

VIRGINIA:

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

IN THE MATTER OF
Richard Farr MacDowell, Jr.

VSB Docket No. 18-052-112582

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On June 11, 2019 a meeting was held in this matter before a duly convened Fifth District, Section II Subcommittee consisting of Richard Brent Orsino; Chair Presiding; Susan Marie Butler, Member; and Stephen J. McArdle, Jr., 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 Elizabeth K. Shoenfeld, Assistant Bar Counsel, and Richard Farr MacDowell, Jr., Respondent, and Michael L. Rigsby, Esquire, counsel for Respondent.

WHEREFORE, the Fifth District, Section II Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. In November 2009, Complainant Tae Uk Lee and his wife retained Respondent for a civil litigation matter.
2. Mr. Lee does not speak English and Respondent does not speak Korean. However, Respondent employed paralegal/Korean interpreter Grace Lee, who helped them communicate.

Facts Regarding Respondent's Trust Accounting Procedures

3. Mr. Lee paid an advance legal fee of \$6,500, which Respondent deposited into his trust account.

4. Respondent's records reflected that he earned \$5,163.30 of the \$6,500 advance legal fee.
5. Although Respondent's representation of Mr. Lee concluded in 2010, Respondent did not refund the \$1,336.70 balance of the advance legal fee until October 2018. If called to testify, Respondent would state that his failure to timely refund the trust balance was not knowing or intentional. Respondent would also state that his billing system was not set up to print monthly statements of those accounts that had no billing activity during the month.
6. For the trust account in which Mr. Lee's funds were held, Respondent failed to perform the reconciliations required by Virginia Rule of Professional Conduct 1.15(d)(3).

Facts Regarding Respondent's Business Transactions With Mr. Lee

7. During Respondent's representation of Mr. Lee, Grace Lee told Mr. Lee about different investments in which Respondent was involved. If called to testify, Mr. Lee would state that he told Grace Lee that he was interested in making a substantial loan for which he would receive interest payments of \$10,000 per month.

If called to testify, Respondent would state that he met with Mr. Lee following his (Mr. Lee's) conversation with Grace Lee. Mr. Lee presented that he wished to utilize his funds in a manner that would generate \$10,000.00 per month in income to him. Respondent would state that he informed Mr. Lee of a business known as Kraze Burger. Respondent would also state that he informed Mr. Lee at their first meeting that the business under discussion was a startup company, and any financial dealing with Kraze Burger was very risky. Respondent would also state that he told Mr. Lee that he should consult counsel for advice concerning his contemplated financial involvement with Kraze Burger. Respondent would state that Mr. Lee declined to do so, representing himself as an astute and knowledgeable businessman. Respondent would also testify that Mr. Lee actively participated in the management of Kraze Burger.
8. Between March 2, 2010 and February 1, 2011, Mr. Lee agreed to make four separate loans to M&A Business Group ("M&A"), an entity in which Respondent held a 42.5% ownership interest. M&A was formed to explore investment opportunities to bring Korean businesses to the United States. M&A's primary business venture was opening franchises of Korean chain Kraze Burger in the United States.
9. Respondent signed three of the four loan agreements on behalf of M&A.
10. Because Mr. Lee had borrowed the money that he loaned to M&A and was relying on the monthly interest payments in order to service his own loan, M&A Business Group also entered into several agreements indemnifying Mr. Lee from liability resulting from default on his line of credit. Respondent signed those agreements, which were entered into in the fall of 2011, as well.
11. Prior to entering into the first loan agreement dated March 2, 2010 with Mr. Lee, Respondent did not obtain Mr. Lee's written consent as required by Virginia Rule of Professional Conduct 1.8(a)(3).

12. In 2013, M&A stopped making interest payments on the loans because of problems with the development of the Kraze Burger locations. If called to testify, Respondent would state that M&A received a total of \$481,222.00 from Mr. Lee. Respondent would further state that M&A and Respondent, as indemnitor of the four notes obtained by Mr. Lee to funds the loan agreements to M&A, paid to Mr. Lee or creditors on Mr. Lee's behalf, a total of \$672,614.00 between May 2010 and August 2017.

II. NATURE OF MISCONDUCT

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

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:

...

(3) the client consents in writing thereto.

RULE 1.15. Safekeeping Property.

...

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

...

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the agreed disposition, it is the decision of the

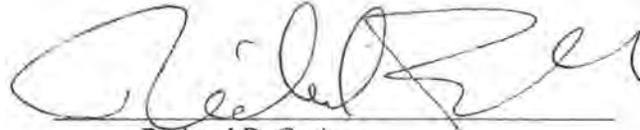
Subcommittee to impose a Public Reprimand with Terms. The terms are:

1. Respondent shall review Virginia Rule of Professional Conduct 1.15 and the VSB publication Lawyers and Other People's Money, 5th Edition, available on the Virginia State Bar's website at www.vsb.org. This term shall be met by August 31, 2019. Upon completion of this Term, Respondent shall so certify in writing to the Assistant Bar Counsel assigned to this case.
2. Respondent shall submit to random reviews of his trust account records by a Virginia State Bar Investigator or other agent of the bar during the course of the next two years for the purpose of ascertaining his compliance with the escrow account maintenance and record-keeping requirements of Rule 1.15 of the Virginia Rules of Professional Conduct. Respondent shall reasonably cooperate with the Investigator or bar agent in submitting to such random review and making available bank records, cancelled checks, checkbooks, subsidiary ledgers, cash receipts journals, cash disbursements journals, evidence of reconciliations, and any and all other documents necessary for the completion of the review.

