VIRGINIA:

BEFORE THE THIRD DISTRICT SECTION III SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
HARVEY LATNEY, JR.

VSB Docket No. 07-033-0910

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS

On August 22, 2008 a meeting in this matter was held before a duly convened Third District Section III Subcommittee consisting of Dennis R. Kiker, Esquire, Chair, David P. Baugh, Esquire and Margaret E. McDermid, lay person to consider an Agreed Disposition tendered by Assistant Bar Counsel, Paulo E. Franco, Jr., Respondent, Harvey Latney, Jr. and Respondent's Counsel, Craig S. Cooley, Esquire.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Third District Section III Subcommittee of the Virginia State Bar hereby accepts the Agreed Disposition as tendered and serves upon the Respondent the following **PUBLIC REPRIMAND with TERMS**:

I. FINDINGS OF FACT

1. Respondent was at all times relevant an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent was licensed to practice law in the Commonwealth of Virginia on February 9, 1973.

3. At all times relevant, Respondent was the duly elected Commonwealth's Attorney of Caroline County, Virginia.

4. In addition to his duties as Commonwealth's Attorney, Respondent had a private law practice and drew clients from the general public.

5. As part of his private law practice, Respondent represented clients in the areas of real estate closings, personal injury cases, decedent's estates and trust administration.

6. As a result of the nature of his law practice, Respondent maintained several escrow and trust accounts to handle client funds.

7. Respondent also maintained a general operating account for his law practice.

8. Although Respondent was required to perform audits, reconciliations and periodic trial balances on his escrow and trusts accounts, in addition to performing other administrative functions in accordance with the Virginia Rules of Professional Conduct, Respondent abdicated all responsibility for such tasks to his administrative assistant of many years, Sheila Boone.

9. By placing Ms. Boone in charge of auditing and administering all of his accounts and books, Respondent gave Ms. Boone unfettered access to such accounts.

10. Ms. Boone began systematically embezzling funds from Respondent's trust and escrow accounts. Because Respondent abdicated his responsibilities under the Rules of Professional Conduct, he was unaware that the embezzlement was taking place.

11. The embezzlement came to light when Respondent realized that Ms. Boone had not forwarded certain accountings to the Commissioner of Accounts for the City of Richmond relating to the Estate of Florence Williams, for which Respondent had been duly appointed administrator.

12. Respondent discovered that Ms. Boone had forged Respondent's signature on a check representing cash on hand that belonged to the Ms. William's Estate. The total amount of the forged check was $185,000.00. Ms. Boone forged Respondent's signature and diverted the funds that belong to the William's Estate for her own personal use.

13. The theft was reported to law enforcement authorities, which led to the eventual prosecution and conviction of Ms. Boone for embezzlement.

14. Respondent caused his operating, trust and escrow records to be examined to determine the extent and nature of Ms. Boone's thefts.

15. To the best of Respondent's knowledge and information, Ms. Boone embezzled the following amounts over the years while in Respondent's employ:

a. $8,500.00 from the Estate of Client MBB;

b. At least $185,000.00 from the Estate of Florence Williams;

c. $21,300.00 from Client CC;

d. $3,000.00 from Client TW;

e. $3,700.00 that were part of personal injury settlements for client CS;

f. $20,310 diverted from a real estate transaction on behalf of client JE;

g. $35,000.00 in funds that were collected for obtaining title insurance policies for various real estate closings that Ms. Boone never paid;

h. $143,00.00 that represented a loan pay off for client WS but Respondent has identified $128,000.00 in his trust account that represents the balance to be paid, leaving a balance owed of between $13,000.00 and $14,000.00.

16. At all times relevant, Respondent has cooperated with the Bar in the investigation of this matter.

17. Respondent has undertaken significant steps in making the injured parties whole, including, but not limited to, paying the claim of the Florence Williams Estate in whole, including interest.

18. Respondent continues to take steps to settle with all injured parties and has reached settlements wherein payments have been made or agreements reached to accept installment payments.

19. Respondent has retained a certified public account to make sure that his escrow and trust account record keeping is in accordance with the requirements of Rule 1.15 of the Rules of Professional Conduct.

II. NATURE OF MISCONDUCT

Such conduct by Harvey Latney, Jr. constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

(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 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.

(1) Insufficient fund check reporting.

(i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;

(ii) Overdraft notification agreement required. A financial institution shall be approved as a depository for lawyer escrow accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against a lawyer escrow account containing insufficient funds, irrespective of whether or not the instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

No escrow account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled by the financial

institution except upon thirty (30) days notice writing to the Virginia State Bar, or as otherwise agreed to by the Virginia State Bar. Any such agreement may be canceled without prior notice by the Virginia State Bar if the financial institution fails to abide by the terms of the agreement;

(iii) Overdraft reports. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(a) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(b) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby;

(c) such reports shall be made simultaneously with and within the time provided by law for notice of dishonor to the depositor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds;

(iv) Financial institution cooperation. In addition to making the reports specified above, approved financial institutions shall agree to cooperate fully with the Virginia State Bar and to produce any lawyer escrow account or other account records upon receipt of a subpoena therefore.

