

VIRGINIA:

**BEFORE THE SIXTH DISTRICT
SUBCOMMITTEE OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
JAMES WILLIS HILLDRUP**

VSB Docket No. 04-060-2594

**SUBCOMMITTEE DETERMINATION
(Public Reprimand with Terms)**

On January 6, 2005, a duly convened subcommittee of the Sixth District Committee, consisting of lay member Andrew C. Gallagher, William E. Glover, Esquire, and Christopher A. Abel, Esquire, Chair and presiding officer, met to consider an agreed disposition of the above-referenced matter.

Pursuant to Part Six, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Sixth District Committee accepts the proposed agreed disposition and hereby serves upon the respondent James Williams Hilldrup this Public Reprimand with Terms:

I. Findings of Fact

1. The respondent, James Willis Hilldrup, was admitted to the practice of law in the Commonwealth of Virginia on May 13, 1980.
2. During all times relevant to this proceeding, Mr. Hilldrup was an attorney in good standing to practice law in the Commonwealth of Virginia.
3. Mr. Hilldrup represented Myrtle Carr, who died on December 28, 1999.
4. After Ms. Carr's death, Mr. Hilldrup agreed to serve as co-executor of her estate.
5. Barbara C. Birney, the complainant, is Ms. Carr's daughter and one of two beneficiaries under Ms. Carr's will.
6. Mr. Hilldrup failed to respond to reasonable requests for information about the status of the estate from his co-executor, the other beneficiary, the complainant and her counsel.
7. Mr. Hilldrup did not file an accounting due in July 2001 until October 2001, and

did so only after the Commissioner of Accounts issued a show cause order.

8. Mr. Hilldrup did not respond to rulings the Commissioner of Accounts made on two issues in June 2003, until April 2004, and did so only after the complainant filed a bar complaint.
9. In a letter to the complainant's attorney dated December 30, 2003, Mr. Hilldrup promised that he would finalize Ms. Carr's estate within a week but failed to do so.
10. Almost five years after her death, Ms. Carr's estate has not been settled.
11. Mr. Hilldrup did not respond to two proactive letters from intake counsel, file a written response to the bar complaint, comply with the bar's subpoena for his file in a timely manner or respond promptly to the bar investigator's request for an interview.

II. Findings of Misconduct

The foregoing findings of fact, which are supported by clear and convincing evidence, give rise to findings that Mr. Hilldrup violated the following Rule of Professional Conduct:

RULE 1.3 Diligence

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

* * *

III. Imposition of Sanction

Accordingly, it is the decision of the Sixth District Committee to impose a Public Reprimand with Terms, and Mr. Hilldrup is hereby so reprimanded and the following terms imposed.

1. By February 28, 2005, Mr. Hilldrup shall refund all payments received for legal services he rendered as co-executor of Myrtle Carr's estate and certify in writing to Bar Counsel no later than February 28, 2005, that he has done so.

2. Mr. Hilldrup shall retain at his own expense counsel to assist him in withdrawing as co-executor of Myrtle Carr's estate and refunding all payments received for legal services he

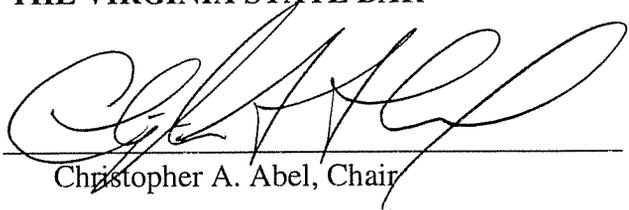
rendered as co-executor of Myrtle Carr's estate.

If Mr. Hilldrup fails to comply with one or both of the foregoing terms, Bar Counsel may notice a show cause hearing before the Sixth District Committee. The only issue to be decided at that hearing will be the sufficiency of his compliance with the agreed upon terms. If the Sixth District Committee finds that Mr. Hilldrup has not complied with one or more of the agreed upon terms, Mr. Hilldrup agrees that the case shall be certified to the Disciplinary Board pursuant to Paragraph 13.I. of the Rules of Court for imposition of an appropriate sanction. Mr. Hilldrup agrees that a 60 day suspension would be an appropriate sanction should he fail to comply with any of the terms of this Agreed Disposition.

This Public with Reprimand with Terms shall be made part of Mr. Hilldrup's disciplinary record. Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess the appropriate administrative fees and costs.

**SIXTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR**

By _____


Christopher A. Abel, Chair

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of January 2005, mailed by certified mail, return receipt requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to the respondent, James Willis Hilldrup, Esquire, at this last address of record with the Virginia State Bar, Suite 220, 4343 Plank Road, Fredericksburg, Virginia 22407-4807.


