

VIRGINIA:

BEFORE THE THIRD DISTRICT, SECTION TWO, SUBCOMMITTEE  
OF THE  
VIRGINIA STATE BAR

IN THE MATTER OF  
CHRISTOPHER LEON ANDERSON

VSB DOCKET NO. 04-032-0873

SUBCOMMITTEE DETERMINATION  
(PUBLIC ADMONITION WITH TERMS)

On December 7, 2004, a meeting in this matter was held before a duly convened Third District, Section Two, Subcommittee consisting of John B. Daly, Lay Member; Mary Kathryn Burkey Owens, Esq.; and Richard K. Newman, Esq., Chair, presiding.

Pursuant to Part 6, Section IV, Paragraph 13.G.1.c.(1) of the Rules of the Supreme Court, the Third District, Section Two, Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition with Terms:

I. FINDINGS OF FACT:

1. At all times relevant hereto the Respondent, Christopher Leon Anderson [Anderson], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about November 5, 2002, Complainant Paul Simon, II [Paul] was struck by a vehicle in Hampton, Virginia while he was walking along the side of a street. As a result Paul was personally injured.

3. On November 13, 2002, The McEachin Law Firm was retained by Paul's mother, Brenda, on Paul's behalf. Brenda asserted that she had a power of attorney to act on behalf of Paul. On November 21, 2002, Brenda signed a retainer agreement on behalf of Paul to retain The McEachin Law Firm. In this notice of hearing, Brenda and Paul are used interchangeably unless otherwise noted. Anderson was the responsible attorney in the firm for the case.

4. By letter dated December 4, 2002, Anderson wrote to Earl Sanders [Sanders], an adjustor with Victoria Insurance Company, noting his representation and asserting "an

attorney's lien, pursuant to Virginia Law [sic], as to any payments and/or recovery herein."

5. Sanders acknowledged Anderson's letter on December 6, 2002 and noted, inter alia, that the vehicle driver was a policyholder and the policy limit was \$25,000.00 per person.

6. By letter dated December 13, 2002, Anderson wrote to Kelly Fulk, an adjustor with Progressive Insurance Company, noting, inter alia, his representation; the possibility of a claim against the underinsured motorist coverage of the policy for which Brenda was the insured and asserting an attorney's lien "pursuant to Virginia Law [sic], as to any payments and /or recovery herein."

7. On January 27, 2003, Paul wrote a letter by facsimile transmission terminating Anderson immediately.

8. On January 31, 2003, Sanders sent Anderson a letter enclosing a draft for \$25,000.00 "as we discussed" along with a release.

9. On February 3, 2003, Anderson wrote a letter to Paul indicating that he had received the termination letter after he had negotiated the case with Victoria Insurance Company and asking Paul to let Anderson know whether or not the check should be returned to Victoria Insurance Company. Anderson also asserted a "lien for our fee in the amount of \$8,333.33, which is representative of the offer tendered by Victoria Insurance only" and asked Paul to convey the lien information to his new attorney.

10. On or about February 4, 2003, Paul instructed Anderson to return the draft to Victoria Insurance Company.

11. By letter to Saunders [sic] dated February 7, 2003, Anderson returned the draft to Victoria Insurance Company, asserted a lien in the amount of \$8,333.33 and provided the name and address of a Washington, D.C. attorney, Ponds, whom Anderson thought Paul had retained.

12. By letter to Ponds dated February 7, 2003, Anderson, inter alia, asserted a lien in the amount of \$8,333.33. Ponds responded by letter dated February 13, 2003, indicating that he could not represent Paul in light of the lien asserted by Anderson.

13. By letter to Paul dated February 24, 2003, Anderson indicated that there seemed to have been some miscommunications that led to a "breakdown between [Paul] and our firm..." and he asked for the opportunity to finish the case, citing that the firm had "won half of the battle when we persuaded Progressive Insurance Company [sic] to offer its ...policy limits."

14. Paul then wrote a letter to Anderson detailing the problems which Paul had with Anderson's representation.

15. Paul met Anderson for the first time in or about April 4, 2003.

16. By letter dated July 31, 2003, Paul informed Anderson that he had chosen not to continue with Anderson's representation but instead had retained G. Anthony Yancey, Esq. [Yancey]. Paul also asked Anderson to forward his case file to Yancey.

17. By letter dated August 29, 2003 to Paul, Anderson, inter alia, asserted the "lien for our fee in the amount of \$8,333.33, which is representative of the offer tendered by Victoria Insurance only."

