

VIRGINIA :

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

VIRGINIA STATE BAR EX REL)
FOURTH DISTRICT COMMITTEE)
)
Complainant,)
)
v.)
)
GWEN ANNE CARPENTER)
)
Respondent.)

OCT 22 2012

Case No. CL2003942

ORDER

THIS MATTER came before the Court on October 16, 2012 pursuant to a Rule to Show Cause entered by the Circuit Court of the City of Alexandria entered on August 17, 2012 requiring the Respondent, Gwen Anne Carpenter to show cause pursuant to Va. Code § 54.1-3935 why her license to practice law in the Commonwealth should not be suspended or revoked, and it

APPEARING to the Court that by mandate entered on September 24, 2012, the Virginia Supreme Court designated The Hon. Jonathan C. Thatcher, The Hon. Burke F. McCahill and The Hon. Joanne F. Alper as the duly constituted three judge panel; and it

FURTHER APPEARING that none of the designated Judges of the panel have any conflict that would prohibit them from hearing this matter; and it

FURTHER APPEARING that pursuant to notice and order of the Court entered on October 1, 2012, the Respondent was present in open court and that the Virginia State Bar was present by Paulo E. Franco, Jr., Assistant Bar Counsel; and it

FURTHER APPEARING to the Court that Respondent and The Bar presented to the Court for its consideration a duly endorsed Joint Stipulation of Facts and

Misconduct with a Recommendation for Sanction, and the Court, having considered and deliberated hereby accepts the proposed Stipulation of Facts and Misconduct; and it

FUTHER APPEARING to the Court that the Virginia State Bar previously filed with the Court its Exhibits 1-45 and there are hereby received and admitted and made a part of the record of this case; and

UPON THE AGREEMENT of the Respondent and The Virginia State Bar, the Bar's Exhibits 1-45, the statements made by the parties in open court, and after due consideration, the Court makes the following findings of fact:

FINDINGS OF FACTS

1. At all times relevant Respondent was licensed and in good standing to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law in the Commonwealth of Virginia on October 15, 1996.
3. Christine A. Stout ("Stout") retained the Respondent to prepare a postnuptial agreement, a will, an advanced medical directive and a power of attorney.
4. Respondent tendered to her an engagement letter dated February 26, 2011 which Ms. Stout signed on March 8, 2011.
5. Ms. Stout paid Respondent a total of \$1,750.00 by checks dated March 14, 2011 and March 16, 2011.
6. Respondent deposited the checks into her trust account.
7. Respondent transferred \$1500.00 of the retainer in April of 2011 into her operating account before the fees were earned.
8. Ms. Stout attempted on numerous occasions to contact Respondent regarding the progress of the work which she asked Respondent to do.
9. On May 3, 2011, Ms. Stout emailed Respondent asking for a status report. Respondent replied that drafts would be sent the following day.
10. Respondent never sent any drafts.
11. Ms. Stout sent another email on May 9, 2011 asking for drafts. She did not receive any.

12. On May 26, 2011, after not having heard from Respondent, Ms. Stout sent an email terminating Respondent and requesting a refund.

13. Ms. Stout also followed up by letter dated May 27, 2011.

14. Respondent failed to reply to the Virginia State Bar's Intake Office's two proactive letters to Respondent dated June 30 and July 13, 2011 asking her to address Ms. Stout's complaints.

15. Respondent did not respond to the Bar's letter dated July 27, 2011 demanding that Respondent provide a formal answer to the Complaint.

16. Ronald McCall, an investigator with the Virginia State Bar, interviewed Respondent on November 15, 2011.

17. During that interview, Respondent stated that she had responded to Ms. Stout's termination letters by writing her on June 3, 2011 and providing her a full refund.

18. Respondent also stated during the interview that she had deposited both of Ms. Stout's checks into her trust account and that the refund had come from her trust account.

19. At the time that Respondent allegedly wrote the refund checks on June 3 and October 17, 2011, she did not have sufficient funds in her trust account to cover those checks. Respondent ultimately deposited sufficient funds into her trust account in November of 2011 and refunded Ms. Stout all of her money on or about November 15, 2011.

20. During the interview with the Virginia State Bar on November 15, 2011, Respondent admitted that the trust account she did have was not in compliance with the requirements of Rule 1.15 of the Virginia Rules of Professional Conduct in that she did not, among other things, keep subsidiary ledgers, did not perform quarterly reconciliations, and did not perform cash balance reconciliations.

