

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
SARA ELIZABETH CHASE**

VS B Docket No. 13-032-094400

MEMORANDUM ORDER

This matter came on to be heard on September 10, 2013 by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of Robert W. Carter, Lay Member, Richard J. Colten, Jeffrey L. Marks, Lisa A. Wilson, and Pleasant S. Brodnax, III, Chair, presiding (the Panel).

Renu Mago Brennan, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar, and Respondent, Sara Elizabeth Chase, appeared in person with counsel, Charlotte P. Hodges.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented same to the Panel.

The Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chair, verified they had no such interests.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, a majority of the Panel accepted the Agreed Disposition.

I. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

1. At all times referenced herein Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On March 1, 2012, Richard Denny retained Respondent to represent him in his divorce filed by his wife in Chesterfield Circuit Court on February 3, 2012.
3. Respondent and Mr. Denny entered into a written representation agreement.
4. Respondent charged Mr. Denny a flat fee of \$5,000.00 for the representation. Per the representation agreement, \$2,500.00 of the fee was due on March 1, 2012, and \$2,500.00 was due on April 1, 2012.
5. Mr. Denny paid Respondent \$2,500.00 on March 1, 2012 and \$2,500.00 on April 3, 2012.
6. In the parties' first meeting on March 1, 2012, Mr. Denny provided Respondent a copy of the complaint and discovery propounded by his wife.
7. Respondent never filed an answer to the complaint.
8. In March 2012, Mr. Denny received a Motion for Pendente Lite Spousal Support, Exclusive Use and Possession of the Marital Home and Order Preventing Dissipation of Marital Assets (Pendente Lite Motion).
9. By e-mail dated March 11, 2012, Mr. Denny advised Respondent that he received the Pendente Lite Motion and asked what he should do.
10. By e-mail dated March 12, 2012, Respondent responded "(t)he amount should be decided by the court not just their request."
11. Respondent never filed a response to the Pendente Lite Motion.

12. By e-mail dated March 30, 2012, Mr. Denny received a proposed Property Settlement Agreement (PSA) from his wife's counsel, which he forwarded to Respondent the same day.
13. By e-mail dated April 2, 2012, Respondent's legal assistant advised opposing counsel that his office would submit a revised PSA to opposing counsel within ten days.
14. Respondent did not submit a revised PSA to either Mr. Denny or opposing counsel.
15. By letter dated April 17, opposing counsel requested an update and Respondent's available dates for a hearing on the Pendente Lite Motion if Mr. Denny did not wish to negotiate.
16. Respondent did not advise Mr. Denny of this letter.
17. By e-mail dated April 30, 2012, Mr. Denny asked for a status update. Respondent's legal assistant advised that they agreed to try to reach a settlement once Mr. Denny's wife responded to discovery which Respondent propounded.
18. On May 16, 2012, opposing counsel served Respondent with a Notice of Hearing on the Pendente Lite Motion. The hearing was noticed for June 29, 2012. Respondent never advised Mr. Denny of this hearing date.
19. On June 1, 2012, Respondent filed a motion to compel discovery responses. The motion represented that Respondent's legal assistant's April 2 e-mail to opposing counsel stated that Respondent would respond to the PSA when Respondent received discovery responses. As stated, the April 2 e-mail actually stated that a response to the PSA would be sent within ten days, not upon receipt of discovery responses.
20. By letter dated June 4, 2012, opposing counsel advised Respondent of his concern about the discrepancy between the April 2 e-mail he received and the April 2 e-mail which was included in the motion to compel. Opposing counsel requested that Respondent withdraw the motion to compel and provide a counterproposal to the PSA before June 29. Opposing counsel offered to continue the June 29 hearing if the parties were to negotiate a settlement.
21. On June 26, Respondent confirmed to opposing counsel that they would work on settlement.
22. On June 29, the Court continued the Pendente Lite hearing because the parties were working on settlement.

