



VIRGINIA:

BEFORE THE FIFTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
James Anthony Rivera

VSB Docket No. 19-051-114354

SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)

On January 3, 2020, a meeting was held in this matter before a duly convened Fifth District Section I Subcommittee consisting of Michael Kwang-Min Kim, Esquire, Kathleen E. Harold, Lay Member, and Colleen M. Haddow, Esquire, presiding. 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 Kathleen Maureen Uston, Assistant Bar Counsel, and James Anthony Rivera, Respondent, Mary Teresa Morgan, Esquire, counsel for Respondent.

WHEREFORE, the Fifth District Section I Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with 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. On December 18, 2018, the Virginia State Bar (“VSB”) received a notice from BB&T Bank, the institution that holds Respondent’s attorney trust account, that Respondent’s trust account was overdrawn (the “NSF”).
3. Respondent explained that the NSF resulted from his having mistakenly written a check to one of his employees from his trust account when that check should have

- been written from his operating account. Respondent explained further that his trust and operating checks are identical and that this contributed to his error.
4. Respondent further stated that once BB&T alerted him to the NSF he immediately transferred funds from his operating account. An examination of bank records confirmed the latter fact.
  5. During the investigation of this case, the VSB subpoenaed Respondent's bank records from BB&T and a review and analysis of those records showed that Respondent's trust account records are essentially in order with some small exceptions. However, Respondent admitted that he did not fully maintain the records or perform the reconciliations required by Rule of Professional Conduct 1.15.
  6. The investigation of this case confirmed that Respondent has implemented a new software program in his practice that will help ensure that this does not occur again in the future.

## 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**

(b) Specific Duties. 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 accountings to the client regarding them[.]

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(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.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

### 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 as follows:

1. Within ninety (90) days of the date of service of the Determination in this matter, Respondent hereby authorizes a Virginia State Bar Investigator to conduct an audit and personal inspection of his trust account books, records, and bank records to ensure his compliance with all of the provisions of Rule 1.15 of the Rules of

Professional Conduct and he shall fully cooperate with the Virginia State Bar investigator.

2. For a period of thirty-six (36) months following the date of service of the Determination herein, if the VSB receives another NSF concerning Respondent's trust account and, following an investigation, a disciplinary tribunal in Virginia issues a ruling, determination, judgment, order, or decree that the NSF resulted from Respondent's failure to comply with RPC 1.15, then that shall constitute a violation of this term, *provided, however*, that the conduct upon which such finding was based occurred within the period referred to above, and provided, further, that such ruling has become final.

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 Respondent agrees that this matter shall be certified to the Disciplinary Board for sanction determination pursuant to Part 6, §IV, ¶13-20 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 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 I SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

*Colleen M. Haddow*

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Colleen M. Haddow, Esquire  
Fifth District Section I Committee Chair

CERTIFICATE OF MAILING

I hereby certify that on the 7<sup>th</sup> day of February, 2020, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to James Anthony Rivera, Esq., Respondent, at The Law Office of James A. Rivera, PLLC, 209 Elden Street, Suite 101, Herndon, VA 20170, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Mary T. Morgan, Esq., counsel for Respondent, at Golightly Mulligan & Morgan, PLC, Suite 441, 1244 Perimeter Parkway , Virginia Beach, VA 23454.

  
for Kathleen M. Uston  
Assistant Bar Counsel