21. After Respondent's initial interview, the Bar issued Respondent a subpoena duces tecum seeking additional records. The Bar also subpoenaed financial records from the bank at which Respondent maintains her trust account.

22. Respondent did not respond to the subpoena in a timely fashion and as a result of her failure received an interim suspension on February 7, 2012.

23. Despite having her license suspended for failure to comply with the Bar's subpoena, Respondent continued to make appearances in courts in Fairfax County, Virginia and represent clients in other matters. Respondent alleges that she did not actually see the Interim Suspension Notice until the Hon. Thomas P. Mann of the Fairfax County Juvenile and Domestic Relations Court advised the Bar that Respondent had appeared in his courtroom on behalf of a client while her license was suspended.

24. On February 8, 2012, Respondent signed a document on behalf of a client in a mental health commitment matter.

25. On February 8, 2012, Respondent also spoke with a client named Amber Perry.

26. After Judge Mann advised Respondent that her license had been suspended, Respondent ultimately complied with the subpoena and the administrative suspension was lifted on February 21, 2012.

27. On February 14, 2012, the Bar's investigator stopped by Respondent's office to speak with her in connection with the investigation of this case.

28. The financial records also revealed that Respondent's trust account was out of trust.

29. The Bar's investigator conducted a follow up interview on February 20, 2012.

30. During that interview, the investigator provided Respondent with a copy of Rule 8.1 of the Virginia Rules of Professional Conduct and was asked if she wanted to correct any prior statements she had given to the Bar.

31. Prior to answering any questions, Respondent stated that she wanted to consult an attorney.

32. On March 19, 2012, Respondent was re-interviewed and was asked about her prior answers. She stated she was still in the process of obtaining counsel.

33. The Bar's investigator attempted several more times for a follow up interview, by calls and emails.

34. Respondent did not respond to those requests until April 18, 2012, when she emailed the Bar's investigator and advised him that she was not going to retain counsel.

35. She further admitted in the email that she had manufactured and falsified evidence that she submitted to the Bar, and admitted that she had lied to the investigator in her initial interview.

36. Specifically, Respondent admitted that she did not mail a refund check to Ms. Stout on June 3, 2011 and that she manufactured those documents to make the investigator think that it had in fact been sent.

37. During her interviews and correspondence with the Bar, Respondent further admitted that for a time period not exceeding two years that she had been misappropriating funds from her trust account to pay for her expenses.

38. She further stated that when her parents loaned her money was she able to put her trust account back into trust and ultimately provide the refund to Ms. Stout about which Respondent had previously lied to the Bar.

HAVING ADOPTED the facts in the matter, the Court hereby makes the following findings of Misconduct and violations of the Virginia Rules of Professional Conduct as having been proved by the Bar by clear and convincing evidence

FINDINGS OF MISCONDUCT

RULE 1.3 Diligence

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

* * * *

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.
- (d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:
- (1) funds may be maintained in a common escrow account subject to the provisions of Rule 1.15(a) and (c) in the following cases:
 - (i) funds that will likely be disbursed or distributed within thirty (30) days of deposit or receipt;
 - (ii) funds of \$5,000.00 or less with respect to each trust or other fiduciary relationship;
 - (iii) funds held temporarily for the purposes of paying insurance premiums or held for appropriate administration of trusts otherwise funded solely by life insurance policies; or
 - (iv) trusts established pursuant to deeds of trust to which the provisions of Code of Virginia Section 55-58 through 55-67 are applicable;
 - (2) funds, securities, or other properties may be maintained in a common account:
 - (i) where a common account is authorized by a will or trust instrument;
 - (ii) where authorized by applicable state or federal laws or regulations or by order of a supervising court of competent jurisdiction; or

- (iii) where (a) a computerized or manual accounting system is established with record-keeping, accounting, clerical and administrative procedures to compute and credit or charge to each fiduciary interest its pro-rata share of common account income, expenses, receipts and disbursements and investment activities (requiring monthly balancing and reconciliation of such common accounts), (b) the fiduciary at all times shows upon its records the interests of each separate fiduciary interest in each fund, security or other property held in the common account, the totals of which assets reconcile with the totals of the common account, (c) all the assets comprising the common account are titled or held in the name of the common account, and (d) no funds or property of the lawyer or law firm or funds or property held by the lawyer or the law firm other than as a fiduciary are held in the common account.

For purposes of this Rule, the term "fiduciary" includes only personal representative, trustee, receiver, guardian, committee, custodian and attorney-in-fact.

