



VIRGINIA:

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

**IN THE MATTER OF
George Holton Yates**

VSB Docket No. 15-022-101725

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

On May 11, 2016, a meeting in this matter was held before a duly convened Second District Committee, Section II Subcommittee consisting of Mr. Frances Nance, Lay Member, Wanda J. Cooper, Esquire, and Leslie F. Spasser, Esquire, Chair presiding (the Subcommittee). During the meeting, the Subcommittee 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 Virginia Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Christine M. Corey, Esquire, Assistant Bar Counsel, Michael L. Rigsby, Esquire, counsel for Respondent, and George Holton Yates, Esquire, Respondent.

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

FINDINGS OF FACT

- 1) At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia.
- 2) The Complainant in this case, Therese Marie Price, Esquire, is an attorney who worked for the Respondent from November 8, 2014 until her resignation on January 26, 2015.
- 3) While working for the Respondent, Ms. Price realized that the Respondent was not depositing all of his clients' funds into his trust account and was instead, depositing some client

funds directly into his operating account.

4) The client funds were commingled with the Respondent's funds in the operating account.

5) On or about December 15, 2014, Respondent issued a payroll check drawn on his operating account payable to Ms. Price in the amount of \$670.18. The check was presented to Respondent's bank on December 16, 2014 and payment reversed for nonsufficient funds. Upon learning of the payment reversal, Respondent issued a replacement check to Ms. Price that was honored by Respondent's bank on December 22, 2014. Between December 17, 2014 and December 22, 2014, Respondent maintained a positive cash balance in his operating account.

6) A subpoena for Respondent's operating account and trust account produced documents evidencing that prior to Respondent receiving the bar complaint, his trust account contained just a few transactions each month.

7) Prior to the bar complaint, Respondent deposited the majority of his retainer fees into his operating account. Respondent also had personal funds in his operating account.

8) Respondent has rental properties and he deposited rental payments from credit cards into his operating account, as well as the majority of his flat fees for criminal cases during the time period January 1, 2014 through January 31, 2015. Prior to this complaint, Mr. Yates had one credit card terminal in his office. Credit card payments from clients and tenants went directly to Mr. Yates' operating account. Immediately following the complaint, Mr. Yates took steps to establish two credit card terminals – one for his trust account and one for his real estate account. The trust account credit card terminal became operational on February 10, 2015. Now, all client credit card payments are deposited into Mr. Yates' trust account.

9) Respondent paid personal and professional bills from the operating account during the

time period from January 1, 2014 through January 31, 2015. There was no accounting of whether the particular client's funds had been earned and whose funds were being used when checks were written from the operating account to pay bills.

10) When he received the bar complaint, the February 2015 operating account statement and deposit slips show that Respondent deposited \$25,000.00 of his personal funds into his operating account on February 9, 2015, and then wrote fifteen checks representing client advanced funds into his trust account. The checks written were for the total amount advanced by each client, without calculation of the fees earned by Respondent for services provided the client. Deposit of these checks in this trust account resulted in an overdraft in Respondent's operating account of more than \$7,000.00 on February 13, 2015.

11) Respondent deposited an additional \$13,000.00 of personal funds into his operating account on February 17, 2015 to cover the overdraft. He wrote additional checks on his operating account resulting in an overdraft on February 19, 2015 of \$1,410.12. Respondent's operating account bank statements show that \$8,000.00 was credited to the account on February 20, 2015 and that a client refund check for \$1,250.00 was presented for payment from his operating account on February 20, 2015.

12) On or about March 16, 2015, Respondent issued a check on his operating account to a client for unearned fees in the amount of \$500.00.

13) Once the Bar complaint was initiated, Respondent took steps to change his practice regarding his trust account so that he would be in compliance with the Trust Account Regulations.

I. NATURE OF MISCONDUCT

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

RPC 1.15- Safekeeping of 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.

(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:

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

- (i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and
- (ii) any unexpended balance.

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

(1) **Insufficient Fund Reporting.** All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(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.

II. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a PUBLIC Reprimand with Terms. The terms are:

1) Respondent shall read in its entirety Lawyers and Other People's Money and Legal Ethics Opinion 1606 and shall certify compliance in writing to Assistant Bar Counsel, Christine M. Corey, or her designee, pursuant to the terms of the Agreed Disposition.

2) For a period of two years following entry of the Subcommittee's Determination, the 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 shall fully cooperate with the Virginia State Bar Investigator.

If the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia, Respondent shall be required to show cause why a **SIXTY (60) Day SUSPENSION** should not be imposed. 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.

In accordance with the Agreed Disposition for a Public Reprimand with Terms, this **ORDER** is **FINAL** and **NON-APPEALABLE**.

It is further **ORDERED** that a copy of this order shall be mailed to Michael L. Rigbsy, Esquire, counsel for Respondent, and George Holton Yates, Esquire, Respondent, at his last address of record with the Virginia State Bar, and to Assistant Bar Counsel Christine M. Corey.

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.

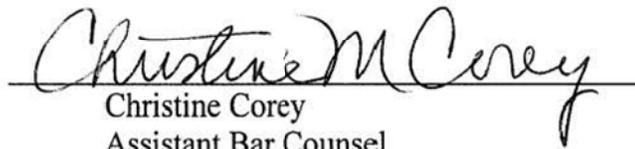
SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR



Leslie Frances Spasser
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on November 7, 2016 a true and complete copy of the Subcommittee Determination (PUBLIC Reprimand With Terms) was sent by certified mail to George Holton Yates, Respondent, at Suite 101, 1023 Laskin Road, Virginia Beach, VA 23451-6314, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Michael L. Rigsby, counsel for Respondent, at Michael L. Rigsby, PC, P.O. Box 29328, Henrico, VA 23242.


Christine Corey
Assistant Bar Counsel