Barbara Ann Willearn

VIRGINIA:

**BEFORE THE SIXTH DISTRICT
SUBCOMMITTEE OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
JAMES WILLIS HILLDRUP**

VSB Docket No. 04-060-2595

**SUBCOMMITTEE DETERMINATION
(Public Reprimand with Terms)**

On January 6, 2005, a duly convened subcommittee of the Sixth District Committee, consisting of lay member Andrew C. Gallagher, William E. Glover, Esquire, and Christopher A. Abel, Esquire, Chair and presiding officer, met to consider an agreed disposition of the above-referenced matter.

Pursuant to Part Six, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Sixth District Committee accepts the proposed agreed disposition and hereby serves upon the respondent James Willis Hilldrup this Public Reprimand with Terms.

I. Findings of Fact

1. The respondent, James Willis Hilldrup, was admitted to the practice of law in the Commonwealth of Virginia on May 13, 1980.
2. During all times relevant to this proceeding, Mr. Hilldrup was an attorney in good standing to practice law in the Commonwealth of Virginia.
3. In June 2001, Mr. Hilldrup prepared a will and power of attorney for Margaret A. Spencer, for whom he had drafted a will and power of attorney in 1994.
4. He subsequently prepared new powers of attorney for Mrs. Spencer.
5. Mrs. Spencer moved to a nursing home after she was incapacitated by Alzheimer's disease.
6. On September 11, 2003, Brenda S. Sullivan, one of Mrs. Spencer's nieces, met with Mr. Hilldrup and informed him that Deborah D. Lemons-Daff, a granddaughter of Mrs. Spencer who allegedly held a power of attorney for Mrs. Spencer, was embezzling funds from Mrs. Spencer's estate.

7. Mr. Hilldrup contends that he told Ms. Sullivan that he could not represent her because he had drafted documents for Mrs. Spencer and could be called upon to testify in a court proceeding.
8. Mr. Hilldrup set up an appointment for Ms. Sullivan to see attorney Walter J. Sheffield, who she met and retained on September 11, 2003.
9. Mr. Sheffield maintains that he conferred with Mr. Hilldrup on several occasions about what action should be taken to protect Mrs. Spencer's interests.
10. Pursuant to Mr. Sheffield's advice, Ms. Sullivan withdrew all the funds remaining in Mrs. Spencer's bank account and delivered two checks, both dated September 23, 2003, to Mr. Hilldrup's office.
11. Both checks were payable to Mr. Hilldrup -- one for \$108,301.66 and the other for \$242.75.
12. A letter from Mr. Sheffield to Mr. Hilldrup dated September 22, 2003, accompanied the checks and stated that Mr. Sheffield assumed Mr. Hilldrup would hold the money for Mrs. Spencer's use.
13. Mr. Hilldrup did not respond to Mr. Sheffield's letter and did not deposit the two checks in a fiduciary account.
14. Mr. Hilldrup claims he advised Ms. Sullivan by letter dated September 23, 2003, that he could not accept any funds from Mrs. Spencer's bank account.
15. Mr. Sheffield is not copied on Mr. Hilldrup's September 23rd letter to Ms. Sullivan, and she denies ever receiving Mr. Hilldrup's letter.
16. Mr. Hilldrup never informed Mr. Sheffield that he had declined to accept the funds that Ms. Sullivan had delivered to his office.
17. According to Mr. Hilldrup, two or three days after he received the checks and allegedly wrote Ms. Sullivan, his secretary called Mrs. Spencer's bank at his direction and was told that Ms. Lemons-Daff had withdrawn all the funds remaining in Mrs. Spencer's account.
18. Mr. Hilldrup did not tell either Mr. Sheffield or Ms. Sullivan that Ms. Lemons-Daff had withdrawn the funds.
19. Not knowing that Mr. Hilldrup had failed to deposit the two checks she had delivered to his office, Ms. Sullivan brought Mrs. Spencer's nursing home bills to Mr. Hilldrup each month, assuming he would pay the bills; he did not.

20. Mr. Hilldrup did not return telephone calls or respond to letters from the nursing home, Ms. Sullivan or Mrs. Spencer's daughter, Sylvia J. Spencer.
21. In December 2003 or January 2004, Ms. Sullivan finally reached Mr. Hilldrup by telephone, and he told her that before he "could do anything with the checks," Ms. Lemons-Daff had withdrawn the money.
22. On August 13, 2004, Ms. Lemons-Daff pled guilty to one count of embezzling \$108,301 from Mrs. Spencer's estate.
23. Ms. Lemons-Daff admitted that on October 6, 2003, she transferred \$108,474, the entire balance of Mrs. Spencer's account, into another account, then transferred the funds into her own account and thereafter made almost daily cash withdrawals until February 2004, when she overdrew the account.
24. On February 13, 2004, Sylvia Spencer filed a bar complaint against Mr. Hilldrup alleging that he failed to protect her mother's interests.
25. Mr. Hilldrup did not respond to two proactive letters from intake counsel, file a written response to the bar complaint, comply with the bar's subpoena for his file in a timely manner or respond promptly to the bar investigator's request for an interview.

