

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

ALICE KATE MARKLE TWIFORD

Attorney at Law

On February 1, 2005, came Alice Kate Markle Twiford and presented to the Board an Affidavit Declaring Consent to Revocation of her license to practice law in the courts of this Commonwealth. By tendering her resignation at a time when disciplinary charges are pending, she admits that the charges in the attached Affidavit Consenting to Revocation (with attachment) are true.

The Board having considered the said Affidavit Consenting to Revocation accepts her resignation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Alice Kate Markle Twiford be and the same hereby is revoked, and that the name of the said Alice Kate Markle Twiford be stricken from the Roll of Attorneys of this Commonwealth.

Enter this Order this 2nd day February, 2005.

For the Virginia State Bar Disciplinary Board

By *Barbara S. Lanier*
Barbara Sayers Lanier
Clerk of the Disciplinary System

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF

ALICE KATE MARKLE TWIFORD

**VS B Docket Nos. 04-060-0988, 05-060-1438,
05-060-1439, 05-000-2390 and 05-060-2401**

Affidavit Consenting to Revocation

Alice Kate Markle Twiford, after being duly sworn, states as follows:

1. Ms. Twiford was admitted to the practice of law in the Commonwealth of Virginia on September 30, 1991, and was active and in good standing to practice law in Virginia until December 28, 2004, when she was administratively suspended for failure to comply with a subpoena duces tecum issued in connection with a bar investigation.
2. On October 22, 1997, Ms. Twiford registered with the Virginia State Bar under the Consumer Real Estate and Settlement Protection Act ("CRESPA") as an attorney settlement agent.
3. Ms. Twiford ceased to be a registered attorney settlement agent under CRESPA on January 22, 2001.
4. Since October 13, 2003, Ms. Twiford has held a full-time position teaching elementary school students.
5. On or about February 21, 2002, Ms. Twiford received a private reprimand with terms in VSB Docket No. 01-061-0446 for abandoning a client matter and failing to communicate with the client.

6. Ms. Twiford complied with the terms imposed in VSB Docket No. 01-061-0446 which, among other things, required her to develop a written office policy for opening client files and tracking deadlines.

7. On or about April 17, 2002, Ms. Twiford received a dismissal with terms, by agreement, in VSB Docket No. 01-061-1368 for failing to advise her court-appointed client that the Virginia Court of Appeals had denied his appeal of a criminal conviction and failing to appeal the matter to the Supreme Court of Virginia.

8. Ms. Twiford complied with the terms imposed in VSB Docket No. 01-061-1368 which, among other things, required her to take four hours of continuing legal education in the area of appellate advocacy and procedure.

9. There are currently five disciplinary matters pending against Ms. Twiford.

10. In VSB Docket No. 04-060-0988, which the Sixth District Committee is scheduled to hear on February 8, 2005, Ms. Twiford admits she violated Rules of Professional Conduct 1.3(a) and 1.4(a) and (b) by failing to perfect a court-appointed client's appeal of a criminal conviction to the Virginia Court of Appeals in a timely manner and failing to locate her client to advise the client that her appeal had been denied.

11. VSB Docket Nos. 05-060-1438 and 05-060-1439, which are still under investigation by the bar, also arise from Ms. Twiford's failure to perfect court-appointed clients' appeals of criminal convictions to the Court of Appeals.

12. In each of those matters, Ms. Twiford admits that she violated Rule of Professional Conduct 1.3(a) by failing to perfect her clients' appeals in a timely manner.

13. The Sixth District Committee has certified VSB Docket Nos. 05-000-2390 and

05-060-2401 to the Disciplinary Board.

14. Both matters arise from Ms. Twiford's failure to account properly for funds held in her CRESPA trust account, withdraw earned fees in a timely manner and disburse funds to third parties in a timely manner.

15. In connection with VSB Docket Nos. 05-000-2390 and 05-060-2401, Ms. Twiford admits that her conduct between October 1997 and January 2001 violated Disciplinary Rules 9-102(A) and(B), 9-103(A) and (B); Rules of Professional Conduct 1.3(a) and (b), 1.15(a), (c), (e) and (f); and the CRESPA regulations set forth in 15 VAC 5-80-50(B).

