VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

received

DEC 15

VSB CLERK'S OFFICE

IN THE MATTER OF ROBERT JOHN HARRIS
VSB DOCKET NO. 04-070-3724

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On the 5th day of December, 2005, a meeting in this matter was held before a duly convened subcommittee of the Seventh District Committee consisting of Frederick W. Payne, Esquire, Steven H. Gordon, Lay Member and Thomas J. Chasler, Esquire, presiding.

Pursuant to Part 6, § IV, ¶ 13(G)(1)(c) of the *Rules of Virginia Supreme Court*, a subcommittee of the Seventh District Committee of the Virginia State Bar hereby serves upon the Respondent the following Agreed Disposition of a PUBLIC REPRIMAND WITH TERMS:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Robert John Harris, Esquire (hereinafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about April 6, 2004, the Complainant, Malachi A. Thompson hired Respondent to provide legal advice concerning a property distribution matter pursuant to Virginia's intestate succession laws. Complainant paid Respondent an advance legal fee of $600.00 in cash. Complaint did not sign a retainer agreement and Respondent did not discuss with Mr. Thompson his hourly billing rate and compensation for expenses.

3. Respondent did not deposit the advance legal fee in his trust account. Respondent did not have a trust account when Mr. Thompson paid the advance legal fees. As of October 21,

2005, Respondent has not established a trust account to comply with the Virginia State Bar's IOLTA requirements.

4. Respondent did not respond to Mr. Thompson's repeated attempts to contact him by telephone. After Mr. Thompson's efforts to contact Respondent proved unsuccessful, he mailed Respondent a letter to request a refund of the advance legal fees. Respondent did not respond to his letter.

5. On or about June 10, 2004, the Virginia State Bar (hereinafter "the Bar"), proactively contacted Respondent requesting that he contact Mr. Thompson and respond to him. On or about June 22, 2004, the Bar contacted Respondent again regarding his lack of response to the Bar's proactive request and to Mr. Thompson. On or about June 28, 2004, the Bar contacted Respondent and informed him that the complaint would be assigned for further investigation because of his lack of response to the Bar's proactive measures to resolve the complaint.

6. On or about June 29, 2004, the Bar contacted Respondent demanding a response to this bar complaint within twenty-one (21) days pursuant to Rule of Professional Conduct 8.1(c). Respondent did not respond to the Bar's demand for a response. On July 29, 2004, the Bar referred the bar complaint for further investigation because Respondent did not respond to any requests for information.

7. On or about August 6, 2004, Respondent was notified that the bar complaint was being referred to the Seventh District Committee for a more detailed investigation.

8. On or about August 9, 2004, Respondent responded to the Bar's June 29, 2004 letter demand for a response twenty-one days from June 19, 2004. In that response, Respondent admits that he did not return Mr. Thompson's phone calls or perform the legal work for which Complainant had retained him.

9. On or about August 13, 2004, Bar Investigator, Earl C. Walts, Jr. interviewed Mr. Hill regarding the letters and documents Mr. Thompson had delivered to Respondent on April 6, 2004. Mr. Hill stated that Respondent called him once in August of 2004 and left a message, but they never spoke regarding Mr. Thompson's status as an heir. Mr. Hill confirmed that he was the source of the October 27, 2002 letter to Mr. Thompson outlining his status as an heir of the late John Tate.

10. Respondent stated to Mr. Walts that he had earned the legal fees upon payment because his self-education of an unfamiliar area of law prior to their first meeting was legal research performed on behalf of Mr. Thompson. On or about October 15, 2004, Respondent mailed Mr. Thompson a letter stating that he had recently been involved in "demanding and time-consuming matters" and just fell behind in his other work. Respondent stated that to make amends to Complainant for the lack of communication, Respondent would forgo a request for additional funds to cover the current expenses. However, if Mr. Thompson wanted him to continue the representation, Respondent would require a deposit of $1,500.00 at $150.00 per hour. The Bar and Mr. Thompson requested that Respondent provide a bill; however, he did not provide an itemized bill for his legal services to Mr. Thompson or to the Bar.

11. On July 11, 2005, Ronald H. McCall, a Bar Investigator, re-interviewed Respondent. Respondent stated to Mr. McCall, and Mr. Walts that when Mr. Thompson first contacted him, he had to educate himself in the intestate laws of Virginia prior to the first meeting. Respondent admitted that he had deposited the advance legal fees into an operating account because he does not have a trust account. He states that his lack of communication with Mr. Thompson and neglect of this legal matter are due to his office's disorganization and lack of office management procedures.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct/Disciplinary Rules have been violated:

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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

(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

RULE 1.15 Safekeeping Property

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or

(2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) A lawyer shall:

(1) promptly notify a client of the receipt of the client's funds, securities, or other properties;

(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

(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 which such person is entitled to receive.

(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.

(2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:

(i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;

(ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;

(iii) 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.

(1) Insufficient fund check reporting.

