Rules of the Supreme Court of Virginia. Any proceeding initiated due to failure to comply with Terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to ¶ 13-9.E of the Rules of the Supreme Court of Virginia.

As agreed by Respondent, this Public Reprimand with Terms is non-appealable.

Pursuant to Part 6, § IV, ¶ 13-9.E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

FOURTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR



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Elizabeth L. Tuomey, Esq.,  
Subcommittee Chair

**CERTIFICATE OF MAILING**

I certify that on January 3, 2014, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail, return receipt requested to Stephen John Saunders, Respondent, at 1031 22nd Street South, Arlington, VA 22202, Respondent's last address of record with the Virginia State Bar.



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Renu Mago Brennan  
Assistant Bar Counsel