

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
JOHN BRENDON GATELY

VS. Docket No. 16-022-105511

SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)

On February 08, 2017, a meeting was held in this matter before a duly convened Second District Subcommittee consisting of Wanda Jones Cooper, Chair, Patricia A. Johnson, Lay Member, and Cal Thompson Bain, 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 subsequently entered into by the Virginia State Bar, by M. Brent Saunders, Senior Assistant Bar Counsel, and John Brendon Gately, Respondent, and Daniel Sean Schumack, Esquire, counsel for Respondent.

WHEREFORE, the Second District 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. In June 2014, the complainant, Shirley Thompson ("Ms. Thompson"), retained Respondent for representation in a U.S. Public Health Service disability case. A hearing was held in November 2014, and in March 2015, a favorable decision was issued finding Ms. Thompson temporarily disabled and placing her on the Temporary Disability Retired List.
3. Following the issuance of the March 2015 temporary disability decision, Respondent continued to represent Ms. Thompson with regard to her disability matters. Between approximately June 2015 and March 2016, Ms. Thompson contacted Respondent on numerous occasions by phone, text and email for the purpose of obtaining advice and guidance regarding her pursuing permanent disability status and a Veteran's Administration claim. Respondent

failed to respond to any of those inquiries. As a result, by email dated March 13, 2016, Ms. Thompson terminated Respondent's representation and requested a refund of half of the \$7,500.00 advance fee she had paid for the representation on or about June 22, 2014. Respondent replied the same day by email stating he would "prepare a disengagement letter" and an accounting and "refund any remaining balance."

4. Respondent subsequently provided Ms. Thompson with what he described as a quick effort to provide an accounting for hourly fees earned and a partial refund check in the amount of \$1,750.00. The partial refund was issued in the form of a cashier's check. In response to the bar complaint, Respondent described the refund as an accommodation and asserted that he believed he had actually invested sufficient time on Ms. Thompson's behalf to earn the fee in full. There is no dispute that Respondent performed substantial services prior to his discharge.

5. Respondent disbursed Ms. Thompson's advance fee from trust as follows: \$2,500.00 on June 23, 2014 and \$5,000.00 on June 26, 2014. Respondent did not invoice Ms. Thompson for the disbursement of those monies and was unable to justify those disbursements with contemporaneous time entries.

6. Respondent did not reconcile his trust account or maintain proper trust account records for years prior to the filing of this complaint, including with regard to Ms. Thompson's advance fee monies.

7. In mitigation of Respondent's actions, he has no prior disciplinary record, suffered a family crisis and medical disabilities during the timeframe of the misconduct, has been forthright and cooperative with the bar during its investigation, and has taken efforts to remediate and prevent a recurrence of the misconduct. In addition, Ms. Thompson was ultimately satisfied with Respondent's \$1,750 refund and his answer to the bar complaint.

## II. NATURE OF MISCONDUCT

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

### 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.

### 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:

(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;

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

(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.

(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. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the agreed disposition, it is the decision of the

Subcommittee to impose a Public Reprimand with Terms and Respondent is hereby so

reprimanded. The terms with which Respondent must comply are:

1. Respondent shall submit to a random review of his trust account records by a Virginia State Bar Investigator or other agent of the bar during the course of the next 12 months for the purpose of ascertaining his compliance with the escrow account maintenance and record-keeping requirements of Rule 1.15 of the Virginia Rules of Professional Conduct. Respondent shall reasonably cooperate with the Investigator or bar agent in submitting to such random review and making available bank records, cancelled checks, checkbooks, subsidiary ledgers, cash receipts journals, cash

disbursements journals, evidence of reconciliations, and any and all other documents necessary for the completion of the reviews.

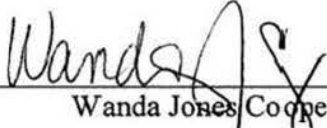
AND

2. Respondent shall review the Virginia State Bar publication Lawyers and Other People's Money, 5<sup>th</sup> Edition, available on the Virginia State Bar's website at www.vsb.org, and certify he has done so in writing to M. Brent Saunders, Senior Assistant Bar Counsel, on or before March 1, 2017.

If 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 District Committee shall hold a hearing and Respondent shall be required to show cause why the alternative disposition of 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.

SECOND DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

  
\_\_\_\_\_  
Wanda Jones Cooper  
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on the 2<sup>nd</sup> day of March, 2017, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to John Brendon Gately, Respondent, at 2332 Croix Drive, Virginia Beach, VA 23451, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Daniel Sean Schumack, counsel for Respondent, at Schumack Ryals, PLLC, 3900 Jermantown Rd Ste 300, Fairfax, VA 22030-4900.

  
\_\_\_\_\_  
M. Brent Saunders  
Senior Assistant Bar Counsel