VIRGINIA:

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

IN THE MATTER OF
JOHN JAMES McNALLY VSB Docket No. 18-022-111805

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On August 8, 2018, a meeting was held in this matter before a duly convened Second District, Section II Subcommittee consisting of Patricia A. Johnson, Lay Member, Laura G. Gross, Member, and Scott C. Vachris, Chair. During the meeting, the Subcommittee voted to approve an agreed disposition for a Public Reprimand Without Terms pursuant to Part 6, § IV, ¶ 13-15.B.4. of the Rules of the Supreme Court of Virginia. The agreed disposition was subsequently entered into by the Virginia State Bar, by M. Brent Saunders, Senior Assistant Bar Counsel, and John James McNally, Respondent.

WHEREFORE, the Second District, Section II Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand Without Terms:

I. FINDINGS OF FACT

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

2. Respondent had a trust account at Wells Fargo Bank, N.A. (ending in 1606). That account was overdrawn on multiple occasions from February through April 2018, as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Debit Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/20/18</td>
<td>$143.00</td>
</tr>
<tr>
<td></td>
<td>$19.26</td>
</tr>
<tr>
<td></td>
<td>$25.00</td>
</tr>
<tr>
<td></td>
<td>$41.24</td>
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<tr>
<td></td>
<td>$42.59</td>
</tr>
<tr>
<td></td>
<td>$46.99</td>
</tr>
</tbody>
</table>
2/21/18        $82.23  
2/22/18        $92.90  
3/15/18        $82.10  
3/16/18        $75.09  
3/22/18        $82.10 (Retry)  
3/23/18        $75.09 (Retry)  
4/16/18        $304.10  

3. After receiving notice of the initial overdrafts, the bar’s Intake Department attempted to obtain an explanation from Respondent in lieu of opening a formal complaint. Respondent did not respond to their letters dated February 23, 2018 and March 5, 2018 which were sent to Respondent’s address of record with the bar. As a result, a formal complaint was opened, and on March 15, 2018, a copy was sent to Respondent to his address of record with the bar along with a demand that he file an answer within 21 days. Respondent did not file an answer. As part of the bar’s subsequent investigation, a subpoena *duces tecum* was issued to Respondent on April 23, 2018, demanding that he produce his trust account records from January 2017 to present and all documents related to the overdrafts, by May 14, 2018. The subpoena *duces tecum* was sent to Respondent’s address of record with the bar via certified mail which he signed for on May 1, 2018. Notwithstanding his actual receipt of the subpoena *duces tecum*, Respondent produced no documents. As a result, a Notice of Noncompliance and Request for Interim Suspension was issued on May 16, 2018. Respondent still failed to produce any documents, and as a result, his law license was administratively suspened on May 31, 2018. The bar’s investigator was subsequently able to make contact with Respondent, who cooperated in making himself available to be interviewed, and eventually complied with the subpoena *duces tecum* resulting in the lifting of the administrative suspension of his law license on July 3, 2018.

4. The bar’s investigation revealed that Respondent has used his trust account as his personal bank account since 2013. His personal transactions have consisted primarily of deposits of personal funds into the account followed by disbursements of those funds for personal expenses, largely the purchase of products for his automotive parts business, utilizing his PayPal account which he linked to the trust account as the “default account”.

II. NATURE OF MISCONDUCT

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

RULE 1.15 Safekeeping Property

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

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1 According to Respondent, the trust account was debited by PayPal only if the balance of his PayPal account was insufficient to cover a transaction.
(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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:
(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a Public Reprimand Without Terms and John James McNally is hereby so reprimanded. In approving this agreed disposition, the following mitigating factors were considered: i) the bar's investigation did not reveal any evidence of commingling or misappropriating of client monies; and ii) following the opening of this complaint, Respondent opened a new trust account and provided assurances to the bar that the account will not be used for PayPal purchases or any other personal transactions.

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.

SECOND DISTRICT, SECTION II SUBCOMMITTEE OF THE VIRGINIA STATE BAR

By: Scott C. Vachris
Subcommittee Chair
CERTIFICATE OF MAILING

I certify that on the 28th day of August, 2018, a true and complete copy of the Subcommittee Determination (Public Reprimand Without Terms) was sent by certified mail to John James McNally, Respondent, at John J. McNally, P.C., P.O. Box 6366, Norfolk, VA 23508-0366, Respondent's last address of record with the Virginia State Bar.

M. Brent Saunders
Senior Assistant Bar Counsel