(i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;

(ii) Overdraft notification agreement required. A financial institution shall be approved as a depository for lawyer escrow accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against a lawyer escrow account containing insufficient funds, irrespective of whether or not the instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

No escrow account shall be maintained in any financial institution, which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled by the financial institution except upon thirty (30) days notice writing to the Virginia State Bar, or as otherwise agreed to

by the Virginia State Bar. Any such agreement may be canceled without prior notice by the Virginia State Bar if the financial institution fails to abide by the terms of the agreement;

(iii) Overdraft reports. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(a) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(b) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby;

(c) such reports shall be made simultaneously with and within the time provided by law for notice of dishonor to the depositor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds;

(iv) Financial institution cooperation. In addition to making the reports specified above, approved financial institutions shall agree to cooperate fully with the Virginia State Bar and to produce any lawyer escrow account or other account records upon receipt of a subpoena therefore.

A financial institution may charge for the reasonable costs of producing the records required by this Rule.

(v) Lawyer cooperation. Every lawyer or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule;

(vi) Definitions. "Lawyer" means a member of the Virginia State Bar, any other lawyer admitted to regular or limited practice in this State, and any member of the bar of any other jurisdiction while engaged, pro hac vice or otherwise, in the practice of law in Virginia;

"Lawyer escrow account" or "escrow account" means an account maintained in a financial institution for the deposit of funds received or held by a lawyer or law firm on behalf of a client;

"Client" includes any individual, firm, or entity for which a lawyer performs any legal service, including acting as an escrow agent or as legal representative of a fiduciary, but not as a fiduciary. The term does not include a public or private entity of which a lawyer is a full-time employee;

"Dishonored" shall refer to instruments which have been dishonored because of insufficient funds as defined above;

"Financial institution" and "bank" include regulated state or federally chartered banks, savings institutions and credit unions which have signed the approved Notification Agreement, which are licensed and authorized to do business and in which the deposits are insured by an agency of the Federal Government;

"Insufficient Funds" refers to an overdraft in the commonly accepted sense of there being an insufficient balance as shown on the bank's accounting records; and does not include funds which at the moment may be on deposit, but uncollected;

"Law firm" includes a partnership of lawyers, a professional or nonprofit corporation of lawyers, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, these Rules apply to the offices in this State, to escrow accounts in other jurisdictions holding funds of clients who are located in this State, and to escrow accounts in other jurisdictions holding client funds from a transaction arising in this State;

"Notice of Dishonor" refers to the notice which, pursuant to Uniform Commercial Code Section 3-508(2), must be given by a bank before its midnight deadline and by any other person or institution before midnight of the third business day after dishonor or receipt of notice of dishonor. As generally used hereunder, the term notice of dishonor shall refer only to dishonor for the purpose of insufficient funds, or because the drawer of the bank has no account with the depository institution;

"Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment

under Uniform Commercial Code Section 4-104, if sufficient funds were available.

(2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;

(3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;

(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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an Agreed Disposition of PUBLIC REPRIMAND WITH TERMS. Disposition of this complaint is predicated upon Respondent's compliance with the terms set forth below.

TERMS

1. The Respondent shall promptly refund to the Complainant the $300.00 in advanced legal fees and provide satisfactory evidence to the Assistant Bar Counsel handling this matter that he has done so by April 1, 2006.

2. Establish an attorney trust account in compliance with the Virginia State Bar's guidelines within seven days of the entry of the Agreed Disposition.

3. The Respondent shall, within thirty (30) days of entry of this Agreed Disposition, engage the services of a law office management consultant to review and make written recommendations concerning the Respondent's law practice policies, methods, systems, and procedures. The Respondent shall institute and thereafter follow with consistency any and all recommendations made to him by the law office consultant following their evaluation of the Respondent's practice. The Respondent shall grant said consultant access to his law practice from time to time, at their request, for purposes of ensuring that Respondent has instituted and is complying with the consultant's recommendations. The Virginia State Bar shall have access (by

way of telephone conferences and/or written reports) to consultant's findings and recommendations, as well as their assessment of the Respondent's level of compliance with the recommendations. Respondent shall be obligated to pay when due law office management consultant's fees and costs for the services (including provision to the Bar of information concerning this matter). Respondent will have discharged his obligations respecting the terms contained in this document if he has fulfilled and remained in compliance with all of the terms contained herein through May 31, 2006.

4. The terms and conditions shall be met and made known to the Bar by June 15, 2006.

5. Upon satisfactory proof that the above noted terms and conditions have been met by June 15, 2006, a PUBLIC REPRIMAND WITH TERMS, shall then be imposed.

ALTERNATE DISPOSITION

If, however, the terms and conditions have not been met by the 15th day of June, 2006, and in such event, the Committee shall, as an alternative disposition to a PUBLIC REPRIMAND WITH TERMS, certify this matter to the Virginia State Bar Disciplinary Board. Upon certification, the parties shall be deemed to have stipulated to the admissibility into evidence by the Board of the "Findings of Fact" appearing above, and the Respondent shall be deemed to have admitted before the Board to a violation of the provisions of the Professional Rules of Conduct as set forth under the above "Nature of Misconduct" section.

COSTS

Pursuant to Part Six, § IV, ¶ 13(B)(8)(c)(1) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By _____
Thomas J. Chasler, Chair/Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this 13TH day of DECEMBER, 2005, mailed a true and correct copy of the Subcommittee Determination (PUBLIC REPRIMAND WITH TERMS) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Robert John Harris, Esquire, Robert John Harris, Esquire, at 258 West King Street, Strasburg, VA 22657-0325, his last address of record with the Virginia State Bar.

Alfred L. Carr
Assistant Bar Counsel