

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
David Allen Downes

VSB Docket No. 24-070-129608

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On February 21, 2024 and March 13, 2024, meetings were held in this matter before a duly convened Seventh District Subcommittee consisting of Ryan Ruzic, chair, Hope Payne, member, and Kimberly Gregg, 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 Richard W. Johnson, Jr., Assistant Bar Counsel, and David Allen Downes, (“Respondent”), pro se.

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

I. FINDINGS OF FACT

1. Respondent was admitted to the Virginia State Bar (“VSB”) in 1987. At all relevant times, Respondent was a member of the VSB.
2. On December 2, 2022, the Warren County Circuit Court appointed David Downes (“Respondent”) as administrator of the estate of Harry Frank Gulley (“Gulley”), a friend of Respondent, who died intestate on October 18, 2022.
3. On May 24, 2022, Respondent received notice from the Commissioner of Accounts of a claim against the estate made by Rebecca Blair (“Blair”) arising from funeral expenses for Gulley. Respondent was also negotiating the rehabilitation and sale of Gulley’s small airplane.

4. At the time of Blair's claim, an existing Interest On Lawyers Trust Account ("IOLTA") that Respondent was using solely for the Gulley's estate did not have adequate funds to pay the claim.
5. On July 12, 2023, proceeds from the sale of the airplane were deposited in Respondent's IOLTA. On July 20, 2023, Respondent drafted and mailed a check for \$3,272.34 from the IOLTA to Blair.
6. On July 27, 2023, Respondent transferred \$170,000.00 from the IOLTA account to the newly opened Gulley estate account ("Estate Account"). Following the transfer, the IOLTA account had a balance less than \$1,800.00.
7. On July 27, 2023, when Blair presented the check for \$3,272.34, the IOLTA had insufficient funds. First Citizens Bank paid the check and notified the Bar on July 31, 2023. First Citizens Bank did not charge an overdraft fee.
8. On July 28, 2023, upon learning of the overdraft, Respondent went to First Citizens Bank and paid the outstanding debt from the Estate Account. Respondent explained that he mistakenly believed the check to Blair had already been cashed at the time he transferred \$170,000.00 from the IOLTA to the Estate Account.
9. On December 13, 2023, VSB Investigator Ron McCall ("McCall") observed discrepancies between Respondent's bank statements and his required ledgers for the IOLTA and Estate Account. Respondent admitted he had not been maintaining required reconciliations for the accounts.
10. Respondent advised McCall that the IOLTA had been open for years but did not hold client funds in the past three or four years before the Gulley matter. Respondent stated that he kept personal funds in the IOLTA to keep it open. On October 1, 2022, the IOLTA balance was \$1,402.74.
11. Respondent stated he retained the services of an accounting firm to perform his required accounting for the estate as well as ledgers and reconciliations for the IOLTA. There is no evidence that Respondent prepared an annual summary of the Gulley estate's receipts and disbursements.
12. On January 2, 2024, Respondent provided McCall with updated ledgers and reconciliations for the IOLTA. The records were compliant with Rule 1.15(d)(3). Respondent advised McCall that he had another IOLTA ("Trust Account"). On January 6 and January 10, 2024, Respondent provided McCall with reconciliations and ledgers for the Trust Account. As of January 16, 2023, the Estate account, IOLTA, and Trust Account were compliant with Rule 1.15(d)(3).
13. Respondent cooperated with the Bar's investigation.

II. NATURE OF MISCONDUCT

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

By maintaining \$1,402.72 of personal funds in the IOLTA, Respondent violated the following Rule 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:

(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.

By failing to prepare an annual summary of the Gulley Estate's receipts and disbursements, Respondent violated the following Rule of Professional Conduct:

Rule 1.15 Safekeeping Property

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

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

By failing to conduct the required monthly reconciliations of the client ledger balance, the IOLTA balance, and reconciliations between the client ledger and IOLTA balance, Respondent violated the following Rule of Professional Conduct:

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) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand with

Terms. The terms are:

1. For a period of three years following the entry of this Order, Respondent will not engage in any conduct that violates Rule 1.15 of the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which Respondent may be admitted to practice law. The terms contained in this paragraph will be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the Rules of Professional Conduct referred to above, *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.
2. For a period of two years following the entry of this Order, Respondent hereby agrees to and will submit to unannounced reviews by a Virginia State Bar Investigator 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. Respondent agrees to and will fully cooperate with the Virginia State Bar investigator in submitting to such reviews and making available bank records, cancelled checks, checkbooks, subsidiary ledgers, receipts journals, disbursements journals, evidence of reconciliations, and any and all other documents necessary for the completion of the reviews.

If any of the terms are not met by the time specified (March 1, 2026), 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 Sanctions 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.

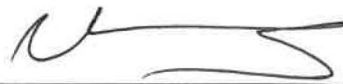
SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR



Ryan David Ruzic
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on March 15, 2024, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was emailed to dadownes14@gmail.com, and sent by certified mail to David A. Downes, Respondent, at 14 Chester Street, Front Royal, VA 22630, Respondent's last address of record with the Virginia State Bar.



