VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
RICHARD JOHAN CONROD, SR.

VSB DOCKET NO. 06-021-2496

MEMORANDUM ORDER

THIS MATTER came on to be heard on the 23rd day of October 2009, before a panel of the Disciplinary Board consisting of William E. Glover, Chair, William C. Boyce, Jr., John Casey Forrester, Russell W. Updike, and W. Jefferson O'Flaherty, Lay Member. The Virginia State Bar was represented by Edward L. Davis, Bar Counsel. The Respondent, Richard Johan Conrod, Sr., appeared in person *pro se.*

The Chair polled the members of the Board Panel to ascertain whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Valarie L. Schmit May, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, 804-730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came on the Respondent's appeal of a determination by the Second District Committee issued on January 5, 2009, finding that the Virginia State Bar had proven by clear and convincing evidence that Respondent violated Rules 1.15 (c)(4); Rule 1.15(e) and Rule 1.15(f) of the Rules of Professional Conduct and imposing a Public Admonition with Terms. As permitted by the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13(H)(4)(a)(1)[1], the Respondent noted his appeal.

---

[1] As of May 1, 2009, Paragraph 13 has been reformatted and this provision is now 13-17(A)

The record having been filed, and the matter having been briefed in accordance with the Rules of the Supreme Court, the Board Panel convened to hear argument and consider the appeal.

A. Standard of Review

The Standard of Review in an appeal from a District Committee Determination is, to wit: "[i]n reviewing a District Committee Determination, the Board shall ascertain whether there is substantial evidence in the record upon which the District Committee could reasonably have found as it did." See Va. Sup. Ct. R., Pt. 6, §IV, ¶13-19(E). Upon its review of the record in its entirety, if the Board finds that the District Committee's Determination "is not supported by substantial evidence" or "is contrary to the law," the charge of misconduct is to be dismissed. See Va. Sup. Ct. R., Pt. 6, §IV, ¶13-19(G)(1)."

B. Discussion

1. Background

The record indicates that the District Committee convened on September 4, 2008, and November 24, 2008, and took testimony from Norma Luther, Judith Wood and the Respondent. The panel also received Virginia State Bar Exhibits One (1) through Ten (10), and Respondent's Exhibit One (1), all without objection. The testimony of these witnesses, along with the exhibits admitted into evidence during the District Committee hearing, provide a substantial evidentiary basis for the factual findings made by the District Committee. Those factual findings appear in the District Committee Determination filed in the Clerk's Office of the Virginia State Bar on January 5, 2009. The factual findings are quoted here in full:

1. At all times relevant hereto, Richard Johan Conrod, Sr., ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On August 26, 2005, a real estate closing took place at the Newport News office of Mr. Conrod's law firm, the Premier Law Group.

3. Former associate Kristina Cardwell prepared the closing.

4. Norma Luther, a former non-lawyer employee of the law firm, conducted the closing under Ms. Cardwell's supervision.

5. Mr. Conrod was not directly involved in the closing.

6. The purchasers, Eldon and Francine Mixer, executed the HUD-1 settlement statement providing for a mandatory lender's title insurance premium of $1126.55 and an optional owner's title insurance premium of $333.35 (a total of $1,450 for both premiums).

7. Ms. Mixer chose to purchase the optional owner's title insurance on the law firm's recommendation and because of its relatively low premium of $333.35, as set forth on the settlement statement.

8. The HUD-1 indicates that the $1,460 for both premiums was to be paid to Assurance Title and Closings, an entity in which the law firm had an interest, although Southern Title issued the lender's policy.

9. The premiums represented to Ms. Mixer as set forth on the settlement statement, however, were erroneous in that the premium amounts for the lenders and owner's policies were reversed.

10. Upon discovering the discrepancy, Ms. Mixer demanded cancellation of the optional policy and a refund.

11. Eventually, on September 29, 2006, Mr. Conrod issued a refund for both policy premiums with a check in the amount of $1,460 (one thousand four hundred and sixty dollars) drawn

on the Premier Law Group Newport News Real Estate Attorney Trust Account, the same trust account used in the

underlying closing, although funds for the policy premiums had already been disbursed from the trust account, and the lender's policy was mandatory.

