VIRGINIA:

BEFORE THE TENTH DISTRICT SUBCOMMITTEE, SECTION II
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JOHN EDWARD JESSEE

VSB Docket No. 09-102-079600

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On April 16, 2010, a duly convened Tenth District Subcommittee, Section II subcommittee consisting of R. Lucas Hobbs, Esq., Chair, Lisa A. McConnell, Esq., Member, and Linda F. Rasnick, Lay Member ("Subcommittee") met to review an Agreed Disposition for a Public Reprimand with Terms in the above-referenced matter. Pursuant to Part 6, Section IV, Paragraph 13-15.B.4.c. of the Rules of the Supreme Court of Virginia, the Subcommittee approved the Agreed Disposition for a Public Reprimand with Terms.

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

I. STIPULATIONS OF FACT

1. At all times relevant herein, Respondent John Jessee, Jr. ("Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia.

2. At all times relevant herein, Respondent has practiced law with the firm of Jessee & Read, representing clients drawn from the general public.

3. In March 2007, Respondent's father, Charles Jessee, Sr. ("Mr. Jessee, Sr."), the founding partner and sole shareholder of the firm of Jessee & Read, transferred his ownership interest in the firm to Respondent. As of March 2007, Respondent became the firm's sole shareholder. Respondent now recognizes and concedes (as he has from the outset of this inquiry) the relevance and legal effect of the stock transfer on his obligations under the Virginia Rules of Professional Conduct. However, at the time of the stock transfer in March 2007, Respondent did not internalize that by virtue of the transfer he had managerial responsibility for what always had been, and in his eyes still was, his father's

firm. Before becoming shareholder of the firm, Respondent did not have any managerial authority in the firm.

4. At the time Respondent became the sole shareholder of Jessee & Read, the firm had a real estate escrow account, in addition to the firm's operating and other escrow accounts. Before Respondent became shareholder of the firm, Respondent never exercised operational or other responsibility regarding that real estate escrow account.

5. Brian Ely, Esq. was the attorney in the firm who handled real estate matters at the time Respondent became the shareholder of the firm. At that time, Mr. Ely and Mr. Jessee, Sr. (Respondent's father) were signatories on the real estate escrow account, but not Respondent. Respondent concedes that upon becoming shareholder, he should have made arrangements to become a signatory on the account.

6. Mr. Jessee, Sr. has stated that his formal retirement date from the firm was June 29, 2007. At or about that time, Mr. Jessee, Sr. hired Anna Howell and assigned bookkeeping and cash handling responsibilities to Ms. Howell. Daniel K. Read, Esq., of the firm had just defended Ms. Howell in an embezzlement action in which she pled guilty. Mr. Jessee, Sr. hired Ms. Howell in a good faith attempt to give her a new start and told Respondent (his son) that Ms. Howell would be an extremely loyal and devoted employee.

7. Mr. Ely left the firm at or about the end of November 2007.

8. No attorney in the firm used the real estate escrow account after Mr. Ely left the firm.

9. Ms. Howell learned while employed by the firm that there were outstanding, non-negotiated checks drawn on the real estate escrow account in question. Many of the outstanding, non-negotiated checks predated Respondent becoming shareholder of the firm. Ms. Howell took advantage of that situation and over a period of months in 2008 had the bank (Bank of America) stop payment on certain outstanding, non-negotiated checks. On such occasions, she would present Bank of America with new checks, payable to Bank of America, with forged signatures of Mr. Ely (on early occasions of such activity) and later of Respondent. Ms. Howell would then have the Bank issue money orders, with the payee line of the money order left blank. Ms. Howell would then make the money orders payable to her own creditors to pay her debts.

10. Respondent was unaware of such activities by Ms. Howell until being called by Bank of America on October 2, 2008.

11. Upon receiving that call, Respondent immediately went to the offices of Bank of America to meet with the bank officer who had contacted him, and to request access to the Bank's records regarding the real estate escrow account. Respondent was refused access to account records, because he was not a signatory on the account. Respondent became a signatory on the real estate escrow account that day so that he could have access to and review the Bank's records of the account.

