

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

VIRGINIA STATE BAR, *ex rel.*
EIGHTH DISTRICT COMMITTEE,

Complainant/ Petitioner,

v.

Chancery No. 04-615
[VSB Docket No. 02-080-0636]

BARRY L. FLORA, ESQUIRE,

Respondent.

ORDER

This matter came before the Three-Judge Court empaneled on September 24, 2004, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to §54.1-3935 of the 1950 Code of Virginia, as amended. A fully endorsed Agreed Disposition, dated the 7th day of October, 2004, was tendered by the parties, and was considered by the Three-Judge Court, consisting of the Honorable Barnard F. Jennings and Honorable William C. Fugate, retired Judges of the Nineteenth and Thirtieth Judicial Circuits, respectively, and by the Honorable Lydia C. Taylor, Judge of the Fourth Judicial Circuit and Chief Judge of the Three-Judge Court.

Having considered the Agreed Disposition, it is the decision of the Three-Judge Court that the Agreed Disposition be accepted, and said Court finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Barry L. Flora, Esquire (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. During or about August of 1998 to August of 1999, the Complainant, Kimberly Michelle Boyer, worked for Respondent at his law practice. In August of 2001, when she filed her complaint with the Virginia State Bar, Ms. Boyer was a third-year law student at the University of Mississippi.

3. While employed at the office of the Respondent, Ms. Boyer's duties included the preparation of HUD-1 real estate settlement statements for which the Respondent calculated in advance the amount of the title insurance premium. Following a loan closing, the original title insurance premium calculated by the Respondent was sometimes in excess of the actual realized premium. If this matter were tried, the Respondent would testify that the reasons for such difference varied, but often the loan amount changed at closing or the insurer offered a re-issue rate. The corresponding title insurance company for each particular settlement with an overage would then send a check payable to the Respondent for the amount of the overpayment. Between September 16, 1998 and February 22, 2001, Virginia Title Center, LLC (hereafter "Virginia Title"), forwarded checks in the aggregate amount of \$4,657.69 to be refunded to seventy-six (76) of the Respondent's clients.

4. The refunds, ranging in amounts from \$20.00 to \$248.75, were not forwarded upon receipt by the Respondent to the clients involved. The last check issued by Virginia Title was dated February 22, 2001. The Respondent returned the monies to the seventy-six clients referenced on or about September 20, 2002.

5. Neither the checks nor any funds realized from negotiation of the checks from Virginia Title were deposited in the Respondent's trust account. The checks remained non-negotiated in the Respondent's office.

6. The complaint in this case was filed in August of 2001. The Virginia State Bar forwarded the complaint to the Respondent on September 19, 2001, requesting a written response within twenty-one (21) days. At some time believed to be shortly following the Bar's request for a response, William B. Hopkins, Jr., Esquire, filed a praecipe informing the Bar that he would be representing the Respondent. The Respondent filed a response on October 1, 2002.

7. In reaching its decision as to sanctions, the Court considered applicable aggravating and mitigating factors from the American Bar Association's Standards For Professional Discipline, as well as factors presented by the Virginia State Bar.

THE THREE-JUDGE COURT finds by clear and convincing evidence that such conduct on the part of the Respondent, Barry L. Flora, Esquire, constitutes a violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility and the Rules of Professional Conduct:

DR 6-101. Competence and Promptness

- (B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.

DR 9-102. Preserving Identity of Funds and Property of a Client.

- (A) All funds received or held by a lawyer or law firm on behalf of a client, estate or a ward, residing in this State or from a transaction arising in this State, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts and, as to client funds, maintained at a financial institution in a state in which the lawyer maintains a law office, 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.
 - (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 they are 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.

(B) A lawyer shall:

- (1) Promptly notify a client of the receipt of his 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 his client regarding them.
- (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 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

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
 - (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.

UPON CONSIDERATION WHEREOF, the Three-Judge Court hereby ORDERS that the Respondent shall receive a **PUBLIC REPRIMAND WITH TERMS**, subject to the imposition of the sanctions referred to below as alternative dispositions of this matter should Respondent fail to comply with the Terms referred to herein. The Terms which shall be met in accordance with the deadlines set forth below are:

1. Respondent shall accrue at least twelve (12) continuing legal education credit hours by enrolling in and attending Virginia State Bar approved Continuing Legal Education program(s) in either real estate and/ or ethics prior to February 1, 2005; Respondent's Continuing Legal Education attendance obligation set forth in this paragraph shall *not* be applied toward Respondent's Mandatory Continuing Legal Education requirement in Virginia and any other jurisdictions in which he may be licensed to practice law. Respondent shall 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 Marian L. Beckett, Assistant Bar Counsel, at 100 North Pitt Street,

Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).

2. Respondent shall be placed on a period of probation for a term of one (1) year, with the said period of probation to begin on the date of entry of an Order including such provision.

3. Respondent shall engage in no professional misconduct as defined by the Virginia Rules of Professional Conduct during the probationary period.

4. Upon satisfactory proof furnished by Respondent to the Virginia State Bar that the above terms have been complied with, in full, a **PUBLIC REPRIMAND WITH TERMS** shall then be imposed. If, however, Respondent fails to comply with any of the terms set forth herein, as and when his obligation with respect to any such term has accrued, the provisions of paragraphs (5) through (8) below shall become effective.

5. Should Respondent fail to accrue at least twelve (12) continuing legal education credit hours by enrolling in and attending Virginia State Bar approved Continuing Legal Education program(s) in either real estate and or ethics prior to February 1, 2005 and provide proof thereof as set forth in paragraph 1, *supra*, this matter shall be certified to the Disciplinary Board for a determination of sanction(s).

6. Any final determination of misconduct determined by any District Committee of the Virginia State Bar, the Disciplinary Board, or a three-judge court to have occurred during the one (1) year probationary period will be deemed a violation of the terms and conditions of this Agreed Disposition and will result in the imposition of an alternative disposition/ sanction of a one (1) year and eleven (11) months suspension of Respondent's license to practice law in the Commonwealth of Virginia. The alternative disposition of suspension shall not be imposed during any appeal period in

which the Respondent is appealing any adverse decision which might result in a probation violation.

7. The imposition of the alternative disposition for misconduct during the period of probation will not require a hearing before a three-judge court or the Disciplinary Board on the underlying charges of misconduct stipulated herein if the Virginia State Bar discovers that the Respondent has violated any of the foregoing terms and conditions. Instead, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternative disposition of suspension should not be imposed.

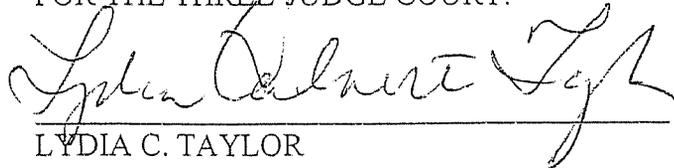
8. The imposition of the alternative disposition of suspension shall be in addition to any other sanction(s) imposed for misconduct during the probationary period.

It is further ORDERED that, pursuant to Part Six, § IV, ¶ 13(B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is further ORDERED that six (6) copies of this Order be certified by the Clerk of the Circuit Court for the City of Roanoke, Virginia, and be thereafter mailed by said Clerk to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

ENTERED this 12th day of October, 2004.

FOR THE THREE-JUDGE COURT:



LYDIA C. TAYLOR
Chief Judge of Three-Judge Court

Barnard F. Jennings
BARNARD F. JENNINGS
Judge

Wm. C. Fugate
WILLIAM C. FUGATE
Judge

WE ASK FOR THIS:

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