12. During a subsequent investigation into this issue, by letter dated May 9, 2007, Mr. Conrod initially explained to Virginia State Bar Investigator Ronald Pohrivchak that the two checks for the insurance policy premiums had been voided, and that the funds for the premiums had not been disbursed from the real estate trust account.

13. Mr. Conrod indicated that he was enclosing copies of the voided checks with the May 9 letter, however, none were enclosed.

14. Mr. Conrod explained further that with respect to the "premium escrow account for Southern Title" (the lender's policy), that portion was paid from a cushion of $500 in his trust account consisting of funds used to open that bank account.

15. Subsequently, however, Mr. Conrod discovered that this explanation was erroneous and that both real estate trust account checks for the policy premiums had been negotiated on September 2, 2005.

16. By letter to the Virginia State Bar dated June 6, 2007, Mr. Conrod explained that it was Norma Luther who prepared the previous letter of May 9, 2007, and that he signed it, but that it was mailed without the enclosures.

17. Mr. Conrod explained further in the letter that upon contacting the bank, he discovered that the two checks, in fact, had been negotiated on September 2, 2005. He also explained that he intended to refund only the owner's title policy premium to Ms. Mixer, but that Norma Luther mistakenly refunded both policy premiums.

18. The $1,460 refund check bears the endorsements of both Mr. Conrod and Norma Luther.

19. During a prior conversation with Virginia State Bar Investigator Ronald Pohrivchak on June 4, 2007, Mr. Conrod admitted that to the best of his knowledge no one had been performing quarterly reconciliations of the Premier Law Group Newport News Real Estate Attorney Trust Account.

20. In his June 6, 2007, letter, Mr. Conrod explained that he hired Fretwell & Associates (an accounting firm) to research and reconcile this and other accounts, but that his former partner did not contribute to the cost, and that he ran out of money to pay the accountants before they could complete any reconciliations.

21. With respect to the bar's concern that the dual refund may have led to defalcations from the trust account, Mr. Conrod offered the following in his June 6 letter:

> *As to whether funds were in the account to cover the Mixer refunds, I propose this observation; we did a vast amount of work for which we did not take compensation from Premier trust accounts to make sure there were adequate funds in the accounts while we were waiting on the finalization of the Fretwell & Associates research. All trust account obligations have been met. These are accounts that I inherited in the Premier "clean up" that had not been my area of responsibility heretofore, but I assumed responsibility for them in order to insure that all obligations would be met. The Premier account in question is a closed account as of October 2006 per Heritage Bank.*

22. During a further investigation into the real estate trust account, Mr. Conrod explained that former associate Kristina Cardwell was responsible for the reconciliations. (Ms. Cardwell left the law firm in October 2005.)

23. Mr. Conrod provided copies of Ms. Cardwell's time sheets from April to August 2005 that do reflect time devoted to the reconciliations.

24. Mr. Conrod stated further that after Ms. Cardwell left in October 2005, he assumed that Norma Luther was conducting the reconciliations.

25. He recalled further, however, that Ms. Luther never sent him any reconciliations to approve, stating that reconciliations were beyond his capability, and that this was why he hired the forensic accountant (Fretwell) to conduct the reconciliations.

26. Ms. Luther confirmed that she did not conduct any reconciliations of the trust account.

2. The Misconduct Finding

The critical question before the panel is whether there is substantial evidence in the record to support the District Committee's conclusion that the factual findings described above constitute misconduct in violation of the Rules of Professional Conduct. Specifically, the District Committee found that the Respondent's conduct violated Rule 1.15(c)(4), Rule 1.15(e) and Rule 1.15(f). Rule 1.15 reads, in pertinent part, as follows:

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

(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.

Va. Sup. Ct. R., pt. 6, §11, R. 1.15 (c)(4)

(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;

Va. Sup. Ct. R., pt. 6, §11, R. 1.15 (e)

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.

(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.

