VIRGINIA

BEFORE THE FIFTH DISTRICT SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF CHARLES JAMES SWEDISH

VSB Docket No. 09-051-078734
VSB Docket No. 09-051-077371
VSB Docket No. 09-051-079194

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND (WITH TERMS)

On the 16th day of May, 2011, a meeting in this matter was held before a duly convened subcommittee of the Fifth District Committee, Section I, consisting of William Q. Robinson, Esquire, Evelyn H. Sandground, lay member, and Debra L. Powers, Esquire, presiding.

Pursuant to Part 6, Section IV, Paragraph 13-15.B.4.c of the Rules of Virginia Supreme Court, that subcommittee of the Fifth District Committee, Section I, of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms.

I. FINDINGS OF FACT

1. At all times relevant hereto, Charles James Swedish ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

As to VSB Docket No. 09-051-078734 (Complainant Jose Romero)

2. In or around July, 2007, Complainant, Jose Romero (hereinafter "Complainant Romero") retained Respondent to file a Motion to Reconsider a prison sentence imposed upon him following his conviction on February 16, 2007, of certain criminal charges. Respondent was not trial counsel in the underlying case.

3. On or around July 20, 2007, Complainant Romero's brother paid Respondent $1,500.00 on Complainant's behalf in order to file the Motion for Reconsideration. During an interview with Virginia State Bar Investigator David G. Fennessey, which took place on June 3,

2010, Respondent admitted that he did not deposit these funds into an approved IOLTA attorney trust account since he considered the fee earned at the time it was paid.

4. Complainant Romero advised the Virginia State Bar that Respondent never filed a Motion for Reconsideration on his behalf and, after one brief visit with him at the Fairfax County Adult Detention Center, neither Complainant Romero nor any member of his family ever heard from Respondent again. Respondent advised the Virginia State Bar that he visited Mr. Romero on more than one occasion while he was incarcerated in order to discuss his case.

5. The court file maintained by the Clerk of the Circuit Court does not contain any record of a Motion for Reconsideration having been filed in Complainant Romero's case. Respondent represented to Investigator Fennessey, however, that he prepared a Motion for Reconsideration and delivered same directly to Judges' Chambers of the Circuit Court for Fairfax County, leaving it with the receptionist. Respondent conceded that he did not ask for, or receive, a date stamped copy of the Motion. Respondent also stated that he believed that his Motion for Reconsideration might have been misplaced by court personnel.

6. In response to a subpoena *duces tecum* issued in this matter, Respondent produced to the Virginia State Bar a one (1) page letter dated August 2, 2007, addressed to The Honorable Stanley P. Klein, wherein he requests that Judge Klein "review and reconcider [*sic*]the sentence" imposed upon Complainant Romero. Respondent represented to Investigator Fennessey that this was the Motion for Reconsideration delivered on Complainant Romero's behalf to Judges' Chambers. Respondent admitted, however, that he did not follow up with Judge Klein, or anyone else at the court, to determine if Judge Klein had ruled or taken any other action on this Motion.

7. Complainant Romero alleged in his complaint that Respondent never advised him of the outcome of the Motion for Reconsideration. In his written response to this complaint, Respondent advised the bar that, after delivering this Motion to Chambers he "had not thought about the case again until [he] got a call from someone (maybe Jose Romero's brother) asking for all the money back since Jose 'got too much time.'" Respondent also admitted to Investigator Fennessey that he had no communication with his client, Complainant Romero, after July 20, 2007, the date upon which Respondent's legal fee was paid by Complainant Romero's brother.

8. Respondent admitted to Investigator Fennessey that he never provided his client with a statement showing how the fees paid were applied and/or the work performed by Respondent on the case.

9. On or around November 5, 2007, Complainant Romero wrote to Respondent advising him, "I need to know what is going on with my case. The last time I saw you was for a rushed few minutes conference back in June. You told me that you would be back, 'next week,' and I have seen [*sic*] nor heard from you since. Please give me a status update." Respondent stated that he never received this correspondence.

10. On or around January 14, 2009, Complainant wrote to Respondent again asking that he contact him concerning his case. In this letter, which was addressed to Respondent's partner, Complainant Romero noted that he had written to the Respondent on November 5, 2007, seeking information as to the status of his case, but that Respondent failed to respond to either Complainant Romero or anyone in his family. Respondent did not respond to this letter.

