

VIRGINIA:

BEFORE THE SECOND DISTRICT COMMITTEE SECTION II
OF THE VIRGINIA STATE BAR

IN THE MATTER OF MICHAEL S. WEISBERG
VSB Docket No. 14-022-099500

DISTRICT COMMITTEE DETERMINATION
(PUBLIC ADMONITION WITHOUT TERMS)

On the 18th day of June 2015, a duly appointed panel of the Second District Committee Section II, hereinafter "the Committee", heard this matter upon the Charge of Misconduct issued April 22, 2015 and pursuant to the Rules of the Supreme Court of Virginia, Part 6.§ IV, Paragraph 13-16.

The bar appeared through its Assistant Bar Counsel Paul D. Georgiadis. The Respondent Michael S. Weisberg was present and represented by Counsel Richard Y. AtLee. The Committee panel consisted of David Whitfield Rowan, Esquire, Scott Charles Vachris, Esquire, Kamala Hallgreen Lannetti, Esquire, and Leslie Frances Spasser, Esquire, Chair. A lay member of the Committee previously scheduled to attend and serve as a panelist was unable to attend. The Virginia State Bar moved to proceed with the panel of four attorney members. Without objection from the Respondent, the Committee granted the motion and agreed to proceed with the four present panel members.

Pursuant to Part 6, Section IV, Paragraph 13-16.X of the Rules of the Virginia Supreme Court, the Second District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition Without Terms:

I. FINDINGS OF FACT

Upon the evidence presented consisting of the bar's exhibits 1-11, the factual stipulations of the parties that were received by the Committee, and arguments of counsel, the Committee finds that the Virginia State Bar proved by clear and convincing evidence the following facts and Rule violations:

1. At all times relevant, Respondent Michael S. Weisberg, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia. He was licensed to practice in Virginia on June 17, 1969.
2. On or before October 11, 2012, Respondent began representing Anthony Perry for personal injuries suffered in an accident that occurred on or about August 19, 2012.
3. On October 11, 2012, Respondent sent Dr. Arthur Wardell of Wardell Orthopedics, P.C. a letter of representation and requested that Dr. Wardell send him Perry's medical records to include "detailed medical report" and "disability rating."
4. In his October 11, 2012 letter to Dr. Wardell, Respondent advised, "In the event of recovery, we will protect your financial interests in this matter."
5. On October 19, 2012, Perry executed an assignment of any proceeds from his negligence case in favor of Wardell Orthopedics, P.C. pursuant to §§ 8.01-26 and 34-28.1 of the Code of Virginia.
6. On or about October 24, 2012, Dr. Wardell forwarded the executed Perry Assignment to Respondent, which Respondent received.
7. Perry continued to treat with Dr. Wardell through March 22, 2013, incurring a balance owed to Dr. Wardell of \$21,293.
8. Respondent settled Perry's personal injury claims for \$75,000.
9. In April 2014, Respondent disbursed the \$75,000. On April 8, 2014, he disbursed \$16,119.45 to Perry. On April 9, 2014, he made the following disbursements: \$7,573.88 to Oasis Finance; \$1,500 to MCV Physicians in

satisfaction of its statutory lien; \$23,524.60 to Commonwealth of Virginia for MCV Hospitals in satisfaction of its statutory lien; and \$750 to Wardell Orthopedics representing the statutory lien amount.

10. Dr. Wardell negotiated the check for \$750 and later that month returned the funds to Respondent.
11. On April 28, 2014, Respondent wrote to Wardell's counsel Tiffany explaining the context of the \$750 payment to Dr. Wardell. He stated, "... there were insufficient funds to pay all of the liens in full by a very substantial amount."
12. The parties stipulated that Respondent would have testified to the panel that he had a reasonable belief that the Perry Assignment was not valid.
13. At no point did Respondent advise Dr. Wardell that he believed the Perry Assignment which he received from Dr. Wardell was not a valid and enforceable assignment.
14. Dr. Wardell withdrew his complaint to the Virginia State Bar against Respondent on or about April 6, 2015.

Upon the evidence presented and arguments of counsel, the Committee denied Respondent's motions to strike and to dismiss based on arguments that the Perry Assignment – and any such assignment of future, prospective personal injury proceeds was not valid and enforceable. The Committee found that the Perry Assignment was valid and enforceable under Virginia law as an assignment of anticipated proceeds of a court award or settlement.

II. NATURE OF MISCONDUCT

Such conduct by Michael S. Weisberg constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

The Committee found that the Virginia State Bar proved by clear and convincing evidence a violation of the charged Rules, Rule 1.15 (b) (4) and Rule 1.15 (b) (5) of the Rules of Professional Conduct.

Evidence was presented and arguments by counsel were made on the issue of an appropriate sanction. The bar stipulated that Respondent had no record of prior discipline. The Respondent testified as to changes in his practice and specifically how he would handle the same circumstances if they arose again.

III. PUBLIC ADMONITION WITHOUT TERMS

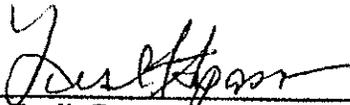
Accordingly, it is the decision of the Second District Committee to impose a Public Admonition Without Terms, and Michael S. Weisberg is hereby so admonished.

Pursuant to Paragraph 13-9.E of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

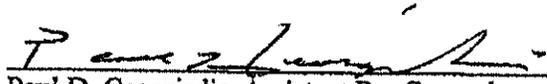
This matter was reported by Lisa Hill, CCR, Biggs and Fleet, LTD Court Reports, 125 St. Paul's Boulevard, Suite 309, Norfolk, VA 23510. 757.622.2049.

SECOND DISTRICT COMMITTEE SECTION II
OF THE VIRGINIA STATE BAR

Entered: 7/22/2015

By: 
Leslie Frances Spasser, Esquire, Chair

I ASK FOR THIS:



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CERTIFICATE OF MAILING

I certify that on that on the 22nd day of July, 2015, a true and complete copy of the District Committee Determination (Public Admonition Without Terms) was sent by certified mail to Michael S. Weisberg, Respondent, at Michael S. Weisberg, PC, 112 College Place, Norfolk, VA 23510, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Richard Y. AtLee Respondent's Counsel, at Hall, Fox, and AtLee, One Manhattan Square, Hampton, VA 23666.



Paul D. Georgiadis, Assistant Bar Counsel