23. By e-mail dated June 29, 2012, Mr. Denny advised Respondent that he was temporarily moving to South Dakota, and he provided a permanent address in Texas.
24. By letter dated July 9, 2012 to Respondent, opposing counsel expressed concern that Respondent had not contacted him with available dates for a settlement conference as agreed in late June. He advised Respondent that he would set the Pendente Lite Motion for hearing if he did not hear from Respondent within ten days, and he provided his available dates for a settlement conference.
25. In an e-mail exchange from July 13 to July 24, Respondent requested Mr. Denny's availability for mediation. The two agreed that August 8 was a good date.
26. By e-mail dated August 1, 2012, Mr. Denny asked Respondent to provide the dates and times he was to meet Respondent for mediation.
27. By e-mail dated August 1, 2012, Respondent advised Mr. Denny that opposing counsel was no longer available August 8 and that they would reschedule the mediation, most likely in September. Respondent requested Mr. Denny keep August 8 open to talk to her about the PSA.
28. By e-mail dated August 2, 2012, Mr. Denny provided Respondent with his "bottom line".
29. Respondent did not contact Mr. Denny on August 8 to discuss the PSA.
30. Despite the fact that Respondent had Mr. Denny's response to the PSA, Respondent did not discuss or attempt to negotiate the PSA with opposing counsel. Respondent also failed to provide additional settlement conference dates to opposing counsel.
31. By e-mail dated August 22, 2012, opposing counsel again expressed his concern that Respondent had yet to provide a response to the PSA, and he requested a response to the PSA or additional conference dates by September 1, 2012, or he would reschedule the hearing on the Pendente Lite Motion.
32. Respondent did not respond to opposing counsel by September 1, 2012.
33. On September 7, 2012, opposing counsel noticed a hearing on the Pendente Lite Motion for October 5.
34. By e-mail dated September 7, 2012, Respondent advised opposing counsel that she had been in the hospital in August, and she and her client still wanted to proceed with mediation.

35. By e-mail dated September 7, 2012, Respondent forwarded to opposing counsel Mr. Denny's e-mail to her regarding his "bottom line".
36. By e-mail dated September 14, 2012 to Respondent, opposing counsel responded to Mr. Denny's "bottom line" and suggested limiting the October 5 hearing to address spousal support.
37. By e-mail exchange September 14, 2012, Respondent asked opposing counsel for the time and location of the October 5 hearing, and opposing counsel responded the hearing was set for 9:15 a.m. in Chesterfield Circuit Court.
38. In subsequent e-mails on September 14, Respondent asked opposing counsel to continue the October 5 date. Opposing counsel asked Respondent to provide available dates so he could check with the Clerk, and he stated, "(a)s long as it does not put us too far out, I am okay with changing the date."
39. Respondent did not advise Mr. Denny that a hearing on the Pendente Lite Motion was scheduled for October 5.
40. Respondent did not file a response to the Pendente Lite Motion.
41. Respondent did not provide alternative dates for the Pendente Lite Hearing to opposing counsel.
42. Respondent took no steps to prepare for the Pendente Lite Hearing.
43. By e-mail dated September 23, 2012, Mr. Denny contacted Respondent in response to a call from a finance company on his wife's behalf, in which the representative indicated that mediation was scheduled for October 5. Mr. Denny asked Respondent whether it was true that his new mediation date was October 5, "is this true, and why am i finding out from a source other than you, 2 weeks ago? are you taking my case seriously? because i'm feeling like you're not. there are so few updates between us (i know because I've saved and logged them all), that it makes me more than a little uncomfortable. the last time I heard from you was a promise to conference-call 8 aug. that call never happened. i've been patient. it's time to fill me in on my case. please do so this week. thank you."
44. As Respondent was aware, mediation had not been scheduled, and the October 5 date was for a hearing on the Pendente Lite Motion, not mediation.
45. Instead of honestly advising Mr. Denny of the status of the case, including telling Mr. Denny that a Pendente Lite hearing was scheduled on October 5 at which time the Court would determine temporary spousal support, exclusive use and possession of

the marital home, and the dissipation of assets, and instead of preparing for the hearing with Mr. Denny and discussing and filing a response to the Pendente Lite Motion, Respondent, by e-mail dated September 24, 2012, advised Mr. Denny that she and opposing counsel agreed to schedule a different date for court, which she would provide to Mr. Denny.

46. Thus, despite his question to his counsel, Mr. Denny was unaware of the Pendente Lite hearing on October 5.
47. By letter dated September 24, 2012 to Respondent, opposing counsel responded to Mr. Denny's bottom line and advised again that perhaps the parties should have a spousal support hearing prior to negotiating the PSA.
48. Respondent did not advise her client of opposing counsel's September 24 letter or of his previous response to her client's settlement proposal.
49. On October 5, 2012, Respondent moved to continue the hearing on the Pendente Lite Motion, and the Court denied her motion.
50. The Court held the hearing on the Pendente Lite Motion and took evidence and testimony from Mr. Denny's wife.
51. Mr. Denny did not attend the hearing and thus did not testify or otherwise participate in the hearing because he was unaware of the hearing, despite his September 23 inquiry to Respondent.
52. By e-mail dated October 6, 2012 to Mr. Denny, Respondent advised him that despite her request for a continuance, which was denied, the Court held a hearing on the Pendente Lite Motion on October 5; it received testimony about his income from his wife; it allowed the introduction of Mr. Denny's tax records; and the Court entered a temporary order requiring him to pay \$2,000 a month in temporary support and ½ of the house payment. Respondent further advised that the order allowed Mr. Denny's wife the sole use of the house and required that neither party dissipate assets. Respondent stated that she would schedule a mediation quickly.
53. Mr. Denny was astounded by Respondent's October 6 e-mail as he was unaware that a hearing had been scheduled.
54. By e-mail dated October 6, 2012 to Respondent, Mr. Denny stated as follows: "We need to talk by phone. If i knew about a hearing, i would have been there. I asked you about this last week. You denied anything going on for the 5th. If i'm reading this correct, I have to pay an additional \$1700 a month to her. That's more than i make. I only worked other jobs to cover your fees . . ."

