VIRGINIA:

BEFORE THE FIRST DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
EDWIN GRIER FERGUSON **VSB Docket No. 17-010-109281**

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS

On August 19, 2019, a meeting was held in this matter before a duly convened First District Subcommittee consisting of Veronica E. Meade, Esq. chair; James E. Short, Esq.; and Walter P. Nullet, lay member. During the meeting, the Subcommittee voted to approve an agreed disposition for a **PUBLIC Reprimand with Terms** pursuant to Part 6, § IV, ¶ 13-15.B.4. of the Rules of the Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Paulo E. Franco, Jr., Assistant Bar Counsel, and Edwin Grier Ferguson, Respondent, and Carl A. Eason, Esquire, counsel for Respondent.

WHEREFORE, the First District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following **PUBLIC Reprimand with Terms**:

I. FINDINGS OF FACT

1. At all times relevant, Respondent has been licensed to practice law in the Commonwealth of Virginia and has been active and in good standing.

2. The Respondent was admitted to the Bar of the Commonwealth of Virginia on May 18, 1977.

3. Respondent first represented the Complainant in a real estate closing sometime back in 1993.

4. From that point forward, Complainant retained Respondent to handle of all of his business and financial dealings involving real estate.

5. During the course of his representation of the Complainant, Respondent borrowed money from the Complainant.

6. In his answer to the Complaint, Respondent did not deny that he had entered into the loans with Complainant and did not deny that some may not have been repaid in full.

7. Respondent further did not deny that prior into entering into the loans with the Complainant that he did not advise the Complainant in accordance with Rule 1.8 of the Rules of the Supreme Court of Virginia.

8. During the time that Respondent was providing legal advice and engaging in financial transactions with the Complainant, he was the Trustee of certain trusts which were established in 1992 and 1998. Each of these trusts were irrevocable.

9. During the time that Respondent was providing legal advice and engaging in financial transactions with the Complainant, Respondent made at least 17 loans to the Complainant using trust funds ("Loans").

10. Sixteen of the Loans did not have any documentation such as promissory notes or other evidence of the debt owed by Complainant to the trusts. The loans were all repaid.

11. Respondent never advised the trust settlor or the beneficiaries of the trusts that he was loaning money from those trusts to the Complainant.

12. Respondent charged Complainant and agreed to an interest rate of ten percent on the Loans that the trusts made to Complainant.

13. Respondent kept five percent of the repaid interests for himself as a fee, in addition to the fees he charged the trusts for services rendered as Trustee.

14. The settlor became aware of the Loans to Complainant in 2013 and 2014 when he reviewed accountings that the Respondent had provided.

15. The settlor, after retaining counsel, determined that Respondent had paid himself fees that were not reasonable or justified by keeping a portion of the earned interest on the Loans in addition to charging the trusts administration fees for acting as Trustee.

16. Respondent and the settlor met to discuss the matters uncovered, and both agreed that Respondent would pay back $500,000.00 to the trust; the settlor did not join in this complaint.

17. Respondent executed a promissory note on January 1, 2015 in the amount of $500,000.00 plus interest at 5% payable in 120 monthly installments to the 1998 trust ("Promissory Note").

18. Respondent had paid back approximately $207,000.00 of the principal owed on the Promissory Note.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

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RULE 1.7 Conflict of Interest: General Rule.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

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RULE 1.8 Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

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RULE 1.15 Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

(b) Specific Duties. 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, or those held by a lawyer as a fiduciary, promptly upon receipt;

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the 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 that such person is entitled to receive; and

(5) not disburse funds or use property of a client or third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

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III. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a **PUBLIC Reprimand with Terms**. The terms are:

1. Respondent shall have all of his trust accounts kept in accordance with Rule 1.15 and other fiduciary accounts audited twice a year, at his expense, by a Certified Public Accountant authorized to conduct such audits in Virginia. The audits shall be performed for a two year period beginning on the date of the issuance of the disposition imposing the Public Reprimand with Terms set forth herein.

2. The Certified Public Accountant shall submit a written report to the Bar Counsel of the biannual audits certifying that all of Respondent's trust and fiduciary accounts are in compliance with Rule 1.15 of the Virginia Rules of Professional Conduct. Such reports shall be submitted to bar counsel with 30 days of the expiration of every six-month period.

3. Within 60 days of the date of the issuance of the disposition imposing Public Reprimand with terms, Respondent shall provide to Bar Counsel a written status report indicating the status of the Promissory Note Respondent executed to pay back the Trust monies he overcharged in fees. If the Promissory Note is not current, Respondent shall bring the Note current within 30 days of his report to Bar Counsel and provide a further written certification attesting to the fact that the has brought the Promissory Note Current.

4. Respondent shall thereafter continue to repay the Promissory Note in full as a condition of this sanction of Public Reprimand with Terms.

5. If the Respondent does not continue to keep the Promissory Note current, then he shall be in breach of the terms of this Public Reprimand with Terms.

If any of the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia, the District Committee shall hold a hearing and Respondent shall be required to show cause why a Certification for Sanction Determination should not be imposed. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed.

Pursuant to Part 6, § IV, ¶ 13-9.E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

FIRST DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

Veronica E. Meade, Esq.
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on November 19, 2019 a true and complete copy of the Subcommittee Determination (**PUBLIC Reprimand With Terms**) was sent by certified mail to Edwin Grier Ferguson, Respondent, at Ferguson Rawls & Raines, P.C., 332 W Constance Rd, PO Box 1458, Suffolk, VA 23439-1458, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Carl Arthur Eason, counsel for Respondent, at Wolcott Rivers Gates, 200 Bendix Rd Ste 300, Virginia Beach, VA 23452.

Paulo E. Franco, Jr.
Assistant Bar Counsel