As to VSB Docket No. 09-051-077371 (Complainant Ever Villanueva)

11. On February 12, 2007, Complaint Ever Villanueva (hereinafter "Complainant Villanueva") was convicted of certain criminal charges in the Fairfax County Circuit Court. Thereafter, Complainant Villanueva retained Respondent to represent him in the filing of a Motion for Reconsideration of his sentence, and Complainant Villanueva's wife met with Respondent in order to pay his fee. Respondent was paid $1,500 in cash at that time, and admitted to Investigator Fennessey during an interview that took place on June 3, 2010, that he did not deposit these funds into an approved attorney IOLTA account.[1]

12. Respondent represented to Complainant Villanueva's wife that he would file a Motion for Reconsideration on her husband's behalf the following Monday.

13. Following this meeting with Complainant Villanueva's wife, she attempted to reach Respondent by telephone but Respondent failed to respond to her. Respondent also failed to contact his client, Complainant Villanueva, and never informed him whether or not a Motion for Reconsideration had been filed on his behalf, never provided a copy of any such Motion to his client, and never advised him of the outcome of any such Motion.

14. Consequently, on or around November 30, 2008, Complainant Villanueva wrote to the sentencing judge, The Honorable Stanley P. Klein. In this letter, he stated, "I am writing to you at this time regarding a Motion for Reconsideration filed by my Attorney Charles J. Swedish, approximately three (3) months after I received your sentence in 2007 in reference to the above reference [*sic*] case." Complainant Villanueva went on to request, "At this time or at your earliest convenience can you be so kind as to advise me of any determination regarding the court's decision, if any at all regarding a 'Reconsideration' of my sentence in this said case."

[1] Respondent states he was only paid $1,000.00.

15. On December 11, 2008, Judge Klein responded to Complainant Villanueva and advised him, "The court file does not reflect receipt of a Motion for Reconsideration filed by attorney Charles Swedish but I do have a faint recollection of receiving such a motion from Mr. Swedish in approximately that time frame for a case in which he was not counsel of record." Judge Klein went on to treat Complainant Villanueva's November 30, 2008, letter as a Motion for Reconsideration, which he denied.

16. A copy of this letter was sent to Respondent, who acknowledged to Investigator Fennessey that he had received this letter and the attached Order. At no time did Respondent contact his client, Complainant Villanueva, after receipt of Judge Klein's letter and Order.

17. Respondent never filed a Motion for Reconsideration on his client's behalf. Respondent advised Investigator Fennessey that he had been retained to appeal Complainant Villanueva's convictions, something Complainant Villanueva denies, and that, after researching the matter, Respondent determined that no post-conviction remedies were available to Complainant Villanueva. Respondent also advised Investigator Fennessey that he reached the conclusion that the filing of a Motion for Reconsideration was not advised. Respondent represented further to Investigator Fennessey that he informed both his client and his client's wife of these conclusions, and of the fact that there was nothing he could do for them.

18. Respondent admitted to Investigator Fennessey that he never provided Complainant Villanueva or his wife with a statement showing how the fees were earned or the work performed on his client's behalf.

As to VSB Docket No. 09-051-079194 (Complainant William Sims)

19. In 2007, Complainant Sims retained Respondent to represent him regarding a probation violation hearing, which hearing took place on September 21, 2007. The fee charged

by Respondent for this representation was $1,500.00, which was paid to him by Complainant Sims' girlfriend, Melissa Sellers, at the courthouse on the day of the hearing.[2]

20. Thereafter, Complainant Sims alleges that he discussed with Respondent the possibility of seeking an appeal or re-opening of his original conviction, which occurred in 1997, on the basis of new evidence that had come to light, and that Respondent agreed to undertake an appeal of the original conviction in light of the new evidence, quoting a fee of $5,500.00 to do so.

21. During an interview with Investigator David Fennessey, which took place on June 3, 2010, Respondent denied that he ever agreed to appeal, or otherwise seek to re-open, Complainant Sims' underlying 1997 conviction, and explained that he had only agreed to undertake representation on the probation violation matter and looking into the possible removal of Complainant Sims' probation officer due to a perceived bias on her part against Complainant Sims. Respondent did concede, however, that he discussed with Complainant Sims the fact that exculpatory evidence may not have been provided by the prosecution in 1997 and, if that were the case, it could form the basis for a petition seeking *habeas corpus* relief on the grounds of prosecutorial misconduct. Respondent stated, however, that Complainant Sims never produced any such exculpatory evidence.