18. By letter dated August 29, 2003 to Yancey, Anderson indicated he was enclosing a copy of Paul's file and asserted a lien in the amount of \$8,333.33.

19. By letter dated August 29, 2003 to Saunders [sic], Anderson indicated, inter alia, that the letter was to advise that, "I have not nor do I intend to release [the \$8,333.33] lien."

20. By letter dated September 2, 2003 to Yancey, Anderson stated he was enclosing a copy of Paul's file, again stated the existence of the \$8,333.33 lien, and listed expenses due in the amount of \$286.47.

21. By letter dated November 24, 2003 to Yancey and copied to Anderson, Sanders sent a draft to Yancey in the amount of \$16,666.67 and sent a draft to Anderson in the amount of \$8,333.33. Anderson's file provided to the bar did not contain the letter with a date of November 24, 2003 but instead contained the identical letter from Sanders but with a date of November 5, 2003.

22. Yancey entered into a contingency fee agreement with Paul and Brenda dated December 5, 2003 in which Paul agreed to a one-third contingency fee for Yancey's firm. The agreement also recited:

It is understood by me that the McEachin Law Firm will retain \$8,333.33 by a lien filed directly with Victoria Insurance Company. I am currently disputing the McEachin Law Firm lien with the Virginia State Bar.

Paul filed a bar complaint with the Virginia State Bar dated September 5, 2003.

23. On December 5, 2003, Paul executed a Statement of Settlement provided by Yancey. The statement indicates that Paul received \$8,333.34 out of a settlement amount of \$16,666.67.

24. As a result of the lien asserted by Anderson in the amount of \$8,333.33 against the settlement with Victoria Insurance Company, Anderson, Yancey and Paul each received one-third of the gross settlement amount prior to the application of the lien.

25. During the investigation of the bar complaint, the bar requested that Anderson provide an itemization of the services provided for Paul and the value of those services. Anderson provided that information in his letter to Investigator Abrams dated September 10, 2004. The itemized breakdown of services provided by Anderson included the following:

Accident investigation	3.0 hrs
Correspondence	2.0 hrs
Telephone conferences with client (and mother)	2.0 hrs
Telephone conferences with insurance representatives	2.5 hrs
Conference with client in Hampton, VA	3.5 hrs
UIM coverage research and investigation	2.0 hrs
Medical malpractice research	4.0 hrs
Miscellaneous (gathering medical records, reports, etc.)	7.0 hrs

According to Anderson, the firm's "hourly fee for this matter would have been \$250.00 per hour had our (contracted) contingency fee not been for one-third of the recovery." In providing the above information, Anderson also noted that the information was "my best approximation of the services we provided to Mr. Simon."

26. On information and belief, Anderson had not determined the services rendered or the value of the services which he had rendered to Paul prior to asserting an attorney's lien. Nor had Anderson made those determinations prior to doing so at the request of the Virginia State Bar.

27. Assuming that the itemized breakdown of services provided by Anderson is correct for purposes of this paragraph, the services provided by Anderson to Paul amounted to a total of 26 hours at an hourly rate of \$250.00 per hour which equals a total amount for services rendered of \$6,500.00 which is \$1,833.33 less than the \$8,333.33 amount received by Anderson and his firm.

28. The breakdown of services provided by Anderson includes entries which do not indicate services rendered, i.e., "miscellaneous."

29. On information and belief, the conference with Paul in Hampton referred to in the breakdown of services was Anderson's attempt to get Paul to allow Anderson to complete the representation.

30. When an attorney who has a contingent fee agreement with his client is terminated, the attorney is entitled to a fee based upon quantum meruit, i.e., the reasonable value of the actual services rendered. The attorney is not entitled to a fee based upon the benefit received by the client. Legal Ethics Opinion 1606 issued November 22, 1994; Va. Code Section 54.1-3932.

31. Paul is entitled to a refund of that sum of money which constitutes the difference between the reasonable value of the services rendered by Anderson for Paul and \$8,333.33. Said sum of money constitutes unreasonable fees received by Anderson.

32. There was a lack of communication between Paul, and/or his mother on his behalf, and Anderson during the representation.

33. The retainer agreement which was utilized in Paul's representation by Anderson contained, inter alia, the following language:

4. Withdrawal or Discharge from Representation

In the event of our withdrawal or discharge, we will be entitled to retain any fees earned on recoveries obtained before the date of our withdrawal or discharge, and to additional compensation, consisting of the reasonable value of any services we have rendered after the initial recovery, with such payment being made only out of future recoveries...