- (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, books 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;

- Rule;
- (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 a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
 - (iv) reconciliations and supporting records required under this
 - (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
- (2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:
- (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;
 - (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
 - (iii) 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.
- (2) Deposits. All receipts of escrow money shall be deposited intact

and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;

- (3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;
- (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.
- (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

* * * *

RULE 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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RULE 8.1 Bar Admission And Disciplinary Matters

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

- (a) knowingly make a false statement of material fact;
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter;
- (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; or

* * * *

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law.

* * * *

AFTER CONSIDERATION of the Facts and Misconduct established in this case, the Court hereby adopts the recommended Sanction submitted by Respondent and the Bar. It is there **ORDERED as follows:**

1. Effective November 1, 2012, Respondent's license to practice law in the Commonwealth of Virginia shall be **SUSPENDED** for a period of two (2) years ("Suspension Period").

2. Prior to her reinstatement at the conclusion of the Suspension Period, Respondent must be in compliance with each of the requirements of Rules of the Virginia Supreme Court, Part Six, Section IV, Paragraphs 13-25.H and 13-29.

3. Six (6) months prior to the expiration of the Suspension Period, respondent must certify in writing to Assistant Bar Counsel that she has completed no less than four (4) hours of continuing legal education in law office management or its equivalent. These hours will be in addition to and not a part of the continuing legal education requirements set forth in Rules of the Virginia Supreme Court, Part Six, Section IV, Paragraph 13-25.H

4. Upon reinstatement, Respondent shall be on a period of probation for a two (2) year period from the date of her actual reinstatement during the Virginia State Bar ("Probation Period").

5. Respondent shall not engage in any Misconduct during the Probation Period. If Respondent is adjudicated to have engaged in Misconduct during the Probation Period, she shall be deemed to be in violation of the terms of this disposition.

6. During the Probation Period, Respondent shall hire a certified public accountant at her own expense to provide written quarterly reports to the Virginia State Bar certifying that any trust or fiduciary account she maintains is in compliance with Rule 1.15 of the Virginia Rules of Professional Conduct.

7. During the Probation Period, Respondent agrees that she is subject to random and unannounced audits of her trust, fiduciary and operating accounts.

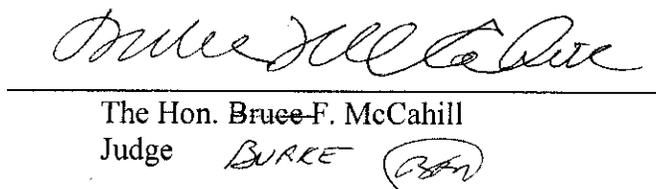
8. The Clerk of the Disciplinary System shall assess an administrative fee.

9. Upon satisfactory proof that such terms and conditions have been met at

the conclusion of the Probation Period, this matter shall be closed. If, however, all the terms and conditions are not met by the deadlines imposed above, the Respondent agrees that she will be in default. Bar Counsel shall issue a Rule to Show Cause demanding that the Respondent show cause why her license should not be further suspended or revoked for failure to comply with the Terms set forth herein. The Disciplinary Board shall have exclusive jurisdiction and Respondent waives her right to have such matter heard by a three judge panel pursuant to Va. Code Ann. § 54.1-3935. The sole issue to be determined is whether Respondent is in compliance with the terms imposed in this sanction. Respondent shall bear the burden of proof by Clear and Convincing Evidence. The provision of the Rules of the Virginia Supreme Court, Part Six, Section IV, Paragraph 13-18.O shall apply. In the event that Respondent does not prove by clear and convincing evidence that she is in full compliance with the term, the Disciplinary Board shall enter the alternative sanction of either further suspension or revocation as it deems appropriate. 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 Paragraph 13-9.E of the Rules of Court.

ENTERED this 16th Day of October, 2012


The Hon. Jonathan C. Thatcher
Chief Judge


The Hon. Bruce F. McCahill
Judge BURKE (CBM)

SIGNATURE OF THE COURT CONTINUED BELOW


The Hon. Joanne F. Alper
Judge

A Copy Teste:
Edward Semonian, Clerk

By , Deputy Clerk
16th October 2012

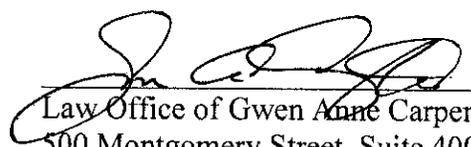
SEEN AND AGREED:

VIRGINIA STATE BAR

GWEN ANNE CARPENTER

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