Va. Sup. Ct. R., pt. 6, §11, R. 1.15(f)

a. Position of Respondent

Respondent makes the following arguments in support of his position that he did not commit misconduct:

First, Respondent argues that in October 2004, when he and attorney Troy Titus formed Premier Law Group and opened a trust account at Heritage Bank & Trust, it was Kristina Cardwell, an attorney who worked with Titus and continued her employ with Premier Law Group, who agreed to monitor and manage the trust account. Respondent maintains that operations manager, Tina Keilman and attorney Cardwell were responsible for overseeing the Newport News real estate office. Respondent argues that he did very little real estate work with the majority of his practice being conducted at another location and not the Newport News office.

Second, Respondent asserts as of August 26, 2005, when the Premier Law Group conducted a real estate closing for Frances and Eldon Mixer, Respondent was only a 50% owner and was not involved in the transaction. Rather, the closing was handled by Norma Luther, a former non-lawyer employee of the firm, under the supervision of associate, Kristina Cardwell.

Third, Respondent asserts that hiring the forensic accountant with Fretwell & Associates absolves him of the obligation to reconcile the trust account. He maintains that Fretwell's involvement was known to the Virginia State Bar and the Federal Bureau of Investigations. Respondent contends that he followed instructions from Fretwell to turn over all bank

statements unopened to ensure the integrity of her audit. Compliance with the instruction, at least according to the Respondent, precluded him from performing the reconciliations during the period of Fretwell's involvement.

Lastly, with regard to the issuance of the refund to the Mixers, Respondent acknowledges that the check should not have been drawn on the Premier Law Group Newport News Real Estate Attorney Trust Account. He argues, however, that there was no misconduct because the refund, while clearly not coming from money belonging to the Mixers, may have come from earned fees remaining on deposit or from the $500 cushion he maintained in the account.

b. Position of the Virginia State Bar

Bar Counsel makes the following argument in support of its position that there is substantial evidence in the record upon which the District Committee could reasonably have found the Respondent to have committed misconduct:

First, Bar Counsel argues that it is uncontroverted that the Respondent did, in fact, supervise and approve the issuing of the $1,460 refund check on September 29, 2006, drawn on the Premier law Group Newport News Real Estate Attorney Trust Account, when no funds belonging to the clients were on deposit in that account. Bar Counsel adds that the $500 "cushion" of non-client funds purportedly on deposit in the

account was well short of the total disbursement. Further, Bar Counsel asserts that the Respondent was unable to support his "observation" that other earned fees remained on deposit in the account. With the absence of any ledgers or reconciliations of this account after October 2005, which was when Respondent terminated Caldwell, Keilman and others, there was no way to determine who owned the funds being held in the account.

Second, Bar Counsel argues that the evidence established that the Respondent's trust account was not being reconciled after October 2005. Prior to and up until their departure from the firm, assistant Tina Keilman prepared the trust account reconciliations which attorney Kristina Cardwell reviewed and approved. No one at the law firm continued with the reconciliations after the departures of Ms. Keilman and attorney Cardwell in October 2005, although Respondent hired an accounting firm to audit the trust account. The accountants, however, Fretwell & Associates, never provided any reconciliations. Although Respondent believed his assistant Norma Luther was reconciling the account after October 2005, he was mistaken in that regard and acknowledged not having reviewed any reconciliations from that point forward. Bar Counsel disputes Respondent's assertion that the accounting firm isolated him from the account records. During a significant portion of the time in question, Fretwell & Associates were no longer performing any work for the Respondent. Respondent acknowledged that the last work performed by Fretwell & Associates was in

February 2006.

Third, Bar Counsel argues that, contrary to the Respondent's assertions, the trust account was not inactive at the time the refund check was issued in September 2006. Bar Counsel asserts that there was "constant activity" in the account, deposits and withdrawals, during the months after Mr. Hamar left in April 2006. Bar Counsel asserts that without any reconciliations of the account, it was impossible to determine the source or owner of the funds drawn from the trust account on September 29, 2006.

c. Analysis.

