

VIRGINIA:

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

IN THE MATTER OF
ROBERT GRAY MORECOCK

VSB Docket No. 24-021-130934

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On August 29, 2024, a meeting in this matter was held before a duly convened Second District, Section I Subcommittee consisting of Constance Joy Vandervelde, Esq, Chair; Ann Burke Brogan, Esq., Member; and Zoah Scheneman, 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 Shelley L. Spalding, Assistant Bar Counsel, Robert Gray Morecock (“Respondent”), and Richard Yorke AtLee, counsel for Respondent.

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

I. FINDINGS OF FACT

1. Robert Gray Morecock (“Respondent”) was admitted to the Virginia State Bar (“VSB”) in 1979. At all relevant times, Respondent was member of the VSB.
2. Cristina Caro-Valencia (“Complainant”) and her husband, Andrew Silverstone, hired Respondent in November 2021 in connection with criminal charges pending against Complainant in the Virginia Beach General District Court. Complainant was charged with felony practicing a profession (dentistry) without a license. On November 29, 2021,

Respondent appeared as counsel of record in the case pending in the Virginia Beach General District Court.

3. On November 30, 2021, Complainant paid Respondent \$10,000.00 by credit card, which was deposited into Respondent's trust account on December 2, 2021.
4. Complainant did not sign any fee agreement. By letter dated December 2, 2021, Respondent wrote to Complainant "this will confirm that my retainer to represent you in the General District Court level will be \$10,000.00 (exclusive of costs). I have enclosed a bill marked paid in full...if this matter proceeds to Circuit Court there will be an additional fee for representation at that level which we can discuss at that time."
5. The December 2, 2021 letter does not disclose any hourly rate, or set forth any benchmarks for determining when the flat fee is earned in part.
6. In his interview with the bar's investigator, Respondent acknowledged that Complainant's fee was a flat fee for representing her only in the GDC for the preliminary hearing.
7. Respondent disbursed to himself Complainant's advanced legal fees out of Respondent's trust account as follows:
 - \$7,497.44 on December 23, 2021,
 - \$1,000.00 on January 6, 2022,
 - \$1,000.00 on January 27, 2022, and
 - \$250.00 on April 27, 2022.
8. As of April 28, 2022, \$250.00 in advanced legal fees paid to Respondent by Complainant remained in trust.
9. On December 15, 2022, Mr. Silverstone emailed Respondent and terminated his services. He also asked to pick up a copy of the discovery binder from Complainant's case, and asked for an accounting of Respondent's services:

10. At the time of termination, the matter remained pending before the General District Court and no preliminary hearing had occurred.
11. Respondent replied to Mr. Silverstone on December 16, 2022, stating he would transfer the materials to substitute counsel as soon as possible, and stated:

I'm not sure I understand the accounting request, I don't have a time-sheet accounting of the dozens of meetings, formal and informal with all involved, and all the personal emails and texts that I have exchanged with other professionals, the Commonwealth Attorneys, and you both. My hourly rate, which I rarely employ in rare civil case where it is utilized, has been \$450/hr. for several years.
12. On December 27, 2022, Respondent disbursed to himself the final \$250.00 in attorney's fees held for the benefit of Complainant out of his trust account.
13. When asked during his interview with the Virginia State Bar's investigator, Respondent could not explain how he determined when the Complainant's advanced legal fees were earned, but pointed out that he did a lot of work on the case.
14. Complainant's preliminary hearing in her criminal matter occurred on April 21, 2023 with substituted counsel.
15. Respondent acknowledged that if he had not been terminated, his representation of Complainant would have been concluded at the preliminary hearing. Respondent also stated that if he had not been terminated he would have represented Complainant at her preliminary hearing with no additional charge.
16. In her bar complaint, Complainant stated that she is seeking a refund of her \$10,000 retainer.
17. No refund in any amount has been provided to Complainant by Respondent.

II. NATURE OF MISCONDUCT

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

By charging Complainant the entire flat fee even though he was terminated prior to the preliminary hearing, Respondent violated Rule 1.5(a) of the Virginia Rules of Professional Conduct as set forth below¹:

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

¹ Legal Ethics Opinion (“LEO”) 1606, a compendium opinion regarding “Fees” issued in 1994 and approved by the Supreme Court of Virginia in 2016 explains:

“Fees paid in advance for particular legal services not yet performed are advanced legal fees regardless of the terminology used in the employment contract...Because advanced legal fees do not belong to the lawyer until the services are rendered, it is the opinion of the Committee that they must be deposited in an identifiable account (trust account) and remain the property of the client until they are earned by the attorney...A fee that is not earned is per se an unreasonable fee.”

