

VIRGINIA:
BEFORE THE THIRD DISTRICT, SECTION TWO, SUBCOMMITTEE
OF THE
VIRGINIA STATE BAR

IN THE MATTER OF
DONALD ARNOLD DENTON

VSB DOCKET NO. 05-032-0997

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On March 18, 2005, a meeting in this matter was held before a duly convened Third District, Section Two, Subcommittee consisting of Coral Coleman Gills, Lay Member; Mary Kathryn Burkey Owens, Esq.; and Richard K. Newman, Esq., Chair, presiding.

Pursuant to Part 6, Section IV, Paragraph 13.G.1.c.(3) of the Rules of the Supreme Court, the Third District, Section Two, Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT:

1. At all times relevant hereto the Respondent, Donald Arnold Denton [Denton], has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or about 2004, Denton agreed to represent Ms. Thorn in seeking custody of her daughter in the Chesterfield County Juvenile and Domestic Relations District Court [the Court]. A verbal agreement was reached between Ms. Thorn and Denton for the representation.
3. On or about May 18, 2004, Denton met with Ms. Thorn in preparation for the upcoming first court date for the case. Denton informed Ms. Thorn that he did not expect the court to hear the case on the first court date. Ms. Thorn paid Denton \$500.00 as a partial payment of fees. According to Denton he cashed the check and deposited the \$500.00 into his trust account.

4. On the May 24, 2004, first court date for the case, Denton appeared with Ms. Thorn. The Court heard limited testimony and awarded temporary custody to Ms. Thorn to begin at the end of the current school year.

5. The Court entered an order on May 24, 2004, continuing the case to July 12, 2004, noting that “Ms. Thorn remains on the stand,” “Denton has not yet rested [Ms. Thorn’s case]” and “the court needs more time to finish the case.”

6. Sometime between the first and second court dates, the child was left with Ms. Thorn by Ms. Thorn’s ex-husband who previously had custody of the child. Ms. Thorn then asked Denton whether there was some way she could get the child’s clothing and personal belongings from her ex-husband. Denton advised that was a subject which could be brought up at the next hearing date.

7. Prior to the next hearing date, Denton contacted Ms. Thorn and discussed the need for remaining fees to be paid prior to the next hearing date. Ms. Thorn informed Denton she could not pay him all of the fees. Denton informed Ms. Thorn that he would not appear at the next hearing date unless she paid him the remaining fees.

8. On July 12, 2004, Denton did not appear at the hearing, made no motion to withdraw and made no motion to continue the hearing. Ms. Thorn and her ex-husband both appeared pro se. According to Ms. Thorn, the Court was about to dismiss the case when her ex-husband told the court he wanted Ms. Thorn to have custody of the child and the court so ordered. The Court’s order granting custody was entered July 12, 2004, and noted that Denton was “Absent.” The Court also issued an order entered the same date in which it stated its findings. That order also noted that Denton was “Absent.”

9. On July 23, 2004, the Court issued a Show Cause Summons (Criminal) against Denton for his failure to appear on July 12, 2004. The show cause was served personally on Denton on August 30, 2004.

10. The show cause came on for trial on September 9, 2004. Denton waived his right to counsel and tendered a not guilty plea. During the show cause trial, Denton stated essentially the following in response to the show cause:

- a. He did not file a motion to withdraw or provide other notice to the Court of his withdrawal because the proceeding was not in a court of record;
- b. Ms. Thorn had not paid him and it was not fair to his clients who pay him in full to appear on Ms. Thorn’s behalf; and
- c. Ms. Thorn did not pay him and therefore he did not appear.

11. The Court found Denton guilty of criminal contempt for his failure to appear on July 12, 2004, imposed a fine and set bail on appeal conditions. Denton did not note an appeal.

12. In his letter to undersigned counsel dated September 28, 2004, Denton stated, inter alia, the following:

“The week preceding the Court date of July 12, 2004, I called Ms. Thorn because I had not heard from her. ... I asked Ms. Thorn if she wanted me to go to court with her on Monday, the 12th. She stated that she did.”

13. Pursuant to Rules of Court, Part Eight, Rule 8:2(2), “counsel of record” in a pending case before a Juvenile and Domestic Relations District Court includes, inter alia, an attorney who has notified the judge that the attorney appears in the case. Furthermore, “except as provided by statute, counsel of record shall not withdraw from a case except by leave of court with such notice as the court may require to the client of the time and place of a motion to withdraw.”

II. NATURE OF MISCONDUCT:

Such conduct on the part of the Respondent constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct:

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.

RULE 1.15 Safekeeping Property

- (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.
 - (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;

RULE 1.16 Declining Or Terminating Representation

- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable rules of court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

III. PUBLIC REPRIMAND WITH TERMS:

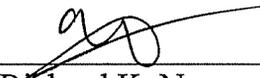
Accordingly, it is the decision of the subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand With Terms of this complaint. The terms and conditions shall be met by the dates indicated below. The terms with which the Respondent must comply are as follows:

1. By April 15, 2005, the Respondent shall refund \$500.00 to Ms. Thorn.
2. By April 22, 2005, the Respondent shall certify to Deputy Bar Counsel in writing that he has completed the refund and provide proof of same.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met as stated herein, the Third District Committee, Section Two, shall impose a Certification for Sanction Determination.

The Clerk of the Disciplinary System shall assess costs pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.

Third District, Section Two, Subcommittee
Of The Virginia State Bar

By 
Richard K. Newman
Chair

CERTIFICATE OF SERVICE

I certify that I have this 30th day of March, 2005, caused to be mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Donald Arnold Denton, 4702 Wistar Road, Richmond, VA 23228-2505, his last address of record with the Virginia State Bar.