With regard to the Second District Committee's determination that the Respondent violated Rule 1.15(c)(4) by issuing or supervising the issuing of funds from the Premier Law Group Newport News Real Estate Attorney Trust Account, this Board Panel respectfully disagrees. While there was indisputably a mistake made with regard to the amount of the check written and the account on which it was drawn, we do not feel that this constituted a violation of Rule 1.15(c)(4). The spirit of this Rule is to require attorneys to pay or deliver to clients or others that which they are entitled to receive. Here, as a result of a clerical error, Respondent actually refunded the clients more money than they were entitled to receive. The record is devoid of any evidence to support a finding that Respondent failed to refund monies to the clients. Moreover, there is no evidence to suggest

that there was any misconduct on the part of the Respondent that caused or substantially contributed to any delay in issuing the refund. Accordingly, this charge of misconduct is hereby dismissed.

The Board Panel unanimously concludes that the Second District Committee properly concluded that Respondent committed misconduct in violation of Rules 1.15(e)(1) and 1.15(f)(5) by failing to ensure that the required reconciliations of the Premier Law Group Newport News Real Estate Attorney Trust Account were being done. We reject the Respondent's assertion that he complied with the Rules by hiring Fretwell & Associates to conduct an audit of the account. Hiring an accountant to conduct an audit does not obviate the need to perform mandatory reconciliations as required by Rules 1.15(e) and (f). Contrary to the Respondent's assertion, we do not believe Fretwell's involvement in the audit precluded him from completing the reconciliations. Moreover, the record clearly establishes that Fretwell's involvement ended at least six months prior to the issuance of the refund check in September 2006 which is the basis of the underlying complaint. Respondent offered no reasonable explanation for the continued failure to reconcile the account even after Fretwell's involvement ended. The only credible explanation given was Respondent's answer to a question posed by Chairman Glover concerning what attorney was responsible for overseeing the trust account from June through October 2006. Respondent's clear and unequivocal response was "I didn't want to deal with that account."

d. Sanction.

Under the Rules of the Supreme Court, once the Board affirms the District Committee Determination, it "may impose the same or any lesser sanction as that imposed by the District Committee." See Va. Sup. Ct. R., Pt. 6, §IV, ¶ 13-19 (G)(2).

In considering the appropriate sanction, we note that the sanction imposed by the District Committee was a Public Admonition with Terms. This Board Panel has determined that this is an appropriate sanction, notwithstanding its dismissal of the Rule 1.15(c)(4) violation. A public admonition is defined as "a public sanction imposed by a District Committee or the Board upon a finding that Misconduct has been established, but that no substantial harm to the Complainant or the public has occurred, and that no further disciplinary action is necessary." See Va. Sup. Ct. R., Pt. 6, § IV, ¶ 13-1 (Definitions). In making this determination, have considered the Respondent's disciplinary record. Further, we note that Respondent fully cooperated with the Bar in its investigations and, as Bar Counsel acknowledged before the District Committee, there was no evidence of dishonesty on the part of the Respondent. (Tr. 216, Nov 24, 2008). Therefore, we conclude that a Public Admonition with Terms is the appropriate sanction.

e. Conclusion.

At the conclusion of the proceedings on October 23, 2009, the Board

entered a Summary Order dismissing the District Committee's Determination of a violation of Rule 1.15(c)(4) and affirming the District Committee's Determinaton of violations of Rules 1.15(e)(1) and 1.15(f)(5). The Board imposed the sanction of a Public Admonition with Terms. By the Memorandum Order, we confirm the Summary Order.

It is further ORDERED that pursuant to the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13-9 (E)(1), the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall send a certified copy of this Order by Certified Mail, Return Receipt, to Respondent at his last address of record with the Virginia State Bar, Conrod & Company Law Firm, 101 North Lynnhaven Road, Suite 104, Virginia Beach, VA 23452 and a copy hand-delivered to Edward L. Davis, Bar Counsel, 707 East Main Street, Suite 1500, Richmond, VA 23219.

ENTERED this 11th day of November, 2009.

VIRGINIA STATE BAR DISCIPLINARY COMMITTEE

By _____
William E. Glover, First Vice Chair