22. In response to a duly issued subpoena *duces tecum,* Respondent produced his file on the Sims case, included within which were undated handwritten notes of a meeting Respondent had with Complainant Sims sometime in 2007. These notes reflect legal fees quoted by the Respondent to Complainant Sims, including the notations: "probation violation – 750.00

[2] As discussed more fully below, Respondent denies that this $1,500.00 payment was for representation limited to this probation revocation hearing.

new evidence – 5,500." As noted above, Respondent advised the bar that at no time did Complainant Sims produce the exculpatory evidence he claimed to have.

23. Complainant Sims and Ms. Sellers stated that Respondent was paid $5,500.00 to pursue the appeal in three (3) installments. The first installment of $2,000.00 was paid by Ms. Sellers' mother, Lolita Sellers, in or around January, 2008, with a personal check dated January 28, 2008, drawn on Lolita Sellers' Metlife bank account. Respondent made arrangements to accept this check from Ms. Sellers in the parking lot of a multiplex movie theater on Route 1 in Fairfax County. Respondent deposited this check into his IOLTA trust account. Although the deposit slip produced by Respondent reflects a $2,000.00 deposit to his IOLTA account on or around January 30, 2008, there is no notation next to the figure as to the client for whom the funds were being deposited. In addition, Respondent was unable to produce a cash receipts and disbursements journal reflecting the deposit and disbursement of these funds from his IOLTA account, and he acknowledged during his interview with Investigator Fennessey that he had no records reflecting the withdrawal of these funds from his IOLTA account.

24. The second installment towards the $5,500.00 fee was paid on or around February 9, 2008, with a check drawn on Ms. Sellers' sister, Felicia Sellers', Apple Credit Union account in the amount of $2,000.00. Respondent cashed this check on or around February 14, 2008.

25. The third and final installment towards the $5,500.00 fee was paid by personal check dated February 15, 2008, in the amount of $1,500.00, drawn on Melissa Sellers' mother, Lolita Sellers', Chevy Chase Bank account. Ms. Sellers gave this check to Respondent at the Fairfax County Courthouse on February 15, 2008, the date of Complainant Sims' probation violation hearing, which was continued to April 4, 2008, due to the non-appearance of a material

witness. This check was cashed by Respondent on or around February 29, 2008. No receipts for these payments were ever provided by Respondent to either Ms. Sellers or Complainant Sims.

26. During his interview with Investigator Fennessey, Respondent advised him that, "The $1,500.00 payment was not deposited into that account [Respondent's IOLTA trust account]. I concidered [*sic*] it earned when received. I cannot find anything for the other $2,000.00. I cannot remember what I did with it. I could have considered it earned when received and made a notation on my account ledger for accounting purposes. I did receive the check."

27. At no time did Respondent provide Complainant Sims, or Ms. Sellers, with an accounting reflecting how the fees paid by them to Respondent were earned.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Disciplinary Rule has been violated:

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

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or

(2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) 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 accounts to the client regarding them[.]

(e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

(1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:

(i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;

(ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

(ii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on

hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;

(iv) reconciliations and supporting records required under this Rule;

(v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

(2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:

(i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;

(ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;

(ii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which by the deadlines set forth below shall be a predicate for the disposition of this complaint by imposition of a Public Reprimand with Terms. The terms and conditions which shall be met by the dates certain specified are:

1. On or before September 30, 2011, Respondent shall attend four (4) hours of Continuing Legal Education in the area of law office practice management. Respondent shall **not** receive any credit towards his annual MCLE requirement for any class(es) attended pursuant

to this Agreed Disposition. Proof of compliance with this Term must be presented to Assistant Bar Counsel Kathleen M. Uston on or before October 31, 2011.

2. The Respondent shall, within thirty (30) days following issuance of this Determination, engage the services of **a law office management consultant** to review Respondent's law office management practices and procedures to aid in Respondent's future compliance with all Rules of Professional Conduct. Respondent acknowledges that he has been provided with the contact information for two (2) consultants who are acceptable to the Virginia State Bar.

3. The Respondent shall promptly inform Assistant Bar Counsel Kathleen M. Uston, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, in writing, that he has engaged the law office management consultant as required herein. The Respondent shall be obligated to pay when due the consultant's fees and costs for his/her/their services (including provision to the Bar and to the Respondent of information concerning this matter).