12. Respondent subsequently engaged an independent certified public accountant (CPA) to review the Bank of America real estate escrow account for the time period of June 1, 2007 to October 31, 2008. In part, the review revealed that from January to October 2008, Ms. Howell had been obtaining funds from the account by the fraudulent activities described above.

13. The CPA's review further revealed that the firm's cash receipts journal reflected $8,695.10 of funds received that were not deposited into any of the firm's bank accounts.

14. Respondent reported this matter to the appropriate criminal authorities.

15. In June 2009, Ms. Howell pled guilty to money laundering and mail fraud in the theft of over $31,328.84 from the Bank of America real estate escrow account.

16. Respondent conceded at the outset of this inquiry that while Respondent has been the owner of the firm, Respondent has been required to perform, or to insure that another attorney in the firm was performing, audits, reconciliations, and periodic trial balances on the real estate escrow account, as required by Rule 1.15 of the Virginia Rules of Professional Conduct.

17. Respondent acknowledges that from in or about March 2007 until October 2, 2008 (including the time period of the thefts by Ms. Howell), he did not reconcile, manage, maintain and supervise the Bank of America real estate escrow account, nor did Respondent insure that another attorney at the firm was supervising and reconciling that escrow account. Respondent further acknowledges that while Ms. Howell was employed by the firm, Respondent did not sufficiently supervise her in the performance of her bookkeeping responsibilities at the firm. Respondent respectfully sets forth that such insufficiencies in his management and/or supervision of the real estate escrow account and of Ms. Howell resulted from the fact that he did not yet view himself as the manager of the law firm and had not as of that time taken the steps to educate himself to such responsibilities.

18. Respondent has consulted with the CPA who analyzed the embezzlement regarding the firm's escrow accounts, and has engaged that CPA to bring all of the firm's escrow accounts into compliance with Rule 1.15. As a result, Respondent has purchased, and now is using, new accounting/management software (PC Law) to assist in complying with his responsibilities under Rule 1.15. Respondent is in the process of implementing the CPA's other recommendations.

19. Respondent now reviews, reconciles, and supervises the firm's escrow accounts.

20. Respondent has ensured that internal and external review and reconciliation of the Bank of America real estate escrow account that was exploited by Ms. Howell continues. In connection with such ongoing review, Respondent has recently become aware that a former client of the firm (in a real estate transaction handled by Mr. Ely before he left the firm) appears to have been the payee of an outstanding check used by Ms. Howell to

facilitate her theft from the Bank of America real estate escrow account. The funds due this client were paid and accepted by the client.

21. As of this date, Respondent is not aware of any other clients of the firm who have been affected due to Ms. Howell's embezzlement. Any such finding will be addressed, and any funds that may be due to any client shall be paid promptly.

22. Respondent continues to undertake efforts to ensure that no other clients have been affected by Ms. Howell's activities.

23. Respondent cooperated fully both with the criminal authorities and the Bar in their respective investigations.

24. Respondent did not intentionally violate any of the Rules of Professional Conduct. He acknowledges that he had supervisory authority over Ms. Howell, and from the start acknowledged his responsibilities under Rules 1.15 and 5.3. Respondent now understands and has accepted his opportunity and responsibility with respect to the management of the firm. He has instituted proper controls and has enlisted the ongoing assistance of qualified professionals. He looks forward to continuing to meet his managerial responsibilities consistent with the requirements of the Rules of Professional Conduct.

II. NATURE OF MISCONDUCT

Such conduct by John Edward Jessee 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:

(subparts one and two are omitted because they do no apply)

(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 receipt 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;

(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

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 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner in a law firm shall make reasonable effort to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take the reasonable remedial action.

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 of the entry of the Subcommittee's approval of the disposition in this matter, Respondent shall confirm in writing his review of Rule 1.15 of the Rules of Professional Conduct to Bar Counsel.

