

**VIRGINIA :**

**BEFORE THE FIFTH DISTRICT—SECTION III COMMITTEE  
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF  
THOMAS ORVILLE MURPHY, ESQ.  
VSB Docket No. 99-053-0974**

**COMMITTEE DETERMINATION  
(PUBLIC) ADMONITION, WITH TERMS**

On June 22, 2004, a hearing in this matter was held before the duly convened Fifth District--Section III Committee of the Virginia State Bar, consisting of Joyce Ann N. Massey, Esq., Elizabeth M. von Keller, Esq., H. Jan Roltsch-Anoll, Esq., Mr. James G. Moran, lay member, and Gregory Allen Porter, Esq., presiding.<sup>1</sup>

Pursuant to Part 6, §IV, ¶ 13(H) of the Rules of the Supreme Court of Virginia, the Fifth District--Section III Committee of the Virginia State Bar hereby serves upon the Respondent the following (Public) Admonition, with Terms, as follows:

**I. FINDINGS OF FACT**

1. At all times material to this Determination, the Respondent, Thomas Orville Murphy has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. During the 1980s, the Respondent provided legal services to each of the Complainants, Richard FitzSimmons and Kathleen FitzSimmons, in several matters.
3. In 1987, the Complainants signed a promissory note (the "Note") for \$10,000,

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<sup>1</sup> This Determination is signed by Elizabeth M. von Keller, Esq., as chair-designate, because Mr. Porter rotated off the Committee on June 30, 2004, at the conclusion of his second term of service.

bearing interest at an annual rate of 24%, in favor of one Carmello Intelisano, who was also a regular client of the Respondent. The Note, while signed by both Complainants, was secured by a deed of trust (the “Deed of Trust”) on real estate then owned solely by Ms. FitzSimmons and located at 10609 Schaeffer Lane, Nokesville, Virginia (the “Property”).

4. Later in 1987, Mr. Intelisano endorsed the Note over to the Respondent, as “trustee.” The Respondent, still designating himself as trustee, then endorsed the Note to himself and his wife, deleting the trustee designation.

5. In 1991, the Respondent represented Ms. Kathleen FitzSimmons in a Chapter 7 bankruptcy (“Kathleen’s Bankruptcy”). As owner of the Note, the Respondent listed himself and his wife as secured creditors in Kathleen’s Bankruptcy. Prior to filing Kathleen’s Bankruptcy, Murphy advised her to add Richard FitzSimmons as a title holder of the Property. She did so, with Respondent preparing the necessary deeds and paperwork.

6. In 1993, the Respondent represented Richard FitzSimmons in a Chapter 7 bankruptcy (“Richard’s Bankruptcy”). The Respondent listed himself and his wife as secured creditors in Richard’s Bankruptcy.

7. At the time of each bankruptcy, the Property had little, if any, equity. As their bankruptcy counsel, the Respondent failed to advise either Kathleen or Richard FitzSimmons of his and her options to allow the Property to go to foreclosure. Specifically, the Respondent failed to advise the FitzSimmonses that they could let the Property go to foreclosure, thereby discharging any debt in regard to the Property, including the Note and lien created by the Deed of Trust.

8. The Respondent recognized a conflict of interest and failed to make a full and

adequate disclosure of the conflict of interest before taking on the representation and the bankruptcies, while holding the Note and Deed of Trust, which lien created by the Deed of Trust would and did survive the bankruptcies.

9. Subsequent to the Complainants' bankruptcies, the Property increased in value and created significant equity, which was irrelevant as to whether or not the Respondent had a potential conflict of interest. The Property was ultimately sold by the Complainants, and the sales price thereof was sufficient to pay all liens recorded against the Property, including the lien of the Deed of Trust held by the Respondent and his wife which, with accrued and unpaid interest, approximated the sum of \$37,000.00.

## **II. NATURE OF MISCONDUCT**

The Committee finds that the following Disciplinary Rules have been violated:

**DR 5-101. Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.**

- (A) A lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property, or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances.

## **III. (PUBLIC) ADMONITION, 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) ADMONITION, WITH TERMS, pursuant to Part 6, §IV, ¶ 13(H)(2)(1)(2)(c) of the Rules of the Supreme Court of Virginia. In imposing a (Public) Admonition, with Terms, the Committee has taken into account, and hereby specifically states its finding that the Respondent has practiced law for

thirty-four (34) years with a good record and that he was acting with compassion in the instant matter. The terms and conditions with which the Respondent must comply are as follows:

1. Within nine (9) months following the issuance date of this Determination, the Respondent shall enroll in and attend the course known as “Professionalism and the Virginia Rules of Professional Conduct” approved by the Supreme Court of Virginia and offered by the Virginia State Bar. The Respondent shall, promptly following his attendance of the said course, certify in writing that he has done so to the Virginia State Bar, c/o Yvonne D. Weight, Special Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

2. Within four (4) months following the issuance date of this Determination, the Respondent shall certify in writing to the aforesaid Special Assistant Bar Counsel that he has personally reviewed, and has reviewed with his law firm staff, those Rules of Professional Conduct pertaining to conflicts of interest, specifically, Rules 1.7, 1.8, 1.9, and 1.10.

Upon compliance with the Terms set forth herein, including his furnishing satisfactory proof of compliance to the Virginia State Bar, as aforesaid, a (PUBLIC) ADMONITION, WITH TERMS shall then be imposed. If, however, Respondent fails to comply with any of the Terms set forth herein, then, and in such event, the alternative disposition of a PUBLIC REPRIMAND shall be imposed upon the Respondent.

#### **IV. COSTS**

Pursuant to Part 6, § 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 COMMITTEE OF THE VIRGINIA STATE BAR**

By \_\_\_\_\_  
Elizabeth M. von Keller, Esq.  
Chair/Chair Designate

**CERTIFICATE OF SERVICE**

I certify that I have this \_\_\_\_\_ day of \_\_\_\_\_, 2004, mailed a true and correct copy of the foregoing Committee Determination ([Public] Admonition, with Terms) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Thomas Orville Murphy, Esq., 8709 Plantation Lane, Manassas, VA 20110-4506, his address of record with the Virginia State Bar, and by first-class, regular mail, to Respondent's counsel, Michael L. Rigsby, Esquire, at Carrell, Rice & Rigsby, Forest Plaza II, Suite 309, 7275 Glen Forest Dr., Richmond, VA 23226.

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Seth M. Guggenheim  
Assistant Bar Counsel