By disbursing the flat fee paid by Complainant from his trust account prior to the completion of the representation, Respondent violated Rule 1.15(a)(1) and (b)(5) as set forth below:

RULE 1.15 Safekeeping Property

(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:

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

See also LEO 1606 (“A fixed fee is an advanced legal fee. It remains the property of the client until it is actually earned and must be deposited in the attorney's trust account. If the representation is ended by the client, even if such termination is without cause and constitutes a breach of the contract, the client is entitled to a refund of that portion of the fee that has not been earned by the lawyer at the time of the termination. LE Op. 681. In such circumstances, what portion of the fee has been earned requires a quantum meruit determination of the value of the lawyer's services in accordance with *Heinzman and County of Campbell v. Howard*, 133 Va. 19 (1922)”) and LEO 1899.

Where complainant paid respondent a \$10,000.00 flat fee for representation at the General District Court, and where Respondent's representation of Complainant was terminated prior to the completion of the representation, by failing to refund Complainant any unearned fees after his termination, Respondent violated Rule 1.16(d) as set forth below:

RULE 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand with Terms. The terms are:

- 1. ASSIGNED READING AND CERTIFICATION:** Respondent will read in its entirety *Lawyers and Other People's Money*, 5th Edition, Rule 1.15, Legal Ethics Opinion 1899 and Legal Ethics Opinion 1606 and will certify compliance in writing to Bar Counsel not later than 30 days following the date of entry of any Subcommittee Determination approving this Agreed Disposition.
- 2. ENGAGING ACCOUNTANT:** Within 30 days from the date of any Subcommittee Determination approving this Agreed Disposition, Respondent must engage the services of an accountant who is familiar with the requirements of Rule 1.15 of the Rules of Professional Conduct 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.
Respondent is obligated to pay when due the accountant's fees and costs for services. Upon completion of the accountant's review of Respondent's trust account record-keeping, accounting, and reconciliation methods and procedures, but no later than six months after the effective date of any disposition approving this Agreed Disposition, Respondent shall certify to Bar Counsel that he has engaged an accountant and has

revised his or her trust accounting methods and procedures based on the accountant's recommendations and the requirements of Rule 1.15 of the Rules of Professional Conduct.

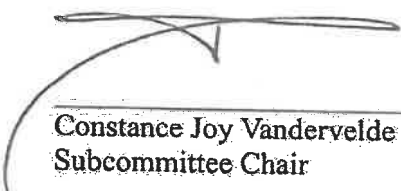
3. **MCLE:** On or before August 30, 2024, Respondent will complete 2 hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of trust accounting. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph will not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law. Respondent will certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance form (Form 2) to Bar Counsel, promptly following his attendance of each such CLE program(s).
4. **RESTITUTION:** Respondent will perform a quantum meruit analysis of the work done for Complainant. Respondent will provide Complainant and Assistant Bar Counsel with a written explanation of his quantum meruit analysis no later than 30 days from the date of any Subcommittee Determination approving this Agreed Disposition. At the same time, Respondent will also refund Complainant whatever portion of the \$10,000.00 fee Respondent determines was not earned.
5. **MODIFICATION OF RESPONDENT'S FEE PRACTICES:** Within 30 days from the date of any Subcommittee Determination approving this Agreed Disposition, Respondent will submit to Assistant Bar Counsel a written statement setting forth how he will modify his fee agreements, trust accounting, and/or fee practices going forward.

If any of the terms are not met by the deadlines set forth above, Respondent agrees the District Committee shall impose a Certification for Sanction 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.

SECOND DISTRICT, SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR



Constance Joy Vanderveide
Subcommittee Chair

CERTIFICATE OF SERVICE

I hereby certify that on 9/3/24, a true and complete copy of the foregoing Subcommittee Determination was sent to Robert Gray Morecock, Respondent, by certified mail at Ruloff, Swain Haddad, Morecock, Talbert 317 30th St, Virginia Beach, Virginia 23451, Respondent's last address of record with the Virginia State Bar, and by email to rmorecock@srgslaw.com; and to Richard Yorke AtLee, counsel for Respondent, by first-class mail at Hall, Fox & AtLee, P.C. One Manhattan Square, Hampton, Virginia 23666, and by email to ryatlee@cox.net.



Shelley L. Spalding
Assistant Bar Counsel