Such language may be an attempt to obtain unreasonable attorney's fees from a client who has entered into the retainer agreement. Said language as applied by Anderson to the instant case, resulted in the receipt by Anderson of unreasonable attorney's fees.

II. NATURE OF MISCONDUCT:

Such conduct on the part of the Respondent constitutes misconduct in violation of the following provisions of the Virginia 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 1.5 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.

RULE 1.15 Safekeeping Property

- (c) A lawyer shall:
- (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

### III. PUBLIC ADMONITION 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 will be a predicate for the disposition of a Public Admonition With Terms of this complaint. The terms and conditions shall be met by the dates indicated below. The terms with which the Respondent must comply are as follows:

1. **By December 31, 2004**, the Respondent shall refund the amount of \$3,583.33 to Paul Simon, II [said amount equals \$8,333.33 minus \$4750.00; \$4750.00 equals 19 hours times \$250.00 per hour] and shall certify in writing to Deputy Bar Counsel that he has done so.
2. **By December 15, 2004**, Respondent shall certify in writing to Deputy Bar Counsel that:
  - (1) in any pending or future contingent fee case in which he or his firm is terminated by the client, or in which he or his firm terminates the representation, he and his firm shall waive all attorney's fees unless he or his firm is able to produce sufficient documentation to support an attorney's fee based upon quantum meruit; and
  - (2) in no such case, shall the Respondent or his firm assert an attorney's lien based upon the incorrect theory of the benefit received by the client.
3. **By December 31, 2004**, the Respondent shall read Rules 1.4, 1.5, 1.15, 1.16 and 8.4 of the Virginia Rules of Professional Conduct and the corresponding comments to each rule; and Respondent shall certify in writing to Deputy Bar Counsel his completion of this term.
4. **By December 31, 2004**, the Respondent shall read all legal ethics opinions cited with respect to the rules recited in Term 3 and their predecessors; said opinions may be found in the two 2002 Replacement Volumes of the

Michie Code of Virginia containing legal ethics opinions and any pocket parts; and Respondent shall certify in writing to Deputy Bar Counsel his completion of this term. Particular attention is directed to Legal Ethics Opinion 1606.

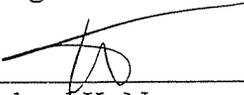
5. (a) **By December 31, 2004**, the Respondent shall have developed, and implemented the exclusive use of, a retainer agreement consistent with the Virginia Rules of Professional Conduct and the Virginia State Bar legal ethics opinions.
  - (b) **By December 31, 2004**, the Respondent shall have provided to Deputy Bar Counsel the new retainer agreement for review and comment.
  - (c) **Within 30 days after the date of any letter from the bar to the Respondent in which the bar makes suggestions for changes** to the new retainer agreement, the Respondent shall effect the suggested changes to the agreement and provide the bar with a copy of the newly revised retainer agreement consistent with the suggested changes. The new retainer agreement may be submitted by Deputy Bar Counsel to the Subcommittee for review and comment.
  - (d) **By December 31, 2004**, Respondent shall certify in writing to Deputy Bar Counsel his agreement that he will exclusively use the newly revised retainer agreement in his practice.
  - (e) **By December 31, 2004**, Respondent shall agree in writing that in exclusively using the newly revised retainer agreement in his practice, he shall fully set forth the nature and extent of the representation for which he has been retained.
6. Respondent shall, immediately upon his execution of this Agreed Disposition, only assert an attorney's lien, when appropriate, based upon

the reasonable value of his actual services rendered; and Respondent shall immediately cease asserting any attorney's lien based upon the benefit received by any client. Respondent shall certify in writing to Deputy Bar Counsel by **December 15, 2004**, that he has implemented this term 6.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met as stated herein, the Third District Committee, Section Two, shall impose a Public Reprimand.

Third District, Section Two, Subcommittee  
Of The Virginia State Bar

By \_\_\_\_\_

  
Richard K. Newman  
Chair

CERTIFICATE OF SERVICE

I certify that I have this 15<sup>th</sup> day of December, 2004, caused to be mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the Subcommittee Determination (Public Admonition with Terms) to Christopher Leon Anderson, Esq., Suite 100, 5905 West Broad Street, Richmond, VA 23230, his last address of record with the Virginia State Bar, and by first class mail to his attorney, Leonard W. Lambert, Esq.

  
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