

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTER OF
KATHLEENE ANNE CIPRIANO

VSB DOCKET NOS. 12-022-089875 & 12-022-089993

ORDER OF REVOCATION

This matter came on to be heard on the 25th day of January 2013, before a panel of the Disciplinary Board consisting of Tyler E Williams III, Chair, Second Vice Chair, John S. Barr, John Casey Forrester, David R. Schultz and Jody D. Katz, Lay Member. The Virginia State Bar (VSB) was represented by Paul D. Georgiadis. The Respondent, Kathleene Anne Cipriano (Cipriano or Respondent) appeared pro se. The Chair polled the members of the Board Panel to see whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the Panel, to which inquiry each member responded in the negative. Angela Nicole Sidener, Court Reporter, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, 804-730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

These matters came before the Board on two separate Seventh District Subcommittee Certifications. In connection with Docket No. 12-022-089875 (Gatewood) VSB Exhibit A (Tabs 1-20) were admitted and the Panel heard testimony from Kelly Lynne Gatewood, Ronald Pohrivchak and Cipriano. In connection with Docket No. 12-022-089993 (Irwin) VSB Exhibit B (Tabs 1-10) was admitted and the Panel heard testimony from Amanda Irwin, Cipriano and six character witnesses on behalf of Cipriano. VSB Exhibit C (Respondent's Disciplinary Record) was admitted in connection with both Subcommittee determinations.

I. FINDINGS OF FACT RELEVANT TO DOCKET NO. 12-022-089875

1. At all times relevant hereto, Kathleene Anne Cipriano (“Respondent”) has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about May 10, 2007, Kelly Lynne Gatewood retained Respondent to complete her uncontested divorce.

3. Gatewood had separated from her husband on or about October 10, 2003. Gatewood’s prior counsel had filed the Bill of Complaint on or about May 23, 2005 in the Virginia Beach Circuit Court. Thereafter the divorce proceeded on an uncontested basis, her husband having executed a waiver of service. Beginning in 2006, prior counsel attempted to finalize the divorce by filing sketch final decrees each of which the Court rejected, and the Court’s notice of rejection set out the basis for rejecting the sketch final decrees. The last rejection notice was dated February 28, 2007. In that notice, the Court advised: a) that restoration of wife’s name must be restored by a separate order to include prior name changes, the wife’s current address and the payment of a \$21 recording fee; b) that the decree must include either the parties’ DMV control number or social security numbers as incorporated by reference in an addendum; and c) that the decree must reserve child support, custody, and visitation unless there is a court order, separation agreement, or both parties sign the decree.

4. On or about April 30, 2007, prior counsel forwarded Kelly Gatewood’s divorce file to Respondent.

5. Respondent met with Gatewood one time on May 10, 2007 and except for preparing and filing a sketch order of substitution of counsel, Respondent took no further steps to finalize the case by having a final decree of divorce entered. Respondent testified that she was unable to reach Gatewood, that Gatewood had moved from the state and Gatewood had not provided a new address and that Gatewood’s phone numbers were no longer working. Bar

Investigator Pohrivchak testified that he interviewed Respondent and that Respondent told him she “[I] had a hard time getting up with Gatewood”.

6. The Bar’s exhibits demonstrate, and Respondent admitted in her testimony, that Respondent had a current address for Gatewood. Further, Respondent’s staff spoke with Gatewood on at least three occasions and exchanged phone messages several times through October, 2009. Moreover, Respondent within a few months of being retained either had in her file, or prior counsel’s file or the Court file all information necessary to prepare a sketch final decree for divorce and submit it to the Court.

7. As a result of Respondent’s failure to take any action on the pending divorce case, the Court, after notice to Respondent, struck the case from its docket for inactivity and dismissed the case on October 26, 2010.

8. Respondent never notified or even attempted to notify Gatewood that the Court had dismissed her case and that Respondent had never submitted any sketch final decree to the Court for entry.

9. Gatewood filed a complaint with the Bar. Although the Bar served Respondent with Bar’s complaint on or about November 8, 2011 with a demand that Respondent provide a written and signed answer to the complaint, Respondent never filed any response.

II. MISCONDUCT RELEVANT TO DOCKET NO. 12-022-089875

Such conduct by the Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

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

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.

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;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

III. FINDINGS OF FACT RELEVANT TO DOCKET NO. 12-022-089993

1. At all times relevant hereto, Kathleene Anne Cipriano, Respondent, has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about June 21, 2011, Amanda Irwin retained Respondent to represent her in a domestic relations matter. At that time, Irwin paid Respondent by credit card a \$2,500.00 retainer.
3. Irwin terminated Respondent on October 7, 2011. Respondent's invoices of July, August, and September 2011 reflected only two billings for fees and costs, one for \$500.00 for services on June 21, 2011 and one for a credit card fee of \$25.00 on August 2, 2011
4. Respondent withdrew funds from the retainer to pay the \$500 charge.