Richard W. Johnson Jr.
Assistant Bar Counsel

VIRGINIA:

BEFORE THE Seventh District SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
David Allen Downes

VSB Docket No. 24-070-129608

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 Richard W. Johnson Jr., Assistant Bar Counsel, and David Allen Downes, Respondent, *pro se*, enter into the following agreed disposition arising out of this matter.

I. STIPULATIONS OF FACT

1. Respondent was admitted to the Virginia State Bar (“VSB”) in 1987. At all relevant times, Respondent was a member of the VSB.
2. On December 2, 2022, the Warren County Circuit Court appointed David Downes (“Respondent”) as administrator of the estate of Harry Frank Gulley (“Gulley”), a friend of Respondent, who died intestate on October 18, 2022.
3. On May 24, 2022, Respondent received notice from the Commissioner of Accounts of a claim against the estate made by Rebecca Blair (“Blair”) arising from funeral expenses for Gulley. Respondent was also negotiating the rehabilitation and sale of Gulley’s small airplane.
4. At the time of Blair’s claim, an existing Interest On Lawyers Trust Account (“IOLTA”) that Respondent was using solely for the Gulley’s estate did not have adequate funds to pay the claim.
5. On July 12, 2023, proceeds from the sale of the airplane were deposited in Respondent’s IOLTA. On July 20, 2023, Respondent drafted and mailed a check for \$3,272.34 from the IOLTA to Blair.
6. On July 27, 2023, Respondent transferred \$170,000.00 from the IOLTA account to the newly opened Gulley estate account (“Estate Account”). Following the transfer, the IOLTA account had a balance less than \$1,800.00.

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8. On July 28, 2023, upon learning of the overdraft, Respondent went to First Citizens Bank and paid the outstanding debt from the Estate Account. Respondent explained that he mistakenly believed the check to Blair had already been cashed at the time he transferred \$170,000.00 from the IOLTA to the Estate Account.
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10. Respondent advised McCall that the IOLTA had been open for years but did not hold client funds in the past three or four years before the Gulley matter. Respondent stated that he kept personal funds in the IOLTA to keep it open. On October 1, 2022, the IOLTA balance was \$1,402.74.
11. Respondent stated he retained the services of an accounting firm to perform his required accounting for the estate as well as ledgers and reconciliations for the IOLTA. There is no evidence that Respondent prepared an annual summary of the Gulley estate's receipts and disbursements.
12. On January 2, 2024, Respondent provided McCall with updated ledgers and reconciliations for the IOLTA. The records were compliant with Rule 1.15(d)(3). Respondent advised McCall that he had another IOLTA ("Trust Account"). On January 6 and January 10, 2024, Respondent provided McCall with reconciliations and ledgers for the Trust Account. As of January 16, 2023, the Estate account, IOLTA, and Trust Account were compliant with Rule 1.15(d)(3).
13. Respondent cooperated with the Bar's investigation.

II. NATURE OF MISCONDUCT

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

By maintaining \$1,402.72 of personal funds in the IOLTA, Respondent violated the following Rule 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:

(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.

By failing to prepare an annual summary of the Gulley Estate's receipts and disbursements, Respondent violated the following Rule of Professional Conduct:

Rule 1.15 Safekeeping Property

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

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

By failing to conduct the required monthly reconciliations of the client ledger balance, the IOLTA balance, and reconciliations between the client ledger and IOLTA balance, Respondent violated the following Rule of Professional Conduct:

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) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This

adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to a subcommittee of the Seventh District 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 Seventh District Committee. The terms shall be met by March 1, 2026 and are as follows:

1. For a period of three years following the entry of this Order, Respondent will not engage in any conduct that violates Rule 1.15 of the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which Respondent may be admitted to practice law. The terms contained in this paragraph will be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the Rules of Professional Conduct referred to above, *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.
2. For a period of two years following the entry of this Order, Respondent hereby agrees to and will submit to unannounced reviews by a Virginia State Bar Investigator 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. Respondent agrees to and will fully cooperate with the Virginia State Bar investigator in submitting to such reviews and making available bank records, cancelled checks, checkbooks, subsidiary ledgers, receipts journals, disbursements journals, evidence of reconciliations, and any and all other documents necessary for the completion of the reviews.

If any of the terms are not met by March 1, 2026, Respondent agrees that the District Committee shall impose a Certification for Sanctions Determination pursuant to Part 6, § IV, ¶ 13-15.F 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 the Supreme Court of Virginia.

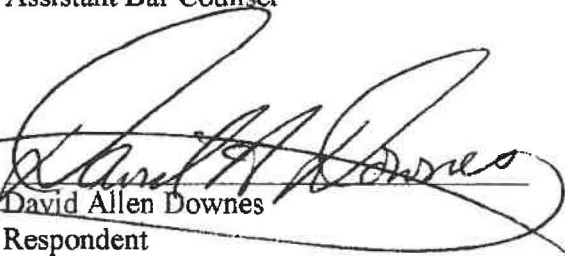
If the agreed disposition is approved, the Clerk of the Disciplinary System shall assess costs.

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

THE VIRGINIA STATE BAR



Richard W. Johnson Jr.
Assistant Bar Counsel



David Allen Downes
Respondent