VIRGINIA:

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

IN THE MATTER OF
JeRoyd Wiley Greene, III **VSB Docket No. 20-042-116876**

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On June 30, 2021, a meeting was held in this matter before a duly convened Fourth District Subcommittee, Section II consisting of Kenneth Edward Labowitz, Subcommittee Chair, Gretchyn Gay Meinken, member, and Joe T. Franklin, 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 Renu M. Brennan, Bar Counsel, JeRoyd Wiley Greene, III, Respondent, and Jeffrey Hamilton Geiger, Esquire, counsel for Respondent.

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

I. FINDINGS OF FACT

1. On October 11, 1995, Respondent was licensed to practice law in the Commonwealth of Virginia. At all times relevant, Respondent has been licensed and in good standing.

2. On September 26, 2016, Respondent entered into a Contract for Legal Services by which he agreed to represent Ralph Slaughter, Joseph A. Williams, Michael A. Parris, and the United Supreme Council of the Ancient Accepted Scottish Rite for the 33° of Freemasonry Southern Jurisdiction, Prince Hall, Affiliated ("USC SJ II") (collectively referred to as "Respondent's clients") in *United Supreme Council 33° of the Ancient and Accepted Scottish Rite of Freemasonry, Prince Hall Affiliation, Southern Jurisdiction of the United States of America, et. Al., v. United Supreme Council of the Ancient and*

Accepted Rite for the 33° of Freemasonry, Prince Hall Affiliated, et al., U.S. Dist. Ct. E.D. Va., Case No. 1:16-cv-01103. The lawsuit was filed on August 29, 2016.

HANDLING OF FEES

3. On September 26, 2016, Respondent's clients paid Respondent an advance fee of $15,000.

4. On October 3, 2016, Respondent deposited the $15,000 payment into his business savings account instead of his trust account. Respondent concedes he violated Rule 1.15. He asserts that his failure to deposit the funds was in error.

5. Notwithstanding the express terms of the retainer agreement that fees were due upon receipt of the billing statements and his ethical obligation, during the year-long representation Respondent only issued two billing statements to his clients. He issued the first in December 2016 for the period of September 6, 2016 to December 6, 2016. In January 2017 he supplemented the December bill with an additional 11.35 hours. Respondent asserts in January 2017 he agreed not to charge for his legal services from January to August 2017. In September 2017, after Respondent was terminated he issued his clients a bill for January to August 2017.

6. Over the course of the one-year representation, in addition to the initial $15,000 payment, the USC-SJ II defendants paid Respondent $25,000 in 4 payments as follows: $10,000 by check dated December 10, 2016 and negotiated December 21, 2016; $7,000 by check dated February 21, 2017 and negotiated February 23, 2017; $3,000 by check dated March 3, 2017 and negotiated March 7, 2017; and $5,000 on September 1, 2017.

7. Respondent did not deposit any of these sums in trust. He asserts these fees were earned when paid.

8. During the year that Respondent represented his clients, Respondent did not maintain a separate client subsidiary ledger or conduct the required reconciliations of his trust account. Respondent asserts that he has amended his trust accounting practices and procedures as a result of the bar's investigation.

HANDLING OF LITIGATION

9. Throughout his representation of his clients, Respondent failed to file motions within the deadlines imposed by the Federal Rules of Civil Procedure and Local Rules and to handle the litigation competently and diligently as follows:

    a. On February 2, 2017, Respondent filed a motion to dismiss outside the 14 days contemplated by Fed. R. Civ. Pro. 15(a)(3). The Court did not strike Respondent's motion, but, by Order entered February 7, 2017, it "admonishe[d] USC-SJ II defendants for failing to comply with the Federal Rules, and it sternly caution[ed] them to comply with all deadlines moving forward."

b. Respondent failed to object to Interrogatories and Requests for Production of Documents served upon Slaughter, Williams, Parris, Brown, and USC-SJ-II on or before the 15-day deadline imposed by Local Rule 26(c).

c. Respondent failed to respond to the discovery on or before the 30-day deadline imposed by Local Rule 26.

d. On August 18, 2017, Plaintiffs moved to compel responses, without objections, and for sanctions.

e. Without his clients' consent or knowledge, Respondent filed a response to the motion to compel stating, "Defendants agree and concede that they have not filed objections to the discovery propounded by the plaintiffs, nor have they responded to the discovery requests."

f. By Order and Amended Order entered August 25, 2017 and August 31, 2017, respectively, the Court ordered that Respondent's clients submit answers to plaintiff's first set of interrogatories and first request for production of documents by September 1, 2017, and that plaintiffs' counsel submit his fee schedule of reasonable attorneys' fees for having to bring the motion to compel. At the August 25, 2017 hearing, the Court stated:

   Rule 37 sanctions is granted. This motion should have never had to have been brought. Defense will pay the reasonable attorney's fees of plaintiffs' counsel for having to bring this motion to compel.

g. Despite representations to the contrary to his clients, Respondent did not propound two sets of requests for admission that his clients provided to him on July 23, 2017.

h. On August 7, 2017, Respondent filed a Rule 37 motion to suspend further proceedings pending plaintiffs' compliance with a discovery order in other litigation involving the same parties in the District of Columbia.

i. On August 11, 2017, four months after filing an answer on behalf of his clients, Respondent filed an untimely motion to dismiss for forum non conveniens.

j. By Order entered August 14, 2017, the Court denied the motions (1) to dismiss the amended complaint for forum non conveniens and (2) to stay discovery.

   The Court denied the motion for forum non conveniens for good cause because the motion was filed approximately four months late in violation of Fed. R. Civ. P. 12(b).

The Court noted its February 7, 2017 admonishment to the USC-SJ II Defendants for failing to comply with the Federal Rules as well as its stern caution to comply with all deadlines moving forward.

Finally, the Court cautioned that it may impose sanctions for continued disregard of the Federal Rules.

The Court denied the motion to stay for good cause because there was no adequate reason for the delay in filing and the substance of the motion was not adequately supported.

10. By email and letter dated September 5, 2017, Respondent's clients terminated his representation. By Order entered September 6, 2017, the Court granted Respondent's motion to withdraw as counsel.

11. By letter to the Honorable Liam O'Grady dated September 11, 2017, filed September 14, 2017, Respondent's former clients advised the Court that:

    We have made numerous requests to Attorney Greene by email and by phone that he submit requests for interrogatories, requests for production of documents and requests for admission and affirmative defenses to the plaintiffs' counsel on our behalf in this case. To date none of our requests for the foundation of our defense have been submitted to plaintiff's counsel and consequently has not been in a position to have our defenses placed in the record of this case.

12. In their September 11, 2017 letter, Respondent's former clients referenced Respondent's August 25, 2017 email and stated as follows:

    When we asked him about this matter, he told us he had informed the Court of his error. However, when we reviewed court documents we found that in his August 21, 2017, Defendants USCJ II, Slaughter, Williams, and Parris response to Plaintiffs [sic] motion to compel, he stated "Defendants agree and concede that they have not filed objections to the discovery propounded by the plaintiffs, nor have they responded to the discovery requests.

    Your Honor, we would never agree and concede to this response especially given that we had provided him with significant responses to the Plaintiff's [sic] discovery requests starting around July 5, 2017 and throughout the month of July 2017. His response makes no reference to his oversight. We also provided him with requests for admission, [sic] requests for the production of documents to propound to the Plaintiffs' Counsel on our behalf.

    We sent him information on July 14, 2017 on the recent US Supreme Court case in [citation omitted] requesting that he review [the case] and see if he could amended [sic] the defenses to add the "first sale doctrine and uncleaned hands" to our affirmative defenses. On July 25, 2017, he sent us an email saying, "I received both

emails with request [sic] for admission input. I will be using these in addition to others to send to plaintiffs this week.["]

Not only has he not propounded any discovery to the plaintiffs' counsel on our behalf, he has not responded to plaintiffs' counsel [sic] request in a timely manner, even though we made the information available to him. He also did not notify his clients about the several plaintiffs' emails asserting his rule violations, his missing deadlines and his failure to attend meet and confer meetings.

Your Honor, we believe we have more than a sufficient amount of documentation to prevail in this case but the information and documentation will be of no benefit if our attorney will not propound discovery to get information in the record of this case. He informed us a couple of days ago that the Court has assessed us with a sanction for more than $11,000 for his error and we have to pay 100 percent of this fine for his errors and omissions.

13. On September 14, 2017, Respondent's former clients filed a *pro se* motion advising that they terminated Respondent and requested a continuance of all dates and reconsideration of the Court's August 25 and 31 Orders. The USC-SJ II Defendants stated that Respondent filed his response to the motion to compel without their consent.

14. By Order entered September 29, 2017, the Court vacated its August 25 and 31, 2017 Orders as to the USC-SJ II Defendants' waiver of objections to plaintiffs' discovery requests and it ordered that the attorneys' fees assessed were against Respondent and not his former clients, and further that plaintiffs had to file a modification of their affidavit in support of attorneys' fees reflecting reasonable attorneys' fees related to the researching, drafting, revising, filing, and arguing of their motion to compel. The court also extended certain deadlines for the parties.