5. Although Respondent's records and invoices demonstrate that she performed no other services for Irwin, Respondent made a counter withdrawal of cash in the amount of \$1,975 on July 5, 2011, leaving a retainer balance of \$25.

6. Irwin's termination letter to Respondent dated October 7, 2011, demanded an accounting on or before October 23, 2011 of her funds paid to Respondent.

7. Respondent never provided any accounting to Irwin for the \$1,975.00 cash withdrawal taken on July 5, 2011.

8. Respondent testified that a friend of Irwin, who had accompanied her when she retained Respondent, met with Respondent and told her that Irwin had asked him to get her money from Respondent. This friend according to Respondent was also slated to testify on behalf of Respondent's husband who was facing federal felony charges. Respondent acknowledged that she did not contact Irwin to determine if she had in fact requested return of the money and never advised Irwin that she had given the money to this friend.

9. As of the date of the hearing in this matter, Respondent has made no effort to repay the money Irwin paid to Respondent that Respondent withdrew from her retainer account in cash and gave it to a friend of Irwin's who was going to be a witness for Respondent's husband.

10. Respondent called six character witnesses each of whom testified that they knew her well and that she was a competent and diligent lawyer.

IV. MISCONDUCT RELEVANT TO DOCKET NO. 12-022-089993

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the 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 that such person is entitled to receive; and

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

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 to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

V. DISPOSITION

Upon review of the foregoing Findings of Facts and alleged Misconduct, the Exhibits admitted, the testimony of Gatewood, Irwin, Pohrivchak, Respondent, the character witnesses and argument of Bar Counsel and of Respondent, the Board recessed to deliberate and after due deliberation reconvened and rendered the following decision concerning the misconduct alleged:

In connection with Docket No. 12-022-089875, the Bar failed to prove by clear and convincing evidence that Respondent knowingly made a false statement of material fact in violation of Rule 8.1(a). The Bar also failed to prove by clear and convincing evidence that Respondent failed to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter in violation of Rule 8.1(b). The Bar did prove by clear and convincing evidence that Respondent did violate Rules 1.3, 1.4, 8.1(c) and Rule 8.4 based upon violations of Rules 1.3 and 1.4.

In connection with Docket No. 12-022-089993, the Bar proved by clear and convincing evidence that Respondent violated Rule 1.5(b) (3) (4) and (5) and Rule 8.4 (b) and (C).

The Board then admitted Respondent's Disciplinary Record, heard testimony from Respondent and Respondent's character witnesses, argument of Bar Counsel and of Respondent and then retired to determine the sanction to be imposed for the misconduct. Upon consideration of the forgoing and after giving due consideration to the factors of mitigation and aggravation, the Board determined that the appropriate sanction was revocation of Respondent's license to practice law in the Commonwealth of Virginia.

Accordingly it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is REVOKED, effective January 25, 2013, pursuant to Part Six, ¶ 13-18 (M) (4) of the Rules of the Supreme Court of Virginia.

It is further ORDERED that, as directed in the Board's January 25, 2013, Summary Order in this matter, Respondent shall comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall provide the Clerk of the Disciplinary System a written statement, within 14 days of the Summary Order, that she gave notice by certified mail, return receipt requested, of the Revocation 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 clients. Respondent shall make such arrangements as are required within 45 days of the effective date of the Revocation. The Respondent shall also furnish proof to the VSB within 60 days of the effective day of the Revocation that such notices have been timely given and such arrangements made for the disposition of matters.

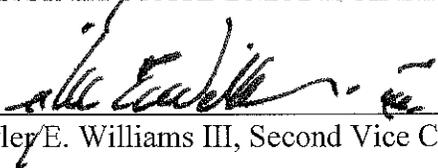
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of Revocation, she shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required 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 pursuant to Part Six, § IV, 13-9E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order by Certified Mail to the Respondent, Kathleene Anne Cipriano, at her address of record with the Virginia State Bar, W. Ware Morrison, PLLC, 2628 Barrett Street, Virginia Beach, VA 23452, and a copy hand-delivered to Paul D Georgiadis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

ENTERED this 14th day of FEBRUARY, 2013

VIRGINIA STATE BAR DISCIPLINARY BOARD



Tylee E. Williams III, Second Vice Chair