16. Due to her failure to comply with the attorney disciplinary rules and the CRESPA regulations set out above, Ms. Twiford consents to the Revocation of her license to practice law in the Commonwealth of Virginia pursuant to Part 6, Section IV, Paragraph 13.L. of the Rules of Court;

17. She has freely and voluntarily rendered her consent to the Revocation of her license to practice law in the Commonwealth of Virginia, without being subjected to any coercion or duress, and understands the implications of consenting to the Revocation of her license to practice law in the Commonwealth of Virginia;

18. Ms. Twiford acknowledges that she is surrendering her license to practice law in the Commonwealth of Virginia because she cannot successfully defend the pending Charges of Misconduct and does not wish to contest any Charges of Misconduct resulting from the two matters still under investigation.

Sworn to, executed and dated this 28th day of January 2005.

Alice Kate Markle Twiford
Alice Kate Markle Twiford

COMMONWEALTH OF VIRGINIA

I, Melinda C. Vreeland, a Notary Public in the state aforesaid, do hereby certify that Alice Kate Markle Twiford appeared in person before me in the City/County of James City, Virginia, on this 28 day of January 2005, and was by me duly sworn and thereupon executed in my presence and acknowledged to me the truth of the contents of the foregoing Affidavit and that she voluntarily executed it.

Given under my hand this 28 day of January, 2005.

Melinda C. Vreeland
Notary Public

My Commission expires: MARCH 31, 2006

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
ALICE KATE MARKLE TWIFORD**

VS B Docket No. 05-060-2401

**SUBCOMMITTEE DETERMINATION
(CERTIFICATION)**

On January 6, 2005, a duly convened subcommittee of the Sixth District Committee, Section I, consisting of Andrew C. Gallagher, lay member, and attorneys William E. Glover and Christopher A. Abel, Chair and presiding officer, met to consider the above-referenced matter.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.b. of the Rules of the Supreme Court of Virginia, the subcommittee hereby certifies these matters to the Disciplinary Board for hearing and serves this Certification upon the respondent, Alice Kate Markle Twiford.

I. Factual Allegations

1. Ms. Twiford was admitted to the practice of law in the Commonwealth of Virginia on September 30, 1991, and was active and in good standing to practice law in Virginia until December 28, 2004, when she was administratively suspended for failure to comply with a subpoena duces tecum issued in connection with a bar investigation.
2. Ms. Twiford registered with the Virginia State Bar under CRESPA as an attorney settlement agent on or about October 22, 1997.
3. Ms. Twiford ceased to be a registered attorney settlement agent on January 22, 2001.
4. In January 2001, Ms. Twiford represented to the Virginia State Bar that she had not handled a real estate closing since approximately May 2001.
5. Until August 2004, Ms. Twiford maintained account number 99783474 at Bank of America, which she used as a CRESPA account.

6. In the summer of 2004, Ms. Twiford discovered from a bank statement that funds totaling \$8,388.26 remained in her CRESPA account.
7. The funds had been in Ms. Twiford's CRESPA account since at least August 2003.
8. According to Ms. Twiford, \$7,090.00 of the funds were conveyed to her as an exchange agent for a life time commercial real estate transaction and she forgot about them.
9. By check dated August 17, 2004, Ms. Twiford tendered \$7,090.00 to Hampton Mall Assoc., LLC via check #1495 drawn on her CRESPA trust account.
10. The check was endorsed and deposited on or about August 20, 2004.
11. The same day Ms. Twiford transferred \$1,298.26, the remaining balance of her CRESPA trust account, to a personal bank account she held.
12. Ms. Twiford contends that the \$1,298.26 were funds she had earned but never withdrawn from her CRESPA account.
13. Ms. Twiford has not produced any documentation substantiating her contention.

II. CHARGES OF MISCONDUCT

The foregoing factual allegations, insofar as they pertain to Ms. Twiford's conduct before January 1, 2000, violates the following Disciplinary Rules:

DR 9-102. Preserving Identity of Funds and Property of a Client.