II. Findings of Misconduct

The foregoing findings of fact, which are supported by clear and convincing evidence, give rise to findings that Mr. Hilldrup violated the following Rule of Professional Conduct:

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:

- (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
- (2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (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; and
- (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.

* * *

(f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

* * *

- (iv) Definitions. "Lawyer" means a member of the Virginia State Bar, any other lawyer admitted to regular or limited practice in this State, and any member of the bar of any other jurisdiction while engaged, pro hac vice or otherwise, in the practice of law in Virginia;

"Lawyer escrow account" or "escrow account" means an account maintained in a financial institution for the deposit of funds received or held by a lawyer or law firm on behalf of a client;

"Client" includes any individual, firm, or entity for which a lawyer performs any legal service, including acting as an escrow agent or as legal representative of a fiduciary, but not as a fiduciary. The term does not include a public or private entity of which a lawyer is a full-time employee;

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III. Imposition of Sanction

Accordingly, it is the decision of the Sixth District Committee to impose a Public Reprimand with Terms. Mr. Hilldrup is hereby so reprimanded and the following terms imposed.

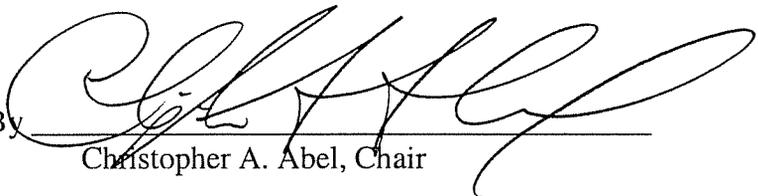
1. Mr. Hilldrup shall reimburse the sum of \$108,301.00, embezzled from Margaret A. Spencer, plus 5% interest from September 23, 2003 to January 11, 2005, in quarterly installment payments of \$15,000.00 on March 15, June 15, September 15 and December 15, beginning on March 15, 2005, until the money has been paid in full.
2. Mr. Hilldrup shall make each payment by cashier's check or money order payable to Margaret A. Spencer and tender each payment to the Victim Witness Assistance Program for the Spotsylvania Commonwealth Attorney's Office.
3. Any advance payments made by Mr. Hilldrup will be credited toward the next quarterly payment(s).
4. Mr. Hilldrup shall certify in writing to Bar Counsel no later than three days after each payment is due that he has made the requisite payment.
5. Mr. Hilldrup shall contact Susan D. Pauley, Executive Director of Lawyers Helping Lawyers, 707 E. Main Street, Suite 1501, Richmond, Virginia 23219, (804) 644-3212, susan@valhl.org, no later than January 31, 2005, request an evaluation and execute whatever releases are necessary for Lawyers Helping Lawyers to obtain his medical and other records, then certify in writing to Bar Counsel no later than February 4, 2005, that he has done so.
6. If requested to do so by Lawyers Helping Lawyers, Mr. Hilldrup shall submit to a physical and or/mental examination by one or more medical care providers selected by Lawyers Helping Lawyers.
7. Based upon the results of the examination(s), if recommended by Lawyers Helping Lawyers, no later than April 15, 2005, Mr. Hilldrup shall enter into a Rehabilitation/Monitoring Agreement with Lawyers Helping Lawyers for the period of time suggested by Lawyers Helping Lawyers.
8. Mr. Hilldrup shall deliver to Bar Counsel an executed copy of the Rehabilitation/Monitoring Agreement, within one week of executing it.
9. If Mr. Hilldrup enters into a Rehabilitation/Monitoring Agreement, within one week of doing so, he shall execute and deliver to Bar Counsel the releases necessary for Lawyers Helping Lawyers to communicate with the Virginia State

Bar on a quarterly basis for the duration of the Rehabilitation/Monitoring Agreement, and for any therapists, counselors or medical providers with whom he consults or by whom he is treated to, upon request, produce his records and communicate with the Virginia State Bar.

If Mr. Hilldrup fails to comply with one or more of the foregoing terms, Bar Counsel may notice a show cause hearing before the Sixth District Committee. The only issue to be decided at that hearing will be the sufficiency of his compliance with the agreed upon terms. If the Sixth District Committee finds that Mr. Hilldrup has not complied with one or more of the agreed upon terms, Mr. Hilldrup has agreed that the case shall be certified to the Disciplinary Board pursuant to Paragraph 13.I. of the Rules of Court for imposition of an appropriate sanction. Mr. Hilldrup has also agreed that a 120 day suspension would be an appropriate sanction should he fail to comply with any of the terms of this Agreed Disposition.

This Public with Reprimand with Terms shall be made part of Mr. Hilldrup's disciplinary record. Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess the appropriate administrative fees and costs.

**SIXTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR**

By  _____
Christopher A. Abel, Chair

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of January 2005, mailed by certified mail, return receipt requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to the respondent, James Willis Hilldrup, Esquire, at this last address of record with the Virginia State Bar, Suite 220, 4343 Plank Road, Fredericksburg, Virginia 22407-4807.

Barbara Ann Williams