15. Respondent failed to return the complete file, which his clients requested, upon discharge.

16. By email dated September 19, 2017, Slaughter requested Respondent write a letter to the Court explaining that it was Respondent's fault that objections were not timely filed. Respondent did not do so.

17. By email dated October 27, 2018, Mr. Slaughter requested Respondent provide a copy of the bank statements to provide an accounting of the fees paid to him. Respondent did not respond to Mr. Slaughter. Respondent asserts he did not respond directly to Mr. Slaughter because by that time he had filed a claim with Respondent's insurance carrier.

18. Mr. Slaughter asserts that the USC-SJ II Defendants could not recover any fees paid to Respondent because they could not substantiate the work done by him.

19. Respondent's former client Mr. Slaughter filed a bar complaint in September 23, 2019, and has stated in correspondence to the bar: "I made the decision to file the bar

complaint because I believe Mr. Greene needs some additional training so that no other client of his would have to go through the pain and mental anguish that I suffered while the Rule 37 default motion was pending against me."

20. Respondent is in the process of reimbursing his clients the $40,000.00 paid to him.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.15 Safekeeping Property (Effective December 2013)

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(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.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(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.

RULE 1.16 Declining Or Terminating Representation

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

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. TRUST ACCOUNT AUDIT BY CPA

1. Within fifteen (15) days of date this Agreed Disposition is served on Respondent, the Respondent shall confirm in writing his review of Rule 1.15 of the Rules of Professional Conduct to Bar Counsel.

2. Within thirty (30) days of the date that this Agreed Disposition is served on Respondent, the Respondent shall engage the services of a Certified Public Accountant ("CPA") (a) who will certify familiarity with the requirements of Rule 1.15 of the Rules of Professional Conduct, and (b) who has been pre-approved by Bar Counsel to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the

CPA determines that the Respondent is in compliance with Rule 1.15, the CPA shall so certify in writing to the Respondent and Bar Counsel. In the event the CPA determines Respondent is NOT in compliance with Rule 1.15, the CPA shall notify Respondent and Bar Counsel, in writing, of the measures Respondent must take to bring himself into compliance with Rule 1.15. Respondent shall provide the CPA with a copy of this order at the outset of his engagement of the CPA.

3. The Respondent shall be obligated to pay when due the CPA's fees and costs for services, including provision to the Bar and to the Respondent of information concerning this matter.

4. In the event the CPA determines the Respondent is NOT in compliance with Rule 1.15, Respondent shall have forty-five (45) days following the date the CPA issues a written statement of the measures Respondent must take to comply with Rule 1.15 within which to bring himself into compliance. The CPA shall then be granted access to Respondent's office, books, and records, following the passage of the forty-five (45) day period, to determine whether Respondent has brought himself into compliance as required. The CPA shall thereafter certify in writing to Bar Counsel and to the Respondent either that the Respondent has brought himself into compliance with Rule 1.15 within the forty-five (45) day period, or that he has failed to do so. Respondent's failure to bring himself into compliance with Rule 1.15 as of the conclusion of the forty-five (45) day period shall be considered a violation of the terms set forth herein.

5. Unless an extension is granted by Bar Counsel for good cause to accommodate the CPA's schedule, the terms specified in paragraphs 2, 3, and 4, shall be completed no later than December 15, 2021.

6. On or about December 15, 2022, the CPA engaged pursuant to paragraph 2 shall reassess Respondent's attorney's trust account record-keeping, accounting, and reconciliation methods and procedures to ensure continued compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the CPA determines that Respondent has NOT remained in compliance with this Rule, such non-compliance will be considered a violation of the terms set forth herein.

If any of the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F.and G. 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.

FOURTH DISTRICT SUBCOMMITTEE.
SECTION II OF THE VIRGINIA STATE BAR

Kenneth Edward Labowitz
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on June 30, 2021, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was emailed to JeRoyd Wiley Greene, III, Respondent at jaygreene1@verizon.net and to Jeffrey Hamilton Geiger, counsel for Respondent at jgeiger@sandsanderson.com, and sent by certified mail on July 1, 2021, to JeRoyd Wiley Greene, III, Respondent, at 2415 Westwood Avenue, Richmond, VA 23230, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Jeffrey Hamilton Geiger, counsel for Respondent, at Sands Anderson, PC, Bank of America Plaza, 1111 E Main St Ste 2400, PO Box 1998, Richmond, VA 23218-1998.

Renu M. Brennan
Bar Counsel