2. Within thirty (30) days of the entry of the Subcommittee's approval of the disposition in this matter, Respondent shall engage the services of a Certified Public Accountant ("CPA") (a) who will certify familiarity with the requirements of Rule 1.15 of the Rules of Professional Conduct, and (b) who has been pre-approved by Bar Counsel to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the CPA determines that Respondent is in compliance with Rule 1.15, the CPA shall so certify in writing the Respondent and the Virginia State Bar. In the event the CPA determines Respondent is NOT in compliance with Rule 1.15, the CPA shall notify Respondent and the Virginia State Bar in writing, of the measures Respondent must take to bring himself into compliance with Rule 1.15. Respondent shall provide the CPA with a copy of the Agreed Disposition at the outset of the CPA's engagement.

3. Respondent is obligated to pay when the CPA's fees and costs for services, including provision to the Virginia State Bar and to Respondent of information concerning the matter.

4. In the event the CPA determines that Respondent has not complied with Rule 1.5, Respondent shall have forty-five (45) days following the date the CPA issues as written statement of the measures Respondent must take to comply with Rule 1.15 within which to bring him into compliance. The CPA shall then be granted access to Respondent's office, books, and records, following the passage of the forty-five (45) day period to determine whether Respondent has brought into compliance as required. The CPA shall thereafter certify in writing to Bar Counsel and to Respondent either

that Respondent has brought himself into compliance with Rule 1.15 within the forty-five (45) day period or that he has failed to do so. Respondent's failure to comply with Rule 1.15 as of the conclusion of the forty-five (45) day period shall be considered a violation of the Terms set forth herein.

5. Unless an extension is granted by the Bar for good cause shown to accommodate the CPA's schedule, the Terms specified in paragraphs 2, 3, and 4 shall be completed no later than July 30, 2010.

6. In July 2011, and no later than July 30, 2011, the CPA engaged pursuant to paragraph 2 shall reassess Respondent's attorney's trust account record-keeping, accounting, and reconciliation methods and procedures to ensure continued compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the CPA determines that Respondent has NOT remained in compliance with this Rule, such non-compliance will be reconsidered a violation of the Terms set forth herein.

7. From the date of the Subcommittee's approval of the disposition in this matter to January 31, 2012, Respondent hereby authorizes a Virginia State Bar investigator to conduct unannounced personal inspections of his trust account books, records, and bank records to ensure his compliance with all the provisions of Rule 1.15 of the Rules of Professional Conduct, and shall fully cooperate with the Virginia State Bar investigator.

8. 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.

9. Respondent shall continue his efforts to determine if any clients have been affected as a result of Ms. Howell's actions. To the extent that Respondent determines that any client has been affected, either in the course of the audits of his books and records, or otherwise, Respondent shall immediately, and no later than 10 days after making such determination, report the same in writing to Bar Counsel.

10. On January 31, 2011, and January 31, 2012, Respondent shall submit to Bar Counsel an annual report certifying either that he has not learned of any client losses from Ms. Howell's embezzlement; or if he learns of any client losses, he must identify the claimant or client who may have suffered a loss; the date he learned of the claim; and the status of the claim, including any investigation as to its validity and the status of payment. If additional claims are discovered, and if Respondent does not attest to the Bar that such claims have been paid, an investigation may be conducted to determine the nature of the loss. If the loss resulted from Ms. Howell's actions and Respondent's failures described herein, the Respondent shall provide Bar Counsel with a plan for restitution, and Respondent will remain obligated to make such restitution.

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, this Subcommittee shall impose a six-month suspension of his license to practice law in the Commonwealth of Virginia pursuant to Part Six, Section IV, Paragraph 13-15.G. of the Rules of Court.

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 II
OF THE VIRGINIA STATE BAR

By _____
Robert Lucas Hobbs
Chair

CERTIFICATE OF SERVICE

I certify that on Apr 1 26, _____, 2010, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to John Edward Jessee, Esquire, Respondent, at Jessee & Read, P.C., 200 West Valley Street, P.O. Box 1506, Abingdon, VA 24212-1506, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to John Lichtenstein, Esq., Respondent's Counsel at Lichtenstein Fishwick & Johnson PLC, PO Box 601, Roanoke, VA 24004-0601

_____
Renu Mago Brennan, Assistant Bar Counsel