55. Mr. Denny e-mailed Respondent again in October asking about the status of the case.
56. Respondent did not respond to Mr. Denny.
57. By e-mail dated October 24 to both Respondent and her legal assistant, Mr. Denny again asked for a status update. He also asked Respondent to refund his money so he could hire new counsel if his case was not important to her.
58. Respondent did not respond to Mr. Denny.
59. Respondent did not refund any portion of the \$5,000.00 to Mr. Denny.
60. On November 19, 2012, the Court entered the Order on the Pendente Lite Motion.
61. Respondent did not provide a copy of the Order to Mr. Denny.
62. By e-mail dated December 29, 2012, Mr. Denny asked Respondent's legal assistant for an update.
63. On January 3, 2013, Mr. Denny's wife asked Mr. Denny if he had learned of the outcome of the October 5 hearing.
64. That day, Mr. Denny asked Respondent and Respondent's legal assistant for an update.
65. Respondent did not respond to Mr. Denny.
66. By e-mail dated January 9, 2013, Mr. Denny again asked Respondent for an update.
67. Respondent did not respond to Mr. Denny.
68. Respondent never scheduled a mediation or settlement conference as she promised Mr. Denny in her October 6 e-mail.
69. On January 10, 2013, Mr. Denny submitted a bar complaint regarding Respondent's failure to respond to him and of her handling of this case.
70. With respect to the handling of the \$5,000.00 fee, it is unclear whether Respondent properly handled the funds and deposited in trust unearned fees. Respondent's legal assistant handled the funds. Respondent's legal assistant stated that the firm does not maintain a cash disbursement journal.

71. Respondent stated she does not review her legal assistant's trust account reconciliations.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Sara Elizabeth Chase constitutes misconduct in violation of the following Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

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.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 1.15 Safekeeping Property

- (b) Specific Duties. 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 that such person is entitled to receive;

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(3) Reconciliations.

(iv) Reconciliations must be approved by a lawyer in the law firm.

RULE 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

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 lawyer's fitness to practice law;

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** that Respondent's license to practice law in the

Commonwealth of Virginia is suspended for eighteen-months beginning on November 15, 2013.

It is further ORDERED that Respondent must comply with the following Terms:

1. Respondent shall pay, by certified, cashier's, or treasurer's check made payable to the order of Richard Denny, the principal sum of \$1,500.00, on or before November 15, 2013. The payment shall be made by delivery of a check to Assistant Bar Counsel, Renu M. Brennan, at Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.
2. Respondent shall pay, by certified, cashier's, or treasurer's check made payable to the order of Richard Denny, the principal sum of \$1,500.00, on or before January 15, 2014. The payment shall be made by delivery of a check to Assistant Bar Counsel, Renu M. Brennan, at Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.
3. Respondent shall pay, by certified, cashier's, or treasurer's check made payable to the order of Richard Denny, the principal sum of \$2,000.00, on or before May 15, 2014. The payment shall be made by delivery of a check to Assistant Bar Counsel, Renu M. Brennan, at Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.
4. Respondent shall close her law practice by November 15, 2013.
5. If, after her eighteen-month suspension, Respondent resumes the

practice of law, she shall not reopen a solo law practice for the remainder of her legal career.

6. Respondent shall immediately, and no later than September 17, 2013, return Richard Denny's entire file to him via certified mail.

It is further ORDERED that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of her license to practice law in the Commonwealth of Virginia, to all clients for whom she is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in her care in conformity with the wishes of her client. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the suspension, she shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary

System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order to Sara Elizabeth Chase by certified mail at her last address of record with the Virginia State Bar, Law Office of Sara E. Chase, Attorney at Law, PC, Suite A, 4100 East Parham Road, Henrico, VA 23228, and by regular mail to her counsel, Charlotte P. Hodges, Esq., B.I.G. Legal Services, PLLC, P.O. Box 4302, Midlothian, Virginia 23112, and via hand delivery to Assistant Bar Counsel, Renu M. Brennan, 707 E. Main St., Suite 1500, Richmond, VA 23219.

Jennifer Hairfield, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: September 10, 2013

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Pleasant S. Brodnax
Pleasant S. Brodnax, III, Chair