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.

FIFTH DISTRICT, SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

A handwritten signature in black ink, appearing to read "Richard B. Orsino", written over a horizontal line.

Richard B. Orsino
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on 6/19/19, a true and complete copy of the Subcommittee Determination (Public Reprimand with Terms) was sent by certified mail to Richard Farr MacDowell, Jr., Respondent, at MacDowell Law Group PC, 10500 Sager Ave Ste F, Fairfax, VA 22030, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Michael L. Rigsby, counsel for Respondent, at Michael L. Rigsby, PC, P.O. Box 29328, Henrico, VA 23242.



Elizabeth K. Shoenfeld
Assistant Bar Counsel

VIRGINIA:

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

IN THE MATTER OF
RICHARD FARR MACDOWELL, JR.

VS
VS B Docket No. 18-052-112582

AGREED DISPOSITION
PUBLIC REPRIMAND WITH TERMS

Pursuant to the Rules of Supreme Court of Virginia, Part 6, § IV, ¶ 13-15.B.4, the
Virginia State Bar, by Elizabeth K. Shoenfeld, Assistant Bar Counsel, and Richard Farr

MacDowell, Jr., Respondent, and Michael L. Rigsby, Esquire, counsel for Respondent, hereby
enter into the following agreed disposition arising out of this matter.

I. STIPULATIONS OF FACT

1. In November 2009, Complainant Tae Uk Lee and his wife retained Respondent for a civil litigation matter.
2. Mr. Lee does not speak English and Respondent does not speak Korean. However, Respondent employed paralegal/Korean interpreter Grace Lee, who helped them communicate.

Facts Regarding Respondent's Trust Accounting Procedures

3. Mr. Lee paid an advance legal fee of \$6,500, which Respondent deposited into his trust account.
4. Respondent's records reflected that he earned \$5,163.30 of the \$6,500 advance legal fee.
5. Although Respondent's representation of Mr. Lee concluded in 2010, Respondent did not refund the \$1,336.70 balance of the advance legal fee until October 2018. If called to testify, Respondent would state that his failure to timely refund the trust balance was not knowing or intentional. Respondent would also state that his billing system was not set up to print monthly statements of those accounts that had no billing activity during the month.
6. For the trust account in which Mr. Lee's funds were held, Respondent failed to perform the reconciliations required by Virginia Rule of Professional Conduct 1.15(d)(3).

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II. NATURE OF MISCONDUCT

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

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(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:

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(3) the client consents in writing thereto.

RULE 1.15 Safekeeping Property

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(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

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(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to a subcommittee of the Fifth District, Section II Committee for its approval the agreed disposition of a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Fifth District, Section II Committee. The terms are as follows:

1. Respondent shall review Virginia Rule of Professional Conduct 1.15 and the VSB publication Lawyers and Other People's Money, 5th Edition, available on the Virginia State Bar's website at www.vsb.org. This term shall be met by August 31, 2019. Upon completion of this Term, Respondent shall so certify in writing to the Assistant Bar Counsel assigned to this case.

2. Respondent shall submit to random reviews of his trust account records by a Virginia State Bar Investigator or other agent of the bar during the course of the next two years for the purpose of ascertaining his compliance with the escrow account maintenance and record-keeping requirements of Rule 1.15 of the Virginia Rules of Professional Conduct. Respondent shall reasonably cooperate with the Investigator or bar agent in submitting to such random review and making available bank records, cancelled checks, checkbooks, subsidiary ledgers, cash receipts journals, cash disbursements journals, evidence of reconciliations, and any and all other documents necessary for the completion of the review.

If any of the terms is not met by the date set forth above, Respondent agrees that the District Committee shall impose a Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13-15.G of the Rules of the Supreme Court of Virginia. 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 ¶ 13-9.E of the Rules of Supreme Court of Virginia.

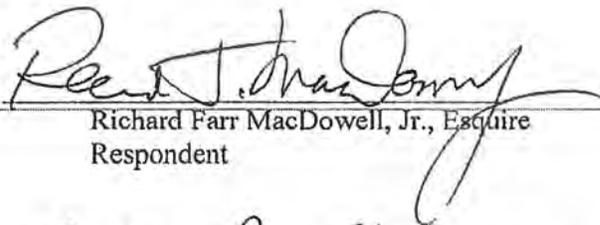
If the agreed disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

Pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of the Supreme Court of Virginia, Respondent's prior disciplinary record shall be furnished to the subcommittee considering this agreed disposition.

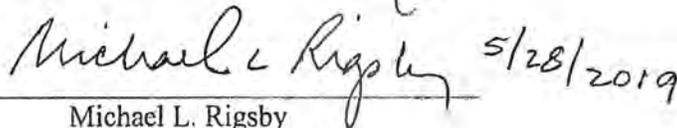
THE VIRGINIA STATE BAR



Elizabeth K. Shoenfeld
Assistant Bar Counsel



Richard Farr MacDowell, Jr., Esquire
Respondent



Michael L. Rigsby
Counsel for Respondent