A financial institution may charge for the reasonable costs of producing the records required by this Rule.

(v) Lawyer cooperation. Every lawyer or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule;

(vi) Definitions. "Lawyer" means a member of the Virginia State Bar; any other lawyer admitted to regular or limited

practice in this State, and any member of the bar of any other jurisdiction while engaged, pro hac vice or otherwise, in the practice of law in Virginia;

"Lawyer escrow account" or "escrow account" means an account maintained in a financial institution for the deposit of funds received or held by a lawyer or law firm on behalf of a client;

"Client" includes any individual, firm, or entity for which a lawyer performs any legal service, including acting as an escrow agent or as legal representative of a fiduciary, but not as a fiduciary. The term does not include a public or private entity of which a lawyer is a full-time employee;

"Dishonored" shall refer to instruments which have been dishonored because of insufficient funds as defined above;

"Financial institution" and "bank" include regulated state or federally chartered banks, savings institutions and credit unions which have signed the approved Notification Agreement, which are licensed and authorized to do business and in which the deposits are insured by an agency of the Federal Government;

"Insufficient Funds" refers to an overdraft in the commonly accepted sense of there being an insufficient balance as shown on the bank's accounting records; and does not include funds which at the moment may be on deposit, but uncollected;

"Law firm" includes a partnership of lawyers, a professional or nonprofit corporation of lawyers, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, these Rules apply to the offices in this State, to escrow accounts in other jurisdictions holding funds of clients who are located in this State, and to escrow accounts in other jurisdictions holding client funds from a transaction arising in this State;

"Notice of Dishonor" refers to the notice which, pursuant to Uniform Commercial Code Section 3-508(2), must be given by a bank before its midnight deadline and by any other person or institution before midnight of the third business day after dishonor or receipt of notice of dishonor. As generally used hereunder, the term notice of dishonor shall refer only to dishonor for the purpose of insufficient funds, or because the drawer of the bank has no account with the depository institution;

"Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under Uniform Commercial Code Section 4-104, if sufficient funds were available.

(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.

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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 efforts 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 a 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 reasonable remedial action.

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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 30 days of the entry of the Subcommittee's Disposition in this matter, Respondent shall provide Bar Counsel with the name of the Certified Public Accountant ("CPA") that will conduct the audits and inspections encompassed in this agreed disposition.

2. Within 30 days of the entry of the Subcommittee's Disposition in this matter, Respondent shall provide a list to Bar Counsel of all financial institutions in which he maintains trust, escrow, fiduciary or other accounts to comply with CRESPA, and shall promptly notify Bar Counsel each time he opens a new one for a period of 18 months.

3. Respondent's CPA shall provide as soon as practicable a report of his or her audit of all of Respondent's accounts, using generally accepted accounting principals, for the last three years.

4. For a period of eighteen months commencing from the date of the Subcommittee's Determination in this matter, Respondent's CPA shall provide quarterly reports of all audits, reconciliations and/or periodic trial balances required by Rule 1.15 of the Rules of Professional Conduct.

5. To the extent that he has not already done so, Respondent shall attend at least 4 hours of CLE in law office management or other related CLE and provide proof of attendance to Bar Counsel. In addition, Respondent shall take an additional 6 hours of CLE within a one year period from the date of the Subcommittee's determination. Such hours shall be in addition to Respondent's mandatory CLE requirements.

6. Respondent warrants and represents to the Bar that to the best of his knowledge information and belief that the losses identified in paragraph 15 of this Agreed Disposition constitute the total losses caused by Ms. Boone's defalcations. To the extent that Respondent discovers other defalcations in the course of any audits of his books and records; he shall immediately report the same, in writing, to the office of Bar Counsel.

7. Respondent shall make full restitution to the clients identified in paragraph 15 within a period of five years from the date of the Subcommittee's disposition. The Bar acknowledges that Respondent has settled with the Williams Estate. Respondent shall provide written proof of settlement or payment in full to each of the clients identified in paragraph 15 of this Agreed Disposition.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates set forth herein, the Respondent agrees that the Third District Section III 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.G.5. The question of whether the Respondent has complied with the terms shall be determined by the Third District Section III Committee. The sole issue for the District Committee shall be whether or not Respondent has complied with the terms of this

Agreed Disposition. Respondent shall bear the burden of proof by clear and convincing evidence. Respondent further agrees to waive his right to have such issue determined by a three judge panel in accordance with Va. Code § 54.1-3935.

Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By _____
Dennis R. Kiker, Chair
Subcommittee of the Third District Section III
Committee

CERTIFICATE OF SERVICE

I certify that on this 4th day of September, 2008, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination PUBLIC REPRIMAND with TERMS to Harvey Latney, Jr., Esquire, Respondent, at 1417 Brook Road, Richmond, VA 23220, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Craig S. Cooley, Esquire, 3000 Idlewood Avenue, P.O. Box 7268, Richmond, Virginia 23221, counsel for Respondent.

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Paulo E. Franco, Jr., Assistant Bar Counsel