

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
STARR ILENE YODER
VSB 05-010-0499 and 05-010-0500

ORDER

THIS MATTER was certified to the Board by a subcommittee of First District Disciplinary Committee. The hearing was held on September 23, 2005, in Courtroom A of the State Corporation Commission, 1300 E. Main Street, Richmond, Virginia 23219. The Respondent, Starr Ilene Yoder, was present, *pro se*. The Bar was represented by Richard E. Slaney, Assistant Bar Counsel. The Board consisted of William C. Boyce, Jr., William M. Moffet, W. Jefferson O'Flaherty, lay member; Russell W. Updike and Peter A. Dingman, First Vice Chair. The proceedings were reported and transcribed by Valarie L. Schmit, court reporter, Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, phone number (804) 730-1222.

Chairman Dingman polled the members of the board as to whether any conflict or bias existed which would prevent the members from fairly and impartially hearing the matter. Each member, including Mr. Dingman, answered in the negative.

The Bar's exhibits, numbered 1 through 17, were admitted without objection. Ms. Yoder submitted no list of proposed exhibits or witnesses, and offered none during the hearing.

Prior to the Bar presenting its case, Ms. Yoder admitted all alleged violations and stated her case would focus on mitigation.

The Bar called two witnesses: Bar Investigator Ronald Pohrivchak and Ms. Yoder. The Bar then rested, and Ms. Yoder presented no evidence.

A. FINDINGS OF FACT

AFTER GIVING due consideration to the Bar's evidence and the argument of the parties, the Board finds the following facts to have proven by clear and convincing evidence:

1. Ms. Yoder was admitted to practice on October 14, 1998, and has been a member of the Bar at all times relevant to this proceeding.
2. Ms. Yoder began practice with a multi-lawyer firm, at which she was not directly responsible for trust account matters and reconciliations.
3. She entered the solo practice of law, under the name of Tidewater Legal Clinic, on [did anyone get this date?]
4. Ms. Yoder was solely responsible for the firm's accounting and banking matters, including the required trust account reconciliations.
5. In August of 2004, the Bar received notice from Wachovia Bank that four checks had been presented on the trust account of Tidewater Legal Clinic, for which there were insufficient funds as follows: a check dated 7/19/04 in the amount of \$403.00; a check dated 7/20/04 in the amount of \$69.00; a check dated 7/22/04 in the amount of \$601; and a check dated 7/26/04 in the amount of \$51.63.
6. As a result, the Bar sent four letters to Ms. Yoder at her address of record, two of which were dated August 9, 2004 and two of which were dated August 17, 2004 regarding these overdrafts and requesting a response and explanation. No response was received by the Bar.
7. On September 15, 2004, Ms. Yoder was contacted by Bar Investigator Ronald Pohrivchak. From that point forward, Ms. Yoder was fully cooperative with the Bar's investigation and responsive to all requests.

8. Ms. Yoder failed to respond to the Bar's initial inquiries because she had moved her practice, but had failed to notify the Bar of her new address of record. As a result, she received no correspondence from the Bar, and was unaware of the complaint until she spoke with Mr. Pohrivchak.
9. The investigation revealed that Ms. Yoder had failed to pay federal and state employment taxes in 2002, 2003, and 2004. As a result, federal and state tax liens were filed against Ms. Yoder's operating account.
10. Believing that liens could not be filed against her trust account, Ms. Yoder began using her trust account as both escrow and operating accounts. Payroll, expenses, and other costs of operation were paid out of the trust account.
11. Ms. Yoder acknowledged that she would deposit flat fees into her escrow account immediately upon receipt, but before all work was performed.
12. Further, during this period, Ms. Yoder failed to perform the reconciliations required by the rules of professional conduct. Ms. Yoder claimed that she was balancing her checkbook on a monthly basis, but admitted that she was not performing the required quarterly reconciliations. She was unable to distinguish between funds belonging to the firm and funds belonging to clients. The account became over drawn on more than one occasion.
13. Despite Ms. Yoder's lack of diligence in maintaining her accounts, no client suffered a loss as a result.

B. MISCONDUCT

The Bar has alleged violations of the following rules:

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

(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, book 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

(iii) 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 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.

(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.

(4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.

(i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and

(ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

(5) Reconciliations.