- (A) All funds received or held by a lawyer or law firm on behalf of a client, estate or a ward, residing in this State or from a transaction arising in this State, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts and, as to client funds, maintained at a financial institution in a state in which the lawyer maintains a law office, 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.
 - (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 they are 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.

(B) A lawyer shall:

- (1) Promptly notify a client of the receipt of his 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 his client regarding them.
- (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.

DR 9-103. Record Keeping Requirements.

(A) **Required Books and Records:** As a minimum requirement, every attorney engaged in the private practice of law in Virginia, hereinafter called "attorney," shall maintain or cause to be maintained, on a current basis, books and records which establish his compliance with Disciplinary Rule 9-102. These records including all the reconciliations and supporting records required under Section (B) hereof shall be preserved for at least five years following completion of the fiduciary obligation and accounting period. For this purpose, the following books and records, or their equivalent, are required.

- (1) 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 fiduciary and nonfiduciary funds, then the consolidated cash receipts journal shall contain separate columns for fiduciary and nonfiduciary receipts.
- (2) A cash disbursements journal listing and identifying all disbursements from the fiduciary 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 fiduciary and nonfiduciary disbursements then the consolidated disbursements journal shall contain separate columns for fiduciary and nonfiduciary disbursements.

- (3) 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 trust shall be maintained. The ledger account shall by separate columns or otherwise clearly identify fiduciary funds disbursed, and fiduciary 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.
 - (4) Computerized and marketed manual accounting systems: Where an attorney or firm of attorneys maintains computerized records or a manual accounting system, such system must produce the records and information required by this rule.
- (B) Required Trust Accounting Procedures: The following minimum trust accounting procedures are applicable to all trust accounts maintained by lawyers or law firms holding funds on behalf of clients who reside in this State, or from a transaction arising in this State, whether or not the lawyer or law firm maintains an office in this State.

* * *

- (2) Deposits: All receipts of trust 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 fiduciary and nonfiduciary funds other than fees and retainers: Mixed fiduciary and nonfiduciary funds shall be deposited intact to the trust account. The nonfiduciary 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 trust account balance of the client or other person at the end of each period.
 - (a) 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 trust for the period and deducting the total of trust monies disbursed for the period.
 - (b) The trial balance shall identify the preparer and be approved by the attorney or one of the attorneys in the firm.

- (5) Reconciliations:
 - (a) 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 trust account checkbook balance, and the trust account bank statement balance.
 - (b) 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.
 - (c) Reconciliations shall identify the preparer and be approved by the attorney or one of the attorneys in the firm.
- (6) Receipts and Disbursements Explained: The purpose of all receipts and disbursements of trust funds reported in the trust journals and subsidiary ledgers shall be fully explained and supported by adequate records.

The foregoing factual allegations, insofar as they pertain to Ms. Twiford's conduct after January 1, 2000, violate the following 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.

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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:

* * *

- (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.
- (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;
- (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 8.4 Misconduct

It is professional misconduct for a lawyer to:

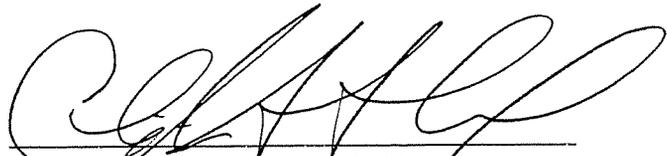
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- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

* * * *

The Sixth District Committee hereby certifies the foregoing Charges of Misconduct to the Disciplinary Board for hearing.

SIXTH DISTRICT COMMITTEE



Christopher A. Abel, Chair

Certificate of Service

I certify that I have this 13th day of January 2005, mailed by certified mail, return receipt requested, a true and correct copy of the foregoing Subcommittee Determination (Certification) to Alice Kate Markle Twiford, 101 Old Carriage Way, Williamsburg, Virginia 23188-5068, her last address of record with the Virginia State Bar.

Barbara Ann Williams