

**VIRGINIA:**

**BEFORE THE TENTH DISTRICT SUBCOMMITTEE, SECTION I  
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF  
ROBERT W. SPESSARD, JR.**

**VSB Docket No. 08-101-071407**

**SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)**

On March 6, 2009, a meeting in this matter was held before a duly convened Tenth District Subcommittee, Section I consisting of Dean R. Manor, Esq., Robin J. Kegley, Esq., and Willard H. Maddy, Jr.

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

**I. FINDINGS OF FACT**

1. Respondent represented Complainant Ryland Turpin Acree, II, and Michelle Wolf Acree, purchasers, and William L. Bean and Stella L. Trudel, sellers ("sellers"), in the December 28, 1999, sale of a parcel of land with a structure thereon located at 276 Fork Drive, NE, Floyd, Virginia for \$73,600.00. Respondent served as the settlement agent.
2. Although the real estate transaction in which Respondent represented the sellers and the Acrees involved the sale of real estate, there is no written contract for the sale of the real estate and structure at 276 Fork Drive, NE, Floyd, Virginia.
3. Prior to his representation of the Acrees and the sellers in the December 28, 1999, sale Respondent had previously represented the sellers, as defendants, in a civil suit in which they were sued by their neighbors, Barbara Rossman and Marian Rose. This prior suit involved separate property located at 314 Fork Drive, NE, Floyd, Virginia.

4. Respondent did not believe either the previous representation of the sellers or the joint representation of the Acrees and the sellers in the December 28, 1999, sale, constituted a conflict of interest and therefore did not disclose any potential conflict of interest to the Acrees, nor did he obtain the parties' written consent and waiver to his joint representation.
5. The Acrees assert that they hired Respondent to research legal title and to conduct a legal transaction for their purchase of the real estate and structure with General Warranty and English Covenants of Title.
6. Respondent asserts that the parties negotiated the price and other details, and he acted as closing attorney.
7. There is no written retainer agreement.
8. Respondent knew that the sale of the real property with the structure located at 276 Fork Drive, NE, Floyd, Virginia, from the sellers to the Acrees, would violate a Floyd County subdivision ordinance.
9. In order to circumvent the ordinance, Respondent employed a "ruse" to convey the property to a trust for the benefit of the sellers' son, Yada Louis Bean, and then out of the trust to the Acrees. Respondent believed the "ruse" would accommodate the expressed wishes of his clients.
10. Respondent learned about the "ruse" through consultation with another attorney in Floyd County. The other attorney had successfully previously employed the "ruse" to circumvent the ordinance. Accordingly, Respondent believed the "ruse" was a time-tested, common practice among Floyd attorneys that would be successful.
11. The sellers transferred the real property via two successive deeds, each dated December 28, 1999. The first deed reflects a transfer from the sellers to William L. Bean as custodian for their infant son, Yada Louis Bean, under the Uniform Transfers to Minors Act. The second deed reflects a simultaneous transfer from the Yada Louis Bean, through his custodian, to the Acrees. The deeds are recorded in the Floyd County Circuit Court

Clerk's Office as Document Nos. 990003192 and 990003193 respectively. Yada Louis Bean received no money from the transaction and was not listed on the settlement statement. Respondent has admitted the transfer was effectuated via the two transactions solely to circumvent the Floyd County subdivision ordinance in deposition testimony.

12. While the first transfer from the sellers to Yada Louis Bean was legal, the zoning administrator deemed the second transfer from Yada Louis Bean to the Acrees a violation of the Floyd County subdivision ordinance.
13. The Acrees were unaware that the second transfer was in circumvention of the Floyd County subdivision ordinance. They believed the transaction as effectuated was legal.
14. As a result of the violation of the ordinance, and as a result of construction violations from the original construction, which pre-date Respondent's and the Acrees' involvement, and which stem from the fact that Floyd County officials conducted only one on-site inspection during initial construction of the home, the Acrees do not possess a Certificate of Occupancy and have not yet obtained building permits to improve their home.
15. There are other homes in Floyd County which violate the ordinance, but the Floyd County Attorney asserts that Floyd County is trying harder to strictly enforce the building ordinances. The County Attorney has indicated that the County may allow the Acrees to make the requested improvements if they can satisfy certain conditions.

## II. NATURE OF MISCONDUCT

Such conduct by Robert W. Spessard, Jr. constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

### **RULE 1.1 COMPETENCE**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

## **RULE 1.2 SCOPE OF REPRESENTATION**

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

## **RULE 1.4 COMMUNICATION**

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

## **RULE 1.7 CONFLICT OF INTEREST**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client consents after consultation, and:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to the affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) the consent from the client is memorialized in writing.

## **RULE 8.4 MISCONDUCT**

It is professional misconduct for a lawyer to:

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

### III. PUBLIC REPRIMAND 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 Reprimand with Terms of this complaint. The terms and conditions are as follows:

Respondent shall attend twelve (12) hours of MCLE-approved Continuing Legal Education, six (6) of which shall be in the area of ethics, three (3) in the area of real estate law, and three (3) in the area of contracts law and confirm attendance by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form(s) to Assistant Bar Counsel Renu Mago by April 1, 2010. These twelve (12) hours of CLE shall not count toward Respondent's annual MCLE requirement, and Respondent shall not submit these hours to the MCLE Department of the Virginia State Bar or any other Bar organization.

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 dates, this subcommittee shall impose a shall impose as an Alternate Sanction a Certification For Sanction Determination as defined by Part VI, Section IV, Paragraph 13.A of the Rules of the Virginia Supreme Court and pursuant to Part VI, Section IV, Paragraph 13.G.5.b. of the Rules of the Virginia Supreme 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.

TENTH DISTRICT SUBCOMMITTEE, SECTION I  
OF THE VIRGINIA STATE BAR

By



Dean R. Manor, Esq.  
Chair

**CERTIFICATE OF SERVICE**

I certify that on March 31, 2009, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination Public Reprimand with Terms to Robert W. Spessard, Jr., Esquire, Respondent, at PO Box 22, 109 East Main Street, Floyd, VA 24091, Respondent's last address of record with the Virginia State Bar.

Renu Mago  
Renu Mago, Assistant Bar Counsel