(i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;

(ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;

(iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

The Board finds that the Bar has proven by clear and convincing evidence a violation of this rule, owing to Ms. Yoder's use of the trust account as an operating account, thereby

mingling firm funds and client funds; her failure to perform the required balances and reconciliations; and her failure to withdraw firm funds at the time they were earned.

The evidence also strongly indicated that Ms. Yoder regarded “flat fees” as earned even when some tasks remained to be completed in cases for which those fees were paid. The commingling of funds belonging to the firm and monies belonging to clients in a single account somewhat obscured this violation of the Rules, and the Board was not presented with a specific charge regarding this conduct, but we will not pass over the matter without noting that it is prohibited conduct. Ms. Yoder’s ignorance on this point was troubling to the Board.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;.....

The Board finds that an intentional violation of this rule was not proven by clear and convincing evidence. While it is true that Ms. Yoder failed to respond to the Bar’s letters regarding her dishonored checks, it is clear that that failure was not volitional. While it was irresponsible for Ms. Yoder to fail to change her address of record with the Bar, it is also significant that Ms. Yoder was fully cooperative upon learning of the investigation. We feel that the spirit of this rule requires cooperation and that Ms. Yoder’s initial lack of response was not due to an intent to be uncooperative. Her failure to notify the Bar of her correct address was relatively short lived (approximately four months), and she corrected her error promptly.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;.....

The Board finds that violation of section (b) of this rule has been proven by clear and convincing evidence. Ms. Yoder's decision to use the former trust account as a combination trust and operating account was taken so as to avoid federal and state tax liens and to stay in business. The board finds that in doing so, Ms. Yoder has committed a deliberately wrongful act that reflects adversely on the Ms. Yoder's honesty, trustworthiness or fitness as a lawyer. The Board does not find a violation of section (c).

C. SANCTIONS

The Board is disturbed by Ms. Yoder's cavalier attitude toward the handling of other people's money. Likewise, the Board is quite concerned over Ms. Yoder's attempt to avoid paying the government its due. Such actions would, in most cases, justify a suspension or revocation.

Nevertheless, the Board feels as though Ms. Yoder's actions are mitigated by several factors:

1. Ms. Yoder has no disciplinary record.
2. Ms. Yoder's lack of experience, particularly as a solo practitioner.
3. The fact that no clients were harmed.
4. Ms. Yoder's remorse.

5. Ms. Yoder's high level of cooperation with the Bar, once she became aware of the investigation.
6. Ms. Yoder's payment of the taxes.
7. Ms. Yoder's recognition of her wrongdoing and acceptance of responsibility

The Board felt it was important to place terms on any discipline imposed upon Ms. Yoder and was frustrated by the inability to do so should a suspension be imposed. For this reason, as well as the mitigating factors listed above, the Board has determined to impose and hereby imposes a public reprimand with terms. The terms are as follows:

1. Ms. Yoder will attend six hours of continuing legal education relating to trust account matters and the handling of client funds. These credits will be earned within 12 months of this order. Ms. Yoder must certify to the Bar within 12 months of this order that she has satisfied this term. The continuing legal education credits earned pursuant to this term will not count toward those otherwise required to remain in good standing.
2. Ms. Yoder will hire a certified public accountant, who must certify that Ms. Yoder's accounting procedures are in compliance with Rule 1.15 (a), (e), and (f). This certification must be filed with the Bar within 30 days of this order. Such a certification must be filed quarterly thereafter, for a period of two years.
3. Ms. Yoder must read and certify that she has read and understood Legal Ethics Opinion 1322, which relates to types of fees and how they are handled.
4. Ms. Yoder must be without further violations of the Rules of Professional Conduct for one year.

Should Ms. Yoder fail to abide by these terms, an alternate sanction of suspension for one year and one day will be imposed.

D. COSTS

Pursuant to Part Six § IV, ¶ 13(B) (8) (c) (1) 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 the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent as her address of record with the Virginia State Bar, being 2704 Elizabeth Harbor Drive, Chesapeake, Virginia 23321, by certified mail, return receipt requested.

ENTERED this 10th day of October, 2005.

VIRGINIA STATE BAR DISCIPLINARY BOARD


Peter A. Dingman, First Vice Chair