

**VIRGINIA:**

**BEFORE THE TENTH DISTRICT SUBCOMMITTEE, SECTION I  
OF THE VIRGINIA STATE BAR**

**IN THE MATTERS OF  
RAPHAEL BENEDICT HARTLEY, III**

**VSB Docket Nos. 09-101-077793 and 09-101-077744**

**SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)**

On September 4, 2009, a meeting in this matter was held before a duly convened Tenth District Subcommittee, Section I consisting of Dennis E. Nagel, Esq., Chair, Hugh G. Campbell, Jr., Esq., member, and Dr. Joseph A. Barta, layperson.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Tenth District Subcommittee, Section I of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

**I. FINDINGS OF FACT**

1. Respondent Raphael Benedict Hartley, III ("Respondent") was at all times relevant an attorney licensed to practice law in the Commonwealth of Virginia.
2. At all times relevant, Respondent had a private law practice and drew clients from the general public. A portion of Respondent's practice involved real estate work.
3. As part of his private law practice, Respondent maintained two escrow and trust accounts, one of which was a real estate trust account, to handle client funds. Both accounts were maintained at the National Bank of Blacksburg.
4. Respondent also maintained a general operating account for his law practice. Respondent's operating account was maintained at the National Bank of Blacksburg.
5. Respondent asserts he has no other firm bank accounts.
6. Respondent was required to perform audits, reconciliations, and periodic trial balances on his escrow and trust account(s), as required by Rule 1.15 of the Virginia Rules of

Professional Conduct, and was required to perform other administrative functions in accordance with the Virginia Rules of Professional Conduct.

7. Respondent did not audit, reconcile, and perform the periodic reviews of his escrow and trust accounts as required by Rule 1.15.

8. On October 7, 2008, an overdraft occurred on Respondent's real estate trust account at the National Bank of Blacksburg.

9. As of October 23 and 24, 2008, Respondent's real estate trust account had a negative balance of \$1,892.73.

10. On October 28, 2008, Respondent made a deposit of \$1,847.00 into the real estate trust account at the National Bank of Blacksburg.

11. Despite the fact that Respondent made a deposit on October 28, 2008, Respondent's real estate trust account had a negative balance from October 23, 2008, to November 24, 2008.

12. On October 30, 2008, Respondent wrote a check, drawn on his real estate trust account at the National Bank of Blacksburg, to Virginia Title Center, Check No. 10437, in the amount of \$1,847.00. Respondent wrote the check to compensate Virginia Title Center for its issuance of a title insurance policy.

13. On December 9, 2008, Michael W. Aiken, an employee with Investors Title Insurance Company, complained to the Bar that the check issued by Respondent to Virginia Title Center, Check No. 10437, was returned due to insufficient funds.

14. On December 8, 2008, the Bar received a Trust Account Notification from the National Bank of Blacksburg which also reflected the overdraft on Respondent's real estate trust account.

15. The Virginia State Bar subsequently commenced an investigation to determine the reason for the overdrafts. Respondent advised the Bar that he had been delinquent in reconciling his real estate trust account; that his real estate trust practice had been coming to a close; and that he closed his real estate practice and was no longer using the account.

16. Respondent has since closed his firm and joined another legal practice, where he no longer practices real estate law. Respondent advises that he will no longer practice real estate law.

17. Respondent is no longer responsible for maintaining, managing, reconciling, or supervising trust account records.

18. Respondent asserts that no clients were affected by his failure to reconcile his trust account. Respondent re-paid the amounts due and owing the Virginia Title Center.

19. Respondent will close his three accounts at the National Bank of Blacksburg as provided below. Respondent asserts there has been no activity on his accounts since he accepted employment with the Warburton Law Offices.

## II. NATURE OF MISCONDUCT

Such conduct by Raphael Benedict Hartley, III constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

### **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

- (d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:
- (1) funds may be maintained in a common escrow account subject to the provisions of Rule 1.15(a) and (c) in the following cases:
    - (i) funds that will likely be disbursed or distributed within thirty (30) days of deposit or receipt;
    - (ii) funds of \$5,000.00 or less with respect to each trust or other fiduciary relationship;
    - (iii) funds held temporarily for the purposes of paying insurance premiums or held for appropriate administration of trusts otherwise funded solely by life insurance policies; or
    - (iv) trusts established pursuant to deeds of trust to which the provisions of Code of Virginia Section 55-58 through 55-67 are applicable;
  - (2) funds, securities, or other properties may be maintained in a common account:
    - (i) where a common account is authorized by a will or trust instrument;
    - (ii) where authorized by applicable state or federal laws or regulations or by order of a supervising court of competent jurisdiction; or
    - (iii) where (a) a computerized or manual accounting system is established with record-keeping, accounting, clerical and administrative procedures to compute and credit or charge to each fiduciary interest its pro-rata share of common account income, expenses, receipts and disbursements and investment activities (requiring monthly balancing and reconciliation of such common accounts), (b) the fiduciary at all times shows upon its records the interests of each separate fiduciary interest in each fund, security or other property held in the common account, the totals of which assets reconcile with the totals of the common account, (c) all the assets comprising the common account are titled or held in the name of the common account, and (d) no funds or property of the lawyer or law firm or funds or property held by the lawyer or the law firm other than as a fiduciary are held in the common account.