4. The consultant shall review all of the Respondent's law office management practices and procedures, in general, but shall focus particularly upon those practices and procedures which involve trust account management and record keeping, file maintenance and organization, the use of a tickler system, the Respondent's procedure for calendaring court appearances, meetings, and deadlines, and the means of communication with his clients. In the event the consultant determines that the Respondent has practices and procedures in place so as to aid in his future compliance with the Rules of Professional Conduct, the consultant shall so certify in writing to the Respondent and the Virginia State Bar. In the event the consultant determines that the Respondent does not have such practices and procedures in place so as to aid in his future compliance with the Rules of Professional Conduct, then, and in that event, the

consultant shall notify the Respondent and the Virginia State Bar, in writing, of the measures that the Respondent must take to improve his practices and procedures.

5. In the event the consultant determines that the Respondent's law office practices and procedures are deficient such that, in the consultant's opinion, the Respondent will likely commit future violations of one or more of the Rules of Professional Conduct, the Respondent shall have sixty (60) days following the date the consultant issues his/her written statement of the measures the Respondent must take to institute such measures.

6. The consultant shall be granted access to the Respondent's office following the passage of the sixty (60) day period to determine whether the Respondent has instituted such measures. The consultant shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has instituted the recommended measures within the sixty day (60) period or that he has failed to do so. The Respondent's failure to conform his law office management practices and procedures to the consultant's recommendations as of the conclusion of the aforesaid sixty (60) day period shall be considered a violation of the Terms set forth herein.

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand shall be imposed. If, however, the Respondent shall fail to comply with the terms and conditions set forth in Paragraphs 1-6, above, then this matter shall be certified to the Disciplinary Board for Sanction Determination upon an agreed stipulation of facts and misconduct as to the facts and misconduct are set forth herein pursuant to Part Six, Section IV, Paragraph 13-15.G of the Rules of the Supreme Court.

Pursuant to Part Six, Section IV, Paragraph 13.9.E of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

FIFTH DISTRICT SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By _____
Debra Powers, Esquire
Chair

CERTIFICATE OF SERVICE

I certify that I have on this 9th day of June, 2011, mailed a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) by CERTIFIED MAIL to Respondent, Charles James Swedish, Esquire, *pro se,* Sloan & Swedish, 107 Pleasant Street, N.W., Vienna, VA 22180, his last address of record with the Virginia State Bar.

_____
Kathleen M. Uston
Assistant Bar Counsel

VIRGINIA:

BEFORE THE FIFTH DISTRICT SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF CHARLES JAMES SWEDISH

VSB Docket No. 09-051-078734
VSB Docket No. 09-051-077371
VSB Docket No. 09-051-079194

AGREED DISPOSITION

Pursuant to Part Six, Section IV, Paragraph 13-15.B.4.c of the Rules of Virginia Supreme Court, the Virginia State Bar, by Assistant Bar Counsel Kathleen M. Uston, and the Respondent, Charles James Swedish, Esquire, hereby enter into an Agreed Disposition arising out of the above-referenced matters.

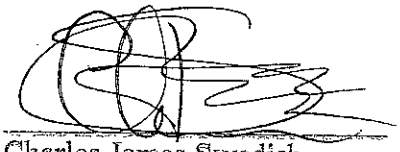
Both parties affirm that the proposed Subcommittee Determination of a Public Reprimand with Terms, a true copy of which is attached hereto and incorporated herein by reference, reflects the stipulated facts, violations, and disposition for the above-referenced matters.

Respondent understands that should the Subcommittee accept this agreed disposition by unanimous vote, the Subcommittee Determination will be signed by the Chair or Chair Designate and thereafter mailed without the necessity of any hearing or further notice to the parties. Further, it is understood and agreed by the parties hereto that should the Subcommittee refuse the agreed disposition, neither party shall be bound by the stipulations or findings contained herein and these matters shall be forthwith scheduled for a hearing by the full Committee.

SEEN AND AGREED TO:

THE VIRGINIA STATE BAR

Kathleen M. Uston
Assistant Bar Counsel



Charles James Swedish
Respondent

SUBCOMMITTEE ACTION

Pursuant to Part Six, Section IV, Paragraph 13-15.B.4.c of the Rules of Virginia Supreme Court, the duly convened subcommittee of the Fifth District Committee Section I of the Virginia State Bar hereby accepts the Agreed Disposition in these matters.

Date: _____ _____

Date: _____ _____

Date: _____ _____