

**BEFORE THE FIFTH DISTRICT--SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF TRACEY ALMA LENOX, ESQ.
VSB Docket # 03-053-1207**

**SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND, WITH TERMS**

On April 23, 2004, a meeting in this matter was held before a duly convened Fifth District--Section III Subcommittee consisting of E. Allen Newcomb, Esq., James G. Moran, CPA, lay member, and Gregory Allen Porter, Esq., presiding.

Pursuant to the provisions of the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶13(G), the Fifth District--Section III Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand, with Terms, as set forth below:

I. FINDINGS OF FACT

1. At all times relevant hereto, Tracey Alma Lenox, Esq., (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On November 7, 1995, Jennie L. Christiansen, now known as Jennie L. DelVecchio (hereafter "Complainant") engaged the Respondent on a contingent fee basis to represent her in a slip and fall personal injury claim.
3. After the alleged tortfeasor denied liability, the Respondent filed suit on the Complainant's behalf. Litigation proceeded and discovery was conducted. On May 22, 1998, the court entered a nonsuit order at Respondent's request, which the Respondent has claimed to the Bar was occasioned by the need to gather additional evidence in support of the alleged tortfeasor's liability.

4. Thereafter, Respondent's partner re-filed the suit, made a settlement demand which the Complainant claims was not authorized, and settled the case in January of 2000 for a sum which the Complainant has since stated to the Bar that she had refused to accept at the time it was offered. Although a check was issued on or about February 15, 2000, by the alleged tortfeasor's insurance carrier, was made jointly payable to the order of the Complainant and Respondent's law firm, and was sent to the law firm, the Complainant was not made aware of those facts at that time.

5. Following the time that the original case was nonsuited, as aforesaid, the Respondent had no further direct contact with the Complainant, despite the fact that the Complainant left numerous telephone messages for the Respondent after that time and made known to others in Respondent's law firm that she, the Complainant, wanted the Respondent to contact her and to handle her legal matter.

6. In or around July, 2001, the Respondent's law firm was dissolved, and she established herself as a sole practitioner. The Respondent received a call from the Complainant in October of 2002, wherein the Complainant advised her that the Complainant had been served with a warrant in debt filed on behalf of the hospital which had provided care associated with Complainant's personal injury, and as to which both the Complainant and Respondent had executed an assignment of funds in June of 1996.

7. When the Respondent retrieved her closed file in the Complainant's matter following the October, 2002, call, the Respondent discovered therein the original settlement check, which had never been negotiated. The Respondent wrote to the Complainant on November 25, 2002, after a Bar Complaint had been filed in this matter, stating, among other things, that

I regret to tell you that it appears that I was waiting to hear from you about setting an in-office conference to discuss the merits of your case and the settlement offer, and the case was allowed to lapse as a result.

8. An investigation conducted by the Virginia State Bar revealed that following service upon her on or about June 17, 2000, of a Notice and Motion by defense counsel in the re-filed suit, the Respondent authorized defense counsel on June 27, 2000, to endorse Respondent's name to an Order of Dismissal, entered by the Court on June 30, 2000, which provided for dismissal of the Complainant's case, with prejudice, upon "joint motion" of the parties upon their representation that matters between them had "been settled and compromised."

9. With respect to entry of the Order of Dismissal, the Respondent stated to a Virginia State Bar investigator that when she was contacted by defense counsel respecting the matter, she assumed that her former partner had completed all of the necessary procedures to close the case, and that she authorized the dismissal of the case without first reviewing the file.

10. During the pendency of the Bar Complaint, the Respondent took steps to rectify the matters set forth above by causing the insurance settlement check to be reissued and by making a voluntary payment to the Complainant as additional restitution.

II. NATURE OF MISCONDUCT

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

RULE 1.2 Scope of Representation

- (a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

RULE 1.3 Diligence

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

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

- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

RULE 1.15 Safekeeping Property

- (c) A lawyer shall:
 - (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
 - (2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
 - (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.

RULE 5.1 Responsibilities Of A Partner Or Supervisory Lawyer

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

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 shall be a predicate for the disposition of this complaint by imposition of a PUBLIC REPRIMAND, WITH TERMS. The terms and conditions are as follows:

Respondent shall accrue at least twelve (12) credit hours by enrolling in and attending Virginia State Bar approved Continuing Legal Education program(s) in legal ethics prior to May 1, 2005; Respondent's Continuing Legal Education attendance obligation set forth in this paragraph shall *not* be applied toward Respondent's Mandatory Continuing Legal Education requirement in Virginia and any other jurisdictions in which she may be licensed to practice law. Respondent shall certify her compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form (Form 2) to Seth M. Guggenheim, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following her attendance of such CLE program(s).

Upon satisfactory proof furnished by Respondent to the Virginia State Bar that the above Terms have been complied with, in full, a PUBLIC REPRIMAND, WITH TERMS shall then be imposed. If, however, Respondent fails to comply with any of the Terms set forth herein, as and when compliance with such Term is due, then, 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 for the purpose of the Board's imposition of a sanction against the Respondent. 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 violations of the Rules of Professional Conduct set forth above under the heading "Nature of Misconduct." Notwithstanding the foregoing provisions respecting stipulations upon certification, neither the Virginia State Bar nor the Respondent shall be limited from presenting any such evidence and/or argument as would otherwise be permitted by the Board at the sanctions phase of a Board hearing.

IV. COSTS

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

**FIFTH DISTRICT - SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

By _____
Gregory Allen Porter, Esq.
Chair/Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this ___ day of _____, 2004, mailed a true and correct copy of the Subcommittee Determination (PUBLIC REPRIMAND, WITH TERMS) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Tracey Alma Lenox, Esq., at 1988 Opitz Boulevard, Suite A, Woodbridge, Virginia 22191, her address of

record with the Virginia State Bar.

Seth M. Guggenheim
Assistant Bar Counsel