For purposes of this Rule, the term "fiduciary" includes only personal representative, trustee receiver, guardian, committee, custodian and attorney-in-fact.

- (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.
- (2) In the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:
- (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual

annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;

- (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i) above;
  - (iii) 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.

### **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 will be a predicate for the disposition of a PUBLIC Reprimand with Terms of this complaint. The terms and conditions are:

1. Within fifteen (15) days from the entry of the Subcommittee's Disposition in this matter, Respondent shall confirm in writing under oath review of Rule 1.15 of the Rules of Professional Conduct to Assistant Bar Counsel Renu Mago Brennan, Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.
2. Within thirty (30) days of the entry of the Subcommittee's Disposition in this matter, Respondent shall either provide Bar Counsel with the name of the Certified Public Accountant (CPA) to audit Respondent's trust and escrow accounts at the National Bank of Blacksburg to determine whether there are any outstanding checks on any of these accounts and to facilitate the closing out of all of Respondent's accounts at the National Bank of Blacksburg. The CPA shall, if he/she/the firm has not done so, certify familiarity with the requirements of Rule 1.15 of the Rules of Professional Conduct. The CPA shall provide a report to Bar Counsel by December 15, 2009, regarding the status of each of Respondent's firm accounts at the National Bank of Blacksburg.
3. Respondent is obligated to pay when due the CPA's fees and costs for services (including provision to the Virginia State Bar and to Respondent of information concerning the matter).
4. Unless an extension is granted by the Bar for good cause shown to accommodate the CPA's schedule, the Respondent shall close out all firm accounts no later than December 30, 2009.
5. Respondent agrees to freeze all activity on his trust accounts he maintains at the National Bank of Blacksburg, which he represents are his only firm trust accounts, to the extent he has not already done so. Respondent still retains limited use of his operating account which will also be closed out by December 30, 2009.

6. Within 30 days of the entry of the Subcommittee's Disposition in this matter, Respondent shall provide a statement under oath to Bar Counsel that he does not maintain any trust, escrow, fiduciary or other accounts to comply with CRESPA. Respondent must provide a statement on or before January 10 of each year for the next five years either stating that he maintains no such accounts or, if he does open any such account, Respondent must so notify Bar Counsel within thirty (30) days of opening the account. The notification should identify any and all financial institutions in which he maintains trust, escrow, fiduciary or other account to comply with CRESPA.
7. Respondent shall attend at least four hours of CLE in law office management, trust account compliance, or other related CLE and provide proof of attendance to Bar Counsel. Such hours shall be in addition to Respondent's mandatory CLE requirements.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If the terms and conditions are not met by the specified dates, the Tenth District, Section I Committee shall impose the alternative sanction of a Certification for Sanction Determination for the imposition of an alternative disposition of a specific period of suspension of license pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-15.G. The sole issue to be determined will be Respondent's compliance with the terms of this Public Reprimand, as set forth above.

Respondent shall bear the burden of proof by clear and convincing evidence that he has met all the terms. Further, Respondent has waived his right to have a three judge panel pursuant to Va. Code Ann. Section 54.1-3900 *et seq.* hear such matter.

Any notice required to be given by Rule to Show Cause shall be by Certified Mail, Return Receipt Requested to Respondent at his address of record with the Virginia State Bar. Any notice required shall be deemed given and complete by Bar Counsel depositing such notice as set forth herein.



Pursuant to Part Six, Section IV, Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

TENTH DISTRICT SUBCOMMITTEE, SECTION I  
OF THE VIRGINIA STATE BAR

By

  
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Dennis Eugene Nagel  
Chair

**CERTIFICATE OF SERVICE**

I certify that on Oct 9, 2009, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (PUBLIC Reprimand with Terms) to Raphael Benedict Hartley, III, Esquire, Respondent, at Warburton Law Offices, 80 East Main Street, Pulaski, VA 24301-5014, Respondent's last address of record with the Virginia State Bar.

  
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Renu Mago Brennan, Assistant Bar Counsel